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NEWS & VIEWS

FPIC Announces Exclusive Partnership formed with Orange County Medical Society

The Orange County Medical Society (OCMS) and FPIC have finalized the formation of a new Exclusive Endorsement and Sponsorship Program. The OCMS Board of Directors is proud to endorse FPIC, and FPIC is equally proud to be endorsed by the OCMS. Both parties look forward to a long lasting relationship. FPIC is now endorsed by 14 County Medical Societies, 12 Specialty Societies, and three statewide associations in the state of Florida. FPIC's commitment to organized medicine and our policyholders remains steadfast.

By being a member of the OCMS, FPIC insureds will now be eligible for a program discount of 5 percent. After taking advantage of the program discount, participants may access claims free discounts for even greater savings of over 25 discount! If a current FPIC policyholder is eligible for the program, the discount will be available upon renewal of the policy. This discount cannot be used in addition to any other societal, association, or other program discounts. Members of the OCMS are not guaranteed a FPIC policy. All

applications will be underwritten and subject to current FPIC guidelines for approval.

Not only does FPIC offer discounts and event sponsorship, they also offer many additional benefits that often go unnoticed. Annual updates on the medical malpractice environment will be provided to the OCMS Board, and FPIC will attend member meetings to answer questions. Risk management information will be provided by the risk management department and available to all OCMS members.

Members insured by FPIC will take advantage of Florida's industry leader in professional liability insurance. FPIC offers the largest claims free discounts to those physicians that qualify.

If you would like to become a member of the OCMS, please contact Cynthia Nash, Executive Director, at cnash@ocms.org or at (352) 326-4433. Cynthia or one of her staff members will be happy to help you with membership information.



The Mona Lisa Smile (And Other Thoughts on Captives)

We have all read accounts of someone who has been told they have captivating eyes or smile. Some of us lucky ones might be able to recall being in a room full of people only to have our eyes meet a complete stranger who captivates our attention and has us all of a sudden oblivious to everyone else there.

In today's insurance market, many buyers find themselves captivated by captives. With significant rate

increases by traditional carriers over the past few years, captives might sound like a perfect way out of the cyclical nature of the commercial insurance marketplace. In reality, captives are best utilized as a long-term alternative to the commercial



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market. It is not the best option if an insured is looking to escape the rate increases of a hard market, only to then re-enter the marketplace when rates soften.

There are several issues a buyer needs to understand when evaluating whether or not to head across the room to get closer to that captivating smile.

If your practice is approached by such a company, one of the first things that should be determined is whether or not they are licensed or authorized in Florida. The Office of Insurance Regulation monitors all companies providing insurance-related services and will be able to tell you if a particular entity has been approved to do business. There are protections for the policyholders under Florida law when the carrier is licensed, or at least authorized in the state. If they are not, your carrier's name may be just a letterhead on a piece of paper with no staying power when it comes to paying claims.

Some of the other issues a physician group should examine include the experience of a particular captive with professional medical liability insurance (especially in Florida). How long have they been in Florida? How familiar are they with Florida law (especially bad faith)? Who will be adjusting their claims? How much experience do those adjusters have in Florida? Which attorneys will be defending you? What is their success rate in the courtroom?

A captive will also provide a Memoranda of Insurance to the group's certificate holders. Those certificates will list an insurance company as providing coverage – even though, in reality, that company might pass most, if not all, of the insurance risk to the captive. It is important to

ascertain a 'fronting' company's A.M. Best rating. It's possible that a certificate might be rejected if the carrier does not bring an adequate A.M. Best rating to the program. If that happens, a group's privileges or reimbursements could be in jeopardy.

The structure of the captive is very important to understand. By that we mean whether or not your policy will be assessed for additional premium if the loss experience of the entire captive is unfavorable. It is to the group's advantage to make sure any arrangement is non-assessable. Therefore, there is no additional premium obligation if the captive's overall loss experience is poor.

There should also be an evaluation of the captive's long-term viability, especially if a physician is going to be retiring soon and will need to exercise the tail provisions of the policy. If the captive goes out of business after a physician has secured a retirement tail, that physician is then subject to self-insuring any claims (including the legal defense) that might then be brought.

In addition, if the group decides to re-enter the commercial market, it might be difficult to get a commercial carrier to offer prior acts over the captive, especially if that captive is experiencing financial difficulties or has gone out of business.

Hopefully, this article has brought out some helpful points that can aid in evaluating whether or not to place professional medical liability insurance with a captive. This decision can be complicated. Your insurance agent, legal counsel and accounting professionals should be called upon to aid you in evaluating all of the coverage, legal and tax implications that such an arrangement presents.

