

Compliance Plan of Crouse Medical Practice



Reviewed and Approved By:

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Seth Kronenberg, MD, Sole Member

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Part I.

a. Introduction

Crouse Medical Practice, (the "Practice") is committed to conducting its business in a lawful and ethical manner. This Compliance Plan (the "Plan") describes the Practice's mandatory Compliance Program (as hereinafter defined) applicable to the Member(s) and all officers, executives, managers and other workforce members, including practice employees and others who provide services on behalf of the Practice (collectively referred to as "Staff"), and affected individuals as defined by the Office of Medicaid Inspector General (OMIG). The intent of the Plan is to provide guidance designed to reflect the Practice's commitment to compliance and to prevent, detect and correct violations of applicable federal, state and local laws, regulations, third-party payer requirements, the Practice's policies and procedures, the Code of Conduct and other applicable standards. Staff who fail to comply with the elements of the Compliance Program as described in this Plan may face disciplinary action including, but not limited to, removal, reprimand, suspension without pay and/or termination from employment or affiliation with the Practice. In addition, Staff who fail to comply with the Plan's requirements may face civil and/or criminal charges from various governmental agencies. (Plan and Compliance Program, as appropriate, are used interchangeably herein.)

The Practice has designated a Compliance Officer (sometimes referred to herein as "CO") to oversee the day-to-day responsibility for its compliance efforts, as well as to develop written policies and procedures ("Policies and Procedures") to protect the Practice's integrity and reputation, and ensure the highest quality of patient care.

b. Member Authorization

The Practice's Member and Executive Team ("Board") authorized the creation of a corporate compliance program, key elements of which include the Plan, Code of Conduct and compliance-related Policies and Procedures (the "Compliance Program"). The purpose of the Compliance Program is to describe compliance expectations for Staff and promote and support the highest standards of conduct - legally, ethically and morally - on the part of the Practice and its Staff, regarding all laws and rules that regulate the Practice, including, but not limited to, Medicare and Medicaid requirements and the applicable New York State and federal fraud, waste and abuse laws. The Board authorized the Practice's President to appoint a Compliance Officer, and is a member of the Risk Management Corporate Compliance staff is designated as the individual who serves as the Practice's Compliance Officer. He/she works in cooperation with the Practice's Compliance Committee.

The Board shall act in good faith in the oversight of the Practice's compliance activities. The Board shall abide by its

- Duty of care (to be familiar with the finances and activities, attend meetings and participate in decision making, read material and minutes, encourage diversity).
- Duty of loyalty (to avoid transactions where there is personal gain and closely examine other transactions which may cause a conflict of interest).
- Duty of obedience (to ensure that the Practice is abiding by applicable laws and regulations and that the proper resources are dedicated to following the mission).

Any questions concerning the Practice's Compliance Program should be directed to the CO, or his/her designee.

Part II

a. Standards of Conduct

It is our policy to provide services in compliance with all state and federal laws governing our operations, and consistent with the highest standards of business and professional ethics.

ALL PRACTICE STAFF MUST ACT IN ACCORDANCE WITH THESE STANDARDS OF CONDUCT AND THIS COMPLIANCE PLAN

The Practice expects Staff and affected individuals to refrain from conduct which may violate applicable federal and state fraud and abuse laws. These laws prohibit (1) direct, indirect or disguised payments in exchange for the referral of patients; (2) the submission of false, fraudulent or misleading claims to any government entity or third-party payor, including claims for services not rendered, claims which characterize the service differently than the service actually rendered, claims for substandard patient care, or claims which do not otherwise comply with applicable program or contractual requirements; and (3) making false representations to any person or entity in order to gain or retain participation in a program or to obtain payment for any service. CMP shall and shall ensure its Staff comply with all applicable federal laws and regulations including but not limited to the Medicare Shared Savings Program regulations under 42 CFR Part 425; federal criminal law; the False Claims Act (31 U.S.C. 3729 et seq.); the Anti-Kickback Statute (42 U.S.C. 1320a-7b(b)); the Civil Monetary Penalties law (42 U.S.C. 1320a-7a); the Physician Self Referral Law (42 U.S.C. 1395nn); and the Health Insurance Portability and Accountability Act (45 C.F.R. parts 160, 162, and 164, Subpart C) including changes from the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH) and the Final Omnibus Rule; as these laws and regulations may be amended from time to time.

Conduct that does not comply with this Plan is not authorized by the Practice and is outside the scope of Practice employment or affiliation. The Compliance Officer, in cooperation with the Compliance Committee, is charged with monitoring and implementing this Plan.

If, at any time, you become aware of an apparent violation of the Plan, you **must** report it to your supervisor, the Compliance Officer or a member of the Compliance Committee. Reports may also be made to the President and to the Board. Reports may be made anonymously and/or confidentially. Confidential reports will be kept confidential unless the matter is referred to law enforcement or such disclosure is otherwise required by law to be disclosed. No adverse action will ever be taken against you solely for making a report in good faith or based on reasonable belief. If you do **not** report a violation of the Plan or Practice policy of which you are aware, you may be subject to disciplinary action, up to and including termination of employment and/or affiliation with the Practice. Employees must report concerns to their supervisor, who is required to report issues of actual or suspected non-compliance to the Compliance Officer; however, if your supervisor is the subject of the conflict, or if you are uncomfortable talking to your supervisor, or you do not receive a satisfactory response, employees may make a report to another member of management/compliance, including directly to the Compliance Officer, or may utilize any of the Practice's other available reporting methods.

The laws governing our activities are complex. This Plan only deals with some of the important legal principles under which we operate. Their mention is not intended to minimize the importance of other applicable laws, professional standards or ethical principles, which may be covered in other Practice policies, programs and literature. Consequently, if you are in doubt you should promptly communicate with your supervisor or with the Compliance Officer before undertaking any course of action.

b. Development & Implementation of Written Standards of Conduct, Policies & Procedures:

The Practice shall operate in accordance with applicable federal, state and local laws, and standards pertaining to the delivery of patient care and the billing for such care. To this end, the Practice has developed policies and procedures to foster compliance with such laws and standards and to promote conduct by the Practice and its Staff that is ethical and upholds our mission and values. Such policies and procedures implement the Plan and describe the Practice's compliance expectations, as well as provide guidance to Staff on dealing with and reporting potential compliance issues, and how potential compliance issues are investigated and resolved.

The Compliance Officer, or his/her designee, with input from the Compliance Committee, shall oversee the development and implementation of policies pertaining to the Compliance Program and/or the Code of Conduct. Corporate Compliance Policies are reviewed periodically and in accordance with Practice procedures. The Practice shall update its standards, policies and procedures as necessary to remain current with applicable law and regulations, the needs of the Practice and its Compliance Program and to reflect current ethical and legal business practices.

