

**PHYSICIAN RETAINER – BASIC AGREEMENT**

**REPRESENTATION BEFORE THE  
OFFICE OF PROFESSIONAL MEDICAL CONDUCT**

**1. PURPOSE OF REPRESENTATION:**

Legal representation pursuant to this Physician Retainer Agreement shall have as its goal the counseling and defense of the undersigned, (hereinafter the "Participating Physician"), who seeks advice regarding, and/or is subjected to an investigation by the Office of Professional Medical Conduct (referred to as the "OPMC").

**2. BASIC REPRESENTATION SERVICE:**

Legal representation shall be provided to the Participating Physician by the Law Firm of Kern Augustine Conroy & Schoppmann, P.C. (hereinafter "Kern Augustine"). The Basic Representation Service shall consist of the following:

Consultation with the Participating Physician in order to determine if he or she has a legal problem involving the OPMC.

Provision of up to three letters, telephone calls, or detailed legal instructions for any OPMC related issue.

The attendance of an attorney at a scheduled interview/appearance before the OPMC.

**3. COST OF BASIC REPRESENTATION SERVICE:**

To cover the cost of rendition of the Basic Representation Service for the Participating Physician, a retainer fee of \$175.00, per year shall be paid by the Participating Physician and be earned by Kern Augustine as follows:

For consultation with the Participating Physician in order to determine if he or she has a legal problem involving the OPMC. The attributed Basic Representation Service retainer amount shall be set at fifty dollars for said services.

For correspondence, telephone calls, or detailed legal instructions for any OPMC related issues. The attributed Basic Representation Service retainer amount shall be set at forty dollars for said services.

For the attendance of an attorney at a scheduled appearance before the OPMC. The attributed Basic Representation Service retainer amount shall be set at eighty-five dollars for said services.

In the event the services described under Basic Representation Service are not fully utilized by the Participating Physician during the year for which they have been paid, the Participating Physician will receive educational materials and/or education programs from Kern Augustine on OPMC related subjects in lieu of such services.

#### **4. ADDITIONAL SERVICES:**

Should the Participating Physician require services in addition to those detailed above under Basic Representation Service, Kern Augustine will undertake such representation at the following rates:\*

\$396.00 per hour for principal's time  
\$316.00 per hour for counsel's time  
\$212.00 per hour for associate's time

Representation of the Participating Physician for Additional Services shall be provided in the event the Participating Physician is served with a formal complaint and/or a statement of charges by the OPMC. Additional Services shall consist of the following:

Provision of letters, telephone calls or detailed legal instructions beyond those described in Section 2, above.

The preparation for additional appearances at meetings and hearings permitted by the OPMC for review of any adverse determination, necessary consultation concerning these matters, review of the problem, preparation of necessary documents, meetings with consultants and expert witnesses.

The attendance of an attorney at additional appearances and hearings before the OPMC.

The preparation of an appeal by Kern Augustine from an adverse determination by the OPMC to the Administrative Review Board of the Department of Health of the State of New York.

#### **5. ADDITIONAL COSTS:**

The cost of the Basic Representation Service described in Section 2 and the cost of Additional Services described in Section 4 shall cover only the cost of legal services. Costs of expert witnesses, medical consultants, photocopying, facsimile transmissions, filing fees, couriers, extraordinary administrative expenses, transcripts, court reporters, mailing, computer aided research, transportation and other out of pocket expenses will remain the obligation of the Participating Physician. Failure of the Participating Physician to pay for these costs within thirty days of the date of receipt of invoice shall, upon reasonable notice, constitute a basis for termination of representation to the Participating Physician.

#### **6. EXCLUSIONS:**

The following services shall be specifically excluded from the Basic Representation Service and the Additional Services and shall be available to the Participating Physician, at his or her election and at the sole discretion of Kern Augustine at the discounted rates set forth above:

- (1) Legal services in connection with any judicial court proceeding.
- (2) Legal services in connection with any civil, administrative or criminal proceeding arising directly or indirectly from any OPMC activity other than administrative proceedings before the OPMC.
- (3) Representation before any entity other than the OPMC.

---

\* Please note that these rates represent a 20% discount from the normal firm fee schedule.

