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HEALTH CARE ALERT

May 4, 2006

Dear Clients and Friends:

Over the past few months, there have been a number of developments of interest within the health care industry. We would like to take the opportunity to make you aware of these developments and their potential impact on your professional practice.

MLMIC TO REDUCE COVERAGES UNDER ITS PHYSICIANS AND SURGEONS PROFESSIONAL LIABILITY POLICIES

In a letter to policyholders dated April 26, 2006, the Medical Liability Mutual Insurance Company ("MLMIC") announced that it has received approval from the New York State Department of Insurance to remove two coverages from its Physicians and Surgeons Professional Liability policies. Effective as of the new policy period beginning July 1, 2006, MLMIC will no longer provide: (1) an automatic separate limit of liability for professional entities; and (2) "defense only" coverage for administrative hearings and Medicare/Medicaid fraud and abuse proceedings. Both of these coverages will still be made available to qualifying health care providers, but only if they pay an additional premium charge. Any qualifying health care providers who wish to maintain either or both of these two coverages must submit a completed application to MLMIC no later than May 22, 2006. For more information, please contact the MLMIC Underwriting Department at (212) 576-9670.

OIG ANNOUNCES INITIATIVE ENCOURAGING RESOLUTION OF "STARK" AND MEDICARE ANTI-KICKBACK VIOLATIONS

In an open letter to health care providers dated April 24, 2006, the Office of Inspector General ("OIG") of the U.S. Department of Health & Human Services announced a new initiative that promotes the use of the Provider Self-Disclosure Protocol ("SDP") to resolve civil monetary penalty ("CMP") liability under the physician self-referral and anti-kickback statutes. The OIG has the authority to impose a CMP of up to \$15,000 for each service billed in knowing violation of the physician self-referral law, and assessments of up to three times the amount claimed for such services. The OIG also has the authority to impose a \$50,000 penalty for each violation of the Medicare anti-kickback statute.

In an effort to encourage voluntary disclosures of physician self-referral and anti-kickback violations that may trigger the imposition of a CMP, the OIG has provided guidance on how such disclosures will be resolved. When a health care provider violates the physician self-referral and/or anti-kickback statutes in a manner that triggers a CMP, the provider's liability falls along a continuum based on a calculation of damages. If, pursuant to the SDP, a health care provider discloses such conduct voluntarily, the OIG will generally settle such matters for an amount near the lower end of the continuum.

A provider's participation in the SDP is contingent upon full cooperation and complete disclosure of the facts and circumstances surrounding the violation. The OIG has created this initiative to provide an incentive to health care providers to work together with the OIG to strengthen the integrity of the health care system. To read the OIG's open letter to health care providers in its entirety, please visit: <http://oig.hhs.gov/fraud/docs/openletters/Open%20Letter%20to%20Providers%202006.pdf>

STATE HEALTH DEPARTMENT APPROVES STANDARDIZED FORM FOR EXPRESSION OF PATIENT WISHES REGARDING LIFE-SUSTAINING TREATMENT

The New York State Department of Health ("DOH") recently approved a physician order form known as the Medical Orders for Life Sustaining Treatment ("MOLST") form, in order to clarify and communicate a patient's wishes regarding cardiopulmonary resuscitation ("CPR"), intubation and other life-sustaining treatments. The MOLST form is designed to serve as a standardized document that will coordinate physician orders with the patient's personal wishes and reduce repetitive documentation. The MOLST form is intended to be transported, along with the patient, between different health care settings in order to ensure that the patient's wishes are fulfilled. The MOLST form may be used by health care providers and facilities as the legal equivalent of a "Do Not Resuscitate" form. For more information about the MOLST form, please visit: http://www.compassionandsupport.org/molst/molst_form.pdf.

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For more information on any of the issues identified above, please call any of the attorneys in our firm's health care department.

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