



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

**December 6, 2019  
Tigard, Oregon**

The regular meeting of the Board of Directors and the PPMAC meeting was called to order at approximately 9:05 a.m. at The Professional Liability Fund in Tigard, Oregon by Chair, Saville Easley. Present in addition to Ms. Easley were Directors Rob Raschio, Molly Jo Mullen, Tom Newhouse, Megan Livermore, Susan Marmaduke, and Gina Johnnie. PLF new CEO, Nena Cook and new PLF board members, Oren Haker, Steve Hill, and Michael Batlan attended open session, as did BOG liaison John Bachofner and OSB CEO Helen Hierschbiel. In addition, PLF staff members Carol Bernick, Madeleine Campbell, Betty Lou Morrow, Jeff Crawford, Cindy Hill, Emilee Preble, Sarah Troutt, Heather Bowman, Karen Neri, Rachel Edwards, John Berge, and Holli Houston attended all or part of the meeting.

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

Saville Easley introduced Nena Cook, incoming CEO. Ms. Cook said she is looking forward to working here.

Ms. Easley introduced the three new board members, Michael Batlan, Steve Hill, and Oren Haker. Mr. Batlan is a retired bankruptcy trustee and is married to former OSB President, Kathy Evans. Mr. Hill is from Pendleton and has 26 years of experience in both defense and plaintiffs tort and injury law. Mr. Hill is involved in youth sports coaching. Mr. Haker is a lawyer at Stoel Rives (since 2012). He practices bankruptcy. Before coming to Oregon, Mr. Haker practiced in New York City at two large firms.

**1. OPEN SESSION**

**(A)i. Draft Open Session Minutes (10/18/19):**

*Rob Raschio moved and Megan Livermore seconded that the open session minutes of October 18, 2019 be approved as written. Motion passed unanimously 7-0 (2 absent).*

**(A)ii. Draft Open Session Minutes (11/02/19):**

*Rob Raschio moved and Tom Newhouse seconded that the open session minutes of November 2, 2019 be approved as written. Motion passed unanimously 7-0 (2 absent).*

**(B) Committee Minutes 10/18/19 (Finance/Investments Committee):**

There were no comments and no action was required.

**2. PLF REPORT**

**(A) General Report:**

Carol Bernick reminded and informed new board members that the PLF Bylaws prohibit the PLF from reimbursing for alcohol. At the annual dinner, historically, we have asked current board members to make a donation of \$50 each to fund wine tableside at dinner. During regular board meetings, you are on your own for alcohol.

Ms. Bernick reported that PMA, Lee Wachocki, has left the PLF. We are in the process of evaluating the timing for hiring a new PMA.

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

See materials for Ms. Bernick's report.

**(C) Committee Assignments (2020):**

Carol Bernick referred the Board to the materials on page 15. She noted that the Long Range Planning/Communications Committee and the Special Issues Committee do not typically meet, so only one person was assigned to those committees. If anyone has questions or concerns about the committee assignments, feel free to talk to Nena Cook or Molly Jo Mullen.

**(D) Proposed Amendment to PLF Bylaws, Article 3:**

Ms. Bernick referred the Board to page 16 of the materials. She is proposing a change to Article 3 of the Bylaws to allow the BOD, at its discretion, to appoint an outgoing CEO for a one-year term on the Board. Ms. Bernick found it very helpful to have Ira Zarov, former CEO, on the Board for a year in order to have privileged and confidential communications.

Ms. Bernick excused herself during the BOD discussion.

Saville Easley is supportive of it. Nena also welcomes the change. Rob Raschio noted that he came on the Board at the same time and felt it was good to have Ira available. He supports the idea, as long as Nena Cook is on board with it. Nena Cook appreciates the suggestion. The five years Carol was here give a wealth of experience. Ms. Cook is not worried about having a shadow CEO and welcomes Carol in this role.

Molly Jo Mullen agrees with it and it has a limit of one year, so she feels with the added layer of confidentiality, it is appropriate and is in favor of it.

*Susan Marmaduke moved and Molly Jo Mullen seconded that the proposed amendment to PLF Bylaws, Article 3 be approved as written. Motion passed unanimously 7-0 (2 absent).*

**3. CLAIMS REPORT**

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

Madeleine Campbell thanked Carol Bernick for being a wonderful, engaged, and hard-working CEO. She also thanked Susan Marmaduke and the Board for the way they conducted the CEO search. She welcomed new CEO, Nena Cook, and the new Board members. Molly Jo Mullen thanked Susan Marmaduke for stepping up to the plate and completely organizing the CEO search. She deserves the gratitude of all. Mr. Raschio thanked Ms. Campbell for coming in and keeping things calm after the departure of long-time former Director of Claims, Bruce Schafer.

