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CLAIMS

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**Physicians
Insurance**
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THE FALLACY IS **only bad doctors get sued.**

UNFORTUNATELY

GOOD doctors

—doctors that really care about good medicine and patient care—**also get sued.**

Jim Beatie
CLAIMS MANAGER

Jim Beatie likes working in a high-level professional environment. He enjoys the intellectual stimulation of working with physicians, some of society's smartest people. And he likes that physicians are inquisitive people. It is fun and rewarding, he says, to participate for a short while in the lives of those so devoted to helping others.

Jim's 22 years of claims experience makes a difference. Having the experience of handling thousands of cases gives Jim a keen understanding of how the system works, and where to look for advantages for physicians.

"I help physicians navigate through claims and get on with their lives," says Beatie, a self-proclaimed "service brat" and son of a career U.S. Air Force father. "I make the process as palatable as I can make it," he says, noting the reward of seeing a case successfully resolved and the outpouring of relief a physician feels.

But no two cases are ever the same.

Jim recalls one particular experience where an attempt was made to resolve a dispute because the doctor felt so bad about the outcome he wanted to pay for some of his patient's medical expenses. With permission from the physician, Physicians Insurance sent a check to the patient. In the eleventh hour, though, she rejected the offer, asked for more money, and hired a lawyer.

But the patient's lawyer didn't pursue the case aggressively. Beatie says, "I think we could have easily let this case languish and not pushed the legal discovery. This could have gone on for four or five years. Instead we did all the legal discovery, and forced the issue to get the case moving."

In some counties, such as Washington State's King County or Pierce County, whenever someone files a lawsuit, another document is produced with a schedule noting disclosure, discovery, and trial dates. This is the backdrop of the legal process. But other counties may not operate this way. A county can basically tell the attorneys to work out the details and then let the court know when they're ready for trial. Unfortunately for physicians and patients, this can open up years and years of litigation.

Physicians Insurance prefers not to let its physicians languish, hoping a case will go away. Beatie says, "In this case, I explained to the doctor, no, you don't want this cloud hanging over you. We want to get this thing over with. Trust us, even though it may sound awkward, we need to push this a little bit because, otherwise, it could go on forever and ever."

When approaching a possible trial, physicians naturally might worry about whether a judge or jury will get the medical nuances of a case. It was no different this time. Beatie says, "In this case the chances of that happening were minuscule, so we spent time with the physician going over the case point-by-point, identifying all the elements that worked in our favor."

Not leaving anything to chance, Physicians Insurance also regularly works with trial consultants who conduct focus groups on the case, and assist in jury selection. "We spend the extra time and money to get the trial consultants. It's not a slight to our defense attorneys because they all know how to pick juries, but why take the risk? Using more minds and eyes—and the collaboration session of having somebody else help you with those tough decisions—sets us apart."

Ultimately, at Physicians Insurance it is always the physician's choice whether to settle or try a case. "We offer expert advice to the physician, but they get to choose what they want to do," states Beatie. In this case, the physician chose not to settle. "The plaintiff attorney asked for a settlement of about \$100,000 and we said no. Then he came back and asked for \$35,000. We said no. Our lawyer wrote a letter with recommendations to dismiss the case. And that's what happened. There was no payment and no mark on the physician's record. Our physician was overjoyed."

Beatie believes that a lot of people who don't work in the medical community have a distorted view of a doctor's life. Most people, he says, "think physicians live a cushy lifestyle." They don't realize that the job is so demanding. That's why Beatie tries, along with the rest of the defense team, to make certain—with the doctor's blessing—that in the case of a settlement "we're settling for all the right reasons." Physicians who are just starting in their practice and have long careers ahead of them may get sued later in their careers and therefore need to weigh the

pros and cons of settlement. If the case is winnable, it may be best to go to trial and seek vindication.

As a claims manager, Beatie has a small caseload of his own and oversees the case workups for resolution of other claims representatives. He enjoys the positive, collaborative environment. "We like to bounce ideas and situations off one another," he says. "We have roundtable discussions with the defense attorneys. A new set of eyes and ears makes a difference."

For him, all the work and preparation and coaching is well worth it. Victory at trial is an incomparable feeling. It is his conviction that "Physicians Insurance is about the only medical carrier who still seriously wants to try cases. The courts are overloaded with lawsuits. A judge and jury are hard to get. So when we do get a trial and plan for it, execute it, and it works according to plan, all the pressure and stressors associated with going to trial are well worth it. When the insured is vindicated, that's a victory for all of us."



Using more minds and eyes—and the collaboration session of having somebody else help you with those tough decisions—sets us apart.”