- (4) Legal services relating to a matter in which the Participating Physician is not a named party.
- (5) Representation following an initial decision by the OPMC.
- (6) Legal services relating to any matter following an adverse determination by the OPMC.
- (7) Legal services relating to any matter resulting from the acts or the omissions of the Participating Physician where the Participating Physician has received, prior to receipt of payment by Kern Augustine, notice of investigation or review of such activity by any of the following:
  - (a) A hospital, hospital medical staff, or any hospital or medical staff committee, or its agents;
  - (b) OPMC or any committee or agent thereof;
  - © The State Attorney General, Department of Health, Office of Professional Medical Conduct, Board of Regents, Education Department or any of their respective sections, committees, divisions, representatives, agents, investigators, or affiliates.
  - (d) The Medical Society of the State of New York, its components, committees or agents.
- (8) Legal services relating to any matter resulting from acts or omissions of the Participating Physician outside of the State of New York.

**7. ACCOUNTING:**

At the end of each year, upon request, the Participating Physician will be provided with an accounting of the value of the retainer provided for the Basic Representation Service and any services provided.

**8. ASSOCIATED ENTITIES:**

Kern Augustine and any entity associated with the participating physician shall cooperate with one another in the performance of their respective duties and obligations. Kern Augustine shall not be deemed an agent, affiliate, or representative of any such associated entity nor shall said associated entity be deemed an agent, affiliate or representative of Kern Augustine.

**9. CONFLICT:**

In the event of conflict precluding Kern Augustine from providing legal representation, Kern Augustine shall pay counsel selected by it for services rendered to the Participating Physician in accordance with the terms of this Physician Retainer Agreement.

**10. EXCLUSIVE CONTROL:**

All legal services and advice provided pursuant to this Physician Retainer Agreement shall be subject to the exclusive control and determination of Kern Augustine or its designated counsel in the context of the attorney-client

relationship established between Kern Augustine and the Participating Physician. Any other entity associated with the participating physician does not hold itself out as providing legal services or legal advice, and shall not in any manner provide legal services or advice or attempt to influence or affect the attorney-client relationship between Kern Augustine and the Participating Physician.

#### **11. RESPONSIBILITY OF THE PARTICIPATING PHYSICIAN:**

The Participating Physician shall be responsible for cooperating fully and honestly with Kern Augustine and with the PAP. Failure of the Participating Physician to provide full and honest cooperation shall result in the forfeiture of any rights he or she may have under this Physician Retainer Agreement and shall constitute grounds for Kern Augustine and/or PAP to refuse to provide any further representation or assistance to the Participating Physician. In the event that Kern Augustine or the PAP elects to withdraw from providing services as a result of such acts by the Participating Physician, the Participating Physician's damages shall be limited to return of any unused portion of the retainer fee made under the Physician Retainer Agreement by the Participating Physician for the applicable term.

#### **12. ARBITRATION:**

All Participating Physicians hereby agree that the National Arbitration Forum shall act as the designated arbitrator of any and 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 any arbitrator or arbitrators so appointed by the National Arbitration Forum 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.

**PHYSICIAN RETAINER – COMPREHENSIVE AGREEMENT**

**REPRESENTATION BEFORE THE  
OFFICE OF PROFESSIONAL MEDICAL CONDUCT,  
THE MEDICARE QUALITY IMPROVEMENT ORGANIZATION,  
THE OFFICE OF INSPECTOR GENERAL U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES,  
THE FEDERAL OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,  
THE OFFICE OF CIVIL RIGHTS,  
AND CRIMINAL INVESTIGATIVE AUTHORITIES**

**1. PURPOSE OF REPRESENTATION:**

Legal representation pursuant to this Physician Retainer Agreement shall have as its goal the counseling and defense of the undersigned, (hereinafter the "Participating Physician"), who seeks advice regarding, and/or is subjected to an investigation by any of the following entities: the Office of Professional Medical Conduct (referred to as the "OPMC"), the Medicare Quality Improvement Organization (referred to as the "QIO"), the Office of Inspector General U.S. Department of Health and Human Services (referred to as the "OIG"), the Federal Occupational Safety and Health Administration (referred to as "OSHA"), the Office of Civil Rights (referred to as the "OCR"), or Criminal Investigative Authorities ("CIA") defined to include: the offices of a County District Attorney; the offices of the United States Attorney within New York State; the New York Attorney General's Criminal Prosecutions Bureau, Medicaid Fraud Control and Automobile Insurance Fraud Units; the New York State Insurance Department's Insurance Fraud Bureau; the Federal Bureau of Investigation; the U.S. Department of Health and Human Services, Office of Inspector General; the Drug Enforcement Agency; the New York State Department of Health's Narcotic Enforcement Division and the New York State Office of Medicare Inspector General.

