



West Penn Specialty MSO, Inc. v. Nolan, 737 A.2d 295 (Pa. Super. 1999)

Topics Covered: Restrictive Covenants

Outcome: Very Unfavorable

Issue

The issue in this case was whether a court, through enforcement of a restrictive covenant, should limit the ability of a physician to make such patient referrals as she deemed medically appropriate.

AMA Interest

The AMA supports open communications between physicians and patients.

Case Summary

Dr. Nolan entered into a restrictive covenant as part of her employment contract. She promised that, should she leave her employment, she would not compete with her employer within a defined geographic area. She later terminated her employment and, in violation of her covenant, began to compete within the restricted area. The employer sued her, and the trial court preliminarily enjoined her from practicing medicine within the restricted area and from referring patients to physicians, hospitals, or clinics within the restricted area other than the former employer.

The injunction prohibited Dr. Nolan from making certain types of patient referrals, an activity not specifically proscribed by the covenant itself. The injunction thus prohibited her from communicating openly and honestly with her patients.

Dr. Nolan appealed the preliminary injunction, but the Pennsylvania Superior Court affirmed over a dissent.

Litigation Center Involvement

The Litigation Center joined an amicus brief prepared by the Pennsylvania Medical Society in support of Dr. Nolan's appeal. The brief did not contest the validity of the restrictive covenant or the general concept that Dr. Nolan should bear some adverse consequences for its violation. However, it did challenge the scope of the injunction entered against her. It pointed out that the limitation on her communications with patients prohibited her from practicing medicine ethically.