

Understanding Binding Arbitration

What are the benefits of binding arbitration?

Medical malpractice lawsuits are often very lengthy and expensive for all parties. This cost contributes to the rising costs of healthcare. Arbitration is a relatively informal process of resolving disputes that is an alternative to the traditional court system. Through arbitration, patients and physicians both benefit because they are able to more promptly resolve malpractice claims and for less cost to each party. Arbitration should avoid unreasonable jury awards, thereby lowering costs, which would positively impact rates and the cost and the availability of healthcare.

How does arbitration work?

The process starts with a notice from one party demanding arbitration. The physician and the patient each name an arbitrator to serve on their behalf. An arbitrator is like a judge, in that he or she listens to the evidence presented by both sides and decides whether malpractice occurred. These two arbitrators then pick a third member of the panel. At the arbitration hearing, each party will be represented by their own attorney.

Each party will have the opportunity to present evidence and cross-examine witnesses. All three arbitrators listen to the evidence and participate in the decision by applying the same law as a court. The arbitrators can award any amount or kind of damages.

What does binding arbitration mean?

The decision of the arbitration panel is final. Neither party can go to court to appeal the decision, except on very limited grounds. Both sides are bound by the arbitrators' decisions.

How do I participate in arbitration?

FPIC has developed an arbitration program that is complimentary to all insured physicians in Florida. The program provides an arbitration agreement, a short video for patients to view, answers to common questions, and instructions for implementation. For additional information, or to reserve your copy, contact Amy Waller, Director of Communications, 800-741-3742, ext. 3057 or waller@fpic.com, or online at www.medmal.com.



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News & Views

A Newsletter Exclusively for FPIC Policyholders

Dear Policyholder:

From the moment Gov. Jeb Bush appointed the Governor's Task Force on Tort Reform, I believed that the whole purpose behind the impetus to get meaningful tort reform was to maintain patient access to the healthcare system by lowering runaway medical malpractice premiums that you -- the physician -- have been forced to pay under Florida's liberal court system.

As an advocate for Florida physicians for the past 22 years, I was very heartened by the painstaking deliberations that the five-member Governor's Task Force undertook. The panel was comprised of University Presidents and Board Members with no ax to grind. They took testimony from hundreds of interested parties. They dutifully researched and deliberated for several months. When all was said and done, the Task Force provided more than 60 treatments that, if taken in their totality, would cure the ills of our present system.

"A \$250,000 cap on non-economic damages is joined at the hip with reform of Florida's onerous bad faith laws in order to bring meaningful savings to Florida physicians."

Unfortunately, despite the media buzz regarding the \$250,000 cap on pain and suffering, our Florida legislature has so far failed to adopt even half of what the Task Force recommended, and incredibly, less than one third of the Task Force's specific recommendations on tort reform explicitly.

I have said in countless presentations around the state that a \$250,000 cap on non-economic damages is joined at the hip with reform of Florida's onerous bad faith laws in order to bring meaningful savings to Florida physicians.

Governor Bush's proposed legislation is the only actuarially sound plan put forth to date to resolve these issues. The plan focuses on reducing premiums by attacking the key drivers of loss costs. The proposal includes a \$250,000 cap on non-economic damages and effective change in current bad faith laws. In addition, it also calls for reforms of the laws on joint and several liability, set-off from settlements and collateral sources, periodic payments of future economic and non-economic damages, and access to medical fact witnesses. The reforms proposed are necessary in order to find a lasting solution to the medical malpractice crisis.

Enacting a \$250,000 cap on non-economic damages and reforming bad faith laws will bring about a competitive marketplace. These reforms will reduce premiums and make losses more predictable in the future. Predictable losses will create stable premiums making Florida more attractive to insurers and physicians.

That is why FPIC has taken on the role of speaking for the industry in leading the fight to lower rates for physicians. And that is why I sent a letter directly to Gov. Bush pledging to reduce our rates 20 percent if his proposed legislation was passed intact.

As always, thank you for being a valued customer of FPIC. If, at any time, there is something you would like to discuss with me, please pick up the phone and call me at 800-741-3742, ext. 3098 or email me at white@fpic.com. Together, we can make changes take place in Tallahassee.

Sincerely,

Robert E. White, Jr., President

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FPIC's Pledge to You – Our Valued Policyholder

In terms of actual dollars and cents, it makes sense for an insurance company to receive a 5 percent profit on a \$50,000 premium than a 5 percent profit on a \$40,000 premium.

So why is FPIC at the forefront in suggesting ways to Gov. Jeb Bush and the Florida legislators on how to bring 20 percent premium relief to the Florida insured?

Because FPIC is first, and foremost, an insurance carrier run by a physician board and dedicated to assisting physicians.

