

Notice of Adoption and Filing of Examination Report

Take notice that the proposed report of the market conduct examination of the

Physicians Insurance Company of Wisconsin, Inc.
Madison Wisconsin 53717

dated July, 1997, and served upon the company on April 28, 1998, has been adopted as the final report, and has been placed on file as an official public record of this Office.

Dated at Madison, Wisconsin, this 10th day of June, 1998.

Randy Blumer
Commissioner of Insurance

PHYSICIANS INSURANCE COMPANY OF WISCONSIN, INC.
MADISON, WISCONSIN

As of July 1997

TABLE OF CONTENTS

- [I. INTRODUCTION](#)
 - [II. PURPOSE AND SCOPE](#)
 - [III. FINDINGS](#)
 - [IV. SUMMARY OF RECOMMENDATIONS](#)
 - [V. ACKNOWLEDGMENT](#)
-

July 21, 1997

Honorable Josephine W. Musser
Commissioner of Insurance
121 East Wilson Street
Madison, Wisconsin 53702

Commissioner:

In accordance with your instructions and authorization, a limited market conduct examination was made in July 1997 of:

PHYSICIANS INSURANCE COMPANY OF WISCONSIN, INC.
1002 Deming Way
Madison, Wisconsin 53744-5650

and the following report is respectfully submitted.

I. INTRODUCTION

Physicians Insurance Company of Wisconsin, Inc., is a stock fire and casualty insurer licensed to transact business in the following states: Illinois, Minnesota, Nebraska, Nevada, North Dakota, South Dakota, and Wisconsin.

Physicians Insurance Company of Wisconsin, Inc., was licensed in Wisconsin in 1986 and commenced business during 1986. As of December 31, 1996, the company's business on a nationwide and Wisconsin basis consisted of the following:

	Nationwide		Wisconsin Only	
Line of Business	Direct Premiums Written	Direct Losses Paid	Direct Premiums Written	Direct Losses Paid
All	\$23,670,817	\$8,340,819	\$23,168,711	\$8,340,508

The insurance business of the company consists mainly of medical malpractice liability insurance written in the state of Wisconsin. Approximately 88% of its medical malpractice business is written as claims-made coverage with the remainder written as occurrence coverage. Its medical malpractice policies are written to satisfy the medical malpractice coverage requirements imposed by statute. During 1996, the principal lines of insurance by Physicians Insurance Company of Wisconsin, Inc., were as follows:

Line	Direct Premiums Written	Direct Losses Incurred
Commercial Multi Peril (nonliability portion)	\$ 146,769	\$ 27,137
Commercial Multi Peril (liability portion)	70,667	13,066
Medical Malpractice	22,810,943	779,155
Other liability	140,333	137,861

The Office of the Commissioner of Insurance received 18 complaints in 1995 and 27 complaints in 1996. A complaint is defined as "a written communication received by the Commissioner's Office which indicates a dissatisfaction with an insurance company or agent." The following categorizes these complaints by type of coverage and complaint reason. There may be more than one type of coverage or reason for each complaint.

Our office received a total of one complaint against Physicians Insurance Company of Wisconsin, Inc., for the years 1993, 1994, 1995, 1996, and 1997 to date. The complaint was received in 1994. The Wisconsin Office of the Commissioner of Insurance defines a complaint as "a written communication received by the Commissioner's office which indicates dissatisfaction with an insurance company or agent." The complaint involved medical malpractice insurance and the complaint reason was denial of claim.

The company is a physician-owned company, is domiciled in Wisconsin, and holds an A-rating (excellent) with A. M. Best. The company's board of directors consists of five medical doctors and four individuals experienced in health care operations. The company uses six committees of the board of directors. The Underwriting Committee and the Claims

Committee relate directly to this market conduct examination and are discussed in more detail below.

Return to [Table of Contents](#)

II. PURPOSE AND SCOPE

The examination was conducted to determine whether the company's practices and procedures comply with Wisconsin insurance statutes and rules.

The examination included, but was not limited to, a review of the following company practices and procedures:

Business Line	Area
Medical malpractice	Underwriting
	Marketing and sales
	Claims
	Policy forms
	Rates

The examination's focus was on the period from January 1, 1996, through May 31, 1997, and included a review of any subsequent events deemed important by the examiner-in-charge when planning the examination.

Return to [Table of Contents](#)

III. FINDINGS

This report comments only on those areas of the company's operations where adverse findings were noted or unusual situations existed.

Underwriting

Physicians Insurance Company of Wisconsin, Inc., is the largest writer of medical malpractice insurance in Wisconsin. The Wisconsin market share in 1996 was 35%.

