

FPIC[®] ARBITRATION PROGRAM

For Medical Malpractice Claims

Dear Doctor:

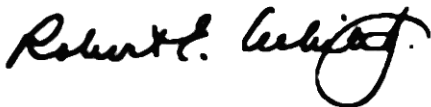
FPIC is pleased to announce our Arbitration Agreement Program. The program has been developed to help physicians deal with the crisis occurring in the professional liability insurance industry. Under this program physicians and patients agree to settle any claims that may arise from treatment through arbitration instead of the court system.

Through arbitration, physicians and patients will benefit by transferring the proceedings from the courthouse to the conference room. This process has lower defense costs for the physicians since there is no jury selection or complex motions to be filed. The arbitration process also removes the variability of juries, which should lower indemnity payments.

The program will provide you with an arbitration agreement that has been developed after extensive consultation with legal counsel, a short video for patients to view before signing the agreement, answers to common questions, and instructions for implementation.

FPIC's arbitration program can be utilized by returning the completed order form and signed participation agreement.

Sincerely,



Robert E. White, Jr.
President

COMMON QUESTIONS

What is the benefit to arbitrating medical malpractice claims for physicians and patients?

Medical malpractice lawsuits are often very lengthy and expensive for all parties. The high cost of malpractice lawsuits contribute to the rising cost of healthcare. As a result, many physicians have been forced to raise their fees, reduce their practices, or leave Florida altogether, threatening patients' access to medical care. Arbitration is a relatively informal process of resolving disputes that is an alternative to the traditional court system. Through arbitration, patients and physicians both benefit because they are able to more promptly resolve malpractice claims and for less cost to each party. It is also believed that arbitration panels will help to avoid unreasonable jury awards, thereby further lowering costs. These cost savings would positively impact medical professional liability rates and the cost and availability of healthcare services in Florida.

How does the arbitration process work?

In agreeing to arbitration, the parties agree to give up their constitutional right to have any potential medical malpractice claim resolved in court. Instead, all medical malpractice claims are resolved by a panel of three arbitrators. The process starts with a notice from one party to the other demanding arbitration. The patient and the physician would each name one person to serve as an arbitrator. An arbitrator is like a judge, in that he or she listens to the evidence presented by both sides and decides whether malpractice occurred. These two arbitrators would pick a third arbitrator. This panel of three arbitrators would then set up rules about the witnesses and evidence each side could present, and they would set up a schedule for the arbitration. If necessary, the arbitrators could 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. All three arbitrators would listen to the evidence and participate in the decision. They would apply the same law that a court would apply, 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 could award any amount or kind of damages that a court could award.

What does binding arbitration mean?

Binding arbitration means that the decision of the arbitration panel is final. Neither party can go to court to appeal the arbitrators' decision, except on very limited grounds. That is why they call it "binding" arbitration — because both sides are bound by the arbitrators' decision.

Will Florida's pre-suit screening process for medical malpractice claims be preserved under FPIC's arbitration agreement?

Before the parties arbitrate a medical malpractice claim, the agreement requires the parties to first follow Florida Statutes, Chapter 766, with regard to the pre-suit screening of medical malpractice claims. This screening process ensures that a medical malpractice claim is fully investigated so that the parties have an opportunity to resolve legitimate claims at an early stage, which saves the parties time and money.

What is the most significant difference between FPIC's arbitration agreement and the arbitration provisions that are available under Florida's statutes that govern medical malpractice claims?

Florida law, Chapter 766, provides the opportunity through two separate statutes to arbitrate medical malpractice claims where a physician is willing to admit liability. If a medical malpractice claim is not resolved at the end of the pre-suit screening process by settlement or if a physician is unwilling to admit liability to trigger the arbitration statutes under Florida Statutes 766, the dispute will be resolved by the arbitration agreement. Therefore, the most significant difference is that under FPIC's arbitration agreement, the parties agree to litigate the issue of liability.

What claims does the arbitration agreement cover?

The arbitration agreement applies to malpractice claims associated with both past and future care and treatment. In addition, the patient agrees that any controversy including, without limitation, claims for medical malpractice, personal injury, loss of consortium, or wrongful death arising out of or in any way relating to the diagnosis, treatment, or care of the patient by the physician, including any partners, agents, or employees of the provider of medical services, shall be submitted to binding arbitration as well.

What claimant(s) does the arbitration agreement cover?

Under the agreement, all claims based upon the same occurrence, incident, or care will be arbitrated in one proceeding. The agreement binds all parties whose claims may arise out of or relate to treatment or services provided by the physician, including the patient, the patient's

estate, any spouse or heirs of the patient, and any children of the patient, whether born or unborn, at the time of the occurrence giving rise to the claim. In the case of any pregnant mother, the term "patient" means both the mother and the mother's expected child or children.