Staff who have questions, suggestions and/or concerns about the Compliance Program, current Practice standards, policies, procedures, business, patient care or other practices should notify their supervisor or the CO, or may call the Compliance Hotline (315-479-5070 ext. 66107), or submit a Compliance Reporting Form which can be found on the Practice's website.

c. Compliance Committee/Compliance Officer

The Practice will appoint one of its physicians as Compliance Committee Chair. The Compliance Committee, through the Chair of the Compliance Committee, is accountable and reports directly to the Practice's President and, as appropriate, the Board. The Compliance Officer will select members of the Compliance Committee. The Compliance Officer is responsible for overseeing implementation of the Plan, making recommendations to the Chair of the Compliance Committee, and will report directly and be accountable to the President of the Practice and, as appropriate, the Board, including regarding changes in our operations to enhance compliance, and updating the Plan. The CO's authority and obligations are more fully explained in the Practice's Compliance Officer and Oversight policy.

The Compliance Committee works collaboratively with the Compliance Officer and other Staff, as appropriate, to develop appropriate standards, policies and procedures to promote compliance within the Practice. The Compliance Committee shall meet periodically throughout the year, but usually no less than quarterly.

d. Training and Education

The Practice has established and implemented effective education and training for the Compliance Officer and all Practice employees, as well as its chief executive and other members of senior leadership, managers and Board members. As part of the Plan, Practice Staff are required to attend specific training on a periodic basis. Such training programs may include sessions highlighting the Plan, summarizing fraud and abuse laws, whistleblower protections, coding requirements, claim development and submission processes and marketing practices that reflect current legal and governmental program standards, which are designed to effectively communicate the Practice's standards and procedures. Supervisors assist in identifying areas that require training and in carrying out such training. Training instructors may come from both outside and inside the Practice. New employees and new appointments of a chief executive, manager or Board member will receive training as part of the orientation process. All formal training undertaken by the Practice as part of its Compliance Program is documented. Appropriate documentation includes a record of dates, times, attendance and agenda for all professional and compliance training sessions in which Staff participates. Copies of materials disseminated at training sessions will also be maintained to the extent feasible.

Employees are required to have compliance-related education each year, as part of their employment responsibilities. Attendance and participation in training programs is a condition of continued employment, and will include compliance issues, expectations and the operation of the Compliance Program. Failure to comply with training requirements may result in disciplinary action, including possible termination. Adherence to the provisions of the Plan, such as training requirements, is a factor in annual evaluation. Therefore, the Practice shall maintain training attendance logs and copies of materials distributed at training sessions, which will include up-to-date contact information for the Compliance Officer and Policies and Procedures.

Specific training topics may include but are not limited to:

- * Government and private payor reimbursement principles;
- * General prohibitions on false claims, self-referrals and the payment or receipt of remuneration to induce referrals;
- * Fraud, Waste & Abuse rules and laws;
- * How affected individuals can ask questions and/or report concerns;
- * Duty to report misconduct, disciplinary standards and non-retaliation policies;
- * Coding and billing requirements

e. Communication, Compliance Hotline and Reporting

All Staff are required to report any activity involving or concerning the Practice that appears to violate the Compliance Program, Code of Conduct or any Practice policy/procedure, as well as applicable laws, rules or regulations. Such reports may be made to the Compliance Officer in person/phone/e-mail, through the Corporate Compliance Hotline, the Compliance Reporting Form on the Practice's website, or through their immediate supervisor/manager, or any other form of written communication. If a supervisor is the subject of the conflict, then employees are required to report to another member of management/compliance, including directly to the Compliance Officer, or may utilize any of the Practice's other available reporting methods. Staff may also make reports of non-compliance to a member of the Compliance Committee, or to the President and the Board. Confidential reports will be treated as confidential unless the matter is turned over to law enforcement or is otherwise required by law to be disclosed. There shall be no retaliation for reporting of actual or suspected compliance problems in good faith or based on reasonable belief.

Reports may be made on an anonymous basis via the Corporate Compliance Hotline. Any reported matters on potential non-compliance, including those that suggest violations of compliance policies, regulations or statutes, will be documented and investigated promptly. The Compliance Officer shall report and/or review such compliance matters with the Compliance Committee and the Board, as necessary.

Failure to report may, by itself, be a violation of the Practice's Compliance Program, which may subject the person to discipline up to and including termination of employment or affiliation with the Practice.

f. Good Faith Participation in the Compliance Program as an Element of Performance Evaluation

Responsibility to Participate

Promotion of, and adherence to the Plan is a key element used in evaluating Staff performance. It is the responsibility of Staff to abide by applicable laws and regulations, support the Practice's compliance efforts and to participate in the Practice's Compliance Program. Any violation of the Plan, applicable law or deviation from appropriate ethical standards, will subject Staff to disciplinary action. The types of conduct subject to disciplinary action are described below, and may apply to management personnel who direct or approve improper actions, or are aware of those actions and fails to appropriately exercise his or her supervisory authority, or fails to detect non-compliance with applicable Practice Policies and Procedures, including the Plan, where reasonable due diligence on their part would have led to the discovery of such non-compliance.

Required Good Faith Reporting and Confidentiality

Staff must report his/her good faith/reasonable belief of any suspected or actual violation of applicable local, state or federal law, Practice Policies and Procedures or this Plan. In support of this policy, the Practice has adopted a strict non-intimidation and non-retaliation policy (see section i below) prohibiting any intimidating actions or retaliation against any Staff who reports suspected or actual violations in good faith or based on reasonable belief. Staff are expected to assist in the resolution of the compliance issue. The Practice will ensure reporting Staff's confidentiality and will honor all requests for confidentiality subject to the limits imposed by law.

Violations Subject to Disciplinary Action

There are many activities that could be considered a violation. Potential violations include, but are not limited to, the following:

- Participating directly or indirectly in actions that are in violation of any applicable local, state or federal law/regulation or this Plan or other Practice Policies and Procedures;
- Encouraging, directing, facilitating or permitting, either actively or passively, non-compliant behavior;
- Deliberately failing to report a violation or deliberately withholding relevant and material information concerning a violation;
- Retaliating, directly or indirectly, or encouraging others to do so, against Staff who reports a violation;
- Fabricating or knowingly misrepresenting facts concerning a compliance investigation; or
- Stealing.

