

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

TOTAL CARE PHYSICIANS, P.A.,)	
)	
Plaintiff,)	
)	
V.)	C.A. NO. 99C-11-201-JRS
)	
KEVIN W. O'HARA, M.D.,)	
)	
Defendant.)	

ORDER

This 10th day of July, 2003, plaintiff, Total Care Physicians, P.A., having moved the Court for reargument with respect to the Court's decision after bench trial¹ and the Court having considered the motion, it appears to the Court that:

1.) After a bench trial, the Court concluded that Kevin W. O'Hara, M.D. ("Dr. O'Hara") misappropriated the trade secrets of Total Care Physicians, P.A. ("TCP") by utilizing confidential patient information to construct a letter to his patients which, in part, wrongfully solicited the patients to leave TCP and join Dr. O'Hara in his new medical practice.² At the same time, the Court rejected TCP's argument that Dr. O'Hara breached his fiduciary duty to TCP. It is this aspect of the Court's decision which is the subject of TCP's motion for reargument.

¹*Total Care Physicians, P.A. v. O'Hara*, 2002 WL 31667901 (Del. Super.).

²*Id.*

2.) The question of whether Dr. O'Hara owed a fiduciary duty to TCP was litigated before the Court of Chancery. At the conclusion of oral argument on Dr. O'Hara's motion to dismiss for lack of subject matter jurisdiction, the Court of Chancery concluded: "I don't think that the allegation suffices to plead to the facts creating a special relationship between Dr. O'Hara and Total Care. In fact, I'd be quite troubled to recognize such a fiduciary obligation."³ This Court concluded that the Court of Chancery's decision in this regard was the "law of the case" and that the issues should not be re-litigated here.⁴

3.) In its motion for reargument, TCP has done nothing but re-hash the arguments it made in post-trial briefing. The "law of the case" issue was addressed to the parties by the Court at the close of the evidence and was the focus of the parties' post-trial submissions. Nothing new has been presented in the motion for reargument and, consequently, the motion must be, and hereby is, **DENIED**.⁵

IT IS SO ORDERED.

Judge Joseph R. Slights, III

³*Total Care Physicians, P.A. v. O'Hara*, C.A. No. 16313-NC (Del. Ch., Nov. 8, 1999)(Tr. at 29).

⁴*Total Care Physicians, P.A.*, *supra* at * 11.

⁵*See Gibbs v. Prison Health Services, Inc.*, C.A. No. 00C-08-071 HLA, Slights, J. (Del. Super., Oct. 3, 2002)(ORDER at 3)("a motion for reargument is not intended to re-hash arguments already decided by the Court")(citation omitted).