



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

**October 18, 2019  
Bend, Oregon**

The regular meeting of the Board of Directors and the PPMAC meeting was called to order at approximately 9:00 a.m. at Riverhouse on the Deschutes in Bend, Oregon by Chair, Saville Easley. Present in addition to Ms. Easley were Directors Rob Raschio, Molly Jo Mullen, Tom Newhouse, Holly Mitchell, Megan Livermore, Susan Marmaduke (via telephone), Gina Johnnie and Patrick Hocking. BOG liaison John Bachofner and OSB CEO Helen Hirschbiel attended open session. In addition, PLF staff members Carol Bernick, Barbara Fishleder, Madeleine Campbell, Betty Lou Morrow, Jeff Crawford, Cindy Hill, and Bryan Welch attended.

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

**1. OPEN SESSION**

**(A)i. Draft Open Session Minutes (08/22/19):**

*Megan Livermore moved and Holly Mitchell seconded that the open session minutes of August 22, 2019 be approved as written. Motion passed unanimously 9-0.*

**(A)ii. Draft Open Session Minutes (10/01/19):**

*Patrick Hocking moved and Molly Jo Mullen seconded that the open session minutes of October 1, 2019 be approved as written. Motion passed unanimously 9-0.*

**(B) Committee Minutes 08/01/19 (Finance/Investments Committee):**

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

**2. PLF REPORT**

**(A) General Report:**

Monthly Claims Meetings

Carol Bernick reminded the Board that at the last meeting, there was discussion about having regular monthly claim conference calls. Most people want Wednesday mornings. Ms. Bernick picked the second Wednesday of each month starting at 8:30 a.m., beginning in November.

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

See materials for Ms. Bernick's report.

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

Carol Bernick requested contributions for the alcohol fund for the annual dinner.

**(D) Election of Officers (2020): Action Required**

Carol Bernick referred the Board to the memo on page 18 regarding election of officers for 2020. The recommendations are Molly Jo Mullen (Chair), Megan Livermore (Vice Chair), and Tom Newhouse (Secretary/Treasurer).

*Gina Johnnie moved and Tom Newhouse seconded that the proposed names be approved. Motion passed unanimously 9-0.*

**(E) Committee Preferences/Assignments (2020):**

Carol Bernick distributed copies of the memo on page 20 of the materials and asked that board members return their preferences to Carol today.

**(F) BOD Announcements (2020):**

Ms. Bernick reported that the Board of Governors appointed Oren Haker, Steve Hill, and Michael Batlan to the PLF Board effective January 1, 2020.

**(G) 2020 Board Meeting Schedule:**

Carol Bernick reported that she polled board members regarding moving to five board meetings per year. She received mixed feedback. Ms. Bernick will let the new CEO decide this. She noted that she would like to do the budget later in the year but the BOG's regular meeting schedules makes that difficult. Helen Hirschbiel noted it could be added as part of a special BOG meeting. We will keep this in mind going forward.

**(H) OSB Paraprofessional Licensing Program:**

Ms. Bernick reported that the BOG appointed an Implementation Committee to begin the process of licensing paraprofessionals (LLLTs). The BOG wants them to have legal malpractice coverage. The likelihood is that there will be a recommendation that the PLF be the provider. The Implementation Committee will include a member of PLF staff appointed to the committee.

A discussion ensued about concerns about coverage and liability, especially with the idea that paralegals will be charged with providing emotional support.

Helen Hirschbiel explained that the Implementation Committee will discuss how to implement and that there will be multiple opportunities for feedback from all stakeholders, including the PLF. Legislative changes will be required as well and developing an educational component (working with community colleges). Ms. Hirschbiel expects the process will take at least two years.

**(I) Rote Matter:**

Carol Bernick referred the Board to the materials on page 27. Mr. Rote filed a bar complaint against Carol Bernick. He has sued several people and organizations, including the PLF and Ms. Bernick. Ms. Bernick received a letter from OSB Discipline stating that the complaint was dismissed.

**3. CLAIMS REPORT**

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

Madeleine Campbell reported that there has been a slight reduction in claims. We are currently projecting 903 claims for the year. We are hopeful this trend will continue.

Ms. Campbell reported that the claims department is keeping up with claims and we continue to receive positive evaluations despite how busy everyone is.

We have had a barrage of very large claims recently and are hopeful it is an anomaly.

Carol Bernick reported that Madeleine Campbell did a great job in getting insurance to pay for the expense in some of the claims in which the PLF is a party.

**4. FINANCIAL REPORTS**

**(A)i. August 31, 2019 Draft Financial Statements:**

Betty Lou Morrow referred the Board to page 32 of the materials.

Ms. Morrow reported that we currently have \$2.6 million in year surplus. Last year, we had \$1.4-\$1.5 million at the same time and ended with a negative surplus at the end of the year.