Fair Enforcement of Discipline

The Practice shall enforce sanctions and discipline resulting from a violation of this Plan, relevant laws and regulations and Practice Policies and Procedures in a fair and consistent manner. Enforcement of sanctions for violations shall be documented by the Compliance Officer.

g. Audits and Routine Identification of Compliance Risks Areas

Auditing and Monitoring. Monitoring and auditing play a role in evaluating the Practice's compliance with Medicare and Medicaid requirements and in determining the overall effectiveness of the Compliance Program. The Practice is committed to ensuring that the Plan is properly implemented through periodic monitoring and establishment of an annual Work Plan that will list audit priorities based on risk areas the Practice has identified and those identified in the OIG and OMIG Work Plans that are relevant to the Practice. While the Compliance Officer is responsible for coordinating formal audits, the audits themselves may be performed by internal or external auditors with expertise in federal and state health care statutes, regulations and policies. The auditor(s) may be independent of the Practice's providers and management, and will have broad access to records and personnel. Audits of coders will be conducted periodically by

Practice Resources, LLC ("PRL"). PRL will provide the Practice with a written report of its audit findings, which provides data for the Practice to evaluate the coder's accuracy and competence for the audit period. The Compliance Officer is responsible for investigating incidents discovered by the audits, systemic errors, or reports of suspected noncompliance. The results of the audit process may be communicated to and discussed with legal counsel to determine whether any corrective action is required.

Periodic Audits. The Practice will conduct audits at regular intervals, not less than annually, to evaluate priorities identified in the Practice's Work Plan and to ensure ongoing claims processing accuracy and compliance with any new rule or regulation implemented since the previous audit. Significant variations will be investigated to determine their cause. In some instances, a legitimate explanation may exist and no systemic error is at fault. In such cases no corrective action may be required. If deviation is due to improper procedures, misunderstandings of rules, fraud or systemic problems, prompt corrective action will be taken.

h. A System for Responding to and Investigating Potential Compliance Issues

It is the Practice's policy to promptly respond to compliance-related concerns and complaints as they are raised and to investigate potential or actual non-compliance of applicable laws, regulations, the Practice's policies, procedures and this Compliance Plan. All Staff must cooperate with the investigative process. As with a periodic audit and routine evaluation of items identified in the Practice's Work Plan, an investigation of a suspected violation typically will involve a review of relevant documentation and records, interviews with Staff, and an analysis of applicable laws and regulations. The results of such investigations will be thoroughly documented and shared with the Compliance Committee and the Board on a confidential basis. Precautions will be taken to ensure that relevant documents to the investigation are not destroyed. Records of an investigation will include a description of the investigative process, copies of interview notes and key documents, a log of witnesses interviewed and documents reviewed, the results of the investigation, and any corrective action taken. The CO, or his/her designee, has primary responsibility for conducting and/or overseeing investigations.

Corrective Action

If an audit or investigation reveals a systemic billing (as opposed to routine refunding of overpayments as discussed below), coding or claims submission problem, the Chair of the Compliance Committee (and legal counsel as appropriate), or the Practice Manager, will draft any required corrective action plan ("CAP") based upon recommendation(s) from the Compliance Officer. The CAP will list each billing practice or other compliance issue that does not meet the applicable requirements and specify what action should be taken to correct the practice. The CAP will include the development of new policies and procedures to prevent recurrence of the issue as necessary; appropriate training related to said policies and procedures; and ensure ongoing compliance with Medicaid and/or Medicare requirements. For each item listed in the CAP, deadlines will be established by which the corrective action must take place. The scope of possible corrective actions is quite broad, ranging from refunds of any overpayments received, to disciplinary actions, to reporting incidents of fraud and abuse to federal or state authorities. (The Compliance Officer should be informed of any routine returns of overpayments, even if they are not made as part of a formal investigation or audit.) All corrective actions must be thoroughly documented. Progress reports will be prepared on a periodic basis that list each corrective action item and identify what actions have been taken on each item. Decisions whether to disclose the results of investigations or audits to federal or state authorities are made by the Board based upon recommendations of the Chair of the Compliance Committee, the CO, and legal counsel.

i. Non-Intimidation and Non-Retaliation Policy.

The Practice is committed to maintaining a workplace where Staff and others are free to raise concerns regarding the Practice's business practices and the care of its patients in good faith or that he/she

reasonably believes is a violation. It is the responsibility of Staff to abide by applicable laws and regulations and to support the Practice's compliance efforts, including reporting their good faith or reasonable belief of any violation of applicable local, state or federal law, or the Practice's Policies and Procedures, including, without limitation this Compliance Plan. The Practice is committed to fostering a workplace that is conducive to open discussions by its Staff of its business and clinical practices. Accordingly, to promote an open culture, the Practice has adopted a strict policy of non-intimidation and non-retaliation. The Practice expressly prohibits retribution, intimidation or retaliation against any Staff who acts in reporting a concern in good faith or that he/she reasonably believes is a violation of actual or potential non-compliance with this Plan or applicable law, including but not limited to investigating issues, self-evaluations, audits and remedial actions, and reporting to appropriate officials as provided in Sections 740 and 741 of the Labor Law. Refer to Appendix A for a description of fraud, abuse and nonretaliation laws.

Practice Staff who raise and identify concerns in good faith or that he/she reasonably believes is a violation(s), or suspected violation(s) of applicable law or Practice policies, or who cooperate in investigations by the Practice, government agencies or law enforcement, concerning potential violations are protected from retaliation and intimidation when taking such actions. Any Staff who commits or condones any form of retaliation or intimidation will be subject to discipline up to, and possibly including, termination of employment or affiliation with the Practice. Refer to Policy #100-05 *Reporting Compliance Issues and Non-Retaliation* for more information.

Any Staff who believes that he or she has been retaliated as a result of reporting a violation or suspected violation should contact the Compliance Officer and/or the President.

The Practice, in accordance with applicable local, state or federal laws, fully complies with all applicable whistleblower protection laws, including, but not limited to the New York State whistleblower protection laws, described in Appendix A.

j. Deficit Reduction Act of 2005 (DRA)

The Deficit Reduction Act of 2005 requires any entity that receives at least \$5 million per year in Medicaid payments to make certain information available to its employees, contractors and agents. This information includes:

- The Federal and New York State False Claims Acts;
- The rights of employees to be protected as whistleblowers; and
- The entity's policies and procedures for detecting and preventing fraud, waste and abuse.

The Practice, in accordance with applicable local, state or federal law, and the Practice's Policies and Procedures, including, without limitation, the Practice's Compliance Program and Code of Conduct, fully complies with all applicable whistleblower protections.

k. NYS's Mandatory Compliance Program Requirements and Certification (SSL)

Per NYS Social Services Law (SSL) §363-d and 18 NYCRR Part 521, A compliance program is required of all providers where Medicaid is a "substantial portion of business operations."

18 NYCRR §521.2(b) defines "substantial portion of business operations" as

- (1) when a person, provider or affiliate claims or orders, or has claimed or has ordered, or should be reasonably expected to claim or order at least five hundred thousand dollars (\$500,000) in any consecutive twelve-month period from the medical assistance program;
- (2) when a person, provider or affiliate receives or has received, or should be reasonably expected to receive at least five hundred thousand dollars (\$500,000) in any consecutive twelve-month period directly or indirectly from the medical assistance program; or

(3) when a person, provider or affiliate who submits or has submitted claims for care, services, or supplies to the medical assistance program on behalf of another person or persons in the aggregate of at least five hundred thousand dollars (\$500,000) in any consecutive twelve-month period.

