

The Physicians **REPORT**

Physicians Insurance A Mutual Company

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Message From the President and CEO

Physicians Insurance Is a Major Player in Federal Grant Proposals

Your company is exploring new avenues for improving patient safety and streamlining claims resolution



*Mary-Lou A. Misrahy, ARM
President and CEO*

Physicians Insurance is a major partner in a proposed patient-safety demonstration project involving communication with patients after adverse events. Last September, President Obama directed the Department of Health and Human Services (HHS) to launch new demonstration initiatives to:

- Test models that improve patient safety and reduce preventable injuries
- Foster better communication between doctors and patients
- Ensure that injured patients are compensated in a fair and timely manner
- Reduce liability premiums

Under the auspices of the Agency for Healthcare Research and Quality (AHRQ), states and health systems were invited to submit grant applications to demonstrate or plan methodologies that met these criteria. We immediately saw the importance of pursuing these research opportunities because of the potential benefit to physicians if meaningful patient safety and loss-reduction initiatives could be developed, implemented, and evaluated.

Disclosure and apology demonstration grant

We're participating in this three-year, \$3 million patient-safety demonstration grant application

spearheaded by the University of Washington's Dr. Thomas H.

Gallagher, an internist and internationally known researcher and author on disclosure and apology. Currently, the grant proposal includes partnerships with eight hospitals, health care facilities, and medical groups throughout Washington State, including MultiCare Health System and its employed physician group, Kadlec Regional Medical Center, Southwest Washington Medical Center, Southwest Medical Group, and The Vancouver Clinic.

Our government relations office secured the support of this grant application from U.S. Senators Cantwell and Murray, along with an endorsement from Governor Christine Gregoire. The grant application is also supported by the Washington State Medical Association; the state's hospital, nursing, pharmacy, and trial lawyer associations; the Washington State Department of Health and Board of Pharmacy; and the Washington Healthcare Forum.

By partnering with participating health systems and organizations, Physicians Insurance will showcase our AdVerse Event Response Team (AVERT) Training Program, which supports effective communication between physicians and patients, lends organizational support of providers (often the "second victims" of adverse events),

Continued on page 11

The Board is guided by the company's mission statement:

To provide insurance coverage to physicians and health care providers at the lowest possible cost consistent with sound financial and insurance practices.

To anticipate and respond to changing needs and trends in a manner that is beneficial to the members, individually and collectively.

To improve the quality of medical care and reduce the instances of adverse outcomes of that care.

To protect and preserve the personal and professional interests of each and every one of our members consistent with sound financial and insurance practices.

Message From the Chairman



James P. Campbell, MD
Chairman of the Board

First-Year Reflections on the Value of Physicians Insurance

As I complete my first year as Chairman of the Board, I would like to reflect on what our company means to the physicians and clinics it insures. The

articles in this issue of the *Physicians Report* tell a lot of the story. I encourage you to read the tribute to Bruce Schafer, who helped set the high standards for service and support during the company's early days. Bruce will be missed, but he has trained a generation of superb claims experts and risk managers to build on his legacy. Look at the trial results in this issue, and you will get a good sense of what this company does to successfully defend cases that should be defended. Read the article by our President and CEO, Mary-Lou Misrahy, who describes our company's innovative risk management approaches to help physicians and their patients find better ways to address unanticipated adverse outcomes. There is more to this story. Here are other developments of 2009 that demonstrate the value of Physicians Insurance.

No increase in premium. For the fifth year in a row, none of us saw an increase in our medical professional liability premiums. In fact, premiums have been reduced for most insureds by 10% up to nearly 25% during this time period.

Strong balance sheet. Physicians Insurance had another impressive year in 2009, raising the company's surplus to nearly \$160 million. This puts the company in a strong position should there be an unanticipated increase in losses.

Strong internal controls. The audit and investment committees monitor our assets and our internal controls with the keenest sense of responsibility to all Physicians Insurance members. Last

year the company initiated an aggressive internal audit program that has resulted in improvement of internal controls and processes to maximize the reliability of the company's financial management. This program will continue year in and year out to help assure the security and reliability of your company.

\$5 million dividend, again. I'm thrilled with calls from members when they receive their dividend checks. Dr. Jim Clark of Tri-City Radiology mentioned to me that he appreciates the dividend and values our company's commitment to its insureds. The company's strong fiscal performance and your effective performance in maintaining low loss risks through patient-safety measures resulted in another dividend to qualified members.

Policies streamlined. The 2010 policy forms were significantly condensed and much easier to read and reference. This was the result of a careful two-year project to update the language of the insurance policies and endorsements.

Board of Directors. The physicians and business professionals who serve with me on the Board are strengthening the quality of their governance of our company. In every Board meeting we receive education about the insurance business and the duties of a director. Directors work together with management in the ongoing strategic-planning process so the company can grow and change as the medical-practice environment changes. While the directors are proud of the management team's quality, they are also not shy about raising questions about the company's initiatives to make certain that they make well-informed decisions as they guide your company into the future.