**2. REPRESENTATION SERVICES:**

Legal representation shall be provided to the Participating Physician by the Law Firm of Kern Augustine Conroy & Schoppmann, P.C. (hereinafter "Kern Augustine"). The Representation Services shall consist of the following:

Consultation with the Participating Physician in order to determine if he or she has a legal problem involving the OPMC, QIO, OIG, OSHA, OCR, or CIA.

Provision of up to three letters, telephone calls, or detailed legal instructions for any OPMC, QIO, OIG, OSHA, OCR, or CIA related issue.

The attendance of an attorney at a scheduled interview/appearance before the OPMC, QIO, OIG, OSHA, OCR, or CIA.

**3. COST OF REPRESENTATION SERVICES:**

To cover the cost of rendition of the Representation Services for the Participating Physician, a retainer fee of \$525.00, per year shall be paid by the Participating Physician and be earned by Kern Augustine as follows:

For consultation with the Participating Physician in order to determine if he or she has a legal problem involving the OPMC, QIO, OIG, OSHA, OCR, or CIA. The attributed Representation Services retainer amount shall be set at one hundred and seventy-five dollars for said services.

For correspondence, telephone calls, or detailed legal instructions for any OPMC, QIO, OIG, OSHA, OCR, or CIA related issues. The attributed Representation Services retainer amount shall be set at one hundred and sixty-five dollars for said services.

For the attendance of an attorney at a scheduled appearance before the OPMC, QIO, OIG, OSHA, OCR, or CIA. The attributed Representation Services retainer amount shall be set at one hundred and eighty-five dollars for said services.

In the event the services described under Representation Services are not fully utilized by the Participating Physician during the year for which they have been paid, the Participating Physician will receive educational materials and/or education programs from Kern Augustine, on OPMC, QIO, OIG, OSHA, OCR, or CIA related subjects, in lieu of such services.

#### **4. ADDITIONAL SERVICES:**

Should the Participating Physician require services in addition to those detailed above under Representation Services, Kern Augustine will undertake such representation at the following rates:\*

\$396.00 per hour for principal's time  
\$316.00 per hour for counsel's time  
\$212.00 per hour for associate's time

Representation of the Participating Physician for Additional Services shall be provided in the event the Participating Physician is served with a formal complaint and/or a statement of charges by the OPMC, QIO, OIG, OSHA, OCR, or CIA. Additional Services shall consist of the following:

Provision of letters, telephone calls or detailed legal instructions beyond those described in Section 2, above.

The preparation for additional appearances at meetings and hearings permitted by the OPMC, QIO, OIG, OSHA, OCR, or CIA for review of any adverse determination, necessary consultation concerning these matters, review of the problem, preparation of necessary documents, meetings with consultants and expert witnesses.

The attendance of an attorney at additional appearances and hearings before the OPMC, QIO, OIG, OSHA, OCR, or CIA.

The preparation of an appeal by Kern Augustine from an adverse determination by the OPMC, QIO, OIG, OSHA, OCR, or CIA to the Administrative Review Board of the Department of Health of the State of New York.

#### **5. ADDITIONAL COSTS:**

The cost of the Representation Services described in Section 2 and the cost of Additional Services described in Section 4 shall cover only the cost of legal services. Costs of expert witnesses, medical consultants, photocopying, facsimile transmissions, filing fees, couriers, extraordinary administrative expenses, transcripts, court reporters, mailing, computer aided research, transportation and other out of pocket expenses will remain the obligation of the Participating Physician. Failure of the Participating Physician to pay for these costs within thirty days of the date of receipt of invoice shall, upon reasonable notice, constitute a basis for termination of representation to the Participating Physician.

---

\* Please note that these rates represent a 20% discount from the normal firm fee schedule.

