management matters

Expanded Protection for Professionals Against At-Will Discharge

By Jonathan A. Wexler

The First Department of New York State Supreme Court's Appellate Division ruled in a case decided in March 2002 that a physician employed by a corporation cannot be discharged for refusing to violate professional standards that govern the practice of medicine. This ruling extends to doctors' protection against discharge similar to that given to attorneys in *Wieder v. Skala*, a 1992 case decided by the Court of Appeals, New York's highest court.

Horn v. New York Times

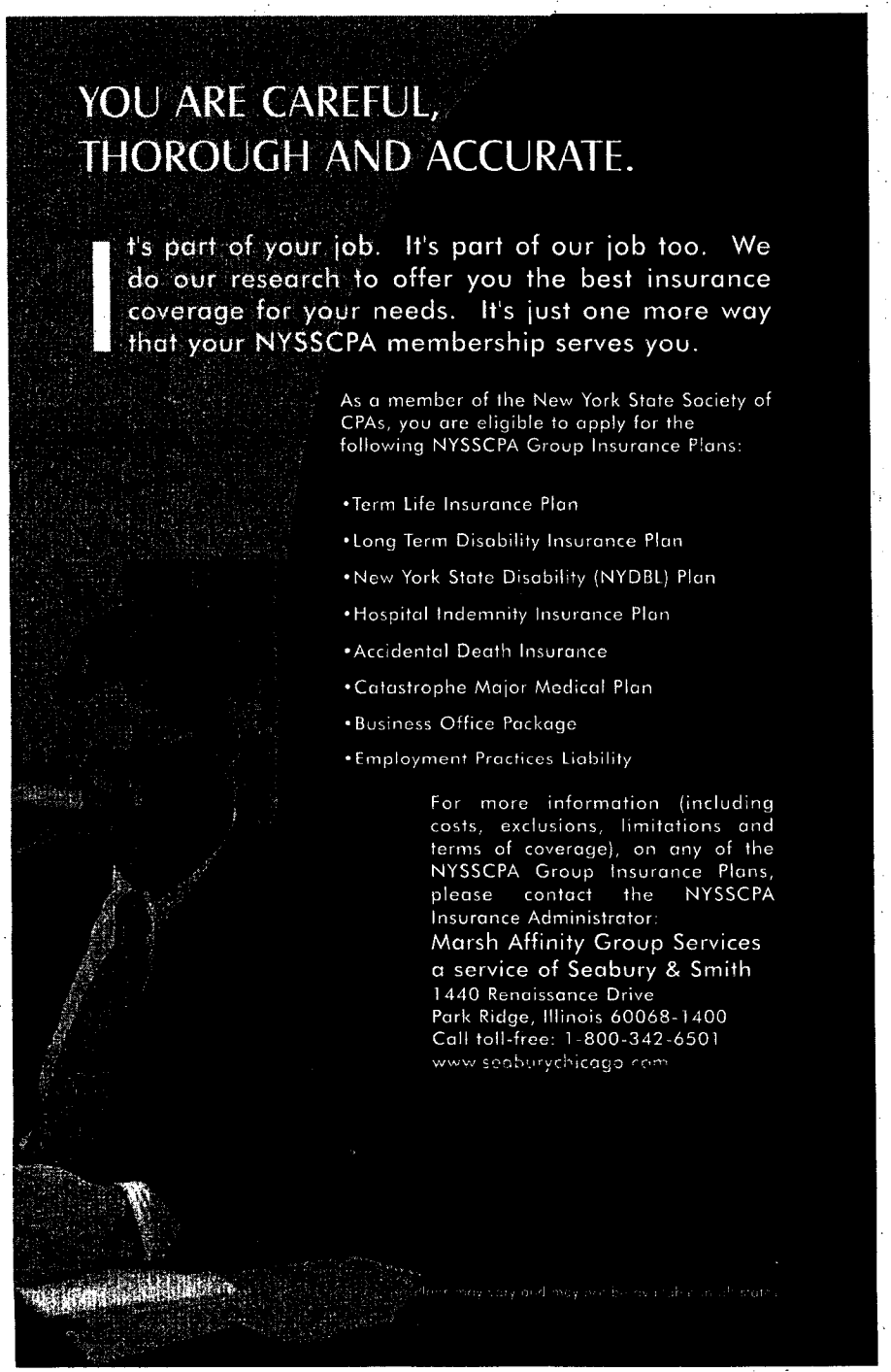
In 1996, Dr. Shirley Horn became the associate director of *The New York Times'* medical department. In that position, she rendered medical care to *Times'* employees, and was responsible for examining employees who were claiming workers' compensation benefits to determine whether their injuries or illnesses were work-related. Horn claimed that the *Times'* department heads had frequently directed her to provide them with employees' confidential medical records (without the employees' knowledge), and that the *Times'* vice president of human resources had instructed her to misinform employees about the work-relatedness of their conditions in order to limit the *Times'* workers' compensation liability.