What if the patient signs the arbitration agreement and later refuses to arbitrate?

If a patient enters into the agreement and chooses to go to court anyway, the agreement says that the arbitration proceeding can go ahead without the patient, and he or she will be bound by the arbitrator's decision even if the patient does not participate.

Should I insist that a patient sign the arbitration agreement before rendering treatment?

FPIC's arbitration program offers two alternative arbitration agreements. Both agreements are the same except for one key provision. One agreement (our form "A" agreement) requires patients to sign the arbitration agreement as a prerequisite to future treatment. The other agreement (our form "B" agreement) permits a patient to terminate the agreement for a period of 30 days from the date the patient signs the agreement. A failure to formally opt out of the agreement in accordance with the procedures set forth in the agreement within the opt out period will obligate the patient to follow the agreement.

What if my patient refuses to sign an arbitration agreement?

Each physician will have to decide for themselves what is best for them in this circumstance after taking into consideration all ethical, legal, and contractual duties that are owed to the patient and/or third parties.

Should I present an arbitration agreement to a patient that presents in an emergent or urgent condition?

No, a patient could attempt to invalidate the arbitration agreement with a claim that they were under duress due to the emergent or urgent condition at the time that they signed the agreement. Physicians should present patients with the arbitration agreement after the emergent or urgent condition has passed. Post treatment signatures are feasible because past treatment is covered by the arbitration agreement.

COMMON QUESTIONS

Is the arbitration agreement valid under Florida law?

There are no Florida court cases specifically on point regarding the enforceability of a mandatory binding arbitration agreement in the context of a medical malpractice claim. It is possible that the agreement may be declared unenforceable in whole or in part. However, it is our view, based upon extensive and careful analysis, that our arbitration agreement will be enforceable.

What is the process for having my patient sign an arbitration agreement?

Provided that a patient is not in an emergent or urgent condition, physicians will present the arbitration agreement to patients (or their representatives) and provide them with an area to view a video approximately six minutes in duration that explains the purpose and fundamentals of the arbitration agreement. After the patient and/or the patient's representative have viewed the video they will be asked to sign the arbitration agreement. The patient and/or the patient's representative should be given two copies of their signed arbitration agreement and the original should go into the patient's file.

What is the purpose of the video?

The video is very important because the manner in which an agreement is entered into is an important factor in determining its validity. Courts have struck down arbitration agreements due to arguments that an individual did not have any concrete knowledge of the agreement. In order to avoid this problem, a video was created to explain in basic terms the practical and legal effects of signing the arbitration agreement. This process is complemented by the fact that the patient, in signing the arbitration agreement, acknowledges that they watched the video, understood it, and had no further questions. In addition, the video performs another important service in that it relieves physicians and their staff from the burden of having to explain the arbitration agreement and it ensures that the message is clear, consistent, and reproducible in the event of litigation.

Is there a cost for the arbitration contract and video?

No, FPIC will provide its arbitration agreement and video to its physician policyholders without charge provided that they complete the order form and sign a participation agreement.

Are the arbitration contract and video offered in different languages?

Yes, the arbitration contract and video are offered in English and Spanish.

Will I get a discount for participating in the arbitration program?

No, there is no premium discount at this time.

May I use an arbitration agreement from another source?

Use of arbitration agreements from other sources will likely not have the benefit of the extensive and careful analysis that has been employed by FPIC; therefore, we strongly recommend that our policyholders use our version of the arbitration agreement and video.

What effect will the use of the arbitration agreement have on my managed care contracts?

Each physician will have to carefully review their contractual arrangements with their managed care organizations to determine what effect, if any, implementing the arbitration agreement will have on their business relationship with their managed care organizations.

Will my FPIC professional liability policy cover me for the cost of the arbitration?

Yes, provided that you have coverage for the claim under the terms of your medical professional liability policy with FPIC.

How can I participate in the arbitration program?

Physicians must complete the order form and sign the arbitration participation agreement. Upon completion of this form and agreement you will receive an arbitration contract and video in the mail within 10 business days.

Who may I contact with questions concerning the arbitration program?

Stephany Carter, Marketing Department
(904) 360-3064
(800) 741-3742 ext. 3064
carter@fpic.com

FPIC ARBITRATION PROGRAM PARTICIPATION AGREEMENT & ACKNOWLEDGEMENT

This FPIC ARBITRATION PROGRAM PARTICIPATION AGREEMENT & ACKNOWLEDGEMENT (“Agreement”) is entered into between First Professionals Insurance Company, Inc. (“FPIC”) and the undersigned Insured (hereinafter “Insured”). This Agreement shall be effective and binding on the parties on the date signed by Insured.

