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TO: THE NEW YORK SOCIETY OF PHYSICAL MEDICINE AND REHABILITATION

We are pleased to report that the New York State Department of Health is considering a regulatory change in its June meeting to bring New York law into step with the Federal Stark Law and the federal safe harbors.

The Federal Stark regulations have been in place for many years and under federal guidelines a series of safe harbors were created so that physicians complying with those safe harbors were permitted to enter into various patterns of referral.

New York State studied the federal statute and through a series of legislative actions created its own mini-Stark, but eliminated certain of the safe harbors which would otherwise be permitted by the federal government. This created a confusing landscape for the practitioner and for those advisors who were unfamiliar with the New York restrictions. As an example, we found many clients entering into referral arrangements they believed were safe – but were not – as many medical organizations publicized the federal safe harbors, while ignoring restrictions placed in states such as New York.

One important difference between federal and state enforcement can be found within the federal statute where the only party targeted for an improper referral is the party doing the referring to an entity with which they have a direct/or indirect “financial relationship.” In New York, both the referrer, and the person/entity receiving the referral, can be pursued under the law. The State Legislature also responded to lobbying

efforts by various Specialty Societies which helped shape curbs placed upon the federal guidelines.

The State Bar Association Health Committee, in which we participate, voiced concern with the disparate applications of the two levels of government. The June meeting, to which we refer earlier, will consider a regulatory change and, if adopted, would fully recognize federal compensation arrangement exceptions.

One of the important safe harbors which may be recognized and accepted in New York would permit equipment leasing (such as P.T. equipment) at fair market value, provided that it is in writing for a period of at least one year. This important business tool would not be considered to be an improper compensation arrangement and in essence, the change, if enacted, would bring back to the medical marketplace a practice which was commonly engaged in prior to the New York restriction.

Respectfully submitted,

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