

Recovery & Resolution



Graham Lundberg & Peschel *Founded 1979*

A LEGAL NEWSLETTER FOR
HEALTH CARE PROFESSIONALS

Anatomy of a PI Case

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Need...
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Initial Phase

Investigation and Evidence Presentation

Soon after a motor vehicle accident, your patient should contact an attorney to discuss the legal aspect of his or her claim. The initial meeting is free and is a good opportunity for your patient to decide whether, in fact, an attorney is needed at all. The attorney can help your patient examine issues of fault, insurance resources and any other possible problems. The attorney can also help your patient address any of the red flags that may come up. See "Red Flags" list on page 3.

During this initial phase a good attorney will advise your patient whether the case is one that can probably be settled without representation or whether an attorney's skills and knowledge will be needed to address, for example, liability, preexisting or subsequent medical and/or damage issues. Then your patient has an early, cost-free evaluation of the case and is able to make an educated decision on whether to obtain representation or not.

If your patient does retain an attorney early on, that attorney can act to preserve evidence that might otherwise be lost, such as a totaled vehicle which would possibly be destroyed before the damage is documented, or a statement obtained from a witness who would likely forget important details over time. The attorney can also make sure that your patient opens a PIP claim so that medical bills are paid. The attorney can assure that

wage loss is being documented and that it, too, is being paid by the PIP carrier.

From the attorney's perspective, the initial phase begins when the client/attorney relationship is established. During this time the attorney's main objective and primary role is to ensure that lines of communication remain open between the patient, the patient's health-care providers, and the patient's insurance representatives so that the patient/client can get the best care necessary.

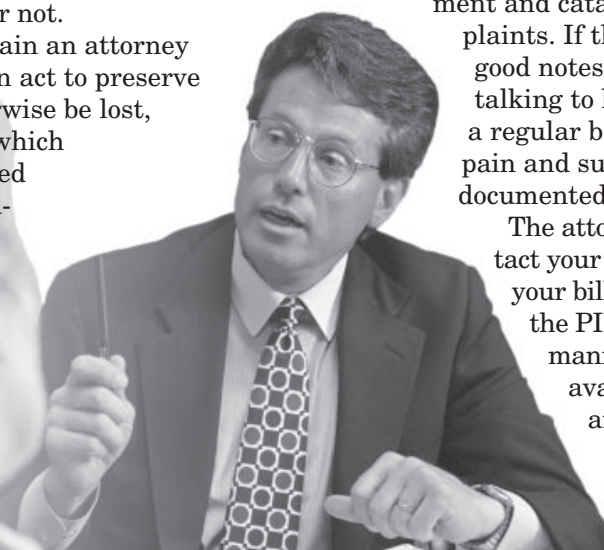
Interim Phase

Monitoring and Communicating

Once all appropriate claims are opened and preliminary information is documented, your patient can concentrate on healing. An attorney helps the patient do that by taking care of all the legal aspects of the claim. A good attorney or someone from his or her staff will contact your patient periodically to find out how treatment is going. This relieves the patient of the burden of having to try to document and catalog ongoing complaints. If the doctor is taking good notes and your patient is talking to his or her lawyer on a regular basis, your patient's pain and suffering will be well documented.

The attorney will also contact your office to make sure your bills are being paid by the PIP insurer in a timely manner and will be available if problems arise. The patient then does not have

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page 2*



CA'S, Office Managers and Office Assistants...

Plan to attend our Summer Seminar

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Anatomy of a PI Case, continued from page 1

to worry about outstanding bills for the medical treatment they require.

In the interim phase the attorney works closely with the attending physician. If necessary the attorney can consult with the doctor regarding referrals to specialists to address the patient's particular injuries. The attorney/doctor combination is a great advantage to your patient. Communication is the key during the interim phase. Working together, the attorney/doctor team offers the patient the best chance of full physical and financial recovery.

Review Phase Gathering Information

When the patient shows significant signs of improvement and the patient's treatment has come to a close or the patient is on maintenance care only, the review process begins. At this time, the attorney requests bills and records from each of the health-care providers. The attorney may also request narrative reports from key health-care providers, as the case requires. Also, all wage loss verification documentation is requested.