RECITALS

WHEREAS, FPIC is an insurer that has issued a medical professional liability insurance Policy (the “Policy”) to Insured and has developed the FPIC Arbitration Program (the “Program”), which provides Insured with the Program Arbitration Agreement (“Arbitration Agreement”), Program arbitration information video (“Video”), and general guidance to enable Insured to enter into the Arbitration Agreement with its patient or the patient’s representative for the purposes of arbitrating medical malpractice claims; and

WHEREAS, Insured desires to participate in the Program to seek the potential but uncertain benefits of promptly resolving medical malpractice claims, reducing litigation costs, and avoiding unreasonable jury awards, which may lead to a positive impact on medical professional liability insurance rates as well as the cost and availability of healthcare services in Florida.

NOW THEREFORE, it is hereby agreed by and between the parties hereto as follows:

1. Compliance with Program. Insured agrees to exercise best efforts to implement procedures in its office so that all patients and/or their representative(s) view the entire Video and further agrees to present, obtain signatures, and maintain as a permanent record the Arbitration Agreement for as long as the Insured has a Policy issued by FPIC in effect unless applicable law governing the retention of medical records provides for a shorter period of time. Insured further agrees to comply with the Arbitration Agreement and to any reasonable instructions that FPIC may provide concerning the Program from time to time. Insured’s duty to maintain records in accordance with this Section 1 shall survive the termination of this Agreement.

2. Coverage For Arbitration. Insured agrees and understands that coverage for any arbitration matter or proceeding in conjunction with the Arbitration Agreement is contingent on the underlying claim being covered under the Insured’s Policy. Insured agrees and understands that FPIC makes no representation, promise, or guarantee as to the applicability or effect of coverage for any arbitration matter or proceeding in conjunction with any Arbitration Agreement as to any policy of insurance issued by any insurer other than FPIC.

3. Applicability of FPIC Policy. The Insured’s Policy (including but not limited to any coverage summary, endorsement, or binder) shall apply in the context of any arbitration matter or proceeding. The Insured’s Policy shall not be construed as being amended in any way by this Agreement.

4. Copyright. The Arbitration Agreement, Video, and Common Questions with Answers document developed by FPIC are and shall remain FPIC’s sole and exclusive property. FPIC reserves all of its right, title, and interest in and to these materials. Insured shall not use any of these materials for any purpose other than the purpose contemplated by the Program and shall not disseminate these materials to any other person or entity without the express written consent of FPIC. This Section 5 of this Agreement shall survive the termination of this Agreement.

5. Surveys & Requests For Information. Insured agrees to participate in surveys and to respond to reasonable requests for information concerning Insured’s participation in the Program. This requirement shall survive the termination of this Agreement for a period of six (6) years from the effective date of termination.

6. Termination. Either party may terminate this Agreement, without cause, at any time by providing the other party with written notice of any such termination. If a claim(s) is covered by Insured’s Policy and is being or may be litigated in accordance with any Arbitration Agreement and notwithstanding the termination of this Agreement or the cancellation or non-renewal of the Insured’s Policy, all of the terms of this Agreement shall remain in effect as to such claim(s).

7. Miscellaneous.

A. Amendments. This Agreement may be amended only by written agreement executed by both parties.

B. Severability. If an arbitration panel or court determines that any part of this Agreement is unenforceable, that part shall be deemed stricken and the remainder shall continue in force and effect.

C. Conflict with Law. Any portion of this Agreement in conflict with any applicable statute, insurance department regulation or directive, or any governmental ruling shall, without further action by the parties, be modified or deleted to the extent necessary to conform to such statute, regulation, directive, or ruling.

D. Headings. The headings in this Agreement are for reference only and shall not be construed to alter the meaning of any provision hereunder.

E. Entire Agreement. This Agreement constitutes the entire and complete understanding and agreement of the parties, exclusive of any other oral or written communication with respect to the subject matter hereof. This Agreement supersedes all prior agreements, understandings, and representations, whether oral or written, with respect thereto.

F. **Notice.** Notices required under this Agreement to insured shall be sent by United States Mail, registered or certified, postage prepaid, or delivered via overnight courier to the last address of record on file with FPIC or, if to FPIC, to 1000 Riverside Avenue, Suite 800, Jacksonville, Florida, 32204 to the attention of the Legal Department.