Mandatory Compliance Program Certification Requirement. Pursuant to New York State Social Services Law (SSL) §363-d, providers are required to certify to the New York State Department of Health upon enrollment in the Medicaid program, and annually thereafter, that they are satisfactorily meeting the requirements of SSL §363-d through the *Certification Statement for Provider Billing Medicaid* form. Through its submission of the certification, the Practice is attesting that is satisfactorily meeting the requirements of SSL §363-d, which includes the federal DRA certification. Annual certification shall occur by the anniversary date of the provider's enrollment in Medicaid, which can be found on their initial Medicaid enrollment welcome letter.

I. Screening Employees and Contractors for Exclusion/Disqualification

The Practice will not employ or do business with any individual or entity who is convicted of health care fraud or listed by a governmental agency as excluded, debarred or otherwise ineligible to participate in any federal or state health care programs. The Practice will screen all prospective and current providers, employees, and members of the Board, to see if such persons are included on any of the relevant excluded or disqualified provider lists, or will contract this responsibility out to a third-party vendor. CMP will require that all independent contractors and vendors conduct their own exclusion screenings prior to entering into a contract with CMP and monthly thereafter. CMP will require that contracts include a clause that the vendor/contractor must conduct monthly exclusion screenings of the vendor/contractor and its employees; evidence of which will be provided to the Compliance Officer upon request. Applicants for employment with the Practice will be required to disclose all criminal convictions, civil monetary penalties assessed or paid, or exclusion actions imposed against them. All current employees, providers and Board members of the Practice have an obligation to notify the Compliance Officer immediately upon receipt of any information indicating that they have been charged with a crime relating to health care or are facing debarment, exclusion or other ineligibility from participation in any state or federal health care program. Failure to notify the Compliance Officer may result in disciplinary action. Every month, the Practice shall review the relevant updates to the exclusion and disqualified lists to ensure that its employees, providers and Board members are not on the exclusion lists. Such lists include, but are not limited to, the following:

- United States Department of Health and Human Services, Office of Inspector General (OIG) website – List of Excluded Individuals/Entities (LEIE)- This database provides information regarding individuals and entities currently excluded from participation in Medicare, Medicaid, and all Federal health care programs;
- New York State Office of the Medicaid Inspector General (OMIG) website –OMIG's website provides access to the list of individuals or entities whose participation in the Medicaid program has been restricted, terminated or excluded;
- System for Award Management (SAM) website – Verification of practitioners excluded from receiving federal contracts, certain subcontracts and certain federal financial and non-financial assistance and benefits.
- Specially Designated Nationals and Blocked Persons List (SDN) - The Office of Foreign Assets Control (OFAC) publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Collectively, such individuals and companies are called "Specially Designated Nationals" or "SDNs." Their assets are blocked and U.S. persons are generally prohibited from dealing with them.

m. Illegal Remuneration and Prohibited Referrals

It is illegal for the Practice or Staff to provide or accept remuneration (for example, payment or an item of value) in exchange for the referral of a patient. The law also bars the payment or receipt of such remuneration in return for directly purchasing, leasing, ordering, or recommending the purchase, lease or ordering of any goods, facilities, services, or items in conjunction with the services provided. Staff may not receive any gift under circumstances that could be construed as an improper attempt to influence the Practice's decisions or actions.

Federal and state law prohibit referrals by any physician who has, or whose immediate family member has, a "financial relationship" with an entity which provides medical goods or services to that entity for the provision of certain designated health services. If a financial relationship exists, referrals are prohibited unless a specific exception is met.

Staff are expected to be vigilant in identifying potential violations of these legal requirements and to bring concerns to the attention of the Compliance Officer. This includes reviewing the business and financial relationships between the Practice (or any of its physicians or their immediate family members) and an entity which makes referrals to, or receives referrals from the Practice (or its physicians). Legal counsel will be sought to review relationships, as necessary.

n. Medical Necessity and Patient Rights

As a health care provider, the Practice is committed to providing the highest quality medical services possible to its patients. Such services will be provided on the basis of medical necessity and preventive care as defined by the physicians and other qualified practitioners of the Practice and will not discriminate on the basis of economic factors or patient characteristics such as race, ethnicity, gender or age. Informed consent will be obtained, as necessary, from patients prior to providing medical services. The confidentiality of patient records will be maintained as required by law.

o. Billing and Claims Submission

The Practice promotes full compliance with all relevant billing and claims reimbursement requirements. The Practice shall only bill for services actually rendered and as reflected in the medical documentation. Staff, as appropriate, are expected to monitor compliance with applicable billing rules. All persons involved in any aspect of the Practice's coding, billing and claims submission processes must be appropriately trained, credentialed and prepared for their responsibilities. All Staff must immediately report any false, inaccurate or questionable claims to a supervisor who will seek assistance from the Compliance Office, or directly to the Compliance Officer. If a supervisor is the subject of the conflict, then employees are required to report to another member of management/compliance.

Refunding Overpayments

The Practice will refund any overpayments discovered as part of an internal or external audit, or pursuant to the Compliance Program, to the appropriate payor or regulator, including OMIG or OIG, as applicable.

Any Staff that identifies an actual or potential overpayment shall immediately notify the Compliance Officer. The Compliance Officer will work with patient accounting personnel to review whether an overpayment occurred and whether there is a potential for systemic billing issues.

It is crucial to report an actual or potential overpayment as quickly as possible, as knowingly retaining an overpayment for over 60 days could result in liability under the federal and state False Claims Acts.

The Compliance Officer will ensure that the appropriate payor, including Medicare, Medicaid or any commercial payor, is notified of any overpayment and that funds are returned to the payor as expediently as possible. Where applicable, accounting personnel will process the refund electronically by voiding or adjusting the amount of the claim. In the event the overpayment cannot be processed through a routine void or adjustment, the CO will work with legal counsel to ensure that the appropriate process is undertaken to return the overpayment to the appropriate payor.

Prohibition on Fraudulent Practices

False billing is a serious offense. The law prohibits knowingly and willfully making or causing to be made any false statement or representation of a material fact in an application for benefits or payment. It is also unlawful to conceal or fail to disclose the occurrence of an event affecting the right to payment with the intent to secure payment that is not due. Such acts are strictly prohibited by the Practice and any Staff committing such acts will be subject to discipline, up to and including termination or affiliation with the Practice. Examples of activities that may result in the submission of false claims include, but are not limited to:

- * Claiming reimbursement for services that have not been rendered.
- * Filing inappropriate duplicate claims.
- * "Upcoding" to more complex procedures.
- * Falsely indicating that a particular health care professional attended a procedure.
- * Billing for services or items that are not medically appropriate.
- * Billing excessive charges.
- * Failing to timely refund overpayments or credit balances.