Complexity
isn't about the length of
a case—it's about the
ISSUES
within the cases.

Kym Shepherd

DIRECTOR, COMPLEX LITIGATION AND RESEARCH

After years of handling birth-injury cases, which are among the most traumatic for family and physician, Kym Shepherd—a self-styled “open heart” kind of person—is in her 19th year at Physicians Insurance. She’s at ease with being on call 24/7 and, in her position as director of complex litigation, attends to some of the most challenging situations.

Obstetrics, according to Shepherd, is super-specialized. “You’ve got the mom, the baby, maybe a dad, then the physician, and the antenatal period, and then you have the intrapartum and postpartum periods, or with the baby you have neonatal—there is a lot to work with.”

And surrounding the complex medical care in an obstetrics case is a bench of 20 to 25 experts for the defense, with an equal number on the plaintiff’s side. In all, there could be more than 60 people getting deposed and a lot of medicine to learn.

But Shepherd wants to handle complex cases a different way. “It’s been a cottage industry of people making vast sums of money taking cases, taking sides, criticizing or advocating, getting deposed, getting big caches of money, and then everyone settles.” Instead of spending years on cases that just go through an all-too-familiar routine, Physicians Insurance enabled her to do things differently.

“I get people who are highly regarded, highly reliable, whom I trust, who will tell the truth,” she says. “If this is a case where something was done wrong and harm caused, then we’re going to work with the physician to help settle it. And if the physician tells me she didn’t do anything wrong and she didn’t cause any harm, and she doesn’t want to settle—then we’re not going to settle.” That means finding experts who will stick with a case over the long haul and who are willing to be an expert witness on the stand in court.

This is possible, she says, because the people she serves are among the most courageous she knows. “Imagine the courage it takes for a health care provider to go on, to again face the family who has suffered loss, the family for whom he has done the best that could be done. Imagine the courage required to approach his next patient.”

She recalls a case with an anesthesiologist who was catching up on administrative work in the hospital at the end of a long day. A colleague interrupted him to say that a patient who had just had surgery was bleeding badly and losing the battle. Would the anesthesiologist come help this woman whom he had never met, whose medical history he did not know, but who, without his help, was in danger of dying?

Of course the anesthesiologist rushed to her aid and preserved her life, but in the process she suffered significant brain injuries and the family sued. The expensive litigation took a huge toll on everyone, and in the process the anesthesiologist again and again questioned what he did and what he could have done.



I don’t think a lot of other carriers are going to do what we do, and at the level at which we do it.”

Those types of questions—the what-if questions—are ones that Shepherd wants to help answer for the physicians she works with. That led her to champion the creation of innovative simulation training that she believed was the true way out of obstetric dilemmas and ascribed to her fundamental philosophy that obstetrics is a team sport. “We put on simulation training for everyone who wanted to sign up. It was nurses, doctors, unit administrators,” she recalls. “We didn’t insure probably two-thirds of them, but we knew it was the right thing to do.”

Shepherd also worked to create the Birth Injury Task Force that gathered a body of knowledge together. Shepherd facilitated the education for both the lawyers and the claims staff around neurologic injury. “We developed new approaches for our trial strategies, and now we’re mentoring and educating attorneys that can move into this complex stratosphere.”

To Shepherd, the difference between Physicians Insurance and other carriers is obvious. She thinks of the dignified and sensitive doctor who told her during trial, “I don’t think I’m doing a very good job.” She responded, “You’re the only one in that courtroom who has ever saved a life.” Her passion flows through every word and gesture. “They really are heroes. We have an obligation to help them and I don’t think a lot of other carriers are going to do what we do, and at the level at which we do it.”

The personal reward for Shepherd is to facilitate the best possible outcome, to find solutions. She approaches each case with compassion for all involved—the health care providers, the patient, their families. In the case with the anesthesiologist, the verdict was for the defense, but the doctor and his legal team left the courtroom saddened that a once vibrant woman must now remain in a nursing care facility. “We weren’t required to do so, but we asked if we could pay a case manager to assist in placing her in a long-term-care setting better suited to her needs,” says Shepherd. “A small gesture, but something that we could do to help her.”

“I have the wonderful luxury of working for a company where I am supported for standing up for what’s right,” says Shepherd, who loves science and loves helping people get to the other side of a bad situation. “Our policyholders need to know that if they experience an adverse event, we’re going to get them through it in one piece and in the most efficient manner.”



BEING INVOLVED in all aspects of a case, and
**sleuthing out
new ways**
of presenting information,
ARE
critical
to a good defense.