I'm proud to serve as Chairman of this remarkable organization. Your loyalty is a testament to the value of Physicians Insurance to you and your practice. I'm looking forward to many more years of success and innovation.

Employee Dishonesty: Protecting Your Practice From the Inside



Janet Jay
Agency Sales and Service
Representative

Case Scenario. Your staff bookkeeper left the office for several weeks for an emergency procedure. For 18 years, you have trusted your bookkeeper to take care of the finances for your small medical office. She has never been away for so long, but her extended illness requires that you hire a temporary accountant. The accountant

notices an inconsistency in the accounting and traces it back to discover several more. He recommends you hire a forensic accountant. An in-depth audit reveals that your bookkeeper has been embezzling business funds, with losses estimated at \$425,000.

Small businesses are particularly susceptible to this type of loss. According to *Modern Medicine*, “employee theft robs small business owners, which includes physicians, of \$20 to \$40 billion annually, with 75% of crimes going unnoticed.”*

Prevention. Taking precautions does not mean you have to sacrifice trust in your employees’ work. Let employees know that you trust them to do a good job. At the same time, let them know explicitly that you hold them accountable for their actions. Take these simple measures to help you avoid fraud while maintaining a comfortable working environment:

- 1. Hire an outside accountant.** A periodic review by an outside source can help detect fraudulent transactions. It also can help discourage would-be thieves if they know that someone will be reviewing their work.
- 2. Require regular vacations.** An employee trying to hide fraudulent transactions may be afraid of being “discovered” when others take over the accounting duties. Knowing that all employees must take time off can discourage the fraudulent behavior altogether.

- 3. Review your bank statements.** Keeping an eye on the statements will let you know when something doesn’t look right. Catching a fraudulent transaction when it first happens can help prevent many more to follow, thereby minimizing your loss.
- 4. Don’t leave the job to one person.** If your employees share the work (for example, one takes the payment, while another records it), they will be accountable to each other, forming a system of checks and balances.

Resources. *HReSource*—In the unfortunate event that you need to terminate an employee, look to the Physicians Insurance Web site, at <http://www.phyins.com/coverages/employment-practices-coverages.php>,

for members-only access to HR tools that can assist you in the process.

Medical Associations—Your state’s medical association can be

an excellent resource for materials, seminars, and tools to assist you in your medical office. Contact the Washington State Medical Association, at www.wsma.org; the Oregon Medical Association, at www.theoma.org; or the Idaho Medical Association, at www.idmed.org.

Business Owners Policy—A good business owners policy (BOP) can provide some coverage for employee dishonesty. For example, a BOP placed through Physicians Insurance Agency contains \$25,000 in employee-dishonesty coverage. Higher limits may also be available.

For more information, contact your account executive or Janet Jay at (206) 343-7300 or 1-800-962-1399.

*Neil H. Baum, MD and Robert A. Dowling, MD, “Is Your Practice Protected Against Embezzlement?” September 1, 2009, <http://www.modernmedicine.com/modernmedicine/Modern+Medicine+Now/Is-your-practice-protected-against-embezzlement/ArticleStandard/Article/detail/624476>.

Find the best coverage for you and your family at Physicians Insurance Agency

Physicians Insurance Agency can place you with the insurance coverages you need. Our top-quality products include life, disability, long-term care, employment practices liability, business owners policies, bonds, and most recently, health care insurance services.

Find out how to best protect you and your family. Members in Washington, Idaho, and Oregon can contact our Physicians Insurance representatives at (206) 343-7300, 1-800-962-1399, or agency@phyins.com.



PHYSICIANS
INSURANCE
AGENCY

Doing the Right Thing Right

“If the doctor had apologized, I wouldn’t be here.” Plaintiff attorneys commonly hear these words from patients injured during medical treatment, whether or not the injury is attributed to an error. Our AVERT (AdVerse Event Response Team) Training Program prepares physicians to address the special needs of patients, families, and peers following an adverse event. The 2½-hour workshop covers how to deliver a compassionate and empathetic apology, when applicable, and develop an ongoing care plan for the patient and family affected by an unexpected or poor outcome. Also addressed are the communication skills and resources to assist providers impacted by an adverse event.

Participants receive a manual containing templates of disclosure protocols, a decision algorithm, and other tools to guide the communication process. A variety of media and experiential learning methods keep learners engaged: advice from medical malpractice attorneys, interviews with physicians and patients

involved in adverse events, and practice with strengthening disclosure skills in a supportive atmosphere.

