

## **PHYSICIAN ADVOCACY PROGRAM™**

The Physician Advocacy Program provides you, as a “Participating Physician” with representation provided by the law firm of Kern Augustine Conroy & Schoppmann, P.C., “Attorneys to Health Professionals” (“Kern Augustine”).

### ***BASIC PROGRAM***

#### ***REPRESENTATION BEFORE THE NEW JERSEY BOARD OF MEDICAL EXAMINERS AND THE MEDICAL PRACTITIONER REVIEW PANEL***

#### ***PROGRAM DESCRIPTION***

##### **What is Covered by the Program?**

Legal representation will be provided during the investigatory phase of any covered matter before the New Jersey State Board of Medical Examiners (the "Board") or the Medical Practitioner Review Panel (the "Panel"). Representation shall commence at the time you receive a written notice from the Board or the Panel of an investigation concerning alleged violation of the New Jersey Medical Practices Act, *N.J.S.A. 45:9-1 et. seq.* Legal representation will be provided during the investigatory phase of the Board's or Panel's administrative proceedings, that is, from the first request by the Board or Panel for information through all informal investigative proceedings except as set forth below. You will receive consultation concerning these matters, including total review of your problem, review of the patient complaint against you, discussions concerning an appropriate response to the Board or Panel, and assistance in the preparation and drafting of that response. Any legal documents required for your defense before the Board will be drafted and, in the event you are required to appear before the Panel, the Board or a committee of the Board, a member of the firm will personally accompany you and provide legal representation before the Board or the Panel. There will be no limitations on the amount of time spent for reasonable consultations, or the number of appearances before the Board or the Panel that may be required.

##### **What are the Program's Limitations?**

The Program does not include representation or the provision of any other services in the post-investigatory phase of any matter (that is, after the filing of a formal complaint against the Participating Physician by the Board or the Attorney General of New Jersey seeking the suspension or revocation of the practitioner's license, monetary penalties, or other relief, or after an offer of settlement by the Board, the Office of Attorney General of New Jersey or their representatives) are not covered. Further limitations on the Program include the Program Limitations set forth under “General Terms Applicable to All Aspects of the Program” beginning on page 10 of this Program Description.

### **What is Excluded from the Program?**

The following services shall be specifically excluded from this program:

- 1) Legal services in connection with any judicial court proceeding.
- 2) Legal services in connection with any civil, administrative or criminal proceedings (other than administrative investigations by the Panel, the Board or their designees, or as set forth above) arising directly or indirectly from any Board or Panel activity.
- 3) Representation before any entity other than the Panel, the Board or the Office of the Attorney General of New Jersey, acting pursuant to *N.J.S.A. 45:1-14 et. seq.*
- 4) The Exclusions from Coverage set forth under “General Terms Applicable to All Aspects of the Program” beginning on page 10 of this Program Description.

## **COMPREHENSIVE PROGRAM<sup>1</sup>**

### ***The Comprehensive Program Includes the Following:***

#### ***REPRESENTATION BEFORE THE NEW JERSEY BOARD OF MEDICAL EXAMINERS AND THE MEDICAL PRACTITIONER REVIEW PANEL***

##### **What is Covered by the Program?**

Legal representation will be provided during the investigatory phase of any covered matter before the New Jersey State Board of Medical Examiners (the "Board") or the Medical Practitioner Review Panel (the "Panel"). Representation shall commence at the time you receive a written notice from the Board or the Panel of an investigation concerning alleged violation of the New Jersey Medical Practices Act, *N.J.S.A. 45:9-1 et. seq.* Legal representation will be provided during the investigatory phase of the Board's or Panel's administrative proceedings, that is, from the first request by the Board or Panel for information through all informal investigative proceedings except as set forth below. You will receive consultation concerning these matters, including total review of your problem, review of the patient complaint against you, discussions concerning an appropriate response to the Board or Panel, and assistance in the preparation and drafting of that response. Any legal documents required for your defense before the Board will be drafted and, in the event you are required to appear before the Panel, the Board or a committee of the Board, a member of the firm will personally accompany you and provide legal representation before the Board or the Panel. There will be no limitations on the amount of time spent for reasonable consultations, or the number of appearances before the Board or the Panel that may be required.