Staff must be alert for these and other errors. To the extent that billing functions are outsourced to an outside entity, the activity of that entity may be monitored as part of the Practice's auditing and monitoring functions.

The Practice carefully follows the rules on assignment and reassignment of billing rights. If there is any question whether the Practice may bill for a particular service, the question should be directed to the Compliance Officer, or outside billing contact for review.

Staff are responsible for ensuring that our Policies and Procedures meet our goal of accurate and ethical billing and claims submission. Our Policies and Procedures should at all times:

- * Provide for proper and timely documentation of provider and other professional services prior to billing to ensure that only accurate and properly documented services are billed;
- * Emphasize that claims are submitted only when appropriate documentation supports the claims and only when such documentation is maintained and available for audit and review;
- * Maintain records and medical notes used as a basis for a claim submission in an organized and legible fashion;
- * Require the diagnosis and procedures reported on the reimbursement claim be based on

the medical record and other documentation, and that the documentation necessary for accurate code assignment be available to coding and/or billing staff;

- * Prohibit compensation for internal coders and/or outsourced billing contractors which provides financial incentive to improperly upcode claims;
- * Require periodic post-submission random testing that examines and re-examines previously submitted claims for accuracy;
- * Advise the appropriate government agents in accordance with current regulations or program instructions with respect to return of overpayments of any incorrectly submitted or paid claims and, if the claim has already been paid, promptly reimburse them and the beneficiary for the amount of the claim paid by the government payor and any applicable deductibles or copayments, as appropriate; and
- * Ensure that coding/billing staff, whether in house or outsourced:
 - only submit diagnostic information obtained from qualified personnel; and
 - contact the appropriate personnel to obtain diagnostic information in the event that the individual who ordered a professional service has failed to provide such information.

In order to ensure compliance with billing requirements, the Practice regularly monitors and audits its billing practices and takes corrective action as necessary. Providers and coding/billing staff are required to attend periodic in-services and/or seminars to stay current with coding changes.

p. Record Retention

The Practice maintains a uniform system for record creation, distribution, retention, storage, retrieval and destruction. The types of documents developed under this system include (a) clinical and medical records, (b) billing, claims documentation and other financial records and (c) all records necessary to protect the integrity of the Plan and confirm its effectiveness (e.g., documentation that Staff were adequately trained, modifications to the Plan, results of any investigations conducted, self disclosure, and results of the Practice's auditing and monitoring efforts). Under no circumstances may documents relating to a pending investigation or inquiry be destroyed without permission of the Compliance Officer and approval of legal counsel. All Staff must protect the integrity of the Practice's documents and records to ensure that records are maintained in accordance with regulatory and legal requirements and for the required length of time.

All efforts to comply with applicable statutes and regulations must be documented, including all auditing activities and the results thereof. Any inquiries from third party payors or Medicare carriers must also be documented.

q. Confidentiality

Patient Information. The Practice possesses sensitive, privileged information about patients and their care. The Practice and its Staff must adhere to the Practice's policies and procedures relating to the use and disclosure of patient protected health information. This includes adherence to the Practice's HIPAA (Health Insurance Portability and Accountability Act) policies and procedures, this Plan, and the Notice of Privacy Practices. Patients properly expect that this information will be kept confidential. The Practice takes any violation of a patient's confidentiality very seriously. Disclosing a patient's protected health information to an unauthorized party/person, will subject the Staff to discipline, up to and including

termination. Staff must not discuss patients outside the Practice to anyone including such Staffs' families. Employees are required to sign a confidentiality agreement reflecting the above principles.

The Practice is the owner of the medical records that document a patient's condition and the services received at the Practice. Medical records are strictly confidential, and may not be released except with prior written authorization from the patient, the patient's authorized representative or as required or authorized by law. Medical records are not to be physically removed from the Practice. Staff who have access to medical records must preserve their confidentiality and integrity, and no Staff is permitted access to the medical record of any patient without a legitimate, Practice-related reason for so doing.

Employment and Business Records. Staff must also treat as confidential, salary, benefits, and other personal information pertaining to the Practice's Staff. Personnel files, payroll information, disciplinary matters and similar information will be maintained in a confidential manner. Staff must also protect the Practice's proprietary information and Staff must not disclose to third parties the Practice's confidential business information, such as contractual arrangements, strategic plans, future marketing efforts, and financial information, unless authorized by the Practice or required by law.

Any unauthorized release of, or access to, medical records, personnel records or proprietary information must be reported to the Compliance Officer or Privacy Officer. These confidentiality requirements apply to physical, electronic or computer records maintained at the Practice.

The above obligations of confidentiality apply even after the Staff is no longer affiliated with the Practice.

r. Government Investigations

If any Staff are contacted (e.g., inquiry, subpoena, personal visit) by a governmental agency regarding the Practice's business, such Staff is required to notify the Compliance Officer immediately unless prohibited by law from doing so, which does not include a request by law enforcement not to tell the Practice. While it is the Practice's policy to cooperate with governmental agencies, the Practice's legal rights and those of its Staff must be protected. In the case of an informal inquiry or visit from a governmental agent, Staff have the right to refuse an interview or may request to schedule or reschedule the interview for a mutually convenient time, to have an attorney present, and to record the interview.

Should a governmental agent present him or herself at the Practice's offices, they should be immediately referred to the Compliance Officer (if the Compliance Officer is unavailable, the agent should be referred to the highest member of Administration present at that time). Under no circumstances are Staff to impede a governmental investigation, however, no one is permitted unsupervised access to the Practice's records. See Information sharing with law enforcement policy 200-54 and other Practice HIPAA policies. Staff may never alter or destroy records requested in the course of an investigation, nor shall Staff make a false or misleading statement on such documents or to an investigator. Staff may not pressure any person to provide false information to, or hide information from, an investigator.

s. Gift Policy

General. It is the Practice's desire to preserve and protect its reputation and to avoid even the appearance of impropriety at all times. Staff shall not give and/or accept gifts, favors, services, entertainment or other things of value to the extent that decision-making or actions affecting the Practice might be influenced. Only occasional gifts having a nominal value are permitted as detailed below.

Patients/Families. Staff are prohibited from *soliciting* any tips, personal gratuities or gifts from patients or patients' family members, and from accepting monetary tips or gratuities. Staff may occasionally accept (if offered) gifts of appreciation that are of nominal value from patients/family members, such as food, candy, or flowers that can be shared with other Staff.