The AVERT training was developed by Ronald Hofeldt, MD, a psychiatrist and director of the company’s Litigation Stress Program who has over 20 years of experience supporting physicians involved in medical malpractice litigation. Copresenting with Dr. Hofeldt is Patricia McCotter, RN, JD, CPHRM, CPC, a senior health care risk management consultant at Physicians Insurance with a broad background as a registered nurse, health law attorney, and certified professional coach in a variety of medical settings.

To view the course brochure and a schedule of presentations through December, go to <http://www.phyins.com/cme/seminars.php> and click **Adverse Event Response Training**.

AVERT
ADVERSE EVENT RESPONSE TEAM

Tools for Managing Chronic Pain

To help you build an effective partnership with your chronic pain patients, our physician toolkit is now available to view online or download. Toolkit components can be used to set goals with patients, guide prescribing decisions, and minimize the potential for abuse, diversion, or addiction. The kit includes:

- Codes Relevant to Pain Management
- SMARTS Card for Opioid Safety
- Agreement for Use of Medication in Pain Management
- Clinical Policy for Use of Medication in Pain Management
- Lost or Stolen Prescription Attestation Form
- Washington State Agency Medical Directors’ Group *Interagency Guideline on Opioid Dosing for Chronic Non-cancer Pain*
- Physician Syllabus
- Patient Booklet

To access these documents, visit www.phyins.com and look under Highlights along the right-hand panel of the home page. Members are also encouraged to attend our seminar, “Balancing Risk in the Management of Chronic Pain,” taught by Gordon Irving, MD, a leader in the Washington State effort to reduce opioid risk. Finally, our one-hour e-learning module, “Recognizing and Responding to Addiction,” will bring you up to date in this challenging area. Both the seminar and the e-learning module provide Category I credit and fulfill the state mandate for risk management education. To register for our seminars or access our e-learning modules, go to www.phyins.com and click on **CME** at the top.



RISK MANAGEMENT CALENDAR OF EVENTS

A COMMITMENT TO SAFETY:

Risk Management Practices That Work

a two-hour seminar for the medical office team

Most medical malpractice lawsuits can be prevented by following 10 simple documentation standards that are also associated with improved patient safety. This seminar will show you how to put these standards to work in your practice.

2010

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|-------------|-----------|--------------------|--------------|------------|--------------------|
| Tue. Apr. 6 | Vancouver | 11:30 am – 2:00 pm | Tue. June 22 | Mt. Vernon | 11:30 am – 2:00 pm |
|-------------|-----------|--------------------|--------------|------------|--------------------|

ADVERSE EVENT RESPONSE TRAINING

a 2.5-hour seminar for physicians and medical team members

This interactive training prepares you to address the special needs of patients, families, and peers following an adverse event. Learn how to prepare for and deliver a compassionate and empathetic apology, when applicable, and develop an ongoing care plan for the patient and family affected by an unexpected or poor outcome.

2010

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|--------------|---------|-------------------|-------------|--------|-------------------|
| Tue. Mar. 23 | Olympia | 5:45 pm – 8:45 pm | Thu. Apr. 8 | Yakima | 5:45 pm – 8:45 pm |
| Tue. Apr. 27 | Everett | 5:45 pm – 8:45 pm | | | |

BALANCING RISK IN THE MANAGEMENT OF CHRONIC PAIN

a two-hour seminar for primary care physicians

This seminar illustrates techniques to set and manage expectations for both patients and physicians. The case-presentation format will demonstrate a structured approach to communication, dealing with psychosocial factors, referral to other providers, and coding to make treatment worthwhile. Concerns of physicians without access to pain specialists will be addressed.

2010

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|--------------|-------------|-------------------|--------------|------------|-------------------|
| Tue. Apr. 20 | Colville | 5:45 pm – 8:30 pm | Thu. Apr. 22 | Mt. Vernon | 5:45 pm – 8:30 pm |
| Thu. May 13 | Walla Walla | 5:45 pm – 8:30 pm | Thu. May 20 | Bellingham | 5:45 pm – 8:30 pm |
| Thu. May 27 | Silverdale | 5:45 pm – 8:30 pm | Thu. June 10 | Olympia | 5:45 pm – 8:30 pm |

RULING OUT LIABILITY:

A Risk Management Toolkit for Office Practice

a two-hour seminar for physicians of all specialties

This seminar provides effective tools to keep you and your patients on track, including discussion and examples of diagnostic test-tracking tools, reporting test results, informed consent, and informed refusal. It also covers risk management and the electronic medical record, apology, and dealing with difficult patients.

2010

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|------------|---------|-------------------|--------------|-----------|-------------------|
| Thu. May 6 | Spokane | 5:45 pm – 8:15 pm | Wed. June 30 | Vancouver | 5:45 pm – 8:15 pm |
|------------|---------|-------------------|--------------|-----------|-------------------|

Enrollment is limited, so early registration is encouraged. For more information on risk management seminars, contact the Risk Management Department at 1-800-962-1399 or risk@phyins.com. If you are a member, you can register at www.phyins.com. If you don't see a seminar in your location, look for future seminar dates on updated brochures regularly sent to all members. You can also visit www.phyins.com for up-to-date seminar offerings and registration.