##### **What are the Program's Limitations?**

The Program does not include representation or the provision of any other services in the post-investigatory phase of any matter (that is, after the filing of a formal complaint against the Participating Physician by the Board or the Attorney General of New Jersey seeking the suspension or revocation of the practitioner's license, monetary penalties, or other relief, or after an offer of settlement by the Board, the Office of Attorney General of New Jersey or their representatives) are not covered.

##### **What is Excluded from the Program?**

The following services shall be specifically excluded:

- 1) Legal services in connection with any judicial court proceeding.

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<sup>1</sup>The Comprehensive Program is offered as an option by Kern Augustine Conroy & Schoppmann, P.C. at an additional charge and is subject to the additional Program Limitations and Exclusions set forth in the "General Terms Applicable to All Aspects of Program" beginning at page 10 of this Program Description.

- 2) Legal services in connection with any civil, administrative or criminal proceedings (other than administrative investigations by the Panel, the Board or their designees, or as set forth above) arising directly or indirectly from any Board or Panel activity.
- 3) Representation before any entity other than the Panel, the Board or the Office of the Attorney General of New Jersey, acting pursuant to *N.J.S.A. 45:1-14 et. seq.*

## ***REPRESENTATION BEFORE THE QUALITY IMPROVEMENT ORGANIZATION***

### **What is Covered by the Program?**

Legal representation will be provided to you upon an adverse review by a Quality Improvement Organization established pursuant to federal Medicare law. (hereinafter "QIO") Your right to representation in the investigatory phase of any covered matter shall commence at the time you receive a written notice from the QIO of an alleged violation of 42 *C.F.R.* Section 1004.10 or an Initial Denial Determination pursuant to 42 *C.F.R.* Section 466.94, which notice provides that any health care services or items furnished or to be furnished to a patient by the participant are disapproved, or which notice makes any other written finding adverse to you. Representation will include all preparation for the appearances at meetings and hearings permitted by the QIO for review of such adverse determinations.

### **What are the Program's Limitations?**

Representation following an initial decision by the Office of the Inspector General, United States Department of Health and Human Services, (hereinafter "OIG") are not covered.

Legal services required after the referral of a matter from the OIG or QIO to the Attorney General's Office, the State Board of Medical Examiners, any prosecutor, or any other individual or entity are not covered.

### **What is Excluded?**

The following services shall be specifically excluded:

- 1) Legal services in connection with any judicial court proceeding.
- 2) Legal services in connection with any civil, administrative or criminal proceeding (other than administrative proceedings before the QIO or OIG or their designee pursuant to 42 *U.S.C.* 132c. *et seq*) arising directly or indirectly from any QIO activity.
- 3) Representation before any entity other than a QIO, the OIG, or a designee of a QIO or the OIG.

***REPRESENTATION BEFORE THE MEDICARE FISCAL  
INTERMEDIARY, MEDICARE ADMINISTRATIVE CONTRACTOR AND THE OIG***

**What Is Covered by the Program?**

Legal representation, except as provided for below, will be provided during the investigatory phase of any covered matter before the OIG, or its administrative contractors, carriers, or fiscal intermediaries for claims relative to your care of New Jersey resident beneficiaries, as defined in 42 C.F.R. Section 421.3 (and collectively referred to herein as the "FI"), where such investigations concern your participation in the Medicare program of the United States Department of Health and Human Services. Representation begins at the time the OIG or the FI first requests information and continues through all informal investigative proceedings, OIG audits and redeterminations, subject to the Program Limitations and Exclusions. Representation includes preparation for and appearances before the OIG, the FI, and the federally Qualified Independent Contractors ("QICs") including necessary consultation concerning these matters, review of the problem(s) at issue, preparation of any necessary documents, meetings with consultants and expert witnesses and such other time as shall be reasonably required to represent you.