Steve Davies
SENIOR CLAIMS REPRESENTATIVE

Having worked in claims for 24 years gives Steve Davies a good perspective on things. In his career he's investigated medical professional liability cases in a variety of fields. However, for the past ten years as a senior claims representative at Physicians Insurance, he has handled more than 700 cases involving physicians. Steve's ability to look at each case differently helps him come up with ways for attorneys and juries to see them differently, too.

"I was talking to a defense attorney last week about other people who do what we do," says Davies. "The attorney said, 'Some don't apply the thinking that you do at Physicians Insurance. They don't all think strategically.'" This resonates with Steve, because rather than pushing paper and taking a back seat, or having a laissez-faire role, he wants to be front and center. He shares his evaluations with the defense attorney, gives them ideas about what the physician and company want done, and actively participates in the defense of his cases.

He highlights a recent case that resulted in a verdict for the defending physician and the innovative technique he helped to create that will impact cases for years to come. It's a case involving a radiologist who reviewed X-rays of a 12-year-old boy's knee and hip after he complained of knee pain. The films appeared normal. Two and a half years later, the physician was sued for a hip injury stemming from the knee pain.

The tricky thing about hindsight is that it works against radiologists when there is a lawsuit. When experts review cases, both for the plaintiff and defendant, they know there must be a problem that was missed. Having that knowledge, experts can't just eliminate it from their evaluation even if they try to review the study as if it were from a prospective basis.

So, when you know that a plaintiff attorney who sent you an X-ray wants you to review it because he's thinking of filing a lawsuit, "you just can't go and look at that film like it's the day that you initially read it," says Davies. "When experts look at these cases, they've got that hindsight bias, even if they don't know the outcome."

Drawing on his investigative experience, Davies wanted to come up with a way to eliminate the hindsight bias in this case. His approach created the winning difference. "I suggested to our attorney

that instead of sending one record—one or two X-rays of one patient—let's put together multiple studies from other patients that the experts could look at and they won't know which case it is." The attorney and our insured took that idea to the next level. The result was a total of 19 studies from 19 different patients. Recalls Davies, "and then our attorney met with our experts and, by golly, that worked—you're really then putting yourself in the day in the life of a radiologist. You don't know which one it is. There're going to be abnormal studies. There're going to be normal studies. There're going to be close calls. There're going to be obvious calls. And there's going to be this one."

Davies feels he can bring ideas like this to the table because the full weight of the company and its expertise are behind him. This also means everyone involved from company management, to the defense attorney, to Steve are familiar with the details of each case. "You get to know your policyholders better because you're meeting them individually and you're communicating with them throughout the case," he says. "You meet them at the initial meeting of the claim stage. You meet them again if it turns into a lawsuit. Then you meet them at their deposition. And all this personal involvement builds confidence and rapport when they can sit across and know that they've got somebody that knows what they're doing. It instills the confidence in them."

Davies adds that the plaintiff's deposition provides him with firsthand perspective as well. "You're seeing how well they do. You're seeing them tell their story. You're seeing if it's believable and credible." Comparatively, some companies just wait for the deposition reports from the attorneys. "But it's different when you've attended that deposition in person and seen it firsthand. So you can really walk away, I think, with a better understanding, a better analysis of the case."

In the radiology case, when the defense attorney sat down with the medical expert to review the 19 studies, and the expert didn't see any abnormality in the real film, that's when Davies and his team confidently recommended trial. Focus groups were conducted and confirmed the evaluation that there was a strong case. And that's where even more creativity was used to battle this hindsight bias.

"We knew that the plaintiffs had experts who would come in and offer criticisms during the trial. But we felt the real focus was this hindsight bias. So, in the opening statements the attorney explained this concept and put an image up on the screen of hundreds of coffee beans. And then in one of the beans in one little spot there's a face." When jurors first looked at the image they didn't see it. "Then our attorney pointed it out and said, 'See that right there?' And then throughout the trial he put it back up there. And it's the hindsight bias. Once you know that there's something that's there, your eye goes right to it and that's all you see."

“

When experts look at these cases, they've got that hindsight bias, even if they don't know the outcome.”



HAVING A **litigation
philosophy** helps
no one.

BUT HAVING A
people
philosophy helps physicians
get through the rough spots.

Kari Adams
CLAIMS MANAGER

Had her life unfolded differently at just one or two turns in the road, claims manager Kari Adams might have become a nurse. She has the desire to help others, and the diplomacy, critical thinking, and interpersonal skills to solve problems and get people through the rough places to better circumstances.

