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TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF

A recent court decision in the Appellate Division governing Queens/Long Island should be of interest to participating physicians with Health Plans.

The medical practice in question was on the Fidelis panel. The Plan terminated its agreement claiming that the continuing provision of care by the physician(s) would constitute "an imminent threat. . ." to the patients in that, allegedly, care was being provided by persons lacking credentialed expertise and other staff lacked credentials. (We would add parenthetically that we have seen this claim raised in dealings with Fidelis over the years).

The physician brought suit for breach of contract contending that Fidelis had manufactured data to justify its actions and also claimed that the Fidelis acts constituted a violation of the Public Health Law which provides immunity for providing information for violations offered in good faith.

Fidelis succeeded in the trial court to dismiss the case for breach of contract and damages but in a very important ruling for the medical profession the Appeals Court reversed and reinstated this suit. It found that the plaintiff was entitled to its day in court on the issue of whether there was an implied covenant of good faith and fair dealing contained in the underlying contract.

The Public Health Law requires that before a contract with a health care professional is terminated there must be an opportunity offered by the carrier for a review and hearing - in this instance that had not been provided. The only way that this can be enforced is to allow the professional to bring suit, if necessary.

The physician failed in claiming a right to sue under the immunity section previously mentioned as the court determined that this portion of the law was designed to protect one from suit after reporting but did not create an affirmative right to claim damages.

Did Fidelis act solely with malice so as to justify prima facie recovery and damages without proof? On this issue the court ruled in favor of the carrier.

Respectfully submitted,

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