Horn refused to engage in this conduct once she learned that it was contrary to a physician's legal and ethical obligations to patients. Horn alleged that her employment was terminated shortly after she declined to provide employees' medical records to the *Times'* managers. *The Times'* asserted that Horn was discharged in connection with a budgetary restructuring of the medical department. Relying on *Wieder v. Skala*, Horn brought suit against *The Times*, claiming that the termination of her employment violated an implied-in-law term that formed part of the employment agreement between her and *The Times*.

In *Wieder v. Skala*, the New York State Court of Appeals ruled that an attorney could not be discharged by his law firm employer for insisting that the firm report the professional misconduct of another of the firm's attorneys to a disciplinary committee, as required by his profession's Code of Professional Responsibility. Despite Wieder's at-will employment status—he had no fixed term of employment and thus could be fired at any time—the court held that Wieder could not be discharged for engaging in conduct required by the rules of the profession. The court based this ruling on the conclusions that the requirements of the Code of Professional Responsibility were implied terms of the employment relationship between a law firm and the attorneys it employed, and that in every contract was an obligation not to engage in conduct that would prevent the other party from carrying out the agreement.

New York courts have shown reluctance to extend *Wieder*-type protection to members of other professions, and have declined to do so for bank employees, chief financial officers, commodities brokers, auditors and pharmacists. This approach results from the courts' oft-stated belief that limitations on New York's strong at-will doctrine is best left to the legislature. However, the court in *Horn*—ruling on the *Times'* motion to dismiss Horn's complaint—found that a physician's obligation to follow the Principles of Medical Ethics of the American Medical Association and the professional conduct requirements set forth in New York's education law and in the rules of the New York State Board of Regents was analogous to an attorney's obligation to follow the Code of Professional Responsibility. Accordingly, the Appellate Division, First Department (which covers New York and Bronx counties), affirmed the trial court's denial of the *Times'* motion to dismiss. The First Department noted that employers of physicians should know that the physician is obligated to adhere to the patient confidentiality provisions of the profession's ethical code. Thus, the court ruled *The Times* had an implied contractual obligation not to interfere with Horn's compliance with that code. In so ruling, the First Department cited public policy considerations, including patients' expectations that their physicians will maintain the confidentiality of their medical conditions.

(*Continues on page 22*)



Expanded Protection for Professionals Against At-Will Discharge

(Continued from page 8)

While the *Horn* case arose from a physician's employment, it is noteworthy for its expansion of the *Wieder* limitation on at-will discharge of professionals. The court read implied terms into the employment relationship between Horn and *The Times* arising from the medical profession's rules of ethics, and limited the employer's ability to interfere with physician's compliance therewith. It will be interesting to see the extent to which, if any, the New York courts continue to expand *Wieder*, and whether other professionals will gain protection from discharge as a result of the governing rules of professional standards. ◗

Jonathan A. Wexler, Esq., is an attorney in the New York office of Vedder Price Kaufman & Kammholz, where he practices labor and employment law.