Bruce Schafer, Senior Vice President, Claims & Risk Management, Retires After 25 Years

Create an Account on Our Web Site

1. Go to www.phyins.com.
2. Click **Member Login** in the upper right corner.
3. Under **Create an Account**, click the statement **click here to create an account login now**.
4. If you are a physician, fill in the boxes on the left side of the page. If you are a group member (clinic manager, staff member, etc.), fill in the boxes on the right side of the page.
5. Click **Submit**.
6. Under **Members Only Access**, log in using your new username (e-mail address) and password.
7. Click **Submit**.
8. You can now take our e-learning courses, download risk management materials, and register for seminars.

Bruce Schafer created a standard that, through unwavering commitment to what is best for our members, has positively influenced the delivery of justice in medical professional liability.

In his 25 years, Bruce formed and maintained a claims management and litigation support program that makes Physicians Insurance one of the leading medical professional liability companies in the country.

Kadlec and Fisons landmark cases

Among the hundreds of cases that Bruce managed were the Kadlec Regional Medical Center and Fisons Pharmaceuticals trials that resulted in dramatic improvements to the health care delivery system and to the discovery process in litigation.

In the first case, Kadlec Regional Medical Center unknowingly hired a drug-impaired physician who severely injured a patient during a routine procedure. Kadlec had received glowing recommendations for the impaired physician from his prior practice, and had received no hint that he had been quietly forced out by a hospital due to diversion of drugs without any report to the National Practitioner Data Bank. Kadlec and Physicians Insurance agreed to a settlement with the plaintiff. Bruce, with Kadlec's full support, then relentlessly pursued the cover-up of the physician's addiction. The federal court jury was convinced, and awarded more than \$4 million to Kadlec. The verdict resulted in attorneys all over the country reminding practices and hospitals that the medical profession must respond truthfully to credentialing and reference requests.

In another landmark case, Bruce worked with defense counsel to pursue counterclaims against a pharmaceutical firm that failed to warn pediatricians across the country of known risks in one of

its products. We learned during the case that the pharmaceutical firm's attorneys had withheld evidence about Fisons' prior knowledge of the drug's potential risks. A claim was then pursued against the firm's attorneys, resulting in a holding by the Washington Supreme Court that those attorneys had "abused the judicial process by giving narrow and misleading answers" in response to discovery requests. Bruce and our defense attorneys contributed to sweeping changes in the way discovery requests must be answered—fully, honestly, and without playing games.



Bruce Schafer's brilliant thinking and years of dedicated work have enabled Physicians Insurance to successfully defend physicians in difficult, often turbulent cases

Moving forward

As one of our reinsurance auditors once wrote, "We believe that the Physicians Insurance claims unit is

among the most effective in this class of business. Mr. Schafer and his claims staff have employed various strategies to cope with the adverse issues in this [Washington state] jurisdiction." Physicians Insurance is committed to continuing this tradition of excellence in claims handling. Eric Holm, who has managed high-level claims at Physicians Insurance for 18 years, will become Vice President, Claims. The claims and risk management teams will report to Senior Vice President, General Counsel & Secretary Gary Morse.

Parting Words for Bruce Schafer, an Industry Legend

Kari Adams, Claims Supervisor, Physicians Insurance: “Bruce’s judgment is impeccable, on matters both large and small. He has been right on more cases than I can recall. Bruce imposes high standards and extracts more talent and productivity than anyone I have ever worked with. He has made me a better claims professional and a better person.”

Ric J. Gass, JD, Gass Weber Mullins, LLC, Milwaukee, WI: “Over the course of 40 years of practice, I’ve worked for many clients on many cases. The vast majority of them not only involved money, but were solely driven by money. It was a once-in-a-career opportunity to work with Bruce on Kadlec and see a case driven not by money, but by what was right and wrong. We were lifted to a higher plane by his devotion to that. And, it made a difference not just to my working with Bruce, but also to those in the justice system who heard the entire case, judge and jury alike.”

Eric Holm, Vice President, Claims: “I was trained at Aetna and CNA, but my true education began when I came to work for PI under Bruce Schafer’s brilliant leadership. He and his talented, dedicated staff have created and sustained the best claims department in the country. Bruce’s cutting-edge creative ideas and foundation of always doing the right thing have brought this about. I am honored to serve in this new leadership role to continue Bruce’s legacy of excellence, integrity, and consistency.”