As we have said from the beginning – we were always under the impression that the whole idea behind tort reform was some premium relief to physicians. The only way to attain this goal is to accept Gov. Jeb Bush's initial recommendations to the Legislature that includes at its cornerstone a \$250,000 cap on non-economic damages, along with relief from Florida's onerous bad faith laws.

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Working For You

During every legislative session, and specifically during the recent Special Session held in June, FPIC has had a continued presence in Florida's capital, Tallahassee. FPIC is actively working to assist physicians in their daily practice.

FPIC has the services of four lobbying firms. All of the lobbyists work for FPIC when needed, and have been very active recently. In addition, FPIC is a member of several professional associations that employ lobbyists. The Company is an active member of the Florida Insurance Council and the National Association of Independent Insurers. There are a total of 14 different individuals working for FPIC's insureds in the capitol. Through these memberships, FPIC has the benefit of many.

The main function of a lobbyist is to develop credible relationships with legislators and their staff in order to transfer truthful information to the legislators. The key to each relationship is trust. Once an open and honest relationship is established, the lobbyist will play an important role in the legislative process. During the recent sessions, FPIC's lobbyists were extremely busy debunking the half-truths and lies spread by opposing special interest groups.

The efforts of FPIC and their lobbyists were even more important during the campaign for tort reform. As a member of the Help Heal Florida's Healthcare Coalition, FPIC was active on many fronts of this issue. In fact, Kurt Driscoll, Vice President of Government Relations, attended every meeting of the Governor's Task Force on Medical Liability Insurance. Bob White, FPIC President, testified at many of these meetings, as well as at many committee meetings during the regular and special sessions.

The behind-the-scenes activities of FPIC in Tallahassee have a vital impact on the legislators as well as the public. The efforts may not result in immediate changes, but they have an impact by helping to educate legislators and the public about the issues.



Governor Bush's Response to FPIC

Editor's Note: Below is the response issued by Governor Jeb Bush regarding FPIC's tort reform commitment.

After reviewing our proposal for comprehensive medical liability reform, First Professionals Insurance Company, Inc. (FPIC) has formally committed to reducing rates for Florida healthcare providers by 20 percent if the reform package becomes law. FPIC is the state's largest medical liability insurer, writing the vast majority of new policies. I applaud FPIC's decision to become an active part of the solution.

Our proposal works to provide predictability to our state's volatile insurance market. Five years ago, more than 60 medical liability insurers wrote new policies for Florida doctors and hospitals, today that number is four. Doctors who can find adequate coverage struggle to pay premiums that have risen as much as 400 percent in the last two years.

As a result more and more Florida doctors are making the difficult decision to close or limit their practices due to the exorbitant cost of liability insurance and the unacceptable risk of operating without coverage. As they do, Floridians are at risk of losing quality healthcare when they need it most.

FPIC's decision confirms that our proposal is the right approach, and will ensure Floridians continue to have access to quality healthcare on demand. As we move ahead in a meaningful debate about our medical liability system, I remain hopeful that we will create comprehensive reform that improves the quality of medicine in Florida, and our access to it.

In Memory of Dr. Acosta-Rua

On May 19, 2003, FPIC lost a long-time friend and supporter with the passing of Gaston J. Acosta-Rua, MD. Dr. Acosta-Rua, a neurosurgeon in Jacksonville, Florida, was a member of the FPIC Board of Directors and a past Chairman of the FPIC Insurance Group Board.



He was well-known throughout the community for his humanitarian work as a medical missionary to Central America and West Africa. Dr. Acosta-Rua received many awards for his work, including National Conference of Christians and Jews, Lifetime Achievement Award from Governor Bush, and the Good Samaritan Award from the Florida Medical Association.

Dr. Acosta-Rua came to America from Cuba in 1961 where he worked as an orderly in a Miami hospital before completing medical school in Spain. Before settling in Jacksonville in 1972 he taught neurosurgery in Iowa and Switzerland.

In addition to his humanitarian activities, Dr. Acosta-Rua was also active in many professional associations. He was chairman of the Florida Board of Medicine, a diplomat of the American Board of Neurological Surgeons, a fellow of the American College of Surgeons, past president of the Florida Neurological Society, a member of the Florida Medical Association, the American Association of Neurological Surgeons, and a past chairman of the Florida Georgia Blood Alliance.

Bad Faith

What will work to bring immediate malpractice relief to physicians, thereby maintaining the public's access to healthcare? These four simple changes to our current bad faith law, which were recommended by the Governor:

1. Allow only the physician to charge the carrier with bad faith (and not the plaintiff's attorney).
2. Codify the existing law to provide standards by which the insurance carrier must demonstrate it is acting in good faith.
3. Allow insurance carriers to offer policy limits at least 120 days or more before trial – under the current system, there is no incentive for the trial lawyer to accept this offer.
4. Limit liability to the insured's legally attachable assets.