

Escambia CMS Endorses FPIC

FPIC is pleased to announce a recent endorsement by the Escambia County Medical Society (ECMS) as the exclusive provider of professional liability insurance.

As part of this endorsement program, FPIC is offering dues paying members a 5 percent discount off base premiums, as well as rewarding claims-free members additional discounts up to 25 percent for even greater savings. The claims-free discounts are based on the number of years a physician has been without a claim.

(These discounts cannot be combined with any other program discounts.) FPIC will also institute its risk management program, *Partners in Prevention*, for insureds in order to minimize risk.

The ECMS is a nonprofit, voluntary, professional membership organization that addresses the social, political and economic issues confronting physicians and their patients today. ECMS represents approximately 385 physicians living or working in Florida's Escambia County. The ECMS is active within the community with a variety of activities including: a physician referral service, a speaker's bureau, student sport physicals, and medical disaster coordination planning.

"We are especially pleased to add Escambia County to our growing list of endorsements in the state of Florida," said Patrick C. Ellis, Director of Market Development for FPIC. "This is a very esteemed organization, and we look forward to a long-lasting partnership."

In addition to this endorsement, FPIC is endorsed by 11 other county medical societies including:

Brevard
Highlands
Indian River

Lake / Sumter
Lee
Manatee
Martin
Palm Beach
Pasco
St. Lucie / Okeechobee
Sarasota

FPIC also maintains endorsement programs with the following specialty societies/networks:

Bradman Network
Florida Academy of Family Physicians
Florida Association of Rural Health Clinics
Florida Chapter, ACP
Florida Chapter, American College of Cardiology
Florida Chapter, American College of Surgeons
Florida Dental Association
Florida Medical Association
Florida Obstetric and Gynecologic Society
Florida Osteopathic Medical Association
Florida Pediatric Society
Florida Society of Ophthalmology
Florida Society of Rheumatology
Florida Society of Thoracic and Cardiovascular Surgeons
Georgia Chapter, American College of Surgeons
Georgia Society of Otolaryngology
Georgia State Medical Association
Medical Association of Atlanta
Network of Florida Otolaryngologists
NW Florida Surgical Center
South Florida Chapter, American College of Surgeons
Stuart Eye Center

For information on the Escambia County Medical Society endorsement or any of FPIC's endorsement programs, contact Patrick C. Ellis, Director of Market Development at 800-741-3742, ext. 3071, or email at ellis@fpic.com.

Factors to Consider When “Going Bare”

As a result of the current state of the professional liability market and the increased costs of professional liability insurance, many physicians are limiting the scope of their practice or are no longer practicing. Other physicians are making the difficult choice to not obtain professional liability insurance, more commonly referred to as “going bare.”

A bare physician 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 consider insurance requirements of hospitals or other entities with whom they contract, such as HMOs. Many HMO contracts contain clauses requiring physicians to maintain professional liability insurance and to hold the HMO harmless. A physician who goes bare under such circumstances may expose themselves to a lawsuit brought by the HMO for indemnification if the HMO is forced to incur costs defending itself and paying losses caused by a bare physician.

This same scenario can repeat 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.

If a physician goes 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.”

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.

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 a physician was bare.

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. A physician who is forced to defend against a claim alone may easily incur legal bills in excess of 50 to 100 percent higher than 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 often times a prolonged and substantial interruption in their practice because of the hours needed to properly prepare a defense on one’s own.

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.

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Going Bare

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Finally, a bare physician has no insurance in defending oneself in connection with a license investigation by the Department of Health, Board of Medicine, or any investigation involving Medicare/Medicaid Fraud & Abuse by Federal and State regulators. Defending these claims are 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 chose 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 as described in this article set the stage for financial ruin and the utter destruction of a physician's career in medicine.

