

Recovery & Resolution

A LEGAL NEWSLETTER FOR
HEALTH CARE PROFESSIONALS



Graham Lundberg & Peschel *Founded 1979*

The Insurance Fair Conduct Act

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The Insurance Fair Conduct Act (IFCA) took effect on December 6, 2007. It was passed by the Legislature, signed by the Governor and approved by the voters in 2007. It provides legal remedies for insurance policyholders, including the ability to seek triple damages and attorneys' fees in court if their claims are unreasonably denied by their insurance companies or their insurance company violates particular regulations governing unfair claims settlement practice.

For example, insurance companies must acknowledge their policyholders' letters and phone calls about their claims, must promptly investigate claims, must properly represent provisions in the policy and must promptly and fairly settle valid claims.

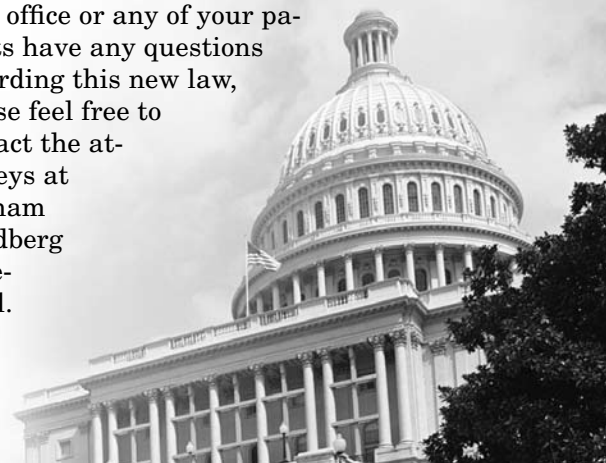
The law applies only to claims made by insured people *to their own* insurance companies. It does not apply to claims made by one person to someone else's insurance company. For example, if a person has been in a car accident, this law applies to a claim made by an insured under his or her own policy to his or her own insurance company. It does not apply to an injured person's claim against the at fault driver's insurance company.

The law does not apply to claims under health insurance policies. The *Patient's Bill of Rights* provides consumer protection for policyholders of health insurance coverage. The IFCA applies to claims under other kinds of policies, including policies that include medical costs as part of that coverage. For example, it does apply to claims under

car and homeowner's insurance policies, even though reimbursement for health care services may be covered by those policies.

Under the new law, policyholders who wish to sue their insurance company must mail written notice of the potential claim to the insurance company and to the Office of the Insurance Commissioner at least 20 days before the lawsuit is to be filed. The notices can be sent by regular mail, registered mail or certified mail with return receipt requested. This notice requirement allows the Insurance Company to take action and cure its unreasonable denial of claims to avoid being sued.

This new law is a huge win for Washington consumers and provides protection to many of your patients and our clients from being unreasonably denied their insurance coverage; the coverage they paid for through their premiums. If your office or any of your patients have any questions regarding this new law, please feel free to contact the attorneys at Graham Lundberg & Peschel.



Plan to Attend This Free Educational Seminar...

MEDICAL LIENS

See page 3

Getting Paid by Filing a Medical Lien

By Brian J. Peschel

It is important in almost all personal injury claims, that you as a health care provider have a system and procedure for filing medical liens. These medical liens, which were created by RCW 60.44, must be filed in the county where your services were provided. The filing fee, as of January 1, 2008, increased to \$42.00 for the first page and \$1.00 per page thereafter. It is important that you file the medical lien with the appropriate filing fee, or it will be rejected.

A medical lien can be filed when there is a third-party tortfeasor responsible for your patient's injuries. There are several things you need to keep in mind so that you and your office handle the procedure correctly to ensure you get paid. First, a lien must be filed before settlement occurs (RCW 60.44.020). Second, and more importantly, a lawsuit must be initiated within one year of the date of filing of your lien (RCW 60.44.060); and third, your lien must meet the statutory requirements to be valid.

