

**OPEN SESSION MINUTES  
OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
BOARD OF DIRECTORS**

**October 19, 2018  
Sisters, Oregon**

The regular meeting of the Board of Directors and the PPMAC meeting was called to order at approximately 9:00 a.m. at FivePine Resort in Sisters, Oregon by Chair, Dennis Black. Present in addition to Mr. Black were Directors Tim Martinez, Saville Easley, Rob Raschio, Molly Jo Mullen, Tom Newhouse, Holly Mitchell, Megan Livermore, and Susan Marmaduke. Also present during open session was BOG liaison, John Bachofner. In addition, PLF staff members Carol Bernick, Barbara Fishleder, Madeleine Campbell, Betty Lou Morrow, Cindy Hill, and Jeff Crawford attended the meeting.

These meetings were noticed and conducted in compliance with the Oregon Public Meetings Law, ORS 192.610, et seq.

**1. OPEN SESSION**

**(A) Determination of Quorum and Compliance with Public Meetings Notice Statute Requirements:**

Mr. Black verified a quorum and confirmed that the public meetings notices were done as required by statute.

**(B) Open Session Minutes (08/24/18):**

*Holly Mitchell moved and Tim Martinez seconded that the open session minutes of August 24, 2018 be approved as written. Motion passed unanimously 9-0.*

**(C) Committee Minutes: 09/10/18 (Investments):**

There were no comments regarding the minutes and no action was required.

**2. PLF REPORT**

**(A) General Report:**

Ms. Bernick reported that she participated on an ABA panel on mandatory malpractice insurance in Las Vegas. She will also be going to California to speak at a subcommittee meeting on the same topic. Mr. Bachofner noted that he is on the task force for mandatory malpractice in Washington. Nevada has presented a proposal to the Supreme Court to have mandatory malpractice. California is looking into it as well.

Ms. Bernick reported that the BOG approved a reduction in the PLF assessment.

Carol Bernick did not attend NABRICO this year, but Betty Lou Morrow and a few others did. Ms. Morrow reported that the discussion of cyber insurance was a significant focus of the conference. Rob Raschio reported that he was the only board member of any organization that attended the conference. There was a lot of discussion on risk management and risk management models.

Ms. Bernick reported that the PLF is slated to host NABRICO in 2022.

**(B) Outside Activities on Behalf of the PLF:**

See materials for Ms. Bernick's report.

**(C) Annual Dinner: Alcohol Contributions:**

Ms. Bernick invited the Board members and senior staff to contribute \$50 towards having hosted wine for the annual dinner.

**(D) Election of Officers (2019):**

Ms. Bernick noted that nominations are as follows: Rob Raschio and Saville Easley as Co-Chairs, Molly Jo Mullen as Vice Chair, and Tom Newhouse as Secretary-Treasurer.

Rob Raschio announced that he no longer wishes to serve as Co-Chair.

*Rob Raschio moved and Tim Martinez seconded that Saville Easley be appointed as Chair, Molly Jo Mullen be appointed as Vice Chair, and Tom Newhouse be appointed as Secretary-Treasurer for 2019. Motion passed unanimously 9-0.*

**(E) Committee Preferences/Assignments (2019) and Proposed Revision to PLF Policy 2.300:**

Ms. Bernick referred the Board to the memo in the materials regarding committee preferences for 2019 and asked that they be given to Cindy Hill or Carol as soon as possible. She added that we created a new committee for Loss Prevention, which requires a policy change to PLF Policy 2.300.

*Rob Raschio moved and Dennis Black seconded that the proposed revision to PLF Policy 2.300 (adding a Loss Prevention Committee) be approved. Motion passed unanimously 9-0.*

**(F) BOD Announcements:**

Carol Bernick announced that the BOG approved the appointments of Gina Johnnie and Patrick Hocking as new PLF board members, effective January 1, 2019.

**3. CLAIMS REPORT**

**(A) General Claims Report (Open Session):**

Madeleine Campbell reported that the claim count is at 880 extrapolated for the year, higher than expected.

Ms. Campbell reported that the claims department is at full-staffing right now, which is a happy coincidence due to the rise in claims. We continue to receive excellent evaluations for both Claims Attorneys and Defense Panel Members.

The Claims Committee met today at 8:30 and Ms. Bernick reported about a claim against the PLF and Carol Bernick.

**4. FINANCIAL REPORTS**

**(A)i. August 31, 2018 Financial Statements:**

Ms. Morrow reported that the number of claims are up and the return on investments is down. At August 31, 2018 the portfolio had a 2.29% return. Investment returns (including low duration) is 1.8%. Ms. Morrow will be doing an analysis of claim severity before the next meeting to determine if severity is increasing.

**(A)ii. Projections to December 31, 2018:**

Ms. Morrow reported that she expects a higher number of full-pay covered parties than originally projected (budgeted 6695; projects 6862). She expects smaller investment returns than budgeted (budgeted 4.5%; projects 3.4%).

See materials for additional information.

**(A)iii. September 30, 2018 RVK Monthly Performance Report:**

Ms. Morrow referred the Board to the materials.

**(B) Senate Bill 1566:**

Ms. Morrow referred the Board to the memo. She reported that government institutions with the greatest liability would be given priority on the matching funds available. She said there is a good chance the funds will be exhausted before the PLF can apply for them.

