

FPIC Offers Arbitration Program

FPIC is pleased to announce that beginning March 1, 2003, we will be offering an arbitration program to physicians.

The arbitration program has been developed as an alternative to the costly process of settling claims in the courtroom. For physicians participating, a panel of three arbitrations will determine the results of a claim.

The program includes a copy of a standard arbitration agreement that FPIC would like participating physicians to use, a five minute video for patients to view before signing the agreement, and instructions for use.

The program has two options. Under the first option patients have the option to not sign the agreement and still receive treatment. With the second option, patients must sign the agreement in order to receive treatment.

The arbitration program is complimentary for FPIC insureds in the state of Florida. For additional information or to reserve your copy contact Amy Waller, Director of Communications, 800-741-3752, ext. 3057 or waller@fpic.com.

Robert E. White, Jr. Elected President

Effective November 1, 2002, Robert E. White, Jr. became President of First Professionals Insurance Company, Inc. (FPIC).

Mr. White joined FPIC in 2000 and previously served as Executive Vice President and Chief Operating Officer. Mr. White has 35 years of insurance industry experience, specializing in medical professional liability insurance.



David L. Rader retired from his position as President and Chief Operating Officer of FPIC on October 31, 2002, and will continue his association with FPIC on a consulting basis.

John R. Byers, the Company's Chief Executive Officer, commented, "We are delighted to announce Bob's promotion to President of FPIC. He has tremendous expertise and experience in medical professional liability insurance and will continue to be a great asset to our organization. We appreciate David Rader's contributions over the past three years and are pleased to continue to have access to his expertise on a consulting basis."

FPIC
Insurance Solutions For Healthcare Providers

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News & Views

A Newsletter Exclusively for FPIC Policyholders

The Dangers of Going Bare

The professional liability insurance industry is in the midst of another crisis. Several factors have contributed to the current market conditions, such as erosion in patient loyalty, managed care, an increase in the number of attorneys, changes in how juries are selected, and rising awards to plaintiffs. In the last five years the average jury verdict has risen by 60 percent. As a result of the crisis and the increased costs of professional liability insurance, many physicians and other healthcare providers are limiting the scope of their practice or no longer practicing altogether. Still other physicians are making the difficult choice to deal with the crisis by not obtaining professional liability insurance, more commonly referred to as "going bare."

According to state records, there were approximately 1,500 physicians practicing medicine without liability insurance in 2002, but this number is expected to rise dramatically in 2003. A physician that goes bare still faces the same chances of being sued by a patient. If a physician elects to go bare and fails (after all applicable appeals) to pay a court judgment, arbitration award, or settlement agreement arising from a case of medical malpractice, the Florida Department of Health is required to issue an emergency order resulting in the suspension of the physician's medical license. A physician's continued failure to pay in this instance will result in a disciplinary action by the Department of Health, Florida Board of Medicine of at least probation, with a restriction that payments be made on a scheduled basis. For those unable or unwilling to pay, the result will almost certainly be a suspension of that physician's medical license.

One must also consider the insurance requirements of hospitals or other entities with whom they contract, such as HMOs. While some hospitals have decided to allow staff physicians to go bare, HMOs, at least so far, have not. Many HMO contracts contain clauses requiring physicians to maintain professional liability insurance and to hold the HMO harmless. A physician that goes bare under such circumstances may expose oneself to a lawsuit brought by the HMO for indemnification if the HMO is forced to incur costs defending itself and pay losses caused by a bare physician.

This same scenario can repeat itself if the hospital that allows a physician to go bare or uninsured is forced to pay a settlement because of the physician's negligence. The hospital has the right, under Florida law, to pursue physicians after entering into a settlement with the plaintiff. Insured, co-defendant physicians may do so as well. This right is set forth in Florida's Uniform Contribution Among

Tortfeasors Act, Florida Statute 768.31. This act gives any defendant in a lawsuit the right to settle the case and pursue any party, named or unnamed in the lawsuit, in a subsequent action for contribution. The act provides no protection from the statute of limitation, which generally governs medical malpractice actions because the act provides the action for contribution can be brought for up to one year following the settlement of the claim. While hospitals, HMOs, or other physicians may support your decision to go bare, that does not mean that they are willing to pay your losses. They, and more likely their insurers, are free to pursue an action when they believe a bare physician caused or contributed to a loss they sustained.