Robert C. Jeffers, MD, former Chairman of the Board, Physicians Insurance: “Twenty years of working with Bruce has taught me that he is the ultimate insurance professional. He is unsurpassed in the insurance industry at managing medical malpractice claims. The plaintiffs’ attorneys will undoubtedly celebrate his retirement.”

Elizabeth Leedom, JD, Bennett Bigelow & Leedom, P.S., Seattle, WA: “Bruce has distinguished himself through his creativity, his courage, and his commitment. He encourages all of us to think ‘outside the box’ and to approach our work for Physicians Insurance with new ideas and a creative edge. Bruce guides his decisions with his own moral compass of trying to do the right thing, not only for the insureds, but also for overall patient safety.”

Gary Morse, Senior Vice President, General Counsel & Secretary: “Bruce Schafer has established a standard in claims and risk management that is the best I’ve ever seen in my 26-year career. Shortly after I entered this business, working for another company, I quickly saw the high caliber of the claims and risk management services at Physicians Insurance. It was obvious back then that Physicians Insurance was the premier company, the one to join in order to pursue a challenging and professionally rewarding career.”

Mike Myers, JD, Michael J. Myers, PLLC, Spokane, WA: “I met Bruce many years ago when he asked me to handle a few cases for his ‘up-start’ company, WSPiE. Since then, I have spent a good part of my life with him on some of the most difficult cases, cases which have tested my ability and my imagination, and which have given me an insight into Bruce’s mind and his personal code of ethics. He has an immutable sense of right and wrong. He gave me the opportunity to be as much of a lawyer as I could be.”

James W. Pritchett, MD, former Chairman and present Board member, Physicians Insurance: “Bruce has a gift few have. He is consistently capable of original thought. His solutions to complex problems are creative. On the day prior to the Board retreat, Bruce would invite me and sometimes others to a game of golf. That day you could ask him about any life problem (something at our medical practice, or about a patient or problem doctor or life in general). He was relaxed and he would tell you what he thought. The excitement was not in the answer but the experience—you could see inside to how his mind worked and it was fascinating. I will miss him.”

Jackie Roberts, Claims Operations Manager, Physicians Insurance: “Bruce’s vision of the high road and the right thing will be his legacy to those of us who remain to work in the wake of his influence. Whether it be his intelligence, his contempt for the ludicrous, his wit, or his compassion, you know when you see it that it is his truth.”

Kym Lewis Shepherd, Claims Department, Physicians Insurance: “It would not be an overstatement to say Bruce has forever influenced the landscape relative to medical malpractice litigation in Washington State. His instincts, fairness, and clarity of purpose will be missed by all. Bruce has an unerring sense for moral justice evenly applied, whether dealing with an injured, unrepresented claimant or prominent corporation. The combination of intelligence, strength, and humor are a rare find.”

2009 Trial Results

Physicians Insurance is committed to informing its members about issues that impact health care professionals.

Since the majority of cases resolved by settlement are confidential, it is impossible for us to disclose all the issues and results of those cases. However, trials are a matter of public record and we are not constrained by confidentiality from disclosure of these cases. Although this information is public, we choose not to disclose the names of the parties when reporting on trial outcomes. The following case summaries are selected from those that went to trial during the second half of 2009 and may represent some of the more prevalent issues facing health care providers today.

As in all of the company's cases, Physicians Insurance retained talented, highly experienced defense counsel to represent its members. As a member, you can feel confident that Physicians Insurance will represent your interests in the event of a claim.

Alleged Negligent Surgery

Specialty: Otolaryngology

Allegation: A 25-year-old male underwent a complex surgery for the removal of a large carotid body tumor following an arteriogram and partial embolization of the tumor. To remove the tumor, the surgeon ultimately had to sacrifice the carotid artery, but the patient went to Recovery in good condition. Three and one-half days postoperatively, the patient experienced left internal carotid artery/middle cerebral artery thrombosis with a catastrophic stroke. The patient sustained right-sided hemiplegia, sensory deficits, interference with speech and right visual field, loss of mobility, and severe dysphasia. The patient claimed general lack of informed consent, lack of informed consent regarding the option for surgery versus radiation therapy, negligent technique in terms of ligating the carotid vessels and the collaboration with the vascular surgeon, and failure to administer intraoperative and postoperative heparin.