**(A)ii. Projections to December 31, 2019:**

Ms. Morrow referred the Board to the spreadsheet on page 43 with numbers and a narrative regarding assumptions.

1. The number of claims projections is currently at 903 through the end of the year. We originally budgeted 890 claims and are now projecting 914 claims. Ms. Morrow looked at monthly trends and it averages 75 claims/month.
2. Total cost of claims. We budgeted \$17,350,000 and the actuarial recommendation is \$19,373,000.
3. Return on investment. Ms. Morrow budgeted 4.5%. Year to date as of September 30, we are at 10.4%. Ms. Morrow projects 7.5% at end of year. We lost a lot of money in the final quarter of our portfolio last year.
4. We budgeted for 6875 full-pay attorneys and the actual is 6848. Year to date, we are behind by 27 attorneys.
5. Assessment income. We budgeted \$22,687,000. Actual is \$22,600,000, or a difference of \$87,000.
6. Claims liability. We budgeted \$150,000 increase; actual is a \$425,000 increase to claims liabilities.
7. Operations expense. We budgeted \$9,168,937 and actual is \$8,789,739. Our operations budget is pretty well fixed. There was a question about why our benefits were so high. It is due to adjustments to PERS.
8. Net Position Loss. We budgeted a loss of \$2,638,203. Actual loss is projected to be \$1,244,602.

Patrick Hocking noted that these projections are based on a conservative set of assumptions but we are still \$1.4 million better than budget. He also noted that if the projections were accurate, our net position would be about \$15 million at year end.

Rob Raschio reminded the Board that we always knew we wanted to pay down the net position but once we got down to the correct level, we might have to increase the assessment. Ms. Bernick noted that the PLF operated for 40 years never at or above the net position goal.

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

### **(A) Loss Prevention Update:**

Ms. Fishleder introduced Bryan Welch, OAAP attorney counselor. She commented that Mr. Welch gave a great presentation yesterday to a very large group in Bend. Ms. Fishleder noted that a number of people came to her after the CLE and thanked us for doing this work and gave examples of how these types of presentations have changed their conversations among themselves. Ms. Bernick commented that she very much appreciates Bryan's presentation. Loss Prevention has worked hard to tie their CLE presentations to PLF board meetings. Ms. Bernick encourages board members to attend the reception and the CLE whenever possible.

Barbara Fishleder referred the Board to the data in her materials, beginning on page 46 and discussed the information, noting that the information represents only a small part of the work that OAAP does. The data analyses access to individual counseling by geographic region and does not include access to workshops, CLEs,

or groups. She noted that there is a reasonable correlation between where Oregon lawyers are located and the amount of OAAP access for individual counseling in each region. She also noted the similarity of access in areas of the state outside the Tri-County + Columbia region.

Ms. Fishleder cautioned everyone to keep in mind that the information is based on the best data available – but it is not always an exact match for what we want to analyze.

Ms. Bernick noted there is no question about the quality of services provided by the loss prevention department. Ms. Bernick hopes that loss prevention will continue to gather data to help evaluate the effectiveness of the services. Ms. Fishleder stated that we receive information about loss prevention program effectiveness in other ways, including evaluations distributed after workshops, CLEs, groups, and office visits; comments received from bar members who are participating in the programs; and comments received from bar members in general. She cautioned against drawing conclusions from data.

Betty Lou Morrow commented that data provides structured information to help with informed decision-making and feels it is an essential part of decision-making.

Helen Hierschbiel commented that when she and the Bar President meet with lawyers throughout the state, lawyers ask if the services are actually preventing loss.

Saville Easley asked if we anticipate doing more subjective or objective surveys. Ms. Fishleder noted that we are in the process of formulating some survey questions which would solicit feedback, while also protecting the lawyer's sense of privacy and confidentiality.

Patrick Hocking stated that the information that was presented was important information and suggested we look into assigning a dollar value to the avoided claims and comparing that to the cost of the loss prevention services.

Ms. Fishleder noted that as we examine the cost of loss prevention services per attorney, it is also important to bear in mind that the services provided by PLF are less expensive than if the lawyer purchased similar services, such as CLEs, counseling sessions, and/or office systems experts, elsewhere.

Carol Bernick thanked Barbara for the work and noted it was significant.

Ms. Fishleder reported that since the last board meeting in August to now, the OAAP has done 18 presentations. There have been changes in Form A and Form B resignations that will have a positive financial impact for the PLF.

Ms. Fishleder noted that she is not attending the December board meeting because she will be out of state. She thanked the exiting board members for their hard work and time on the board. She also thanked Carol Bernick for her insights and ideas and hard work for the PLF.