If a physician makes the difficult choice to go bare, there are additional issues that must be considered. Compliance with Florida's Financial Responsibility Statute (the "Statute") must be established with the Florida Board of Medicine as a condition of licensing at the time of licensure renewal or reactivation. For physicians relying upon an exemption under the Statute, there is an ongoing duty to report to the Florida Department of Health, in writing, regarding any changes in circumstances concerning qualifications for the exemption.

Going bare in Florida also requires that physicians make provisions to inform patients that the physician is practicing without the benefit of professional liability coverage. Physicians are required to post a sign in the waiting room with defined language that includes, but is not limited to, a statement in capital letters stating: "YOUR DOCTOR HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE." This may have an effect on the confidence and relationship that a patient has or potential patient may have with the physician. This notice requirement may also become problematic when a physician does not practice in an actual office setting, such as an anesthesiologist.

It is extremely important for a physician going bare to purchase tail coverage from their current carrier. Such coverage will protect the physician against claims for past actions while that physician was insured. While the physician is not required to purchase tail coverage, the failure to do so will effectively result in the forfeiture of all the money previously paid for professional liability coverage. In other words, since this is not an occurrence policy, if the physician does not purchase the costly tail coverage, premiums previously paid all the way back to the retroactive date will not cover claims reported after the claims-made coverage has expired.

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Going Bare

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Most physicians are also surprised to learn that it is extremely difficult for a bare physician to obtain professional liability coverage in the future. In addition, professional liability carriers seldom provide retroactive coverage for the period of time that the physician was bare. Finally, insurance carriers will generally not accept a laundry list of patient incidents, also known as "dumping," just prior to a physician's decision to stop purchasing insurance from their current carrier.

By going bare, a physician also loses the intensive litigation management that an insurance carrier is able to provide when a claim is made. Through the carrier's expertise in handling claims and its established relationships, the carrier is better able to control expenses in defense of a claim. In Florida in 2002, the average cost to defend a case by a carrier, not including the trial portion, was \$31,249; if the case went to trial the average cost was \$123,290. A physician who is forced to defend against a claim alone may easily incur legal bills in excess of 50 to 100 percent of the carrier's costs as insurance carriers are able to negotiate lower fees with defense attorneys. It should also be noted that because a physician has to go through this process alone, the physician is forced to endure what is at times a prolonged and substantial interruption in their practice because of the monumental hours needed to properly prepare a defense on one's own.

Bare physicians will also have to deal with intrusions by plaintiff attorneys. When a physician who decides to go bare is sued, they can expect to be approached by the plaintiff's attorney with an offer of settlement at some point during the litigation. The attorney will usually offer the bare physician an offer of settlement whereby the plaintiff will not proceed with the case against the bare physician in exchange for the bare physician's agreement to criticize his or her insured co-defendant(s) in deposition or at trial. The bare physician must then make what is often a very difficult decision: to either go against colleagues or be forced to pay a settlement or verdict. If the bare physician refuses to go along, the plaintiff attorney will likely take aggressive action against the bare physician for not testifying against a colleague.

In Florida, the state exemptions to the federal bankruptcy laws are very liberal. With few limitations, bare physicians are able to protect the full value of their home in a bankruptcy proceeding. Currently, there is pending legislation in the United States Congress that would override Florida's state laws and dramatically cap the amount of equity that can be protected in a home. This same pending legislation proposes a significant change that would prevent most physicians from immediately discharging their debt in a bankruptcy proceeding. Rather, a physician would first be required to work for a number of years and pay off the debt in a manner that would dramatically reduce one's lifestyle before discharging all debts. This new legislation will clearly make it more difficult to settle a case for a bare physician because of the reduction in the ability to protect assets from creditors. Moreover, in a groundbreaking case in South Florida, a bare physician who had declared bankruptcy and protected his assets in his home by placing them in his wife's name only was forced to pay the first \$250,000 of the settlement. The judge ruled that the first \$250,000 was a condition of licensing, thereby forcing the physician to pay.

Going bare is not a one-time event for a physician. One does not go bare and then forget about it until a case arrives. There is a lot of time and planning involved in maintaining the status of a bare physician. Every time a bare physician obtains a new asset, it has to be determined how to protect that asset. A physician must have an ongoing plan to hold on to their assets or else they may be lost. The expenses of such a plan will offset and often times even exceed the cost of the professional liability insurance premium.