**What are the Program's Limitations?**

Legal services required post-audit or post-reconsideration by a QIC of any matter (that is, after you have received notice of the results of any reconsideration by the QIC)

**What is Excluded?**

The following services shall be specifically excluded:

- 1) Legal services in connection with any judicial (court) proceeding.
- 2) Legal services in connection with any civil, administrative or criminal proceeding.
- 3) Representation before any entity other than OIG, the FI, the QIC or their designees.
- 4) Legal services related to any inquiry or other action initiated by a QIC, other than actions before the QIC.

**REPRESENTATION DURING CRIMINAL INVESTIGATIONS BY  
THE NEW JERSEY ATTORNEY GENERAL**

**What is Covered by the Program:**

Legal representation will be provided during the investigatory phase of any matter pursued as a health care claims fraud pursuant to *N.J.S.A. 2C:21-4.2 et, seq*, and conducted by the Attorney General of New Jersey, the Insurance Fraud Prosecutor, any New Jersey County Prosecutor's Office or any New Jersey Grand Jury. Representation, during the investigatory phase, begins at the time the Attorney General of New Jersey, the Office of the Insurance Fraud Prosecutor, a New Jersey County Prosecutor, or a New Jersey Grand Jury first requests information and continues through all investigative proceedings, subject to the Program's Limitations and Exclusions. Representation includes preparation for and appearances (to the extent allowed by law) before investigators of the Office of the Attorney General of New Jersey, the Office of the Insurance Fraud Prosecutor, a New Jersey County Prosecutor or a New Jersey Grand Jury, including necessary consultation concerning these matters, review of the problem, preparation of necessary documents, meetings with consultants and expert witnesses and such other time as shall be reasonably required to represent you.

**What are the Program's Limitations?**

Legal services required in the post-investigatory phase of any matter are not covered. The post-investigatory phase begins after the filing of an indictment or criminal information, or a civil, administrative or criminal complaint.

**What is Excluded?**

The following services shall be specifically excluded:

- 1) Legal services in connection with any judicial proceeding (other than as set forth above).
- 2) Legal services in connection with any civil, administrative or criminal proceeding (other than as set forth above).
- 3) Representation before any entity other than the Attorney General of New Jersey, the Insurance Fraud Prosecutor, a New Jersey County Prosecutor, or a New Jersey Grand Jury.

**REPRESENTATION BEFORE  
THE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**What Is Covered by the Program?**

Legal representation will be provided during the investigatory phase of any covered matter before the Department of Environmental Protection of the State of New Jersey ("DEP"). Representation, during the investigatory phase, begins at the time the DEP first requests information and continues through all informal investigative proceedings, subject to the Program's Limitations and Exclusions. Representation includes preparation for and appearances with investigators of the DEP, including necessary consultation concerning these matters, review of the problem, preparation of necessary documents, meetings with consultants and expert witnesses and such other time as shall be reasonably required to represent you.

**What are the Program's Limitations?**

Legal services required in the post-investigatory phase of any matter, that is, after the filing of a formal complaint, or after the referral of the matter from the DEP to the Attorney General's Office or any prosecutor or individual for the filing of a formal complaint are not covered.

**What is Excluded?**

The following services shall be specifically excluded:

- 1) Legal services in connection with any judicial court proceeding.
- 2) Legal services in connection with any civil, administrative or criminal proceeding (other than administrative investigations by the DEP as set forth above) arising directly or indirectly from any DEP activity.
- 3) Representation before any entity other than the DEP or its designee.

**REPRESENTATION BEFORE  
THE FEDERAL OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION**

**What Is Covered by the Program?**

Legal representation will be provided during the investigatory phase of any covered matter before the United States Occupational Safety and Health Administration ("OSHA") pursuant to Section 1910.1030 of Subpart Z of 29 CFR part 1910. Representation during the investigatory phase begins at the time OSHA first requests information and continues through all informal investigative proceedings, subject to the Program's Limitations and Exclusions. Representation includes preparation for and appearances with investigators of OSHA, including necessary consultation concerning these matters, review of the problem, preparation of necessary documents, meetings with consultants and expert witnesses and such other time as shall be reasonably required to represent you.

