

# **EMPLOYEMENT AGREEMENT FOR CONTINGENCY FEE IN WOKERS' COMPENSATION CASE, POWER OF ATTORNEY, TRUST AGREEMENT AND ACKNOWLEDGMENT OF LIEN**

## **Retainer Agreement**

The undersigned, referred to ad "Client," employs the law firm Sean Culliton, Esq., LLC, referred to as "Attorney," to represent Client in enforcing a cause of action arising out of the Client's workers' compensation case.

Attorney accepts this employment and Client agrees that Attorney is authorized to take steps that are in his judgement reasonably advisable to enforce Client's rights, to make such investigations, undertake such legal proceedings, and expend such monies attorney may deem necessary. Attorney is authorized to file Petitions for Benefits on Client's behalf, at the attorney's direction.

### **I. FEES PAID BY CLIENT**

#### **A. Lump Sum Settlements:**

Client agrees to pay Attorneys a fee as follows:

25% of any lump sum settlement up to \$1,000,000 through the time of filing of a Response to the Petition for Benefits, denial of the case or denial of any benefit;

30% of any settlement up to \$1,000,000 following the filing of a Response to the Petition of Benefits, denial of the case or denial of any benefits and through the Final Hearing in the case or thereafter; and

25% of any recovery in excess of \$1,000,000.

To the extent that the provisions of s. 440.34(1) F.S. apply to restrict the fee to be paid by the Client to anything less than what is contained in this retainer, Client agrees a waiver of said statutory provisions and signed a waiver for that purpose, a copy of which is incorporated herein by reference and attached hereto. The attorney's fee percentages referenced herein shall be applied to the settlement prior to the deduction for any costs that Client is responsible for in Section II of this Agreement.

## B. Benefits Secured through Actions of Attorney or filing of Petition for Benefits

In addition to any attorney's fees that may be payable as a result of a lump sum settlement, Client is responsible for the payment of a reasonable attorney's fee (as set forth in Murray v. Mariner Health, 994 So.2d 1051, 1062 (Fla.2008), Miles v. City of Edgewater, Case No. 1D15-0165, (Fla. 1<sup>st</sup> DCA 2016) and Lee Eng'g & Constr. Co. v. Fellows, 209 So.2d 454, 458 (Fla. 1968) (applying Canon 12 of the Canons of Professional Ethics, the predecessor to rule 4-1.5(b)) to Attorney for the recovery of benefits secured as a result of Attorney's actions on Client's behalf or that were provided after the filing of a petition for benefits which is accepted by the Employer/Carrier. The attorney's fee due shall be 25% of the value of benefits secured and will be approved by the Judge of Compensation Claims. If the Employer/Carrier is responsible for the fee regarding that benefit included in petition for benefits. A fee due from the Client that results from the filing of a petition for benefits or other efforts to secure benefits may be collected from the Client at the time of a lump sum settlement or directly out of past due indemnity benefits provided.

The Claimant hereby consents to a Motion for Claimant's paid Attorney's Fee under Rule 60Q-6.124.

Payment of Attorney's fees and costs other than pursuant to s. 440.20(11)F.S. which provides as follows:

- (1) Payment of Undisputed Attorney's Fees and Costs by Claimant. The Claimant and his or her attorney may jointly move for the judge to approve the payment of attorney's fee and reimbursement of costs. The motion shall be served on all parties and include a statement that the Claimant's counsel has not previously secured or received a fee in the benefits for which a fee is now being sought, the Claimant's signature, an attorney's fee data sheet setting forth the benefits secured by Claimant's attorney.

## C. Cap on Claimant Paid Attorney's Fees.

If the attorney is intitled to payment of fees under both Paragraphs A and B above (i.e., where benefits were obtained through the actions of the attorney or filing of a petition for benefits and by way of a lump sum settlement), in no event will the total attorney's fees due from client exceed 33% of the lump sum settlement, prior to deductions for costs. This cap on claimant paid fees due does not apply to any attorney's fees due from the Employer/Carrier under Section III of this Agreement. All

attorney's fees due from the Client under Paragraphs A, B or C above must be approved by a Judge of Compensation Claims as reasonable, unless a Change in the law in the future, or interpretation of the law in the future, does away with this requirement.