Vendors, Business Associates, Government Officials, and Others. Staff may not solicit or accept from the Practice's business associates or vendors, individually or on behalf of the Practice, gifts, favors, entertainment or other things of value to the extent that decision-making or actions affecting the Practice might be influenced. Similarly, the offer or giving of money, services or other things of value with the expectation of influencing the judgment or decision making process of any purchaser, supplier, customer, government official or other person by the Practice is prohibited.

No Cash Gifts. Staff may not accept cash gifts in any amount, including cash equivalents (such as a gift card, checks, etc.) from patients, families, vendors and others.

If Staff has any concern whether a particular gift/gratuity is appropriate and whether it should be accepted, he or she should consult his or her supervisor or the Compliance Officer. Any conduct in violation of this policy must be reported immediately to management or the Compliance Officer.

t. Managing Conflicts of Interest

The Board, senior leadership, Medical Directors, managers and key employees are subject to the Practice's *Conflicts of Interest Policy*. The purpose of the *Conflicts of Interest Policy* is to help such individuals identify, understand, manage and appropriately disclose actual or potential conflicts of interest. Please refer to the Practice's Conflicts of Interest Policy for information on how to manage any actual or potential conflicts.

u. Definitions

Affected Individuals

All persons who are affected by the required provider's risk areas including the required provider's employees, the chief executive and other senior administrators, managers, contractors, agents, subcontractors, independent contractors, and governing body and corporate officers.

Abuse

Incidents or practices of providers that, while not usually considered fraudulent, are inconsistent with accepted sound medical, business, or fiscal practices.

Centers for Medicare and Medicaid Services (CMS)

The US federal agency which administers Medicare, Medicaid, and the Children's Health Insurance Program.

Fraud

An intentional deception or misrepresentation made by an individual knowing it to be false, when that deception or misrepresentation could result in some unauthorized benefit.

Medicaid

A national health insurance plan that is state controlled providing coverage for low income individuals and families and commercially uninsured.

Medicare Part B

A voluntary federal health insurance plan which pays for physician and outpatient services for the elderly/retired population, younger people receiving Social Security benefits, and persons who need dialysis or kidney transplants for treatment of end-stage kidney disease.

OIG

US Department of Health and Human Services, Office of Inspector General. The OIG is responsible for the investigation and prosecution of health care fraud. It investigates Federal cases regarding Medicare, Medicaid, and other fraud, and is authorized to impose civil money penalties and program exclusions of fraudulent providers.

OMIG

New York State Office of Medicaid Inspector General. OMIG has been established by statute as an independent entity within the New York State Department of Health to improve and preserve the integrity of the Medicaid program by conducting and coordinating fraud, waste and abuse control activities for all State agencies responsible for services funded by Medicaid. OMIG conducts and supervises all such prevention, detection, audit and investigation efforts and coordinates such activities with other government agencies.

Whistle Blower

Also called a "Relator" – Under federal or state false claims laws, any person with the knowledge of false claims or fraud against the government may bring a lawsuit in his or her own name and in the name of the government.

Appendix A: Description of Fraud and Abuse/Non-Retaliation Laws:

I. Federal and New York State Health Care Fraud and Abuse Laws.

Both the federal and New York state governments fund health care programs that provide medical and mental health care benefits to qualified patients. Examples of such government health care programs include, but are not limited to, Medicare and Medicaid. To avoid waste, fraud and abuse in Medicare, Medicaid and other programs, there are Federal and State laws designed to deter fraud and abuse, some of which are described below.

- a. Federal False Claims Act, 31 USC §§ 3729 -3733.** This law applies to any person (or entity) who:
- i. Knowingly presents, or causes to be presented, to the United States Government, a false or fraudulent claim for payment or approval;
 - ii. Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
 - iii. Conspires to defraud the Government by getting a false or fraudulent claim allowed or paid; iv. Has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
 - v. Authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
 - vi. Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or
 - vii. Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government.
 - viii. Any person who engages in any of the above conduct may have violated the False Claims Act and may be liable for civil monetary penalties as well as up to three times the amount of damages, depending on the circumstances surrounding the false claim(s).
- b. Program Fraud Civil Remedies Act, 31 USC §§ 3801-3812 (PFCRA).** PFCRA provides for administrative remedies against any person who knowingly makes a claim or statement that the person knows or has reason to know is false, fictitious or fraudulent. The presence of a false claim is not required: a false statement is enough to trigger remedies under PFCRA.

c. New York State False Claims Act, New York State Finance Law, Article 13. The New York State false claims act is very similar to the Federal False Claims Act. It prohibits the filing of a false claim which means that a person:

- i. Knowingly presents, or causes to be presented, to any employee, office or agent of the state or a local government, a false or fraudulent claim for payment or approval;
- ii. Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the state or a local government;
- iii. Conspires to defraud the state or a local government by getting a false or fraudulent claim allowed or paid;
- iv. Has possession, custody, or control of property or money used, or to be used, by the State or a local government and, intending to defraud the state or a local government or willfully to conceal the property or money, delivers, or causes to be delivered, less property or money than the amount for which the person receives a certificate or receipt;
- v. Is authorized to make or deliver a document certifying receipt of property used or to be used by the state or a local government and, intending to defraud the state or a local government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- vi. Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state or a local government knowing that the officer or employee lawfully may not sell or pledge the property; or vii. Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state or a local government.
- viii. A person who does any of the above acts will be liable for a civil penalty of between \$6,000.00 and \$12,000.00 plus three times the amount of damages sustained by the state or local government. The amount of damages may be reduced if the violator self discloses the violation.

d. New York State Finance Law § 191. Any current or former employee, contractor, or agent of any private or public employer who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment, or otherwise harmed or penalized by an employer, or a prospective employer, because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action brought under this article or other efforts to stop one or more violations of this article, shall be entitled to all relief necessary to make the employee, contractor or agent whole. Such relief shall include but not be limited to:

- (i) an injunction to restrain continued discrimination;
- (ii) hiring, contracting or reinstatement to the position such person would have had but for the discrimination or to an equivalent position;
- (iii) reinstatement of full fringe benefits and seniority rights;
- (iv) payment of two times back pay, plus interest; and
- (v) compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

For purposes of this section, a "lawful act" shall include, but not be limited to, obtaining or transmitting to the state, a local government, a qui tam plaintiff, or private counsel solely employed to investigate, potentially file, or file a cause of action under this article, documents, data, correspondence, electronic mail, or any other information, even though such act may violate a contract, employment term, or duty owed to the employer or contractor, so long as the possession and transmission of such documents are for the sole purpose of furthering efforts to stop one or more violations of this article. Nothing in this subdivision shall be interpreted to prevent any law enforcement authority from bringing a civil or criminal action against any person for violating any provision of law. An employee, contractor or agent described above in subdivision one of this section may bring an action in the appropriate supreme court for the relief provided in this section.