## What are the Program's Limitations?

Legal services required in the post-investigatory phase of any matter are not covered. The post-investigatory phase begins after the filing of a formal complaint, or after the referral of the matter from OSHA to the United States Attorney, the Attorney General of the United States, the State's Attorney General, or any prosecutor or individual for the filing of a formal complaint.

## What is Excluded?

The following services shall be specifically excluded:

- 1) Legal services in connection with any judicial court proceeding.
- 2) Legal services in connection with any civil, administrative or criminal proceeding (other than administrative investigations by OSHA as set forth above) arising directly or indirectly from any OSHA activity .
- 3) Representation before any entity other than OSHA or its designee.

**REPRESENTATION BEFORE  
THE U. S. DEPARTMENT OF HEALTH & HUMAN SERVICES'  
OFFICE FOR CIVIL RIGHTS REGARDING  
THE HEALTH INSURANCE PORTABILITY & ACCOUNTABILITY ACT ("HIPAA")  
PRIVACY STANDARD**

## What Is Covered by the Program?

Legal representation will be provided during the preliminary investigations by the U.S. Department of Health & Human Services' Office for Civil Rights ("OCR") related to compliance with Subpart E of 45 *CFR* part 164 (Privacy of Individually Identifiable Health Information). Representation begins at the time OCR first requests information, whether as the result of a complaint to OCR filed pursuant to §160.306 of Subpart C of 45 *CFR* part 160, or based upon an OCR-initiated compliance review pursuant to §160.308 of Subpart C of 45 *CFR* part 160, and continues through all informal investigative proceedings, subject to the Program's Limitations and Exclusions. Representation includes preparation for and appearances with investigators of OCR, including necessary consultation concerning these matters, review of the problem, preparation of necessary documents, meetings with consultants and expert witnesses and such other time as shall be reasonably required to represent you.

### **What are the Program's Limitations?**

Legal services required after OCR's issuance of a Violation Letter of Findings or other decision to move to administrative proceeding or other enforcement, or after the referral of the matter from OCR to the U. S. Department of Justice, the United States Attorney, the Attorney General of the United States, or the State's Attorney General for the filing of a formal complaint are excluded.

### **What is Excluded?**

The following services shall be specifically excluded:

- 1) Legal services in connection with any judicial court proceeding.
- 2) Legal services in connection with any civil, administrative or criminal proceeding (other than administrative investigations by OCR as set forth above) arising directly or indirectly from any OCR activity .
- 3) Representation before any entity other than OCR or its designee.

## GENERAL TERMS APPLICABLE TO ALL ASPECTS OF PROGRAM

### Program Limitations

- 1) The program shall cover only the cost of legal services. Costs of expert witnesses, medical consultants, photocopying, facsimile transmissions, transcripts, court reporters, mailing, and all other out of pocket expenses will remain the obligation of the participant. Failure of the participant to pay for these expenses within thirty days of the date of receipt of invoice shall, upon reasonable notice, constitute a basis for termination of representation to that participant for the remainder of the program period.
- 2) Coverage shall be denied where written notice of an investigation or other action by any governmental agency or its designees is not received by Kern Augustine from the Participating Physician during a period in which the Participating Physician is enrolled in the program.
- 3) Kern Augustine reserves the right to terminate coverage if the member fails to cooperate fully and honestly with the Law Firm; refuses to follow the Law Firm's advice; fails to respond to the Law Firm's telephone calls, letters, or other communications; insists that the Law Firm do something illegal; lies under oath or tells the Law Firm that he or she did so; fails to pay or retain any expert or investigator as the Law Firm may reasonably require; or engages in other conduct inimical to the Law Firm or the Program.
- 4) Membership as a Participating Physician is limited to members in good standing of New Jersey Physicians. Initial membership or renewal may be denied based upon past utilization of this or other programs provided by Kern Augustine; potential for conflict with other Program members or clients of Kern Augustine; past dealings with the applicant or for any other reason in the reasonable discretion of Kern Augustine.