## **II. COSTS PAYABLE BY CLIENT AND ACKNOWLEDGMENT OF LIEN**

Client agrees to pay, in addition to the fee, the out-of pocket expenses incurred to investigate and document their case, including but not limited to investigative fees, court costs, medical reports and opinions, deposition expenses, witness fees, filing fees, trial exhibits and other related out of pocket expenses. Client understands that the attorney will advance these costs on their behalf. Sean Culliton, Esq., LLC specifically has the right to require prepayment of costs, if the matter is going to trial. All costs paid for by Attorneys are waived if there is no recovery.

No settlement shall be made without the consent of Client. No substitution of attorneys shall be made without Attorney's consent, except for their misconduct or incapacity. Attorney is given a lien for this fees and advances upon any settlement or judgment made or secured in this action, and is authorized to deduct his fees and advances from this amount and to pay the balance to client.

## **III. FEES PAYABLE BY EMPLOYER/CARRIER:**

RECOVERY OF FEES FROM ADVERSE PARTIES: In certain cases, the law provides that the prevailing party is entitled to recover an additional award of attorney's fees and costs. Should the liability for attorney's fees shift from the Client to Employer/Carrier by operation of s. 440.34 F.S. or any other Florida Statute, the Client is entitled to recover an award of a reasonable attorney's fee from an adverse party set forth in s. 440.34, F.S. (Fla. 2008) and Castellanos v. Next Door Co., No. SC13-2082, slip op. at 1-2 (Fla. Apr. 28,2016); Murray v. Mariner Health, 994 So.2d 1051, 1062 (Fla. 2008) and Lee Eng'g & Constr. Co. v. Fellows, 209 So.2d 454, 458 (Fla. 1968) (applying Canon 12 of Canons of Professional Ethics, the predecessor to rule 4-1.5(b)). Client shall be entitled to recover an attorney's fee from a carrier or employer:

- (a) Against whom she or he successfully asserts a petition for medical benefits only, if the claimant has not filed or is not entitled to file at such time a claim for disability, permanent impairment, wage -loss, or death benefits, arising out of the same accident;
- (b) In any case in which the employer or carrier files a response to petition denying benefits with the Office of the Judges of Compensation Claims and

the injured person has employed an attorney in the successful prosecution of the petition;

(c) In a proceeding in which a carrier or employer denies that an accident occurred for which compensation benefits are payable, and the claimant prevails on the issue of compensability; or

(d) In cases where the claimant successfully prevails in proceedings filed under s.440.24 F.S. or s.440.28 F.S.

Regardless of the date benefits were initially requested, attorney's fees owed by the carrier shall not attach under this subsection until 30 days after the date the carrier/employer, if self-insured, receives the petition.

Any fees paid by the Employer/Carrier shall not effect, diminish or otherwise limit any fees owed by the Client with respect to a settlement of his case. However, in cases where the Employer/Carrier is responsible for payment of an attorney's fee as set forth above, the Claimant shall not be responsible for payment of attorney's fees attributable to that specific benefit that was requested in the petition for benefits. Nothing in this contract agreed to by the Client shall be interpreted to reduce the reasonable fee due by the Employer/Carrier to the Claimant as a prevailing party.

#### **IV PREVAILING PARTY COSTS FOR ACCIDENTS AFTER 10/1/03**

s. 440.34(3) F.S. provides: if any party should prevail in any proceedings before a Judge of Compensation Claims or Court, there shall be taxed against the non-prevailing party the reasonable costs of such proceedings, not to include attorney's fees. I understand prevailing party costs to mean that if I lose my case I will be responsible for the reasonable costs of the Employer/Carrier as determined by the Judge of Compensation Claims or by agreement of the parties.

In the event, Attorney determines that the claim of the Client should not be prosecuted, they may notify Client of this decision and withdraw as Attorney for all claims, and Client shall owe no fee for legal services.

**POWER OF ATTORNEY:** In the event that the case settles, the Client grants a limited power of attorney to the law firm of Sean Culliton, Esq., LLC, for the limited purpose of endorsing any settlement check(s) for deposit into the firm's trust account. Client will review and approve aa closing settlement statement prior to settlement funds being released from the trust account.

