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TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF

Our report addressing the matter of subpoenas elicited a number of inquiries and we thought it useful to clarify some of the issues raised.

If you receive a Grand Jury or judicial subpoena in conjunction with a criminal proceeding involving a patient. Please be alert to the fact that although HIPAA rules do permit you to release this information minus your patient's consent, the law in New York does not grant you the exemption for information release without the consent of your patient. If the subpoena lacks a court order or patient authorization, then to comply with New York Law the information is not to be released. However, New York does permit its oversight agencies to subpoena patient information without patient consent. Thus, were you to receive such a subpoena from OPMC, Departments of Mental Hygiene or Health, you need not be concerned with the question of lack of consent. The same also applies to Medicaid fraud investigations with the caveat that if the information is not related to the investigation you need not comply. It goes without saying that it is always best to have counsel guide you through the morass.

Subpoenas are to be served in the same fashion as it was a legal proceeding. A subpoena served through the mail is not valid unless it is accompanied with an acknowledgment of receipt. If you (and your attorney) are of the opinion that the subpoena is improper for any reason you must consider a motion to quash it. You simply cannot decide yourself that it is improper and that you will ignore it. If the subpoena is valid your passive refusal to comply may lead to your being found to be in contempt of court.

You may be foremost expert in a particular field and an attorney may wish you to testify on his/her behalf in a legal proceeding. New York will not require you to comply with a subpoena to appear in a matter in which you have had no relationship to the parties. A motion to quash the subpoena is the proper remedy in this dilemma.

Respectfully submitted,

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