By filing a medical lien prior to settlement, you establish the right to enforce your lien against the third-party insurance carrier as well as your patient if you are unpaid at the time of settlement. It is important, however, that this lien be filed or renewed before settlement of your patient's claim. If you are not getting communication from your patient or your patient's attorney as to the status of the third-party claim, it is important that you file or renew your lien so that you buy yourself another year to file a lawsuit. If you file a lien and the matter settles nine months later, you would only have three months to file a lawsuit be-

fore your lien expires. You cannot renew your lien after settlement. Therefore, it is very important for you to know when a settlement occurs. If you have knowledge that a settlement is about to happen, and your lien is over six months old, it would be wise to rush down and refile a lien so that you buy yourself more time to enforce the lien, if it becomes necessary.

A medical lien is only valid for 12 months from the date it is filed. If your treatment is continuing, you should have a calendaring system in your clinic to renew

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your lien on the eleventh month, making sure there is no gap between the filing of the liens. If treatment has concluded, and you are getting near the end of your medical lien, it is wise to refile your lien and follow up with the third-party insurance carrier and/or your patient or patient's attorney to determine whether a settlement has occurred or will be occurring shortly.

When you file a lien, it must meet the statutory requirements to be valid. If you file a lien indicating the tortfeasor's name is unknown and a lawsuit is filed against the third-party insurance company in an attempt to enforce the lien, the insurance company will have the opportunity to con-

duct discovery. This will include obtaining a copy of your complete patient file, including the intake information. If, in the intake information the tortfeasor's name is listed, the court will find that your lien is not valid and that your case should be dismissed because you knew the tortfeasor's name.

It is important to note that filing a medical lien is not complete protection. The statute states, "All said liens for services rendered to any one person as a result of any one accident or event shall not exceed 25% of the amount of an award, verdict, report, decision, decree, judgment or settlement." If the case settles for \$10,000.00, and you have a lien for an unpaid balance of \$2,500.00, you may be paid in full as long as there are no other liens. The insurance company will write you a check for your unpaid balance, or they might simply add your name to the settlement check. If you do not receive reimbursement of your entire balance after filing a statutory lien, the patient is always responsible for any balance that is unpaid by the tortfeasor's insurance company.

In summary, it is important to file medical liens on all third-party personal injury cases to assist you in receiving full payment of your bill. Another way to ensure that you receive full payment of your bill is to have your patient see an attorney whom you trust who will pay your outstanding bill directly out of the settlement proceeds when the case resolves. If you have any questions regarding filing a medical lien or how to enforce a medical lien, the attorneys at Graham Lundberg and Peschel are available to answer your questions.



Attorney and Paralegal Team Jim Gooding and Melissa Clune

Jim Gooding, an associate attorney, and Melissa Clune, his paralegal, are an integral team in the Seattle office of Graham Lundberg & Peschel.

A native of Ballard, Jim recently moved back to Seattle after practicing law in New York City for the last eight years. He brings with him a background of aggressive, hard-nosed trial lawyering that focuses on getting the best recovery possible for his clients, whether by settlement or verdict.

Jim originally began his practice with his father in Kent, where he learned how to handle every type of case from a grievous wrongful death to a neighborly dispute over a trespassing cat. On the East Coast he worked for one of the largest and oldest personal injury firms in the city, trying cases back to back, and taking over 20 verdicts in the last three years alone, with a total recovery for his clients during that time of over \$7 million dollars.

Jim is currently a WSTLA Eagle member, an American Association for Justice member, a member of Trial Lawyers Care (a group that contributed pro bono time to World Trade Center victims after September 11th), a Moot Court

Judge at AAJ's Student Trial Advocacy Competition, and was a member of Ethics Committee of the NY County Lawyers Association until 2007. He is also one of only a few attorneys in Seattle who are Board Certified as a Civil Trial Specialist by the National Board of Trial Advocacy, a distinction which requires verifiable trial results and skills, and a review process including testimonials by Judges, and attorneys who have opposed him at trial.