**Arbitration Agreement:** Any controversy or claim arising out of or relating to this contract, or breach thereof, shall be settled by arbitration administered by the American Arbitration Association and Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

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COMPENSATION CASE, POWER OF ATTORNEY, TRUST AGREEMENT AND  
ACKNOWLEDGMENT OF LIEN**

Sean Culliton, ESQ. LLC

\_\_\_\_\_  
Print Name of Client

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Client

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Council for Client

\_\_\_\_\_  
Date

**WAIVER OF THE STATUTORY RIGHT PROVIDED IN S. 440.34(1) F.S.**

In 2003, the Florida Legislature approved amendments to the Florida Workers' Compensation Act, Chapter 440, Florida Statutes. The amendment to s. 440.34(1) F.S. is set forth below:

A fee, gratuity or other consideration may not be paid for a claimant in connection with any proceedings arising under this chapter, unless approved by a Judge of Compensation Claims or court having jurisdiction over such proceedings. Any attorney's fee approved by a Judge of Compensation Claims for benefits secured on behalf of a claimant must equal to 20 % of the first \$5,000 of the amount of benefits secured, 15% of the next \$5,000 of the amount of benefits secured, 10% of the remaining amount of benefits secured to be provided during the first 10 years after the date the claim is filed, and 5% of the benefits secured after 10 years. The Judge of Compensation Claims shall not approve a compensation order, a joint stipulation for lump sum settlement, a stipulation or agreement between a claimant and his or her attorney, or any other agreement related to benefits under this chapter which provides for an attorney's fee in excess of the amount permitted by this section. The Judge of Compensation Claims is not required to approve any retainer agreement between the claimant and his or her attorney. The retainer agreement as to fees and costs may not be for compensation in excess of the amount allowed under this subsection or subsection (7).

This waiver is being executed in the event a dispute arises as to whether the statutory provisions relating to fees limits any fee paid by me would limit my attorney to a fee in the percentage amount set forth above.

The undersigned client understands and acknowledges that (initial each provision):

\_\_\_\_\_ I have been advised that signing this waiver may release an important statutory right; and

\_\_\_\_\_ I have been advised that I may consult with separate counsel before signing this waiver; and that I may request a hearing before a judge to further explain this waiver; and

\_\_\_\_\_ By signing this waiver I agree to an increase in the attorney fee that might otherwise be owed of the statutory provision listed above is not waived. Without prior court approval, the increased fee that I agree to may be up to the maximum contingency fee percentages set forth in Rules Regulating The Florida Bar 4-1.5(f)(4)(B)(i). Depending on the circumstances of my case, the maximum agreed upon fee may range from 25% to 33% of any recovery up to \$1 million; 25% of a recovery more than \$1 million, up to \$2 million; plus 20% of any recovery exceeding \$2 million; and

\_\_\_\_\_ I have three (3) business days following execution of this waiver in which to cancel this waiver; and



## **STATEMENT OF CLIENT'S RIGHTS**

Before you, the prospective client, arrange a contingency fee agreement with a lawyer, you should understand this statement of your rights as a client. This statement is not a part of the actual contract between you and your lawyer, but as a prospective client, you should be aware of these rights:

1. There is not legal requirement that a lawyer charge a client a set fee or a percentage of money recovered in a case. You, the client, have the right to talk with your lawyer about the proposed fee and to bargain about the rate or percentage as in any other contract. If you do not reach an agreement with one lawyer, you may talk with other lawyers.
2. Any contingency fee contract must be in writing and you have three (3) business days to reconsider the contract. You may cancel the contract without any reason if you notify your lawyer in writing within three (3) business days of signing the contract. If you withdraw from the contract within the first three (3) business days, you do not owe the lawyer a fee although you may be responsible for the lawyer's actual cost during that time. If your lawyer begins to represent you, your lawyer may not withdraw from the case without giving you notice, delivering necessary papers to you, and allowing you time to employ another lawyer. Often, your lawyer must obtain court approval before withdrawing from a case. If you discharge you lawyer without good cause after the three-day period, you may have to pay a fee for work the lawyer has done.
3. Before hiring a lawyer, you, the client, have the right to know about the lawyer's education, training and experience. If you ask, the lawyer should tell you specifically about his or her actual experience dealing with cases similar to yours. If you ask, the lawyer should provide information about special training or knowledge and give you this information in writing if you request it.
4. Before signing a contingency fee contract with you, a lawyer must advise you whether he or she intends to handle your case alone or whether other lawyers will be helping with the case. If your lawyer intends to refer the case to other lawyers he or she should tell you what kind of fee-sharing agreement will be made with the other lawyers. If lawyers from different law firms will represent you, at least one lawyer from each law firm must sign the contingency fee contract.
5. If your lawyer intends to refer your case to another lawyer or counsel with other lawyers, your lawyer should tell you about that at the beginning. If your lawyer takes the case and later decides to refer it to another lawyer or to associate with other lawyers, you should sign a new contract which includes the new lawyers. You, the client, also have the right to consult with each lawyer working on your case, and each lawyer is legally responsible to represent your interests and is legally responsible for the acts of the other lawyers involved in the case.
6. You, the client, have the right to know in advance how you will need to pay the expenses and the legal fees at the end of the case. If you pay a deposit in advance for costs, you may ask reasonable questions about how the money will be or has been spent and how much of it remains unspent. Your lawyer should give a reasonable estimate about future necessary costs. If your lawyer agrees to lend or advance your money to prepare or research the case, you have the right to know periodically how much money your lawyer has spent on your behalf. You also have the right to decide, after consulting with your lawyer, how much money is to be spent to prepare a case. If you pay the expenses, you have the right to decide how much to spend. Your lawyer