Finally, a bare physician has no insurance in defending oneself in connection with a license investigation by the Florida Department of Health, Florida Board of Medicine, or any investigation involving Medicare/Medicaid Fraud & Abuse by Federal and State regulators. Defending these claims is expensive and the initiation of a licensure investigation can come from numerous sources, including but not limited to, patients, ex-spouses, competitors, and even those who choose to remain anonymous. These complaints spark an investigation that puts a physician's reputation and livelihood on the line. It is at this point in time that physicians need the experience of their professional liability insurance carrier.

The choice to go bare is one that only the physician can make, but such a choice should only be made after careful consideration of all the factors involved. Often, physicians learn the value of professional liability insurance coverage the hard way: after going bare and being faced with a medical malpractice case. The financial exposure, vulnerability to disciplinary action, and practical limitations described in this article set the stage for financial ruin and the utter destruction of a physician's career in medicine. Most physicians weigh the risk factors of going bare and conclude that insurance is the reasonable choice to protect their finances, livelihood, and professional reputation.

FPIC Non-Standard Program to Continue

FPIC is pleased to announce that the professional liability insurance program for non-standard physicians will continue in Florida and Arkansas. The current underwriting standards and qualifications for the program will be maintained. The only change is that reinsurance for the program will now be provided by BF Re Underwriters.

BF RE Underwriters is a division of the W.R. Berkley Corporation, a leading domestic and international insurer and reinsurer founded in 1967. As of June 30, 2002, group assets were \$6.1 billion and policyholder surplus was \$700.1 million.

This new partnership is effective immediately. Renewal business will be rolled over based on the retroactive date of the previous non-standard policy. New business to the non-standard program is still subject to retro date inception.

The intent of this program is to place individual physicians in Florida and Arkansas with underwriting concerns who are members of a large group into the non-standard program so that FPIC may insure the entire group.

Rita Schaaf, ext. 3088, Junior Underwriter, will continue to oversee the underwriting of this program.

FPIC Non-renewing Policyholders in AL, OH, and NC

Due to capacity constraints, FPIC has determined that it can no longer offer professional liability insurance coverage to physicians in the states of Alabama, North Carolina, and Ohio. Effective March 1, 2003, FPIC will begin non-renewing current policyholders in these three states as policies come up for renewal.

This was a very difficult decision for FPIC to make; however, our long-standing relationship with the Florida market and our desire to regain our A-rating from the A. M. Best Company left us little choice. We realize that our decision will put an added strain on policyholders and agents in Alabama, North Carolina, and Ohio, but these states do not have the availability problem that presently confronts Florida's physicians. As a Florida-domiciled insurance carrier and the Florida Medical Association's endorsed carrier, FPIC feels duty-bound to channel all of our available resources toward the relief of physicians in Florida. We trust that you will understand our decision.

Bulletin Board

Coverage for Botox Injections

FPIC has agreed to insure Dermatologists, ENT's, Ophthalmologists, and Plastic Surgeons who preform Botox injections. For physicians other than the classifications previously listed, FPIC will include a 25 percent surcharge and request a copy of the consent form being used, training they received (we are most interested in the hands-on training), and the application. The application refers to the location of the botox injections to be given.

Arkansas Rate Increase

Effective March 1, 2003, there will be a 20 percent rate increase in Arkansas.

South Florida Claims

FPIC has just completed an expansion of the South Florida claims office. If you are in Martin, St. Lucie, Okechobee, Palm Beach, Broward, Dade, Monroe, or Collier county claims should be reported to the South Florida office. The contact information is as follows:

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600 N. Pine Island Road, Suite 250
Plantation, FL 33324
Phone: 954-577-2721
Fax: 954-577-2725

CME Cruise Offered

The Florida Medical Association (FMA) in partnership with FPIC is offering a CME Caribbean Cruise. The cruise, "Safe Passage to Superior Practice," will be sailing July 19-25. Ports-of-call include San Juan, St. Thomas, and St. Maarten. A total of 16 hours of CME credit will be available. The deadline for reservations is March 1. For more information, contact Angie Nykamp, FMA Director of Member Relations at 800-762-0233.

Congratulations

FPIC Board member Gaston Acosta-Rua, MD, a Jacksonville neurosurgeon, was awarded a lifetime achievement award by state health officials for his work with the Florida Board of Medicine.

Terrence F. McCoy, MD, past-president of the Florida Medical Association and a FPIC Board member was appointed to the Florida Board of Medicine by Governor Bush.

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