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TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF

A recent court decision has received a great deal of attention in legal circles and we thought it would be of interest to you. It centers about the powers of the New York State Comptroller and we think you would agree with us that it is quite rare to think of the Comptroller and healthcare in the same sentence.

In essence, United Healthcare pays the claims submitted by physicians for services provided to state employees under the Empire Plan. The Plan is the primary for the State's health insurance program. The obligations of United are to process and pay the claims.

The Comptroller determined to audit claims paid to a certain plastic surgery practice extending over a four year period as the Comptroller suspected overpayment of certain claims. To accomplish the purposes of the audit the Comptroller attempted to subpoena the practice's documents following the refusal of the practice to permit a random sampling of its records.

It was at this point that the physician group moved in court to quash the subpoena on the grounds that the subpoena failed to include written patient authorizations authorizing the release of the patient records. The lower court agreed with the physicians and denied the subpoena as is failed to include the patients' authorizations within its contents.

The Comptroller then appealed arguing that that office possessed broad subpoena powers to further its investigatory powers. In order to fulfill its responsibilities to guarantee proper payments and to avoid overpayments a review of records was essential and patient releases or authorizations were not required in these instances.

The appeals court sided with the Comptroller's argument and further found that HIPAA did not act as a bar to the release of the records in question. In point of fact HIPAA specifically authorizes the disclosure of health related information to "health oversight agencies" to enable proper oversight activities. The court then added that the Comptroller fit within the definition of a health oversight agency and was properly performing its duties in this regard. As a result of its findings the court found that the authorizations of the patients in this matter were not needed under HIPAA.

Respectfully submitted

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