**ATTN: MEDICAL RECORDS DEPARTMENT**      Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RE:    REQUEST FOR ELECTRONIC COPY OF PROTECTED HEALTH INFORMATION**

**Patient:** \_\_\_\_\_  
**Social Security No.:** \_\_\_\_\_  
**Date of Birth:** \_\_\_\_\_  
**Date(s) of Service:** \_\_\_\_\_

Dear Sir/Madam:

I am writing to request an electronic copy of all of my protected health information maintained by your office, under 45 C.F.R. 164.524, a/k/a the Health Insurance Portability and Accountability Act (HIPAA), in order to maintain an accurate copy of my complete medical file. Please send a copy of my entire medical file/chart for the above-referenced date(s) of service electronically to **Sean Culliton, Esquire** at the following email address: **sean.culliton@gmail.com**.

I am requesting an electronic copy of ALL my medical and billing records in your possession, without exclusion, including but not limited to, any test or lab results, intake forms, diagnostic studies, treatment notes, correspondence, internal communications or log notes, billing records, claims forms, prescriptions, orders or referrals, medical notes, psychiatric or mental health records, informal notations, writings contained on file folders, memo pads, and post it or sticky notes affixed to any paper or file folder. This request encompasses each and every record and/or document in your possession, whether maintained in an electronic or written form. For any records/documents already in electronic form, please convert them to PDF electronic format. For any records/documents maintained in paper form, please scan them to a PDF electronic format. You are authorized to release medical, mental, alcohol and/or drug abuse, HIV testing, AIDS, eating disorders or any other medical information of sensitive nature.

I do not agree to or request any summary or explanation of my records. Furthermore, I do not agree or request that my records be provided in a paper or hard copy format. I request an electronic version of my records only pursuant to 45 C.F.R. 164.524(c)(2)(ii).

I further request that my protected health information be provided in digital form (PDF), and hereby designate that same be delivered to my attorney, Sean Culliton, Esquire, at the following email address: sean.culliton@gmail.com. If the records are too voluminous to be emailed as an attachment, please copy them in a PDF format onto a readable CD, and mail the CD to my attorney at 150 John Knox Rd., Tallahassee, FL 32303. If a CD is not available, you

may fax the records to Sean Culliton, Esquire at 813-441-1999. Please find an executed HIPAA compliant release attached hereto for your records.

If the records are only available in some form that cannot be readily digitized, or cannot be provided in PDF form, please email my attorneys at the email address above to discuss alternative means of copying or transmitting those records and (if applicable) the reason you are unable to digitize them.

As provided by 45 CFR 164.524(c)(4), you may only charge a reasonable cost-based fee to cover the cost of copying. This provision preempts any state law designating a fee for copying. For example, if a state permits a charge of 25 cents per page, but a covered entity is able to provide an electronic copy at a cost of 5 cents per page, then the covered entity may not charge more than 5 cents per page (since that is the reasonable and cost-based amount).

If your cost per page to comply with this request exceeds 10 cents, please email my attorney first at the email address above with justification for this cost, and to obtain consent for same before you send a response to this request.