Plaintiff Attorneys: Joel Cunningham and Robert Gelatly, The Luvera Law Firm, Seattle, WA

Plaintiff Experts: Mark Fisher, MD, Neurology, Orange, CA; Frederic Braun, MD, Neurology, Bellingham, WA; Thomas McDonald, MD, Otolaryngology, Rochester, MN; John Leonetti, MD, Otolaryngology, Chicago, IL; David G. Fraser, MD, Vascular Surgery, Santa Rosa, CA; Bauer Sumpio, MD, Vascular Surgery, New Haven, CT

Defense Attorneys: Michael Myers, Law Offices of Michael J. Myers, Spokane, WA; William Leedom, Bennett Bigelow & Leedom, Seattle, WA

Defense Experts: Johnny Delashaw, MD, Neurosurgery, Portland, OR; Peter Andersen, MD, Otolaryngology, Portland, OR; Steven Wang, MD, Otolaryngology, San Francisco, CA; Neal Futran, MD, Otolaryngology, Seattle, WA; James Malone, MD, Otolaryngology, Mesa, AZ; Steven Hajdu, MD, Pathology, Westlake Village, CA; Gary Stimac, MD, Radiology, Bellevue, WA; Glenn LaMuraglia, MD, Vascular Surgery, Boston, MA

Result: Defense verdict, King County Superior Court, Judge Trickey

Cost to Defend: \$1,119,523

Alleged Negligent Surgery & Restoration of Airway

Specialty: Neurosurgery, Anesthesia

Allegation: A 47-year-old female underwent an uneventful anterior cervical discectomy and fusion. She was stable and transported from PACU to the floor when it was noted that the drain in her neck had suddenly filled with blood. When notified, the surgeon directed that the patient be taken immediately to an OR. An anesthesiologist responding to the emergency met the patient outside the OR. The patient was having difficulty breathing and her head and neck were a purplish color. A nurse was instructed to take the patient into the OR while the anesthesiologist quickly assembled necessary equipment for intubation. Multiple techniques and varied equipment were employed, without successful intubation. The surgeon arrived, opened the sutures, and removed a large clot that was distorting the trachea. Intubation was still impossible. The surgeon performed an emergency tracheotomy. The patient sustained an anoxic injury. She has cognitive and motor impairment and requires care in a skilled nursing facility.

Plaintiff Attorneys: Christopher Otorowski, Thomas Golden, and Carol Johnston, Otorowski Johnston Diamond & Golden, Bainbridge Island, WA

Plaintiff Experts: Mark Palumbo, MD, Orthopedic Surgery, Providence, RI; William Dillon, MD, Orthopedic Surgery, Los Angeles, CA; Vladimir Nekhendzy, MD, Anesthesiology, Palo Alto, CA; Ron Abrams, MD, Anesthesiology, Kirkland, WA; Brent Pistoresse, MD, Pulmonology, Kalispell, MT

Defense Attorneys: Elizabeth Leedom and Amy Forbis, Bennett Bigelow & Leedom, Seattle, WA

Defense Experts: Robert Caplan, MD, Anesthesiology, Seattle, WA; Jay Brodsky, MD, Anesthesiology, Palo Alto, CA; Marc Mayberg, MD, Neurosurgery, Seattle, WA; David Bradford, MD, Orthopedic Surgery, San Francisco, CA; Robert Hacker, M.D., Orthopedic Surgery, Eugene, OR; Alan Artru, MD, Anesthesiology, Seattle, WA; Leonard Hudson, MD, Pulmonology, Seattle, WA

Result: Defense verdict, Whatcom County Superior Court, Judge Snyder

Cost to Defend: \$1,016,498

Alleged Failure to Diagnose

Specialty: Family Practice

Allegation: A 43-year-old female sought primary care for approximately ten years from three physicians. She had complaints of and eventual diagnosis and treatment for obesity, hypertension, hyperglycemia, hyperlipidemia, Type II diabetes, psychological and cognitive difficulties, osteoporosis, and multiple fractures. Her care encompassed hundreds of office visits. Two years into treatment, she was referred to an endocrinologist at a large academic institution, who ruled out an endocrine disorder. Treatment progressed and the patient was appropriately referred to specialists as indicated. Later in the course of care, she was again referred to an endocrinologist. The endocrinologist performed a brain MRI and diagnosed a benign pituitary tumor. The patient underwent surgery for removal of that tumor. Due to the location of the tumor and results of lab work, Cushing's disease was clinically diagnosed prior to surgery. The patient alleged a ten-year failure to diagnose and treat Cushing's disease and alleged that had it been properly diagnosed and treated, she would have avoided the development of all her chronic conditions. She claimed medical expenses, disability, and emotional and cognitive injuries.

Plaintiff Attorney: Sanford Kinzer, The Law Offices of Sanford Kinzer, Ellensburg, WA

Plaintiff Experts: Lynn Loriaux, MD, Endocrinology, Portland, OR; Julie Komarow, MD, Family Practice, Bonney Lake, WA; Glenn Goodwin, PhD; Neuropsychology, Edmonds, WA

Defense Attorneys: Dan Keefe, Keefe Bowman & Bruya, Spokane, WA; John Graffe, Johnson Graffe Keay Moniz & Wick, Seattle, WA