G. **Waiver.** The failure of either party to enforce any provision of this Agreement or to declare a breach of this Agreement shall not constitute a waiver by either party of any such provision. The past waiver of a provision by either party shall not constitute a course of conduct or a waiver in the future to that same provision.

H. **No Third Party Rights.** The parties have not created and do not intend to create by this Agreement any rights for any third parties. There are no third party beneficiaries to this Agreement.

I. **Interpretation.** The language in this Agreement shall be construed according to its fair meaning and not for or against any party hereto. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

J. **Binding Authority.** Each signatory to this Agreement represents and warrants that he or she possesses all necessary capacity and authority to act for, sign, and bind the respective entity or person on whose behalf he or she is signing.

K. **Governing Law & Venue.** The validity, construction, and performance of this Agreement shall be governed and construed in accordance with the laws of the State of Florida. Any legal proceeding related to this Agreement shall be brought in a court located in Duval County, Florida.

L. **Attorney's Fees.** In the event of litigation arising out of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and expenses at all levels of litigation, including appeals.

M. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of FPIC and Insured and their respective permitted successors and assigns.

8. ACKNOWLEDGEMENTS

A. **Policy Limits & Excess Verdicts.** INSURED ACKNOWLEDGES THAT THE LIABILITY OF FPIC FOR INDEMNITY PAYMENTS ON AN INSURED'S BEHALF OF AMOUNTS AWARDED FOR DAMAGES, ATTORNEY'S FEES, AND COSTS (COLLECTIVELY "DAMAGES") BY AN ARBITRATION PANEL IS SUBJECT TO THE APPLICABLE LIMIT OF THE INSURED'S POLICY. INSURED FURTHER ACKNOWLEDGES THAT IF THE TOTAL AMOUNT AWARDED BY AN ARBITRATION PANEL IS IN EXCESS OF THE INSURED'S POLICY LIMIT, INSURED WILL BE PERSONALLY LIABLE FOR THOSE DAMAGES. INSURED AGREES AND UNDERSTANDS THAT FPIC MAKES NO REPRESENTATION, PROMISE, OR GUARANTEE THAT THE DECISION OF AN ARBITRATION PANEL WILL NOT SUBJECT THE INSURED TO A JUDGMENT IN EXCESS OF THE INSURED'S POLICY LIMIT OR THAT THE DECISION OF AN ARBITRATION PANEL WILL BE MATERIALLY DIFFERENT IN REGARD TO A GIVEN CLAIM RELATIVE TO LITIGATING THAT CLAIM IN A TRADITIONAL COURT.

B. **Effect of Binding Arbitration on Right of Appeal.** INSURED ACKNOWLEDGES THAT ENTERING INTO A BINDING ARBITRATION AGREEMENT WITH YOUR PATIENT MEANS THAT THE DECISION OF AN ARBITRATION PANEL WILL BE FINAL AND THE PARTIES TO THE LITIGATION WILL GENERALLY NOT HAVE A RIGHT TO APPEAL AN ADVERSE DECISION.

C. **No Guarantee that Arbitration Agreement will be Upheld as Valid.** Insured acknowledges that there are no Florida statutes or court cases specifically on point regarding the enforceability of a mandatory binding arbitration agreement like the one developed for the Program and it is possible that such agreement may be declared unenforceable in whole or in part.

D. **Effect of Termination.** Insured acknowledges that the Arbitration Agreement is a separate contract between Insured and the Insured's patients that will not be effected by the termination of this Agreement. Notwithstanding the termination of this Agreement or the cancellation or non-renewal of Insured's Policy, Insured shall continue to be obligated to follow the terms of the Arbitration Agreement.

E. **Recommendation to Seek Personal Legal Counsel Prior to Signing this Agreement.** Insured acknowledges that FPIC has encouraged Insured to seek personal legal counsel prior to signing this Agreement.

INSURED

Name of Corporate Entity

Date

Signature

Name of Insured

Date



Insurance Solutions for Healthcare Providers

P.O. Box 44033
Jacksonville, FL 32231-4033
800-741-3742
www.firstprofessionals.com

FPIC Arbitration Program Order Form

Name _____

Address _____

City _____ State _____ Zip Code _____

Phone _____ Fax _____

Email _____ FPIC Policy Number _____

Name(s) of Corporate Entity Insured by FPIC _____

Name(s) Physicians Insured by FPIC _____

Signed _____ Date _____

**Return the completed order form and signed participation agreement to:
FPIC • 1000 Riverside Avenue, Suite 800 • Jacksonville, FL 32204
Fax: 904-358-6728**