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February 19, 2020

TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF

You may recall that about ten years ago a group of insurers, (including Progressive), brought a series of lawsuits challenging physicians' charges on the grounds that the professional corporations, despite corporate filings, were not truly owned by licensed physicians. Old habits seemingly do not vanish as we review a case recently ruled upon by New York's highest court.

The facts: A medical P.C. was formed by a radiologist to provide MRI services and he subleased the facilities and rented the equipment at what the court found were exorbitant charges. The owner of the equipment reserved the right to cancel the lease at any time, and, as part of the transaction the physician also "hired" an executive secretary recommended by the owner and paid said secretary handsomely. The latter had sole control over the P.C. checkbook. As you may have surmised the practice was instrumental in providing care to those injured in automobile accidents and were plaintiffs in litigation. Substantial billings were generated to Progressive Insurance Company. The physician sued Progressive when it began denying claims. The defense contended that the medical P.C. was a sham – not truly owned and operated by the physician but instead by laypersons.

The doctor's case was certainly not helped when the non-physician refused to testify by claiming their Fifth Amendment rights against self-incrimination!! On appeal, the Court of Appeals reiterated that under New York law an unlicensed person is forbidden from organizing a P.C. to profit or to control the entity. Fraud or fraudulent intent need not be established to deny payment if it is established under the facts that there is a material breach of this prohibition.

The court was also concerned that a corporate practice controlled by non-physicians could negatively impact patient care.

Respectfully submitted,

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