Bryan Welch reported that the OAAP has been very busy with the added mandatory MHSU credit. They are focusing on improving services and accessibility to those in the tri-county and outside the tri-county areas. They

are working on balancing everything. A new group for women of color has been started. They are working on getting the word out about lawyer wellness. Many of them attended the LAP conference a few weeks ago. It was very helpful hearing what they are doing to get the word out.

Helen Hirschbiel commented on the MHSU credit. It is a good example and has been a very positive experience of partnership between both organizations. This is a great area where the OSB and PLF has similar interests. She loves what they have done and looks forward to continuing it. John Bachofner added that he has universally heard nothing but positive comments about the credit. Mr. Welch noted that the CLE requirement has allowed them to be more direct regarding the topic and people have responded well.

## **6. COMMITTEE REPORTS AND ASSIGNMENTS**

### **(A) Claims:**

Rob Raschio stated that there is nothing to report.

### **(B) Coverage:**

Holly Mitchell stated that there is nothing to report.

### **(C) Excess Program: Renewal Negotiations, Rate Increase, Firms with Securities Risk:**

Carol Bernick discussed the meeting with reinsurers in September in London. She reported they continue to feel very positive about our program. We received the renewal contract and all reinsurers except one wanted to be a part of our program at the same level. Our performance at the excess layer has not been great this year. We are happy to have the support of our reinsurers. We continue to have A and A+ reinsurers.

Ms. Morrow reported that claims development in excess for 2019 to-date is about \$6.6 million and we have about \$4.8 million in premium.

Patrick Hocking questioned if the many long-term relationships with some of the reinsurers has been profitable for them over the years. Ms. Morrow said yes.

Carol Bernick stated that we also have a great relationship with our broker Aon. She reported that based on our claim development, they recommended a 10% increase across the board for 2020.

Emilee Preble has drafted a notice that will go to the current book, advising of the renewal. The first paragraph will include information about the 10% increase in rates. We are also calling the larger firms, letting them know what to expect.

Jeff Crawford noted that we are trying to anticipate the increase. We are also tightening up our underwriting. We are trying to focus in on where the claims are coming from and trying to identify where the problems are. There are commercial alternatives.

Mr. Crawford reported that applications are going out next week.

**(D) Finance/Investments:**

Tom Newhouse stated that there is nothing to discuss.

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

Saville Easley reported that we are losing our CEO and Susan Marmaduke is the Chair of the BOD CEO Search Committee. We have received several applications and will begin the process of evaluating those applications at today's BOD CEO Search Committee meeting immediately following the regular board meeting.

**(F) Loss Prevention:**

Megan Livermore stated that there is nothing to report.

**(G) Special Issues:**

Susan Marmaduke reported that the CEO Search would be discussed in executive session.

**7. LIAISONS' REPORT (BOG): Draft September 27, 2019 BOG Open Session Minutes**

John Bachofner gave the report.

Mr. Bachofner reported that the BOG met on September 27 and discussed the following:

1. Approved HOD agenda for the November 1, 2019 HOD meeting;
2. Voted to oppose HOD Delegate Resolution No. 3 relating to relocation of the Oregon State Bar to Salem.
3. Region 1 BOG position was filled by Kyra Rohner of Baker City;
4. Amendments to OSB Bylaw 15.400 were approved by the BOG;
5. Approved the Policy & Governance Committee motion that the BOG convene an Implementation Committee for the establishment of a paraprofessional licensing program in Oregon.
6. Approved CSF increase from \$15 to \$50;
7. Approved the PLF assessment and budget for 2020; and
8. Various other approvals.

**8. CHAIR REPORT**

Ms. Easley stated that there was nothing to report.

**9. INFORMATION ITEMS**

**(A) Miscellaneous Articles/Other:**

There were no informational items to discuss.

**10. EXECUTIVE SESSION**

See separate executive session agenda. Executive Session materials require a password.

Saville Easley 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.

**11. OPEN SESSION**

**(A) Approval of Executive Session Minutes in Open Session: August 22, 2019, September 11, 2019, and October 10, 2019:**

*Gina Johnnie moved and Patrick Hocking seconded that the executive session minutes of August 22, 2019 be approved as written. Motion passed unanimously 9-0.*

*Rob Raschio moved and Gina Johnnie seconded that the executive session minutes of September 11, 2019 be approved as written. Motion passed unanimously 9-0.*

*Rob Raschio moved and Gina Johnnie seconded that the executive session minutes of October 10, 2019 be approved as written. Motion passed unanimously 9-0.*

**12. UNFINISHED AND NEW BUSINESS**

There was no unfinished or new business to discuss.

**13. ADJOURNMENT**

The meetings adjourned at approximately 12:04 p.m.

**These minutes were approved by the PLF Board of Directors at its December 6, 2019 board meeting.**