Defense Experts: John Kremer, MD, Family Practice, Chelan, WA; Dan Doornink, MD, Internal Medicine, Yakima, WA; Lewis Blevins, MD, Endocrinology, San Francisco, CA; Andrew Hoffman, MD, Endocrinology, Palo Alto, CA; Kristoffer Rhoads, PhD; Neuropsychology, Seattle, WA; Andrew Friedman, MD, Physical Medicine, Seattle, WA

Result: Defense verdict, Kittitas County Superior Court, Judge Cooper

Cost to Defend: \$889,952

Alleged Failure to Diagnose

Specialty: Emergency Medicine

Allegation: An 8-year-old female presented with her mother to a pediatric clinic with complaints of a headache that had started two days prior and had evolved over the weekend to include nausea, vomiting, fever, and diarrhea. The patient was seen by a pediatric nurse practitioner, who performed a physical exam, noting no neck stiffness. In evaluation with an emergency medicine physician, the nurse practitioner arranged for the patient to be further evaluated by a pediatric emergency medicine physician, who also performed a physical exam, noting full range of motion without neck tenderness or stiffness. The patient was neurologically intact and the physician's impression was headache and gastroenteritis. The

patient remained in the ED for several hours, receiving IV hydration, Anzemet, and Toradol. At the time of discharge, the patient no longer complained of a headache and was noted to be awake, alert, and talking. That night at home, she experienced an episode of vomiting after eating and complained of leg pain and difficulty breathing. She was given a sleeping pill by her mother. The patient was discovered in the morning, unresponsive, and was transported to the hospital, where she died of Group A meningitis. The estate of the decedent alleged that had a complete blood panel and lumbar puncture been performed, a diagnosis of meningitis would have been made and initiation of antibiotic therapy would have preserved the patient's life.

Plaintiff Attorney: John Mocerri, The Law Offices of Manza & Mocerri, Tacoma, WA

Plaintiff Experts: Lisa MacCormack, MD, Emergency Medicine, Nice, CA; Mark Schleiss, MD, Pediatric Infectious Disease, Minneapolis, MN

Defense Attorney: Rebecca Ringer, Law Offices of Floyd, Pflueger & Ringer, Seattle, WA

Defense Experts: William Lennarz, MD, Emergency Medicine, Portland, OR; Dianne Glover, MD, Pediatric Infectious Disease, Seattle, WA; Michael Radetsky, MD, Albuquerque, NM

Result: Defense verdict, Pierce County Superior Court, Judge Cuthbertson

Cost to Defend: \$308,898

Alleged Misread Biopsy

Specialty: Pathology

Allegation: A 75-year-old male presented to an otolaryngologist for complaints of hoarseness, difficulty swallowing, and a 20-pound weight loss. The patient was a former smoker. A CT and physical exam revealed a large mass in the right piriform sinus. A biopsy was performed. The pathologist interpreted the specimen as invasive squamous cell carcinoma. It was an unusual specimen. The patient was referred to a large academic institution, and was given both surgical and nonsurgical options. The patient chose to undergo a laryngectomy. The postoperative specimen did not reveal cancer. The plaintiffs alleged the preoperative pathology interpretation was incorrect and the patient did not have cancer. The defense contended that the biopsy was appropriately interpreted. The case was tried in 2008 to a hung jury. The case was retried in 2009.

Plaintiff Attorneys: Keith Tichenor, Tichenor Dziuba and Coletti, Portland, OR; Joseph Grube, Seattle, WA

Plaintiff Experts: Stephen Sarewitz, MD, Pathology, Renton, WA; Richard Zarbo, MD, Pathology, Detroit, MI; Mark Singer, MD, Otolaryngology, San Francisco, CA

Defense Attorneys: Donald Nakonechny, MD, Pathology, Lynwood, WA; Jennifer Hunt, MD, Otolaryngology/Pathology, Cleveland, OH; Herbert Dedo, MD, Otolaryngology, San Francisco, CA

Result: Defense verdict, on appeal, King County Superior Court, Judge Barnett

Cost to Defend: \$814,797

New Data Compromise Coverage Offered

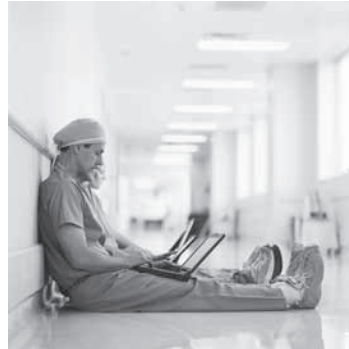
At Physicians Insurance we are responding to our members' concerns about personal information in their care, custody, and control that may be lost, stolen, or inadvertently published.

Data are protected by several state and federal statutes against unauthorized access, use, copying, and distribution.