### Program Exclusions

The Following Are Expressly Excluded:

- 1) Legal services relating to a matter in which the participant is not a personally named party.
- 2) Legal services relating to any matter resulting from acts or omissions of the participant outside of the State of New Jersey.
- 3) Legal services relating to any matter resulting from acts or omissions of the participant where the participant has received, within thirty days subsequent to receipt of initial membership by Kern Augustine, notice, directly or indirectly, of the possibility of an investigation or review of any activity which would be covered under the PhysicianAdvocacy Program Services Program, including, but not limited to a complaint from, or a notice of investigation or review of such activity from, any of the following:
  - a) a hospital, hospital medical staff, or any hospital or medical staff committee, or its agents or representatives;
  - b) a QIO or any agent, representative or committee thereof;

- c) the State Board of Medical Examiners, or any agent, representative or committee of the State Board of Medical Examiners or the Attorney General;
  - d) New Jersey Physicians, any of its components, subsidiaries, agents, representatives or committees;
  - e) The Medical Society of New Jersey, any of its components, subsidiaries, agents, representatives or committees;
  - f) the New Jersey Department of Banking and Insurance, its agents, representatives or committees;
  - g) the New Jersey Department of Health and Senior Services, its agents, representatives or committees;
  - h) the New Jersey Department of Environmental Protection, its agents, representatives or committees;
  - i) the Office of the Inspector General of the United States Department of Health and Human Services or the Medicare FI, Medicare QIC, Medicare QIO or their agents, representatives or committees;
  - j) United States Occupational Safety and Health Administration;
  - l) the U.S. Department of Health & Human Services' Office for Civil Rights;
  - m) any other state, federal, county or municipal, civil or criminal authority, including, but not limited to, the United States Attorney, a State Attorney General, a Grand Jury, a prosecutor's office, a licensing board, a department of insurance, a department of health, or any of their agents, representatives, or committees; or a patient or a patient representative;
  - n) any third party payor, including but not limited to, a Health Maintenance Organization, an Insurance Company, a third party administrator, a health benefits program established under ERISA, an Independent Practice Association, a Physician Hospital Organization, a Preferred Provider Organization, a Provider Service Organization, or any of their agents, committees, or representatives; and
  - o) a patient or a patient's agent or representative.
- 8) Legal fees in excess of \$25,000 per calendar year and legal fees in excess of \$25,000 per matter. In calculating these fee limitations, the applicable fees shall be based upon the usual rate structure of the firm. At present that rate structure is \$550.00 per hour for principal time, \$450.00 per hour for Counsel time, \$350.00 per associate time, and \$125.00 per hour for paralegal time.

**Additional Benefits:**

Services specifically excluded shall be available to the Participating Physician, at his or her election and at the sole discretion of Kern Augustine. Should Kern Augustine agree to handle the matter, it shall provide the Participating Physician with a twenty percent reduction from its usual billing rates for legal services rendered for such otherwise excluded services.

**Conflicts:**

In the event of conflict precluding Kern Augustine from providing legal representation, Kern Augustine shall pay counsel selected by it for reasonably necessary services rendered to the Participating Physician in accordance with the terms of this agreement, and at rates negotiated by Kern Augustine, subject to the Limitations and Exclusions provided herein.

**Term:**

The program year shall be either: a) the period from the date of receipt of the physician's membership fee through June 30 of the following year if that fee was received during the period April 1 to September 30 or b) the period from the date of the receipt of the physician's membership fee through the end of December of the calendar year following receipt of payment if the fee were received during the months of October through December (i.e., a fee received on October 15, 2009 would result in membership from that date through December 31, 2010) or c) the period from the date of receipt of the physician's membership fee through the end of December of the same year if received during the period January 1 through March 31 (i.e., a fee received on March 15, 2010 would result in membership from that date through December 31, 2010).

**Arbitration:**

The Executive Director of New Jersey Physicians, or his or her designee, shall designate an arbitrator of all claims by participants against Kern Augustine which claims relate in any way to the scope and extent of coverage or any of the terms of the Program. Each participant, as a condition of membership, hereby agrees to submit all disputes to such arbitration. The decision of the arbitrator designated by the Executive Director shall be binding upon the participants, and Kern Augustine, and shall be deemed final. The participants hereby waive any right to adjudication in any other forum, including the right to trial by jury.

Supreme Court of New Jersey Registration Number: NJ-2007-09-262