

Understanding Binding Arbitration

In order to deal with medical malpractice disputes that may arise many physicians are turning to binding arbitration. Binding arbitration is an alternative method of solving disputes or claims that arise between a physician and a patient. The process is less formal and less time consuming as compared to a traditional courtroom.

Under FPIC's proposed binding arbitration agreement, both parties agree to give up their right to have any medical malpractice claims resolved by a jury in a court of law. Instead, 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. The patient and the physician each name one person to serve as an arbitrator. These two arbitrators pick a third arbitrator. The panel of arbitrators set up rules about the witnesses and evidence each side can present, as well as a schedule for the arbitration. 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 more quickly than in traditional court litigation.
- 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, which should go a long way toward decisions being based upon an honest and through review of a physician's care and treatment.

- Finality - since the process is binding, the decision of the arbitrators is final and cannot generally be appealed, except on very limited grounds.

As a result of the changing environment and the benefits associated with binding arbitration, FPIC has created a program for its physician policyholders in Florida. The 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.

Benefits of Binding Arbitration

Time Savings

Cost Savings

Finality

Florida Rates

In August the Florida Legislature enacted comprehensive legislation to address the crisis that has manifested itself through dramatic increases in your professional liability insurance premium over the last three years. The legislation was the product of tough negotiation and honest compromise on the part of our elected representatives.

As required in the legislation, the Office of Insurance Regulation (OIR) retained independent experts to calculate the presumed savings associated with the items of tort reform that were included in the bill. Those experts reported to the OIR that they believe that the savings will average 7.8 percent for all healthcare providers.

While it is beneficial that there is a savings associated with the legislation that inures to the interests of our policyholders, the amount of the savings is insufficient to reduce your 2004 premium from its 2003 level. Loss cost trends, the driver of past premium increases, have continued to escalate. Those trends have caused us to increase our base rate 5.5 percent even after credit is given as legislatively mandated for the presumed factor savings. In addition, there are several specialty and territorial adjustments that loss trends caused us to make. The net effect of these adjustments will be an average 8 percent rate increase. These new rates will be effective for existing policyholders whose coverage renews on or after March 1, 2004.

In their report, the independent experts hired by the OIR state: "As policy limits drop, the savings insurance companies can pass on to insurance consumers decreases. For policy limits purchased under \$500,000, there is little or no benefit to pass on to insurance consumers at all." This statement recognizes that Florida physicians cannot afford to purchase adequate limits of protection and that the cap on non-economic damages passed by the legislature has little or no savings associated with low per claim policy limits. However, in applying the savings associated with the presumed factor, **FPIC gave every policyholder equal credit for the savings regardless of the limit of liability carried.**

FPIC has been dedicated to protecting personal assets and professional reputations since 1975. In addition to financial stability, showcased by our Secure Rating and Stable Outlook from the A.M. Best Company, we will fight for you in the courtroom and defend you against non-meritorious lawsuits. As the endorsed carrier of the Florida Medical Association and numerous other specialty and county medical societies, FPIC exists to provide physicians with the most comprehensive professional insurance coverage and the most protection. You can count on FPIC to provide you with the most comprehensive coverage and highest level of customer service in the industry. For questions concerning your policy, please contact Policyholder Services at 800-741-3742, ext. 3217.

Risk Management by the Numbers

The year 2003 was extremely busy for the Risk Management Department. Take a moment to review the number of policyholders who took advantage of the services of Risk Management during the past year.

- 66 presentations and lectures were given to 5,038 attendees
 - 3,202 physicians
 - 290 dentists
 - 925 non-physicians clinicians
 - 235 administrative personnel
 - 386 medical office staff
 - in 5 states
- 85 percent of these presentations were for continuing medical education credit
- 15 lectures were provided to medical/dental clinics
- 10 different county, state, and national societies scheduled presentations with the Risk Management Department.
- 4 medical specialty societies sponsored a presentation
- 11 different medical and dental specialties were represented in the presentations
- 9 hospitals/medical centers
- 8 universities/teaching institutions
- Over 22 topics were covered
- 84 on-site practice assessments and consultations were preformed for 404 insureds at over 137 locations
- Over 4,500 telephone consultations/risk management queries were fielded

News & Views is published quarterly by
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How to Respond to a Claim

In today's litigious society, the majority of physicians will have a claim against them during their career. It is crucial that the physician take an active role in the defense of a claim. Early preparation is the key to a successful defense or settlement. During every step of the process FPIC will be there.

What Is a Claim and When Should It Be Reported

In general, a claim is an actual demand for something rightfully or allegedly due, usually compensation for harm that was caused by an action. To determine the exact meaning of what constitutes a claim under your FPIC professional liability policy refer to the definitions sections of your policy booklet.