Sometimes when the records are received and reviewed they reveal unknown providers whose records and bills can then be requested. At other times the records may reveal that the patient requires more treatment or a referral to a specialist.

Additionally, a case may go into the review phase and then return to the interim phase if it becomes clear the patient's symptoms have not fully resolved or a referral to a specialist is indicated. In this case, the review process will begin again when the time is right.

The review phase ensures that all health-care providers are accounted for and paid accordingly, that all documentation necessary for settlement of the patient claim is available, and that the patient is getting the care necessary.

The Demand Phase Spelling It Out

After all pertinent information has been gathered, the attorney typically sends a settlement demand letter to the at-fault party's insurance company or, if the at-fault party was uninsured, to your patient's insurance company under their uninsured motorist (UIM) coverage. In this letter the attorney clearly and concisely presents your patient's case to the insurance company. The letter will include factual details of the accident, as well as the extent of the patient's injuries, subsequent treatment, need for future medical care, wage loss, and itemized expenses. The attorney will also use the health-care providers' notes and record of calls with the patient to point out lifestyle changes and the vocational impact of the injuries. Documentation in this phase is key to a successful outcome.

A good attorney will have consistently updated the insurance company on the status of your patient; however, the settlement demand is usually the insurance adjuster's first look at the big picture. When the adjuster reads the demand, all of the previously provided information comes together and the full value of your patient's claim is revealed. From there, negotiations commence.

Negotiation & Settlement Reaching An Understanding

Your patient's full and complete recovery, both legally and financially, is the main objective of the negotiation process. Anything less is unacceptable.

During this time, a good attorney will be in touch with your office to verify your patient's account balance and make sure it is accurate. Constant communication between the attorney and your office at this point will eliminate the possibility

that treatment will be missed or overlooked, or that part of your bill goes unpaid.

The attorney's initial goal is to settle your patient's case out of court for the maximum amount allowed by law. More often than not, the case settles close to the time when your patient's treatment ends. Your patient can then leave the accident and related claim behind them. The patient feels better, the bills are paid and the patient has been justly compensated.

Unfortunately, sometimes negotiations fail.

Litigation—The Last Resort

When negotiations break down and the third-party or UIM adjuster refuses to make a fair settlement offer, a lawsuit is filed. At that point the case is headed to arbitration or trial; however, at many junctures settlement is still possible. Once information has been gathered within the confines of litigation, most insurance companies will agree to, and many courts mandate, that the parties share the cost of hiring a neutral third party to help them resolve the case. This proceeding, which is called mediation, is relatively stress-free and allows your patient to have his or her story told. More often than not mediation results in settlement.

However, if settlement does not result from mediation, then an arbitration or jury trial is necessary. Only a small percentage of personal injury cases actually come before an arbitrator or a jury.

Red Flags

If you have a patient with any of these Red Flags, your patient may be in need of legal counsel.

- Uncertain liability
- Inconsistent treatment or gaps in treatment



Anatomy of a PI Case, *continued*

- Low or no property damage
- High passive treatment bills
- Absence of objective findings
- Pre-existing conditions
- Insufficient insurance coverage
- PIP benefits exhausted
- IME scheduled
- Out-of-state claims
- Combination on-the-job/MVA claims
- Multiple claims or parties
- Third-party insurance companies that use Colossus to evaluate claims

Time Line to Enforce Medical Liens

A lien for your health-care services can be filed pursuant to RCW 60.44 when there is a third-party tortfeasor responsible for your patient's injuries. The statute provides you protection if you have an outstanding balance. When the case resolves, the tortfeasor's insurance company should honor your lien and either pay your bill or list your name on the settlement check. There is a limitation, however, that all liens for services rendered from one accident shall not exceed 25% of the total settlement, award or verdict. Your individual payment would be calculated on a pro-rata share if there are other health-care providers that have filed liens.