e. Qui Tam Lawsuits. The Federal False Claims Act and the New York State False Claims Act also provide for *qui tam* lawsuits through which any person (the “qui tam relator”) may bring a civil action for himself or herself and on behalf of the US Government for any violation of the False Claims Act. If the qui tam relator ultimately wins the lawsuit or if there is a settlement of the lawsuit, he or she may share in a portion of any money recovered with the government and receive reimbursement for reasonable expenses, reasonable attorneys’ fees and costs. Please note recovery by the qui tam relator is uncertain and dependent upon the facts and circumstances of the case.

f. Civil Monetary Penalties Law (42 U.S.C. 1320a-7a): Authorizes penalties and assessments on individuals and entities that submit false or fraudulent claims, or engage in other types of specified misconduct. False Claims Act: Imposes liability on any person who submits a claim or causes a claim to be submitted to the federal government that he or she knows (or should know) is false.

g. Federal Anti-Kickback Statute (“Anti-Kickback Statute”), 42 U.S.C. § 1320a-7b(b)

i. The federal Anti-Kickback Statute is a criminal statute that prohibits the exchange (or offer to exchange), of anything of value, in an effort to induce (or reward) the referral of federal health care program business (Medicare or Medicaid).

ii. Criminal penalties and administrative sanctions for violating the Anti-Kickback Statute include fines, jail terms, and exclusion from participation in the Federal health care programs. Safe harbors protect certain payment and business practices that could otherwise implicate the Anti-Kickback Statute from criminal and civil prosecution. To be protected by a safe harbor, an arrangement must fit squarely in the safe harbor and satisfy all of its requirements. Some safe harbors address personal services and rental agreements, investments in ambulatory surgical centers, and payments to bona fide employees.

h.. Physician Self-Referral Law (“Stark Law”), 42 U.S.C. § 1395nn

i. The Physician Self-Referral Law (Stark Law) prohibits physicians from referring patients to receive designated health services (DHS) payable by Medicare or Medicaid from entities with which the physician or an immediate family member has a financial relationship, unless an exception applies. It also prohibits entities from presenting or causing to be presented claims to Medicare or Medicaid for those referred services.

ii. Criminal penalties include fines up to \$25,000 per violation and up to 5 years in prison per violation. Civil penalties include False Claims Act liability, civil monetary penalties and program exclusion.

i.. Non-Retaliation Policy.

i. The False Claims Act forbids retaliation by an employer against an employee who cooperates with investigators regarding potential False Claims Act violations or who commences qui tam actions in good faith. In accordance with such laws and its Corporate Compliance Program, The Practice fully complies with all applicable “whistle-blower” protections. ii. The False Claims Act specifically provides that any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employer or others in furtherance of an action under the False Claims Act, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under the False Claims Act, shall be entitled to all relief necessary to make the employee whole. Such relief may include reinstatement with the same seniority status the employee would have enjoyed but for the discrimination; two times the amount of back pay; interest on back pay; and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees. The New York State False Claims Act has similar non-retaliation protections.

j. New York State Social Services Law § 145-b: False Statements.

Under New York Social Services Law § 145-b, it is unlawful for any person, firm or corporation to knowingly by means of a false statement or representation (defined below), or by deliberate

concealment of any material fact, or other fraudulent scheme or device, on behalf of himself/herself or others, to attempt to obtain or to obtain payment from public funds for services or supplies furnished or purportedly furnished under the Social Services Law, including Medicaid.

ii. "Statement or representation" includes, but is not limited to: a claim for payment made to the state, a political subdivision of the state, or an entity performing services under contract to the state or a political subdivision of the state; an acknowledgment, certification, claim, ratification or report of data which serves as the basis for a claim or a rate of payment, financial information whether in a cost report or otherwise, health care services available or rendered, and the qualifications of a person that is or has rendered health care services.

iii. For the violations described in section i above, the government may recover civil damages (plus interest) equal to three times the amount of the false claim or in the case of non-monetary false statements, three times the amount of actual damages or five thousand dollars, whichever is greater.

k. DOH Penalties. The Department of Health may require the payment of a monetary penalty by any person who fails to comply with the standards of Medicaid or of generally accepted medical practice in a substantial number of cases or grossly and flagrantly violated such standards and receives, or causes to be received by another person, Medicaid payment when such person knew, or had reason to know, that:

1. the payment involved the providing or ordering of care, services or supplies that were medically improper, unnecessary or in excess of the documented medical needs of the person to whom they were furnished;
2. the care, services or supplies were not provided as claimed;
3. the person who ordered or prescribed care, services or supplies which was medically improper, unnecessary or in excess of the documented medical need of the person to whom they were furnished was suspended or excluded from Medicaid at the time the care, services or supplies were furnished;
4. the services or supplies for which payment was received were not, in fact, provided; or
5. an overpayment was retained after the deadline for reporting and returning the overpayment after the date on which the overpayment was identified; or
6. an effective compliance program failed to be adopted and implemented.

l. New York State Social Services Law § 145-c: Sanctions. It is a violation of the law for any person to apply for or receive public assistance, including Medicaid, by intentionally making (or intending to make) a false or misleading statement. Social Services Law §145-c sets forth certain sanctions which may be imposed against a person for such illegal actions.

m. Social Services Law § 145: Penalties. Any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor.

n. New York Social Services Law § 366-b. Any person who obtains or attempts to obtain, for himself or others, Medicaid benefits by false means is guilty of a Class A misdemeanor. In addition, any person who, with the intent to defraud, presents for payment any false or fraudulent claim, knowingly gives false information to obtain more money than he is legally entitled to, or knowingly gives false information in order to obtain authorization to provide items or services is guilty of a Class A misdemeanor.

o. New York Penal Law Article 155, Larceny. A person steals property and commits larceny when, with the intent to deprive another of his property, wrongfully takes, obtains, or withholds such property by means of trick, embezzlement, false pretense or fraud. There are four levels of offenses, depending on the value of the property involved.

p. New York Penal Law Article 175, False Written Statements. The crimes under Article 175, involve false written statements, including for example, filing false information, the falsification of business records and tampering with public records.

q. Insurance Fraud Under Article 176 of the New York Penal Law. Under Penal Law § 176.05, a fraudulent health care insurance act is committed by any person who, knowingly and with intent to defraud, presents (or causes to be presented) to an insurer, including Medicaid, a claim for health benefits which such person knows to contain materially false or misleading information. There are six levels of offenses, generally depending on the value of the false claim. A person is guilty of aggravated insurance fraud when he commits a fraudulent insurance act, and has been previously convicted within the preceding five years of any offense also involving a fraudulent insurance act.

r. Health Care Fraud Under Article 177 of the New York Penal Law.