Emergency Room Call

Recent articles appearing in several publications have focused on an issue that most Florida doctors have been aware of for some time: that the healthcare crisis in the state, especially in southern Florida, has resulted in a shortage of specialists willing to handle Emergency Room calls.

One such article quoted statistics from a study performed by MDContent, a group composed of University of Michigan researchers ("Lack of Specialist Physicians Plagues South Florida ERs, *South Florida Business Journal*, March 11, 2005). According to the study, which surveyed 250 Palm Beach County physicians, "Fifty-one percent of physicians said there are not an adequate

number of doctors in their specialty taking ER calls..." When asked for a reason for this shortage, one of the leading causes mentioned was high malpractice insurance rates.

Unable to find specialists willing to see patients in the ER, and faced with the prospect of having to transport badly-injured patients miles away to other facilities in order to



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receive treatment, hospitals have been searching for ways to encourage physicians to see these types of patients.

While some hospitals have begun paying specialists a per-diem amount to be on call, others have chosen to approach the situation from the cost side of the equation. Specifically, some hospital districts have considered finding alternate methods of insuring their physicians for their on-call service. While most of these programs are in their infancy, the general idea seems to be that hospital districts plan to offer malpractice coverage for specialists for their specific exposure while on call in the ER.

Fortunately for FPIC policyholders, our policy automatically provides coverage for ER exposure at no additional cost. FPIC policyholders also benefit from being protected by a company with unmatched experience

and expertise in defending Florida physicians. This allows

our policyholders to conduct their practice as they always have, including covering ER, while having the peace of mind that comes from being insured by Florida's premier malpractice carrier.

If you have questions about Emergency Room liability issues or any other topics, please contact FPIC Risk Management at (800) 741-3742 ext.3016.

The Anatomy of a Trial

Editor's Note: This series of articles is based upon actual cases that FPIC has defended in the courtroom, and illustrates FPIC's ongoing commitment to a strong defense of claims against our insureds.

Wrong-site Surgery

Case Facts

Consider the recent case involving a 53 year-old single male who presented with history of chronic temporal headaches and transient blurred vision. Following evaluation, a biopsy of the left superficial temporal artery was performed by the insured. In recovery, it was obvious that the patient had sustained a nerve injury, demonstrating a left facial droop. Within 24 hours the patient was referred to a specialist who performed a re-anastomosis of the left facial nerve. Unfortunately, the patient was left with a permanent facial droop, including pronounced ptosis of the left eye and eyelid. Medical experts who reviewed the case could not support the insured on standard of care or causation, noting that the incision which was made during the biopsy procedure was several inches away from the correct position and directly causative of the nerve injury sustained. Investigation revealed that movement of the drapes after the patient had been prepped went unnoticed by the insured, resulting in the wrong-site incision. Consequently,

settlement of the case was necessitated in the amount of \$700,000.

Risk Management Discussion

Patient safety and the prevention of medical errors have become the focus of most healthcare providers. Wrong site, wrong procedure, and wrong patient surgery are catastrophic, alarming and preventable medical errors that continue to occur despite increased efforts to eliminate these errors. Malpractice claims entailing wrong surgery are not limited to the surgical specialties. The reduction in surgical errors is a major patient safety goal for virtually all practitioners that can be met with fundamental risk management practices

At a national summit involving the American Academy of Orthopaedic Surgeons, the Joint Commission on Accreditation of Healthcare Organizations, the American Medical Association, the American College of Physicians, the American College of Surgery, and the American Dental Association, a Universal Protocol was developed. The four components of the protocol include: a preoperative



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verification process; “Sign you Site,” marking at the operative site; “Time Out,” taking time for surgical team members to ensure all processes are completed and accurate prior to starting the procedure; and expected compliance with universal protocols regardless of the surgical settings.

In addition to implementing the Universal Protocol other risk management approaches to reduce the incidence of surgical errors include:

- Involving the surgeon in obtaining informed consent
- Reducing reliance on memory
- Improving information access
- Standardizing surgical processes
- Improving employee training
- Improving staffing and work environments
- Improving communication
- Improving teamwork
- Incorporating error proofing in processes
- Involving the patient and family members in the verification processes
- Maintaining or improving diligence in preparing for high-risk patients and procedures.

The reduction of surgical errors is a national patient safety goal. To eliminate the incidence of surgical errors, surgeons and surgical providers must examine their surgical processes and systems, identify flaws in those systems and processes, address the potential for wrong surgeries, and become actively involved in improving patient safety.



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