Please comply with this request within thirty (30) days pursuant to 45 CFR 164.524(b)(2). If my request cannot be honored within thirty (30) days, please inform my attorneys at the email address above with an explanation for same, as well as the date they might expect to receive my records. If you have any questions or concerns regarding this request, please direct them to my attorney at the email address above or call 850-385-9455.

I understand that I am requesting my medical records be transmitted to a third party, Sean Culliton, Esquire, in an unencrypted format. I understand the risks involved in such a transmission and acknowledge the possibility the transmission may be intercepted. However, I am willing to assume said risk in order for my request to be completed in the most expeditious manner possible. I also understand that the released information may no longer be protected by Federal Privacy regulations and that any disclosure carries with it the potential for an unauthorized redisclosure.

I certify that I am the person named above and that I am requesting that my protected health information be provided in electronic form to my attorney to the fullest extent permissible by law. Thank you for your anticipated cooperation in this regard. Please govern yourself accordingly.

Client Signature

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Printed Name:

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Enclosure: Medical Authorization  
cc: Sean Culliton, Esquire

## **HIPAA RELEASE AND AUTHORIZATION**

I, \_\_\_\_\_ hereby authorize the following person to act as my agent with regard to the matters specified in this Release:

Name: Sean Culliton ESQ. LLC  
Address: 285 Pinewood Drive  
Tallahassee, FL 32303  
Phone: (850)385-9455

This Release and all of the provisions contained herein are effective immediately. I intend for my agent to be treated as I would be treated with respect to my rights regarding the use and disclosure of my individually identifiable health information and other medical records. This Release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 USC 1320d and 45 CFR 160-164.

### **AUTHORIZATION**

I hereby authorize any doctor, physician, medical specialist, psychiatrist, chiropractor, health-care professional, dentist, optician, health plan, hospital, hospice, clinic, laboratory, pharmacy, pathologist, or other provider of medical or mental health care, as well as any insurance company and the Medical Information Bureau Inc. or other health-care clearinghouse that has paid for or is seeking payment from me for such services (referred to herein as a "covered entity"), to give, disclose and release to my agent who is named herein and who is currently serving as such, without restriction, all of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, including all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness, and drug or alcohol abuse. Additionally, this disclosure shall include the ability to ask questions and discuss this protected medical information with the person or entity who has possession of the protected medical information even if I am fully competent to ask questions and discuss this matter at the time. It is my intention to give a full authorization to any protected medical information to my agent.

In Determining whether I am incapacitated, all individually identifiable health information and medical records may be released to my agent, including any written opinion relating to my incapacity that my agent may have requested. This release authority applies to any information governed by HIPAA and applies even if my agent had not yet begun serving as my agent.

The authority given to my agent shall supersede any prior agreement that I may have made with my health-care providers to restrict access to or disclosure of my individually identifiable health information. The individually identifiable health information and other medical records given, disclosed, or released by my agent may be subject to redisclosure by my agent and may no longer be protected by my HIPAA.

**TERMINATION**

This release shall terminate on the first to occur of: (1) two years following my death, or (2) upon my written revocation actually received by the covered entity. Proof of receipt of my written revocation may be certified mail, registered mail, facsimile, electronic mail, or any other receipt evidencing actual receipt by the covered entity. This Release shall not be affected by my subsequent disability or incapacity. There are no exceptions to my right to revoke this release.

**RELEASE**

Each covered entity that acts in reliance on this Release shall be released from liability which may result from disclosing my individually identifiable health information and all other medical records.

**LEGAL ACTION**

I authorize my agent to bring a legal action against a covered entity which refuses to accept and recognize this Release. Further, in order to fulfill my intent as expressed herein, I authorize my agent to sign any documentation that my agent deems necessary or appropriate in order to secure the disclosure of my individually identifiable health information and all other medical records.

**SUBSEQUENT DISCLOSURE OF INFORMATION**

Any information disclosed to my agent pursuant to this Release may subsequently be disclosed to another party by my agent. My agent shall not be required to indemnify a covered entity or perform any act in the event information is subsequently disclosed by my agent.

**COPIES AND FACSIMILES**

Copies or facsimiles of this Release shall be as valid as the original Release.

I sign my name to this Release on \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
at \_\_\_\_\_ County Florida.

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Signature