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Binding Arbitration

FPIC has created a binding arbitration program for use by our physicians in Florida. Under this program both parties agree to give up their right to have any medical malpractice claims resolved by a jury in a court of law. The claim is handled by a panel of three arbitrators. An arbitrator is like a judge, in that he or she listens to the evidence presented by both sides and decides whether malpractice occurred. If necessary, the arbitrators can issue subpoenas to compel witnesses to appear at the hearing or to obtain documents or other evidence. At the arbitration hearing, each party will be represented by their own attorney. Each party will have the opportunity to present evidence and witnesses, and cross-examine the other party's witnesses. The arbitration panel will listen to the evidence and render a decision. They apply the same laws that a court would, but the procedural rules are more relaxed and the hearing is less formal than a trial. Based on the evidence and the law, the arbitrators can award any amount or kind of damages that a court can award.

The benefits associated with binding arbitration are many, including:

- Time Savings - disputes are resolved quickly.
- Cost Savings - because of the informality, arbitration hearings are less expensive than trials.
- Educated and Experienced Arbitrators - the arbitration panel will be more educated and experienced than the average jury.
- Finality - since the process is binding, the decision of the arbitrators is final and cannot generally be appealed, except on very limited grounds.

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

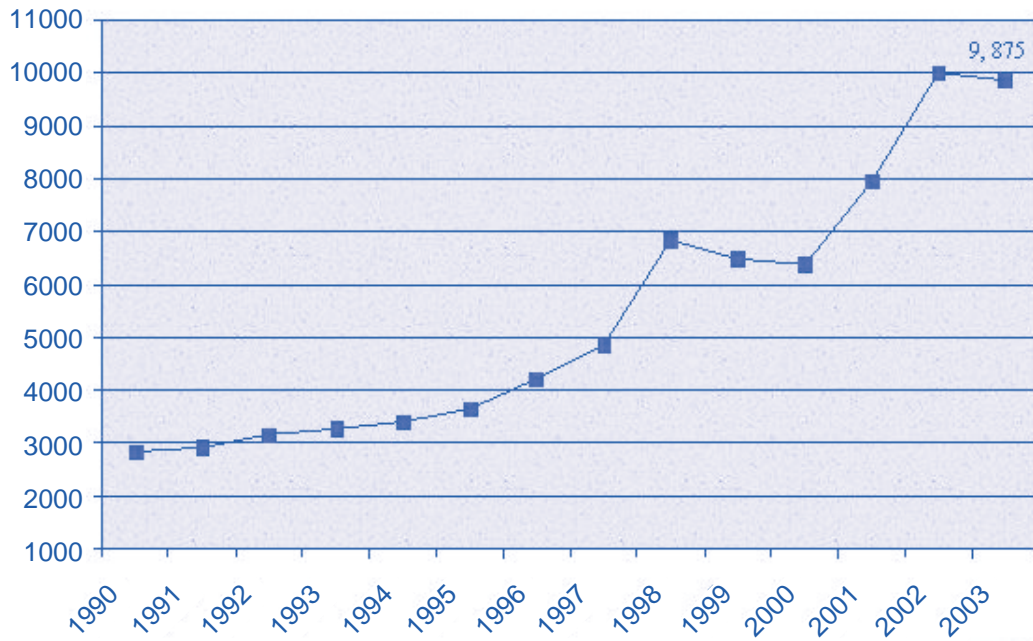
FPIC's arbitration program offers two alternative arbitration agreements. Both agreements are the same except for one key provision. Our form "A" agreement requires patients to sign the arbitration agreement as a prerequisite to future treatment. The other agreement, form "B," permits a patient to terminate the agreement for a period of 30 days from the date the patient signs the agreement.

For additional information regarding FPIC's binding arbitration program or to request a copy, contact Amy Waller, Director of Communications, 800-741-3742, ext. 3057, or waller@fpic.com.

Oldest and Largest Carrier in Florida

29 years

Number of FPIC Physician and Dental Insureds 1990-2003



• Do not capitate legal fees

• Non-Assessable

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