To be eligible for medical malpractice insurance, each physician applicant must meet the company's underwriting standards, be licensed by the state of Wisconsin, and be a member of the State Medical Society of Wisconsin (SMS). Underwriting standards are based on specialties, training and schooling, claims/loss history, and hospital privileges. If an applicant is denied medical malpractice insurance or nonrenewed, the company notifies the applicant/insured by letter which explains the process for reviewing that decision and provides the applicant/insured with an opportunity to meet with the Underwriting Committee. The Underwriting Committee consists of physician members of the board of the company. The purpose of the committee is to serve as a medical technical resource to the underwriting team, as well as serve as a review committee for any physician who has been denied coverage or otherwise disagrees with the underwriting team's decisions.

The examiners reviewed 202 medical malpractice underwriting files and the following

exceptions were noted:

The examiners found three files where the notices of nonrenewal stated the reason for nonrenewal as either "claim experience" or "underwriting reasons." Section 631.36 (6), Wis. Stat., provides that a nonrenewal notice shall state with reasonable precision the facts on which the insurer's decision is based. No such notice is effective unless it so states the facts. It is recommended that the company when nonrenewing a policy because of claim experience or underwriting reasons add to the nonrenewal reason more specific claim or underwriting detail to ensure compliance with s. 631.36 (6), Wis. Stat.

The examiners found that the company, subsequent to an underwriting review of an application, notifies the insured of acceptance via mailing an acceptance letter to the insured. Agents do not have binding authority. The acceptance letter states in part, "We are pleased to inform you that your application has been accepted for coverage, effective (variable date)." The date that is filled in is the requested effective date indicated on the application. This sentence appears to put coverage in force as of that date. The acceptance letter continues in part with the following statement: "This coverage is contingent upon receiving payment by the due date indicated on the invoice." It is the intent of the company to provide coverage as of the date indicated in the acceptance letter only if the insured pays the invoiced premium prior to the future due date so stated. If paid, coverage is in effect as of the date indicated in the acceptance letter. If not paid by the due date, another invoice and a follow-up letter are mailed to the insured which provides the insured another chance to pay the premium by another future due date. It also states the company will be unable to provide coverage if not paid by the revised future due date. The language in the acceptance letter which states "We are pleased to inform you that your application has been accepted for coverage, effective (variable date)." is misleading as it appears to bind coverage. The intent of the company is not to bind. It is recommended that the company amend the acceptance letter wording to more clearly state when and under what conditions coverage is effective in order not to misrepresent coverage and not to violate s. 628.34 (1), Wis. Stat.

The examiners found that the company's policy renewal process is to provide a renewal premium invoice to the insured at least 10 days prior to the date of expiration and states in part, "Please pay at least the quarterly amount by the due date or obtain premium financing to ensure no interruption in coverage." If the invoiced renewal premium is not paid, the company terminates the coverage as of the date of renewal. Section 631.36 (4) (a), Wis. Stat., provides that a policyholder has a right to renewal unless at least 60 days prior to the date of expiration provided in the policy a notice of intention not to renew the policy beyond the agreed expiration date is mailed or delivered to the policyholder, or with respect to failure timely to pay a renewal premium a notice is given, nor more than 75 days nor less than 10 days prior to the due date of the premium, which states clearly the effect of nonpayment of premium by the due date. The company's invoice does not clearly state the effect of nonpayment of premium by the due date and, therefore, does not effectively cancel the policy as of the renewal date if the premium is not paid by the due date. It is recommended that the company amend its renewal premium invoice to state clearly the effect of nonpayment of premium by the due date in order to comply with s. 631.36 (4) (a), Wis. Stat.

Marketing and Sales

The examiners reviewed the company's sales materials for agents and advertisements.

The agent sales material reviewed was an Agent Presentation Binder and Background for Presentation Binder, and various publications that provide trend information, risk management topics, and key aspects of risk management practice to policyholders. The examiners reviewed the company's advertisements utilized in several state publications.

All policies are written through an agency system consisting of agents with the State Medical Society Insurance Services (SMSISI). SMSISI is a subsidiary of the State Medical Society and is physician owned. There are approximately 73 listed agents with the company and 12 SMSISI offices throughout Wisconsin. The company writes medical malpractice insurance for 36% of all Wisconsin licensed, practicing physicians and 49% of all SMS member physicians. The company requires policyholders to be SMS members.

The examiners noted no adverse findings.