On the state level, more than 45 states—including Washington, Oregon, and Idaho—have adopted data breach notification laws requiring organizations to notify consumers whose personal information has been exposed in a data breach. In the second quarter of 2010, Physicians Insurance will be adding Data Compromise Coverage to our corporate and solo practice medical professional liability policies. Limits will be \$50,000, with higher limits available. The broad coverage definition includes coverage for claims defined as

- **electronic** (such as the theft of electronic files),
- **physical** (such as the theft of hardcopy files),

- **procedural** (such as mistakenly posting personal information to a Web site or printing mailing labels with Social Security numbers), or
- **fraud-related** (such as the purchase of information by sham companies).



Coverage provides reimbursement for costs and includes access and means to obtain professional legal advice, forensic information technology review, and notification to affected individuals, as well as services to affected individuals, including identity restoration case management and credit monitoring for up to one year. There is a \$5,000 sublimit for legal and forensic information technology review.

The estimated premium will be less than \$150 and will be offered on an opt-out basis. We are confident that all of our insureds will want this important coverage.

If you have any questions, please contact an account representative at (206) 343-7300 or 1-800-962-1399 (Western Washington and Oregon) or (509) 456-5868 or 1-800-962-1398 (Eastern Washington and Idaho).

Hear PI's podcasts!

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***True or False?* Our New Self-Study Course Fulfills Washington State's Education Mandate.**

True! Physicians may also earn two hours in Category I CME by completing our newly updated self-study course on current and time-tested risk-reduction strategies. "Promoting Patient Safety" covers medical-legal issues, documentation do's and don'ts, treatment of minors, and practice-management suggestions that can shield you from liability. The 25-question quiz is derived from our *Risk Management Reference Guide*, which has also undergone a recent update. Members can download the course from our Web site, or request the printed version through risk@phyins.com.

Message From the President and CEO *Continued from page 1*

improves patient safety, and has the potential to reduce malpractice premiums. Studies from the University of Michigan Medical Center and the Lexington Veterans Affairs Medical Center showed that robust disclosure programs dramatically reduced claim volume and payments as well as time to claim closure.

Dr. Gallagher thanked our staff members—including Pat McCotter, Gary Morse, Dennis Olson, and Anne Bryant—for their contributions to the grant application. “We owe a special debt of gratitude to the folks at Physicians Insurance,” he wrote, “who were instrumental in securing the broad range of support for this project.”

Alternative dispute resolution and patient-safety planning grant

Physicians Insurance is also participating in an application for a one-year, \$300,000 federal grant proposal to develop alternative dispute resolution mechanisms for physicians and patients. Under the auspices of the Washington Healthcare Forum, large health care systems, and private insurers, the proposal seeks funding to help formulate patient-safety and dispute resolution strategies that will:

- Make compensation fairer, faster, and more readily available for patients suffering injury (especially from never events and other types of preventable errors)
- Make the system cost-effective and efficient by reducing legal and administrative costs
- Create incentives for health care delivery improvements when preventable injury occurs

- Improve accountability and trust between patients and caregivers
- Make the system more predictable, accessible, and sustainable and less susceptible to legislative incursion

MultiCare Health System is the grant applicant, and several other health care systems will participate in the development of the dispute resolution system. If awarded, the grant would fund an effort to complete the specifics of an alternative dispute resolution approach previously developed by the Washington Healthcare Forum. Our role is to serve on the steering committee and on an expert panel to develop categories of compensable events with reasonable compensation ranges depending on the extent of damages. A key part of the study will be an assessment of whether there would be long-term cost savings. Positive results could lead to efforts to obtain supporting legislation to implement demonstration projects.

The two project applications were submitted in January 2010, and AHRQ’s response is expected in about four months. I will keep you informed regarding these exciting research initiatives in future publications.

I’m honored to be at the helm of a company with so many talented experts who promote effective risk management and litigation reform for our insureds. Your company offers so much more than just insurance.

Margaret A. Mirabey

Take Our E-Learning Courses for Members Only

E-learning provides another option for earning Category 1 CME credit and meeting the risk management education requirement mandated by Washington State. At www.phyins.com, under the **CME** tab, click on **E-learning** to find the following e-learning courses:

- Chest Pain
- Documentation, Informed Consent, and the Electronic Medical Record
- Images of Liability: Risk Management in Radiology
- The More Things Change: Current Issues in Health Care Risk Management
- Recognizing and Responding to Addictive Behavior

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Don't forget to send in your proxy!

All members should receive a proxy in March. The annual meeting of the members of Physicians Insurance A Mutual Company will be held on April 26, 2010, at 1 p.m. at our home office at 1730 Minor Avenue, Suite 1800, Seattle, WA 98101. The purpose of this meeting is to review the annual report and elect four directors. Every vote counts, so please send in your proxy today.

Risk Management Update Enclosed

Our risk management team offers tips for managing the special-care needs of our aging population. Because older patients with physical limitations may not fully understand and carry out treatment plans, your practice may be at an increased risk of liability. Learn how to lower your risk when caring for elderly patients.