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FPIC Announces Affiliation for Patient Satisfaction Tool

FPIC is pleased to announce a strategic alliance with Rightfield Solutions, LLC to offer EMMI to policyholders. Emmi (expectation management medical information) is a powerful risk management and patient satisfaction tool that effectively manages patients' expectations prior to undergoing a surgical procedure. Emmi combines the

management measure. A fully informed patient is far less likely to initiate litigation should a risk or complication of treatment be encountered," said Cliff Rapp, Vice President of Risk Management at FPIC.

The alliance program will benefit FPIC insureds when they purchase an EMMI license for their website. For the first six months of the program, any FPIC insured that signs up can do so for 60 days with no obligation. After the first 30 days, they will be billed for the balance of the year (10 months) in the amount of \$850. Upon renewal they will benefit from a 20 percent FPIC discount off the standard rate of \$1,200 for a special rate of \$960. All physicians that sign up after the first six months will get the FPIC rate of \$960. To sign up for Emmi,

please contact a Rightfield sales representative at 312-236-3650, ext. 24 or sales@rightfield.net. The physician only needs to let them know they are insured with FPIC. EMMI staff will call us to confirm coverage.



best clinical and legal practices into a web-based interactive tool for healthcare providers who understand the relationship between patient satisfaction and risk management.

There are currently Emmis covering a wide variety of surgical and medical procedures including obstetrics/gynecology, plastic surgery, cardiovascular surgery, orthopedics, gastric bypass, oral surgery and LASIK. All of these web-based programs are developed by board-certified physicians within their respective fields. Within a year Rightfield Solutions should have Emmis available for over 100 procedures. Many programs are currently available in Spanish, as well.

"Of all the products and strategies we examined, by far the simplest and most complete was Emmi's web-based informed consent program. Establishing realistic expectations often necessitates patient education, a powerful risk

For a complete product introduction and demonstration please visit www.emmidemo.com. You may also go to www.rightfield.net for additional details on the programs available. In addition, a webpage specific to the FPIC discount program has been established at www.rightfield.net/fp928.html. To sign up for Emmi or to ask specific product questions contact Kristin Robinson, 312-236-3650, ext. 24 or krobinson@rightfield.net

Any concerns regarding FPIC's relationship and discount program with Rightfield Solutions should be directed to Patrick Ellis, Director of Market Development at 800-741-3742, ext. 3071.

Insurance Scandal Investigated

In mid October, New York Attorney General Elliot Spitzer launched an ongoing investigation into several of the largest insurance brokerage firms in the nation. The investigation was aimed at accusations of bid-rigging, price fixing, and incentive fees or contingent commissions for property and casualty insurance policies.

Attorney General Spitzer further alleges that brokers were paid fees above commission in exchange for more business. Such fees are commonly referred to as contingent commissions. The contingent commissions were paid in an effort to retain market share and close the gap with competitors' standard commissions. These unfair practices of brokers in many cases forced consumers to pay higher premiums or not receive the best coverage for their needs.

The investigation has resulted in a full scale examination of the insurance industry in New York. It has resulted in high-level resignations, employee layoffs, and in some cases, even guilty pleas. In response, many insurance companies have announced changes in business practices and how commissions are paid.



Several other state attorneys general have announced plans to investigate, including California, Connecticut, and Florida. Also, the United States Congress has launched an investigation.

It is important for policyholders to note that FPIC does not engage in the practice of entering into contingent commissions arrangements. It is not our policy to provide false bids and our commission rates are uniform and remain the same for each agency.

You should also keep in mind that your agent is working on your behalf and in your best interest. A good agent can answer any questions and offer the best policy among several companies to fit the physician's needs. The physician gives the agent the authority to act on his behalf, but the physician retains the final decision-making power. The agent is also responsible for fully accounting for all funds that a physician has entrusted to the agent. Agents are also bound to keep the physician fully informed of the actions taken on their behalf.

The Anatomy of a Trial

By Ed Hayes, Regional Claims Manager

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.

The Medical Record Should "Speak For Itself"!

Incident

It was alleged that the FPIC insured physicians failed to timely recognize and surgically repair a perforation of the small intestine, and this caused the death of the patient.

Defendants

An FPIC insured family practice physician and an FPIC insured general surgeon.

Plaintiff

The wife and the Estate of the deceased patient.