Claims

When a claim or incident is reported to the company, it is discussed with the Director of Claims and a litigation specialist is assigned to investigate. The litigation specialists handle the claim to conclusion if no legal action is involved. Litigation specialists have varying claim settlement authority, presently from zero to \$75,000. Defense counsel is assigned if legal action is pending. The litigation specialists work with counsel to develop a litigation plan and meets with counsel throughout.

Claim staff participates in weekly round table discussions regarding the status of pending problematic claims. Such problematic claims may be presented to the Claims Committee for review. The Claims Committee is made up of six physicians of varying specialties and meets quarterly. One committee member is a policyholder as well as a stockholder. Three other committee members are also stockholders. Other claims reviewed by the Claims Committee are claims requiring settlement exceeding \$100,000 authority and litigated claims with an exposure of over \$200,000. The Claims Committee decides if a claim should be defended and authorizes settlement authority.

The examiners wrote exceptions on three claims to review whether the company requires the insured's consent to settle a claim. Section 655.245 (1), Wis. Stat., provides that no policy of health care liability insurance may permit a health care provider to reject any settlement agreed upon between the claimant and the insurer. As a professional courtesy, the company involves the insured policyholder in the defense of a claim because of the claim reporting ramifications to the Medical Examining Board (MEB) and the National Practitioners Data Bank (NPDB). The company states they explain to the insured policyholder why a case cannot be defended and must be settled in their best interest. However, the company explained that they do settle cases that they evaluate as indefensible regardless of the insured's position and in compliance with s. 655.245 (1), Wis. Stat. The three claims reviewed in the exceptions were settled.

The examiners reviewed 56 medical malpractice claim files and no adverse findings were noted.

Policy Forms

The company utilizes independent forms.

Section 631.20 (1), Wis. Stat., requires policy forms to be approved by the Commissioner

before use. All forms presently in use by the company were verified as either approved or deemed approved by the Office of the Commissioner of Insurance. Medical malpractice forms (those forms used to provide medical malpractice insurance for health care providers subject to the Wisconsin Patients Compensation Fund) are not deemed approved but subject to review for prior approval. In 1996, the company's medical malpractice insurance premium written was 98% of the total premium written. The examiners found no instances of the company using unapproved forms.

The examiners found that form 0007 09-96-PW, Professional Liability Coverage Binder, states "If payment is not received by its due date, this binder will be null and void." A binder takes the place of the policy until the policy is issued and is subject to the policy's cancellation conditions. Section 631.36 (6) (b), Wis. Stat., provides that an insurer must provide at least a 10-day notice when canceling for nonpayment of premium. It is recommended that the company amend the binder language in form 0007 09-96-PW to provide at least 10 days' notice to the policyholder when canceling a binder for nonpayment of premium in order to comply with s. 631.36 (2) (b), Wis. Stat.

Rates

The examination included a review of the rating practices utilized by the company in determining the medical malpractice premiums charged to policyholders. The company uses the expertise of an outside actuarial firm to help review the adequacy of its rates. In charging its medical malpractice customers, the company has established a set of base premiums for groups of similar medical professionals. To the base premium it applies a credit or debit to adjust for specific loss experience and type of exposure. The adjustments are effected by loss history, management, employees, quality assurance, medical records, facilities, and billing procedures.

The examiners reviewed a sample of 49 premiums and noted no adverse findings in the application of the base premium or the adjustments.

Return to [Table of Contents](#)

IV. SUMMARY OF RECOMMENDATIONS

Underwriting

1. It is recommended that the company when nonrenewing a policy because of claims experience or underwriting reasons add to the nonrenewal reason more specific claim or underwriting detail to ensure compliance with s. 631.36 (6), Wis. Stat.
2. It is recommended that the company amend the acceptance letter wording to more clearly state when and under what conditions coverage is effective in order not to misrepresent coverage and not to violate s. 628.34 (1), Wis. Stat.
3. It is recommended that the company amend its renewal premium invoice to state clearly the effect of nonpayment by the due date in order to comply with s. 631.36 (4) (a), Wis. Stat.

Policy Forms

4. It is recommended that the company amend the binder language in form 0007 09-96-PW to provide at least 10 days' notice to the policyholder when canceling a binder for

nonpayment of premium in order to comply with s. 631.36 (2) (b), Wis. Stat.

Return to [Table of Contents](#)

V. ACKNOWLEDGMENT

The cooperation and courtesy extended to the examiners is hereby acknowledged. In addition to the undersigned, Jo LeDuc, Norm Wirtz, and Laura Iliff of the Office of the Commissioner participated in the examination and preparation of this report.

Respectfully submitted,

Jane Kovacik, CPCU
Examiner-in-Charge

Return to [Table of Contents](#)

Updated: April 9, 1999