i. Penal Law Article 177 also involves offenses of health care fraud. Under Article 177, a person is guilty of health care fraud when, with the intent to defraud a health plan (including Medicaid), he or she knowingly and willfully provides materially false information or omits material information for the purpose of requesting payment from a health plan for items or services and, as a result of such information or omission, payment is received for which he/she or another person is not entitled. There are five levels of offenses, depending on the value of the fraudulent claims.

ii. It is a defense for crimes under Article 177 that the defendant was a clerk, bookkeeper or other employee (other than an employee charged with active management and control, in an executive capacity, of the affairs of the corporation) who, without personal benefit, merely executed the orders of his or her employer/supervisor.

s. Insurance Frauds Prevention. Section 403 of the New York Insurance Law prohibits an individual, firm, association or corporation from committing a fraudulent insurance act as defined in Penal Law § 176.05. Violators may be subject to both criminal liability and money penalties.

t. 31 U.S. Code § 3730 (h). Relief from Retaliatory Actions. Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent or associated others in furtherance of an action under this section (31 U.S. Code § 3730) or other efforts to stop 1 or more violations of this subchapter (Subchapter III. CLAIMS AGAINST THE UNITED STATES GOVERNMENT).

Relief shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection. A civil action under this subsection may not be brought more than 3 years after the date when the retaliation occurred.

u. Employee Whistleblower Protection Rights/Non-Retaliation.

i. **Crouse Medical Practice's Non-Retaliation Policy.** The False Claims Act forbids retaliation by an employer against an employee who cooperates with investigators regarding potential False Claims Act violations or who commences qui tam actions in good faith. In accordance with such laws and its Corporate Compliance Program, the Practice fully complies with all applicable "whistle-blower" protections

ii. **Specific False Claims Act Protection.** The False Claims Act specifically provides that any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employer or others in furtherance of an action under the False Claims Act, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under the False Claims Act, shall be entitled to all relief necessary to make the employee whole. Such relief may include reinstatement with the same seniority status the employee would have enjoyed but for the discrimination; two times the amount of back pay; interest

on back pay; and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

iii. **New York Labor Laws Prohibiting Retaliatory Actions.** Two Laws prohibiting employer retaliation against employees are addressed below. The first is Labor Law § 740 and applies to employers in general. The second is Labor Law § 741, and is specific to health care providers.

- **Labor Law § 740.** This law prohibits retaliatory action by an employer against an employee who discloses or who threatens to disclose, to a supervisor or to a public body, an activity, policy or practice of the employer that the employee reasonably believes to be in violation of law, rule or regulation or that the employee reasonably believes poses a substantial and specific danger to the public health or safety.

"Employee" means an individual who performs services for and under the control and direction of an employer for wages or other remuneration, including former employees, or natural persons employed as independent contractors to carry out work in furtherance of an employer's business enterprise who are not themselves employers.

1. The protection against retaliatory action provided above pertaining to disclosure to a public body only applies where the employee has first made a good faith effort to notify his or her employer by bringing the activity, policy or practice believed to be in violation of law, rule or regulation to the attention of a supervisor of the employer and has afforded such employer a reasonable opportunity to correct such activity, policy or practice. Such employer notification shall not be required where: (a) there is an imminent and serious danger to the public health or safety; (b) the employee reasonably believes that reporting to the supervisor would result in a destruction of evidence or other concealment of the activity, policy or practice; (c) such activity, policy or practice could reasonably be expected to lead to endangering the welfare of a minor; (d) the employee reasonably believes that reporting to the supervisor would result in physical harm to the employee or any other person; or (e) the employee reasonably believes that the supervisor is already aware of the activity, policy or practice and will not correct such activity, policy or practice.

2. Labor Law § 740 also prohibits an employer from taking retaliatory action against an employee who provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such activity, policy or practices by such employer.

In addition, an employer may not take retaliatory action against an employee who objects to, or refuses to participate in any such activity, policy or practice.

3. For purposes of Labor Law §740, "retaliatory action" means an adverse action taken by an employer or his or her agent to discharge, threaten, penalize, or in any other manner discriminate against any employee or former employee exercising his or her rights under this section, including (i) adverse employment actions or threats to take such adverse employment actions against an employee in the terms of conditions of employment including but not limited to discharge, suspension, or demotion; (ii) actions or threats to take such actions that would adversely impact a former employee's current or future employment; or (iii) threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member, as defined in subdivision two of section four hundred fifty nine-a of the social services law, to a federal, state, or local agency.

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4. An employee who has been the subject of a retaliatory action in violation of Labor Law § 740 may commence a civil court action within two years after the alleged retaliatory action was taken. The court may order relief as follows:

a. an injunction to restrain the employer's continued violation;

- b. the reinstatement of the employee to the same position held before the retaliatory action, or to an equivalent position, or front pay in lieu thereof;
- c. the reinstatement of full fringe benefits and seniority rights;
- d. compensation for lost wages, benefits, and other remuneration;
- e. payment by the employer of reasonable costs, disbursements, and attorney's fees;
- (f) a civil penalty of an amount not to exceed ten thousand dollars; and/or
- (g) the payment by the employer of punitive damages, if the violation was willful, malicious or wanton.

5. Labor Law § 740 does not diminish the rights, privileges, or remedies of any employee under any other law or regulation or under any collective bargaining agreement or employment contract.

Employer relief. A court, in its discretion, may also order that reasonable attorneys' fees and court costs and disbursements be awarded to an employer if the court determines that an action brought by an employee under this section was without basis in law or in fact.

ii. **Labor Law § 741.** This law prohibits retaliatory action by *certain health care* employers against a health care employee who discloses or who threatens to disclose, to a supervisor or to a public body, an activity, policy or practice of the employer or employer's agent that the employee, in good faith reasonably believes constitutes improper quality of patient care. Labor Law § 741 also prohibits retaliatory action by such employer if the employee objects to, or refuses to participate in any activity, policy or practice of the employer that the employee, in good faith, reasonably believes constitutes improper quality of patient care.

1. Protection against retaliatory action does not apply unless the employee has first notified the employer of the improper quality of patient care and has afforded the employer a reasonable opportunity to correct such activity, policy or practice. However, such notice is not required if there is an imminent threat to public health or safety or to the health of a specific patient and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

2. For purposes of Labor Law § 741, "retaliatory action" means the discharge, suspension, demotion, penalization or discrimination against an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

3. Under Labor Law § 741, an employee has two years from the date of the alleged retaliatory action to commence a lawsuit. In addition to the remedies that may be available to the employee a court may assess a fine up to \$10,000 against the employer if the court finds that the employer acted in bad faith. These fines are not paid to the employee, but will be deposited into a state-wide fund to improve patient care.

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XIX Signature Page

I, _____[Print Name], have received and read the Compliance Plan of Crouse Medical Practice, understand its requirements, and agree to abide by the rules and regulations herein set forth within it.

Signature

Date