Facts

On February 15, 2000, the patient, a 73 year-old married male, had the entire large intestine and rectum surgically removed and an ileostomy performed by the insured general surgeon due to colon and rectal cancer.



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One year later on February 3, 2001, the patient was admitted to the hospital with a distended abdomen and stool impaction. The insured family practitioner was the attending physician for the hospitalization. A CT scan of the abdomen performed on February 8 was interpreted to demonstrate free intraperitoneal air and a peristomal hernia (an entrapment of the small intestine in the stoma). As the patient was clinically stable and had co-morbid conditions of cardiac problems and chronic obstructive pulmonary disease, the surgeon elected to monitor the patient as opposed to performing surgery.

Since the patient improved between February 8 and 14, it had appeared that any micro perforation had sealed. When abdominal pain increased on February 15 and a CT scan of the abdomen revealed a perforated small intestine and an intra-abdominal abscess, the surgeon performed surgery to repair the perforation. The patient was improving postoperatively until he had an aspiration event on February 25, developed aspiration pneumonia and expired on March 11, 2001.

Plaintiff Allegations

The plaintiff attorney presented the case to the jury as if the insureds did not know of the February 8, 2001, CT scan findings. Unfortunately, as the insureds did not chart an acknowledgement of the CT findings or document their plan of treatment in the hospital chart, the plaintiff attorney suggested that their decision-making regarding the medical management was being misrepresented in the courtroom. Since their actions and thought processes were not supported in the medical record, this became a major issue in the trial.

Defense Argument

The surgery was not initially indicated based on the February 8, 2001, CT scan findings alone as there was no abdominal tenderness, the white count was normal, and stool was being passed in the colostomy bag. Since this was a surgical case, it was reasonable for the family practitioner to rely on the surgeon to decide whether the surgery should be performed. With respect to the surgeon, it was acceptable to take a “watch and see” approach, especially in view of the benign abdominal examination

and co-morbid problems that would place the patient at increased risk for undergoing surgery.

Result

The plaintiff attorney requested a verdict from the jury in a range of \$500K to \$1M. After two hours of deliberation, a defense verdict was returned for both insureds.

Summary

This case emphasizes the importance of documenting in the medical record the discussions with consulting physicians, the review of the diagnostic studies and the plan of treatment. The contemporaneous charting of this information would have eliminated the issue of whether the insured physicians were aware of the same. In other words, recording information on a prospective basis may avert a subsequent retrospective analysis by a jury.

Risk Management Points

- Document pertinent clinical factors that support your medical rationale.
- Include timing factors when documenting the indications/contraindications of treatment.
- Summarize your discussions with consulting physicians including the agreed upon course of action.
- Clarify the consensus reached and document any clinical contingencies on a prospective basis.
- Delineate and document the confines of your specific role in the overall medical management - including any deferral to others.
- Document your discussion with the patient/family in terms of the clinical situation, their understanding, and the agreed upon plan of action.



Physician Financial Responsibility

By Bill Bell, General Counsel-Florida Hospital Association

The Florida Department of Health recently released the following data concerning physicians meeting their financial responsibility for malpractice coverage.

Out of approximately 49,000 licensed MDs, 3,475 carried \$100,000 of required liability insurance for a non-hospital practice, and 25,517 carried \$250,000 of liability insurance for a hospital practice.

Those that elected not to carry medical malpractice insurance cited the following reasons that meet the licensure requirements:

- 174 have a Letter of Credit or Escrow Account for \$100,000
- 637 have a Letter of Credit or Escrow Account for \$250,000
- 3,374 do not carry medical malpractice insurance and are self-insured
- 3,655 practice exclusively for the government
- 59 practice only under scope of a limited license
- 8,022 are not practicing medicine in Florida
- 2,844 are in a part-time practice with limited patient contact
- 1,072 practice in conjunction with teaching duties at an accredited medical school

Out of approximately 4,200 licensed DOs, 279 carried \$100,000 of liability insurance and 1,270 carried \$250,000 of liability insurance.

Those that elected not to carry medical malpractice insurance cited the following reasons:

- 220 have a Letter of Credit or Escrow Account for \$100,000
- 973 have a Letter of Credit or Escrow Account for \$250,000
- 238 do not carry medical malpractice insurance
- 247 practice exclusively for the government
- 9 practice only under scope of a limited license
- 708 are not practicing in Florida
- 231 are in part-time practice with limited patient contact
- 20 practice in conjunction with teaching duties at an accredited medical school



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