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TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF

We offer the following fact pattern for your consideration in a pending litigation which has not yet been decided by the court.

McKesson offered oncology practices which guaranteed to purchase a specific quantity of drugs from McKesson the free usage of two management tools developed by McKesson. One program compared reimbursement rates for interchangeable drugs and the other calculated the profit margins for the prospective course of treatment.

An enterprising whistleblower utilized the whistleblower statute and the federal government determined to assert a claim against McKesson based upon the theory that it was illegal for McKesson to offer remuneration of any type for items or services reimbursed under a federal program and, in addition, that claims for reimbursement would be false under the civil False Claims Act.

McKesson moved for judgment before a trial arguing that the business-management tools were not “reimbursements” and that there was no fraudulent scheme intended or willful violation. It also argued that there was no criminal intent or knowledge of a crime to justify being charged.

The court agreed with McKesson and reasoned that since McKesson had acted so transparently it could not be established that it had willfully acted with criminal intent.

McKesson was not as fortunate in an attempt to negate a trial on the civil aspects of the transactions. The court found that a trial could establish that the management tools offered could be found to have a substantial value to customers and thus could qualify as reimbursement being offered to use McKesson products.

The court also ruled that with regard to a charge of false claims being submitted the Plaintiff did not have to offer proof of a specific claim or claims being submitted. There need only be an inference that false claims had been submitted to justify a claim.

The issue of the possible exposure of those physicians who may have received the “reimbursement” was not a question before this court but is there a possible question for the future?

Respectfully submitted,

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