

**PHYSICIAN RETAINER – COMPREHENSIVE AGREEMENT**

**REPRESENTATION BEFORE THE  
STATE BOARDS OF MEDICINE AND OSTEOPATHIC MEDICINE,  
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  
AND THE OFFICE OF CIVIL RIGHTS**

**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"), a Pennsylvania Physicians Reciprocal Insurers (hereinafter "PaPRI") insured, who seeks advice regarding, and/or is subjected to an investigation by any of the following entities: the State Boards of Medicine and Osteopathic Medicine (referred to as the "SBMOM"), a Quality Improvement Organizations established pursuant to federal law under the Medicare program (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") or the Office of Civil Rights (referred to as the "OCR").

**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 any SBMOM, QIO, OIG, OSHA or OCR.

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

The attendance of an attorney at any scheduled interview/appearance before the SBMOM, QIO, OIG, OSHA or OCR.

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

To cover the cost of rendition of the Basic Representation Service for the Participating Physician, a discounted retainer fee of \$455.00, per year shall be paid by the Participating Physician and be earned by Kern Augustine as follows:

\$34 for each consultation with the Participating Physician in order to determine if he or she has a legal problem involving the SBMOM, QIO, OIG, OSHA or OCR.

\$10 for each of up to three letters, telephone calls, or detailed legal instructions for any SBMOM, QIO, OIG, OSHA or OCR related issues.

\$35 each for the attendance of an attorney at a scheduled appearance before the SBMOM, QIO, OIG, OSHA or OCR.

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 SBMOM, QIO, OIG, OSHA or OCR 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:\*

- \$340.00 per hour for PaPRIncipal's time
- \$300.00 per hour for counsel's time
- \$180.00 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 SBMOM, QIO, OIG, OSHA or OCR. Additional Services shall consist of the following:

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

The preparation for additional appearances at meetings and hearings permitted by the SBMOM, QIO, OIG, OSHA or OCR 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 SBMOM, QIO, OIG, OSHA or OCR.

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

**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.

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\* Please note that these rates represent a 20% discount to PaPRI insureds.

- (2) Legal services in connection with any civil, administrative or criminal proceeding arising directly or indirectly from any SBMOM, QIO, OIG, OSHA or OCR activity other than administrative proceedings before the SBMOM, QIO, OIG, OSHA or OCR.
- (3) Representation before any entity other than the SBMOM, QIO, OIG, OSHA or OCR.
- (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 SBMOM, QIO, OIG, OSHA or OCR.
- (6) Legal services relating to any matter following an adverse determination by the SBMOM, QIO, OIG, OSHA or OCR.
- (7) Legal services relating to any matter resulting from the acts or the omissions of the Participating Physician where the Participating Physician has received, PaPRI or 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) SBMOM, QIO, OIG, OSHA, OCR or any committee or agent thereof;
  - (c) The State Attorney General, Department of Health, State Boards of Medicine and Osteopathic Medicine, 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 Pennsylvania, 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 Pennsylvania.

## **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. ASSOCIATION WITH PaPRI:**

Kern Augustine and PaPRI 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 PaPRI, nor shall PaPRI 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. PaPRI 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 PaPRI. 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 PaPRI to refuse to provide any further representation or assistance to the Participating Physician. In the event that Kern Augustine or PaPRI 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.