Issues arise when the tortfeasor's insurance company does not pay you or does not list you on the check, and the patient does not pay you from the settlement proceeds. If you have a valid lien, you can file a lawsuit to enforce your lien. However, the lawsuit must be initiated in a timely manner or it will be barred by the statute of limitations. First, a lien must be filed before settlement occurs. RCW 60.44.020. Also, a lawsuit must be initiated within one year of the date of filing your lien. RCW 60.44.060. If settlement occurs close to a year after you have filed your lien, you will have a very short period of

time in which to file a lawsuit to enforce your lien.

Therefore, it is very important that you routinely check with the third-party adjuster or your patient regarding the status of his or her claim. You should call the third-party adjuster on a regular basis to inquire regarding the status of the case. In order to further protect yourself, it is important to send a copy of your lien to the insurance adjuster so they have a lien in their file. Although the statute does not require you to send a copy of your lien, most adjusters simply look in their file to determine whether there is a lien on the case when they send out the settlement check.

The plain reading of the statute states that you must file the lien before settlement, and you must then file a lawsuit to enforce your settlement within one year of filing your lien. If you have filed a new lien after the settlement occurs, there is a possibility that this lien will not be effective.

At this time, there is no case law on point regarding the statute of limitations. There will be a time, however, when we test this defense in court. However, in the meantime, take steps in advance to avoid having to litigate this issue. As always, we are available to answer any lien questions that you may have and provide you with guidance regarding this area of the law.

FREE SEMINARS

Graham Lundberg & Peschel welcomes Office Managers, Chiropractic Assistants, and Professional Assistants to attend a **FREE** Educational Seminar.

Join us for a complimentary Legal Educational Summer Seminar Regarding:

INSURANCE ISSUES

This is one seminar you cannot afford to miss! Sign up today.

**Wednesday, June 16
Port Orchard**

McCormick Woods
5515 McCormick Woods Blvd
Port Orchard, WA 98366

**Thursday, June 24
Seattle**

Seattle Center's Shaw Room

**Thursday, July 1
Tacoma**

La Quinta Inn & Conference Center
1425 East 27th Street,
Tacoma, WA 98421

Enclosed is an RSVP form. Seating is limited. Reply today!

- All Seminars: 12:00 – 3:00 pm
- Attendees receive a complimentary copy of Graham Lundberg & Peschel's Legal Guide To Insurance Issues
- Complimentary Lunch Will Be Served
- This Seminar is for Office Managers, Chiropractic Assistants and Professional Assistants





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.

Our Attorneys

John Graham
Scott F. Lundberg
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Cydny Campbell Webster
Sean A. Ayres
Angela L. DeWig
Kenneth Barry Dore
Tara L. Eubanks
John D. Webber
*John Williams
Rodney G. Zerr

*admitted in Ohio only

Our Paralegals

Rebecca Berdan
Patricia Clanton
Patti Cryder
Judy Hanson
Grace Stephens
Diana Tennison
Catherine Torkelson
Sandi Wandler
Heather Webb

Our Administration

Diane Daniel
Trish Driver
Jill Hanson
Ann Harris
Misty Helber
Thelma James
Heather Kelly
Martha McDonald
Becky Moilanen
Lucinda Pieczatkowski
Tom Reger
Paula Rhyne
Erin Roudybush

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**
- Lakewood 253-274- 1111**
- Lynnwood 425-775- 1111**
- Marysville 360-658- 1111**
- Olympia 360-786- 1717**
- Port Orchard 360-876- 5005**
- Puyallup 253-845- 1112**
- Renton 425-235- 1111**
- Seattle 206-448- 1992**
- Tacoma 253-627- 7701**

Or Call Toll Free

North Puget Sound area including King & Snohomish Counties
800-422-4610

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

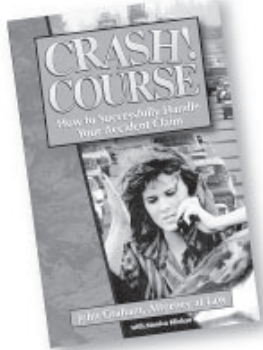
or visit us online...
www.glpattorneys.com

Are Your Patients Asking Questions About Their Recent Accident And You Don't Know Where To Turn For Help?

YOUR PATIENTS NEED...

Crash! Course

By John Graham
How to Successfully Handle Your Accident Claim



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