**5. PLF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE COMMITTEE REPORT**

**(A) 3<sup>rd</sup> Quarter 2018 Report and Loss Prevention Update:**

Ms. Fishleder reported that Lee Wachocki has started and is doing a great job. The Tech Fair was far more successful than was expected. Rachel Edwards worked hard at organizing the event.

*Learning the Ropes* is coming up (November 14-16). 100 people have signed up so far.

The Supreme Court approved the MCLE requirement about mandatory education on substance abuse and mental health conditions. The majority of people who have commented on this requirement have been very positive.

Ms. Fishleder noted that she is very grateful for the Board's support of their programs.

Barbara Fishleder reported that PMA office visits are up. Megan Livermore asked if the office visits are due to people reaching out to the PLF or is the PLF contacting those individuals? Ms. Fishleder responded that the majority reach out to the PLF.

**6. COMMITTEE REPORTS AND ASSIGNMENTS**

**(A) Claims:**

Dennis Black reported that the committee met prior to the board meeting. High indemnity claims were down from last quarter, as were the high expense claims. Ms. Morrow noted that whatever severity is, if overall claims are increasing, the costs are increasing.

Ms. Morrow stated that we do an actuarial analysis every six months, but she will report in December with a preliminary analysis of our severity trends.

**(B) Coverage:**

Holly Mitchell stated that there is nothing to report at this time.

**(C) Excess Program:**

Jeff Crawford reported on the following 4 items:

1. With regard to reinsurance treaties, the rates are not going up or changing. Ms. Bernick noted that this is remarkable since our claims development at the excess level has not been good this last year. Rates are staying flat because the reinsurers are confident in our current underwriting model and management team. Maintaining these relationships is critical to keeping rates low.

Jeff Crawford noted that we have worked with the reinsurers for many years in refining our excess program. They feel our pricing is more appropriate based on risks than it used to be. This has helped with the rates.

2. We are introducing online payments for excess coverage, including credit cards. We have decided to pass through the credit card expenses for firms who pay via credit card. Ms. Morrow noted that firms can also pay via electronic check, which costs \$0.25 per payment.

3. The renewal applications are going out next week.

4. Mr. Crawford referred the Board to the ABA article on Cyber Liability and noted that it mentions Emilee Preble and our leadership in this area of coverage.

**(D) Finance:**

Tom Newhouse stated that there is nothing to report.

**(E) Investments:**

Tim Martinez reported that Betty Lou Morrow included a flash report in the materials. There is nothing further to report at this time.

Dennis Black noted that the U.S. stocks made the most money this year and that seems to be the trend. Mr. Black recommends not rebalancing.

**(F) Long Range Planning/Communications:**

Molly Jo Mullen stated that there is nothing to report at this time.

**(G) Special Issues:**

Susan Marmaduke stated that there is nothing to report.

**7. LIAISONS' REPORT (BOG):**

John Bachofner gave the BOG report.

Mr. Bachofner reported on the following issues:

1. The BOG approved the recommendations of Gina Johnnie and Patrick Hocking to the PLF Board of Directors.

2. The BOG approved the MCLE for mental health, effective January 1, 2019. A free CLE is being offered to allow people to comply with the requirement. Very positive comments have been received.

3. The BOG approved the agenda for the HOD meeting on November 2, 2018.
4. The BOG approved a revised editorial board for the Oregon State Bar Bulletin, as a result of recent issues. They also approved an editorial advisory committee.
5. The BOG approved PLF changes to the coverage plans, policies, the budget, and a reduction in the assessment.
6. The BOG approved an increase to the reserve target for the legal services program.
7. The BOG approved the anti-harassment policy for OSB-sponsored events.
8. The BOG made various appointments to boards and committees.
9. The BOG authorized prosecution among unlawful practice of law.
10. The BOG was updated in detail about a new lawsuit filed against the OSB.

The draft Open Session BOG minutes of September 21, 2018 are in the materials.

## **8. CHAIR REPORT**

### **(A) Updates:**

Dennis Black reported that the CEO evaluation is in process. Mr. Black requested that all board members send him their evaluations.

Saville Easley and Megan Livermore volunteered to be a part of the evaluation committee as required by the Bylaws.

## **9. EXECUTIVE SESSION**

Dennis Black called the meeting into executive session pursuant to ORS 192.660(2)(f) and (h) to discuss claim matters and other executive session issues. See separate executive session minutes.

The meeting was called back into open session to approve the executive session minutes and other executive session issues.

**10. OPEN SESSION**

**(A) Approval of Closed Session Minutes in Open Session: August 24, 2018, September 6, 2018 and September 26, 2018:**

*Tim Martinez moved and Rob Raschio seconded that the executive session minutes of August 24, 2018, September 6, 2018, and September 26, 2018 be approved as written. Motion passed unanimously 8-0 (1 absent).*

**(B) Approval of 2019 Coverage Plans:**

*Holly Mitchell moved and Molly Jo Mullen seconded that all three plans be approved as amended (during executive session discussion, the word "harm" was removed from the damages section). Motion passed unanimously 8-0 (1 absent).*

**11. INFORMATION ITEMS**

**(A) Miscellaneous Articles/Other: California Malpractice Coverage Mandate Would Be No Easy Leap.**

Carol Bernick referred the Board to the above article in the materials.

**12. ADJOURNMENT**

The meetings adjourned at approximately 11:45 a.m.

**These minutes were approved by the Board of Directors at its December 7, 2018 board meeting.**