



# Horn v. New York Times, 790 N.E.2d 753 (N.Y. Ct. App. 2003)

Topics Covered: Termination of Employment, Employment

## **Outcome: Very Unfavorable**

### **Issue**

The issue in this case was whether the *New York Times* could discharge its employee, a physician, because she refused to act unethically.

### **AMA Interest**

The AMA supports the right and duty of physician-employees to adhere to medical ethical rules, even when otherwise directed by employers.

### **Case Summary**

Dr. Horn sued the *New York Times* for wrongful termination of her employment relationship. She alleged that the *Times*' Labor Relations, Human Resources, and Legal Departments had directed her to provide them with employees' confidential medical records without those employees' consent or knowledge. She also alleged that the Human Resources Department, so as to curtail the number of workers' compensation claims filed against the *Times*, directed her to misinform employees that certain injuries and illnesses were not work related when, in fact, they were. She claimed that the *Times* fired her because she refused to follow these illegal instructions.

The *Times* moved to dismiss the lawsuit, contending that, under New York law, it could discharge Dr. Horn at-will. The trial court denied the motion, and the *Times* appealed.

By a 3-2 decision, the Appellate Division of the New York Supreme Court affirmed the denial of the *Times*' motion to dismiss. Although the general rule in New York State is that employers can discharge their employees at-will, the court created an exception for a physician-employee who was punished for following ethical obligations to patients. The court noted that Dr. Horn was legally required to follow the AMA's Principles of Medical Ethics and CEJA Opinion E-5.09, which required employed physicians to preserve the confidentiality of their patients' medical information, even against the wishes of the employer.

The case was then appealed to the New York Court of Appeals, the highest court in New York. By a five-to-one decision, the Court of Appeals reversed the Appellate Division and the trial court. It held that, as in previous cases, it would decline to create a right of action for wrongful or abusive termination of employment or to recognize a covenant of good faith and fair dealing to

imply terms grounded in public policy into employment contracts, and it ordered the case dismissed.

### **Litigation Center Involvement**

The Litigation Center joined a brief prepared by the Medical Society of the State of New York (MSSNY) to support Dr. Horn in the Appellate Division of the New York Supreme Court. Additionally, the Litigation Center, on behalf of the AMA, MSSNY, and the American College of Occupational and Environmental Medicine, filed an *amicus curiae* brief in the Court of Appeals to support Dr. Horn.

New York appellate court brief

New York Supreme Court brief