## 6. EXCLUSIONS:

The following services shall be specifically excluded from the Representation Services and the Additional Services and shall be available to the Participating Physician, at his or her election and at the sole discretion of Kern Augustine at the discounted rates set forth above:

- (1) Legal services in connection with any judicial court proceeding.
- (2) Legal services in connection with any civil, administrative or criminal proceeding arising directly or indirectly from any OPMC, QIO, OIG, OSHA, OCR, or CIA activity other than administrative proceedings before the OPMC, QIO, OIG, OSHA, OCR, or CIA.
- (3) Representation before any entity other than the OPMC, QIO, OIG, OSHA, OCR, or CIA.
- (4) Legal services relating to a matter in which the Participating Physician is not a named party and/or an identified subject or target.
- (5) Representation following an initial decision by the OPMC, QIO, OIG, OSHA, OCR, or CIA.
- (6) Legal services relating to any matter following an adverse determination by the OPMC, QIO, OIG, OSHA, OCR, or CIA.
- (7) Legal services required after the filing of a formal complaint, information, accusation or indictment or legal services provided after an offer of settlement by a law enforcement agency. The program also excludes matters already before a law enforcement agency at the time of enrollment, as well as criminal investigations initiated within 30 days of the receipt of the physician's initial enrollment fee.
- (8) Legal services in connection with any local, municipal, traffic, motor vehicle and/or town court proceeding.
- (9) Legal services relating to any matter resulting from the acts or the omissions of the Participating Physician where the Participating Physician has received, prior to receipt of payment by Kern Augustine, notice of investigation or review of such activity by any of the following:
  - (a) A hospital, hospital medical staff, or any hospital or medical staff committee, or its agents;
  - (b) OPMC, QIO, OIG, OSHA, OCR, or CIA or any committee or agent thereof;
  - (c) The State Attorney General, Department of Health, Office of Professional Medical Conduct, Board of Regents, Education Department or any of their respective sections, committees, divisions, representatives, agents, investigators, or affiliates.
  - (d) The Medical Society of the State of New York, its components, committees or agents.
- (10) Legal services relating to any matter resulting from acts or omissions of the Participating Physician outside of the State of New York.

**7. ACCOUNTING:**

At the end of each year, upon request, the Participating Physician will be provided with an accounting of the value of the retainer provided for the Representation Services and any services provided.

**8. ASSOCIATED ENTITIES:**

Kern Augustine and any entity associated with the participating physician shall cooperate with one another in the performance of their respective duties and obligations. Kern Augustine shall not be deemed an agent, affiliate, or representative of any such associated entity nor shall said associated entity be deemed an agent, affiliate or representative of Kern Augustine.

**9. CONFLICT:**

In the event of conflict precluding Kern Augustine from providing legal representation, Kern Augustine shall pay counsel selected by it for services rendered to the Participating Physician in accordance with the terms of this Physician Retainer Agreement.

**10. EXCLUSIVE CONTROL:**

All legal services and advice provided pursuant to this Physician Retainer Agreement shall be subject to the exclusive control and determination of Kern Augustine or its designated counsel in the context of the attorney-client relationship established between Kern Augustine and the Participating Physician. Any other entity associated with the participating physician does not hold itself out as providing legal services or legal advice, and shall not in any manner provide legal services or advice or attempt to influence or affect the attorney-client relationship between Kern Augustine and the Participating Physician.

**11. RESPONSIBILITY OF THE PARTICIPATING PHYSICIAN:**

The Participating Physician shall be responsible for cooperating fully and honestly with Kern Augustine and with the PAP. Failure of the Participating Physician to provide full and honest cooperation shall result in the forfeiture of any rights he or she may have under this Physician Retainer Agreement and shall constitute grounds for Kern Augustine and/or PAP to refuse to provide any further representation or assistance to the Participating Physician. In the event that Kern Augustine or the PAP elects to withdraw from providing services as a result of such acts by the Participating Physician, the Participating Physician's damages shall be limited to return of any unused portion of the retainer fee made under the Physician Retainer Agreement by the Participating Physician for the applicable term.

**12. ARBITRATION:**

All Participating Physicians hereby agree that the National Arbitration Forum shall act as the designated arbitrator of any and 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 any arbitrator or arbitrators so appointed by the National Arbitration Forum 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.