A claim can take several different forms and often it is not easy to determine if in fact it is a claim. The most recognizable form is a written demand from a patient or a patient's legal representative for compensation. This may be preceded by a phone call with the same demand. A request from a patient or an attorney for medical records may signify that a claim may be developing. In general, it is a good idea to notify FPIC if a medical error occurs, if there are untoward results, complications, or any situation in which you are uncertain how to proceed.

Once the policyholder receives notice of a claim or possible claim, he/she should immediately notify FPIC. Timely reporting is necessary for FPIC to adequately process the claim and, if necessary, prepare a defense as FPIC has a limited time period in which to respond. Often with early notice the carrier can prevent an incident from becoming a true claim. FPIC can be notified with a phone call initially. Your FPIC representative will then instruct the policyholder how to proceed. Usually the policyholder will be instructed to provide the details in writing.

What Information Does the Carrier Need When Reporting a Claim

When reporting a claim or potential claim call FPIC's claims representative. The representative, who is a licensed claims adjuster, will prepare a "first report."

In order to prepare the report, the defendant policyholder will need to provide the FPIC representative with basic information. The first piece of information needed will be the general contact information for the physician: name, address, phone number, specialty. The next piece of information will be about the patient or claimant. FPIC will also need the patient's name, age or date of birth, address, and the dates you rendered treatment.

Your FPIC representative will then ask for a brief description of the claim or incident. Inform the carrier if a notice of intent or summons has been received. This

should be faxed to FPIC as soon as possible. The representative will ask you to send a brief narrative with a copy of your records on the patient.

Upon review, some calls made to the claims representative will be determined not to be a claims issue. These calls are often more of an issue for risk management. Such calls might deal with issues of harassment from a patient, terminating the doctor/patient relationship, or other issues. The local authorities can handle cases of harassment. If it is a risk management issue, the physician will be referred to that department for further assistance. Even though a call may not be a claim, the incident may be noted in the physician's file upon request.

Once the first report is prepared, the record will be sent to the Underwriting Department to verify coverage and limits. The Underwriting Department also will prepare a certified copy of the policy. This copy may be sent to the attorneys involved or held in the file for future reference.

The FPIC claims department will establish a precautionary file on the incident. This file will remain open for two years from the date of treatment or until the statute of limitations runs out. If this incident develops into a claim the status will be changed. In the event that the incident does develop into a claim or suit, an FPIC Claims Supervisor will contact you regarding the details of an expert review of your claim.

Physician Responsibilities When a Claim Is Reported

Cooperate with the Insurance Company

The physician policyholder has a responsibility to fully cooperate with FPIC as the company is trying to help the physician avoid costly losses. This involves a variety of activities, such as doing whatever is necessary to defend against the claim, including not discussing it with anyone, especially the patient. It is important that the policyholder be fully involved with the process. A defendant physician should invest the time to research and evaluate medical literature so that he/she can help educate the defense team. This also helps identify potential experts in a particular area.

Secure Records

Once a physician receives notice of a demand and contacts FPIC, the records involved in the case should be secured, as they are now part of the evidence. Records can be notes the physician authors, records made by others, any correspondence regarding the patient, insurance and billing statements, e-mail or fax transmissions, and even answering service call logs. The records will be necessary for FPIC and your defense attorney to determine if negligence exists and, if

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necessary, prepare a defense. If the policyholder receives requests for patient records, have a photocopy made. Never send the original records or x-rays, and when at all possible provide the records within 10 business days.

Also, it is imperative that the records remain as is. No additions or deletions should be made at this time, as this could only adversely effect the outcome of the case. Making alterations after the fact only jeopardizes your credibility.

Actively Participate in the Trial

For a defense to be effective, the policyholder must actively participate in the process if the claim goes to trial. This involves spending time with the attorney beforehand to fully prepare for the case. In addition, the physician must be present and attentive in the courtroom for the entire proceedings.

**Insurance Company Responsibilities
When a Claim Is Reported**

Investigate a Claim

Once FPIC receives a report from the policyholder, we will investigate to determine the facts and decide if the event is covered under the policy and how to proceed.

Defend Against the Claim

FPIC is responsible for the policyholder's defense against a claim. An attorney will be assigned to prepare a defense at no cost to the policyholder. FPIC has

established relationships with top trial attorneys throughout the state. These attorneys have the experience and expertise necessary for a proper defense in cases involving professional liability actions.

Pay Any Settlements Related To the Claim

FPIC will pay any settlements or awards up to the limits of liability. The amounts of the settlements will be determined through negotiation, arbitration, or by a jury.

TO REPORT A CLAIM TO FPIC:

In the South Florida counties of Martin, St. Lucie, Okeechobee, Palm Beach, Broward, Dade, Monroe, or Collier contact the FPIC office in Plantation.

600 North Pine Island Road, Suite 250
Plantation, FL 33324
Phone: 866-760-2121
Fax: 954-577-2721

For the rest of Florida and any other state contact FPIC headquarters.

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