Melissa Clune joined the firm in 2006 as a Legal Assistant, and has been working as Jim's Paralegal since September 2007. Melissa, a native of Bainbridge Island, received her Bachelor of Science in Economics from Syracuse University in 2006, where she graduated with Distinction for completing original research in the field of political economics. Melissa has been an avid swimmer most of her life, and she still holds school records for Bainbridge High School and Syracuse University. She plans on attending law school in the fall of 2008. In her free time, Melissa enjoys playing golf, skiing, and playing with her Corgi puppy, Pumpkin.



MEDICAL LIENS

Graham Lundberg & Peschel welcomes you and your office staff to attend a **FREE** Educational Seminar.

Join us in a discussion regarding:

- **When to file a medical lien**
- **How to file a medical lien**
- **How to enforce your medical liens**

This is one seminar you cannot afford to miss! Seating is limited so register today!

Wednesday, **March 5th**
Renton-Holiday Inn
Tacoma-La Quinta

Thursday, **March 6th**
Puyallup-Best Western

Thursday, **March 13th**
Everett-Holiday Inn
Port Orchard-
 McCormick Woods Country Club

Thursday, **March 20th**
NEW LOCATION! Bellevue-
 Embassy Suites

Thursday, **March 27th**
NEW LOCATION! Northgate-
 Nexus Hotel

Thursday, **April 3rd**
NEW LOCATION! Mt. Vernon-
 Best Western Cottontree Inn

Plan to attend this informative seminar! Seminar registration form included in this issue.

- All Seminars: 12:30 – 2:00 pm
- Complimentary Lunch Will Be Served
- Doctors of Chiropractic, Massage Therapists, and Physical Therapists will earn 1.5 CE credits
- Registration is limited to four attendees per office



We are a team of legal professionals working together to advocate for the injured while being recognized in the community for providing the highest level of service.

Attorneys

John M. Graham
Scott F. Lundberg
Brian J. Peschel
Kenneth B. Golden
Cydney Campbell Webster
John D. Webber
Sean A. Ayres
Tara L. Eubanks
James F. Gooding
Carrie D. Umland
Heather D. Webb
Rodney G. Zerr

**Paralegals/
Legal Assistants**

Annie Adamson
Patricia Clanton
Melissa Clune
Patti Cryder
Neil Diemer
Judy Hanson Earle
Georgia Gullick
Aleena Hodges
Maya Jenkins
Lindsey Martin
Martha McDonald
Cynthia Sapp
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Grace Stephens

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Anne Bowers
Regina Bronson
Melissa Collins
Ana Maria Gameros
Teresa Garcia
Lynne Golden
Lindsey Johnson
Heather Kelly
Contessa McKenzie
Becky Moilanen
Ashley Pearson
Chandra Smith
Geoff Waring
Curtis Williams
Marie Wohlert

**CONVENIENTLY
LOCATED**

For the convenience of your personal injury patients, we offer several meeting locations throughout Puget Sound and Peninsula communities. Attorney consultations are encouraged and always free.

- Auburn** 253-931-1111
- Bellevue** 425-827-1111
- Burien** 206-241-1708
- Everett** 425-252-1111
- Federal Way** . . . 253-946-1111
- Gig Harbor** . . . 253-853-5005
- Lacey** 360-786-1717
- Lakewood** 253-274-1111
- Lynnwood** 425-775-1111
- Marysville** 360-658-1111
- Mount Vernon** . . 800-422-4610
- Port Orchard** . . 360-876-5005
- Puyallup** 253-845-1112
- Renton** 425-235-1111
- Seattle** 206-448-1992
- Silverdale** 360-876-5005
- Tacoma** 253-627-7701

Or Call Toll Free

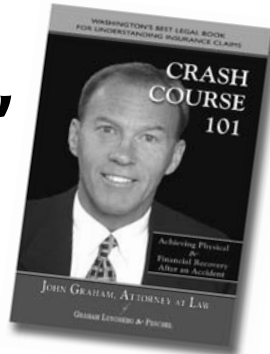
North Puget Sound area
including Island, Skagit, King,
Whatcom & Snohomish Counties
800-422-4610

South Puget Sound area
including Pierce, Kitsap, Mason
& Thurston Counties
800-273-5005

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