But Kari wouldn't trade in the last 20 years of handling medical negligence claims, sixteen of which have been at Physicians Insurance. "I derive a lot of satisfaction from the intellectual challenge and diversity of the job," says Adams. "I get to do

something fascinating and know that I am well supported by my coworkers, management, and the physicians we serve.”

And that support is well earned, with an average of 60 hours a year spent learning about evolving trends, legal nuances in various states, and new medical procedures—all this on top of the regular medical research she does to support her physician clients. “We constantly push ourselves to learn more about the medicine, whether it’s by spending more time with a physician or by getting additional training,” says Adams. “Sometimes you become an expert on a type of procedure because you handle that case for three years, but we’re also looking for evolving medical and legal trends.”



At the end of the day, I’m trying to understand what they need, what is best for them, and how to lessen the effects on them of litigation or the consequences of settlement.”

All of which refuels her for the job of championing physicians. One of her primary responsibilities is to help a physician understand the litigation world and make informed decisions whether to settle a claim out of court or go to trial.

“I was working with a physician and clinic in an atypical case with multiple plaintiffs,” recalls Adams. One plaintiff settled quickly, but the other four plaintiffs refused all reasonable settlement offers. “We believed that all four had lower-damage claims.”

Kari thinks a lot of other carriers might have overpaid the plaintiffs in an effort to resolve the case. But Physicians Insurance felt the cases had been fairly evaluated, so with the physician and clinic’s approval, they continued to defend it. “Some insurance companies want to settle cases like this because they’re looking at how much the defense costs,” she says. “I get the same question all the time from physicians who have had other insurers: ‘You’ll probably make me settle, right?’” Kari’s response: only if that is the right outcome for the physician. As Kari knows, physicians can face additional consequences such as state medical board investigations following a settlement, so economics is not weighted in determining case resolution.

Instead of giving up on this case, Physicians Insurance conducted a series of focus groups. “I don’t think any carrier would have done as many focus groups,” says Adams. “We used mock jurors’ attitudes and beliefs to prepare our trial strategies and that gave the defense confidence that we were doing the right thing. At the first trial we received a verdict for three of the plaintiffs consistent with our focus group awards, and one received no award.”

Unfortunately, that success was short-lived. The plaintiffs claimed jury misconduct and a new trial was granted. The case was tried for a second time with similar verdicts. This led to negotiated settlements within our evaluation range.

The case was active more than seven years. But no matter how long a case may take, it’s Adams’ desire to help people get through the rough places. “When

physicians are too hard on themselves, I pump them up,” she says. “At the end of the day, I’m trying to understand what they need, what is best for them, and how to lessen the effects on them of litigation or the consequences of settlement.”

She goes further: “What I don’t want to happen is for them to be so distracted by litigation that they can’t take care of the next patient or go home and be present with their families. Physicians Insurance is good at hiring people who value relationships. The company looks for employees with the qualities of compassion *and* effective claims management.”

From her experience with other carriers, there are different standards for how many claims a representative is supposed to handle. “Other carriers’ claim reps are kind of forced to just put out fires. You can’t really know the case very well, and you certainly don’t get to know your physicians very well either. You’ve got to have time to develop those relationships.”

Adams admits she believes in a more civilized society than we may have. But she will not—cannot—be dishonest or disparaging. She refuses to leave people worse off than she found them. “To help them, I need to work for a local company that makes its decisions locally. I need to work for a company that respects the ethical standard physicians hold themselves to, and that treats physicians and patients not as policy numbers but as real people.”

Who We Are



For more than 30 years, Physicians Insurance has proactively responded to changes in physician, hospital, and facility liability claims. Today, more than 6,600 physicians, hospitals, and clinics in the Northwest have entrusted their coverage to Physicians Insurance. Serving both the traditional liability and alternative risk financing needs of physicians and facilities, the company maintains its Excellent A- rating* from A.M. Best, the world's leading insurance-company rating agency.

Leading the industry in claims and risk management programs, Physicians Insurance offers the widest protection at a reasonable cost, with physician- and facility-centered programs that emphasize patient safety. Whether as part of an AHRQ demonstration project, partnerships with state universities, or advocating at the state level, Physicians Insurance is recognized as bringing innovation to the litigation process, and positively changing the nature of disclosure and resolution.

*A.M. Best's ratings are on a scale from A++ (superior) down to D (poor) with even lower ratings for companies under regulatory supervision or in liquidation.



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HOME OFFICE
1301 Second Avenue, Suite 2700
Seattle, WA 98101
(206) 343-7300 | (800) 962-1399
www.phyins.com