

First Professionals Insurance Company
Files for 8 Percent Base Rate Decrease
Florida doctors begin to reap the benefits of Amendment 3

When you are in any contest, you should work as if there were - to the very last minute - a chance to lose it. This is battle, this is politics, this is anything.

~ Dwight D. Eisenhower

While General Eisenhower did not lead the battle for tort reform in Florida's medical malpractice war, First Professionals Insurance Company (First Professionals) salutes the state's physicians who did work 'to the very last minute,' which resulted ultimately in terrific success. It was a costly, hard-fought triumph, and on November 4, 2004, when Florida voters overwhelmingly passed Amendment 3, a new era began for Florida's physicians and their patients.

"Because of Amendment 3, we are now able to reduce our base rate to most Florida policyholders by 8 percent," First Professionals President Robert E. White, Jr. recently stated. "Amendment 3 is the reason we are in a position to reduce rates and provide some relief from the medical liability crisis."

Briefing

The 2003 legislation froze professional liability insurance rates at July 1, 2003, levels. It also mandated that an impartial study be conducted annually, and the Office of Insurance Regulation (OIR) hired Deloitte Consulting LLP (Deloitte) to conduct the initial study. That report was submitted to the OIR in October 2004.

A significant conclusion from that study was that the caps set by the 2003 tort reform legislation would have little impact for Florida's physicians because of the low policy limits most physicians carry. Only 15 percent of First Professionals' policyholders carry policy limits higher than \$500,000. Among First Professionals' policyholders, 65 percent carry \$250,000 limits; another 20 percent carry \$500,000 limits.

Deloitte's report stated, "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."

The other side thought they had won the war when that legislation was passed; however, the leaders of organized medicine groups around the state recognized "before the ink was dry on the governor's signature" that the bill was not enough. These groups understood that Florida insurers pay indemnity losses more often than insurers in other states, and nothing in the tort reform legislation addressed that fact.

Soldier's Battle

The state of Florida demonstrated once again that it was unwilling to truly address the malpractice problems physicians faced, despite the tireless efforts of the governor, the Florida House of Representatives and a few senators. The response of the FMA House of

Delegates in September 2003, just a few short weeks after the legislation was enacted, was to vote unanimously to pursue the passage of Amendment 3.

The paradox of tort reform is that the year during which the legislation passes is usually worse than insurance companies anticipated because lawyers race to file cases under the old law. The subsequent year will generally have lower claims frequency as attorneys are overloaded from the acceleration of cases to beat the deadline when tort reform takes effect and the fact that they have to take time to learn the new laws before they can file cases under them. Those two factors create a lull in claims that typically lasts 18-24 months, after which claims typically return to pre-tort reform levels.

Florida is now three years out from the passage of tort reform, and claims frequency remains at a level that is lower than what it was prior to the passage of tort reform. The single variable responsible for this – the only thing that changed since the tort reform legislation was enacted – is the passage of Amendment 3 in November 2004, which limits attorneys' contingency fees.

D-Day

The 2003 tort reform legislation required insurers to file new rates that reflected the expected savings from tort reform called the "presumed factor." The presumed factor is based on loss costs, not premium, and Deloitte calculated it to be 7.8 percent. Essentially that means were it not for the savings from the legislation, the premium would have been 7.8 percent higher. Premium savings will vary from company to company depending on the mix of an insurer's book of business.

Tort reform has been reflected every year in First Professionals' rates since 2003. Since then the presumed factor has decreased First Professionals' policyholders' premiums each year: 5.7 percent (March 1, 2004), 5.1 percent (March 1, 2005), and 4.8 percent (January 1, 2006).

First Professionals uses a 10-year loss experience to set rates, because one good (i.e., loss-free) year may not be representative of the true loss experience since it is a small fraction of a doctor's experience. Now, post tort reform with three full years of decreasing loss experience, First Professionals considers this to be a true reflection of its book of business and its premiums will adjust in response.

Campaign Success

This is all good news for First Professionals policyholders and for Florida physicians. The rewards of the \$7.5 million investment by organized medicine and its members are beginning to surface. As long as this loss trend continues, physicians should continue to see rate decreases in professional liability insurance.

White announced recently that effective December 1, 2006, most Florida physicians insured by First Professionals will see an 8 percent decrease in premiums. However, about 900 physicians in particular specialties will see larger decreases ranging from 14.2 percent to 19.5 percent because of changes in their specialty relativities. Based on 2005

written premiums, if every insurer in Florida made a similar rate adjustment, Florida physicians would save \$50 million per year.

Like the leadership of organized medicine groups in Florida, First Professionals recognizes that the cap on non-economic damages and bad faith reform will face a constitutional challenge in the future. Florida doctors can rest easy knowing that their leaders and First Professionals remain vigilant to the unique malpractice situation in Florida, and are armed for battle when necessary.

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