Ms. Campbell reported that the Claims Department continues to be busy and she expects more high severity claims coming in the next year. Presently, claims are on track for about 911 claims for the year. We continue to receive excellent feedback regarding claims attorneys and defense counsel.

**4. FINANCIAL REPORTS**

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

Betty Lou Morrow referred the Board to page 19 of the materials.

Ms. Morrow reported that at the October board meeting, we projected we would have a deficit of almost \$1 million. However, in November the PLF investment portfolio earned almost \$1 million. She expects the market will hold through the end of December and is now projecting approximately a \$2 million surplus at the end of year. Our current net position is \$19 million with \$15.5 million being the net position goal.

**(A)ii. PLF Database Software:**

Ms. Morrow referred to two memos in the materials (page 28 and page 31). Page 28 pertains to her recommendation to examine replacing our existing database software. We currently have a Universe system. We have had this system since 1978. Universe is integral to everything we do at the PLF on a daily basis and we can therefore anticipate that making changes will be challenging. Ms. Morrow recommended using an outside consultant to assist in the identification of needs across the organization. Rob Raschio does not feel we need a consultant after reading the memos. Ms. Morrow explained the purpose is to give staff an objective third party to work with through the initial stages of the process. Tom Newhouse recommended the deliverable from the consultant would be a document that articulates what needs are/not currently being met by Universe.

Helen Hirschbiel said that the OSB is now completing the installation of a new enterprise system with association management software. The process began in 2013. She said you cannot underestimate how complex it is and how important it is to engage your stakeholders early and often in the transition process. OSB engaged a consultant to help identify their needs and functionality requirements. Megan Livermore asked if

Betty Lou could give an estimate of the cost of the software. Ms. Morrow explained that because every installation is so different, it is a challenge to provide even a ballpark number. However, Ms. Morrow stated the Board should not be surprised by a price tag of \$500,000 to \$1,000,000.

Ms. Morrow explained that one of the two vendors recommended to her by NABRICO and Canadian provinces has an 18-24 month waiting period to begin conversion and installation work.

Megan Livermore stated that she believes that when undertaking such a large project, it is most helpful to have support across the organization. Ms. Bernick agreed and stated she has confidence that Ms. Morrow's work to date in identifying potential consultants and vendors is predicated solely on the best interest of the organization, as outlined in her memo.

Molly Jo Mullen asked if it is a crisis and can the PLF wait potentially three years before new software goes live. Ms. Morrow said we are not currently in crisis, but for the reasons provided in her memo, the organizational needs document work should begin as soon as possible. John Bachofner noted that support is the key. Madeleine Campbell asked what Jason Ouellette's background is. Ms. Morrow stated that his database background is mainly in Universe but that he would be the obvious person to provide in-house support with a new system. Rob Raschio asked what action Ms. Morrow is looking for and if there is anything to authorize for the expenditure for the consultant. Ms. Morrow stated that there is nothing she needs at this time. The discussion is for informational purposes only. There is a meeting scheduled for January 2020 with senior management to determine how that group would like to move forward with a needs assessment. Ms. Morrow will provide an update at the next board meeting (February 2020).

In other news, Ms. Morrow reported that an audit engagement letter has been signed and the audit firm Kern Thompson will be onsite in March of 2020 to conduct their annual audit.

**(A)iii. PERS Side Account Deposit:**

Ms. Morrow referred the Board to the memo regarding PERS. She summarized the memo and reported that the PLF application for making an additional payment and receiving matching funds from the state has been waitlisted. Megan Livermore questioned when we have to pay the PERS liability that is outstanding. Ms. Morrow stated that the PERS liability is in a continuous cycle of increasing as staff continues employment at the PLF, then decreases through monthly contributions made by the PLF to pay down the current amount of the liability.

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

**(A) 3<sup>rd</sup> Quarter 2019 Report and Loss Prevention Update:**

Karen Neri gave an OAAP report and stated that she is a relatively new member of the OAAP (coming up on two years). The OAAP has provided many CLE presentations, a wide variety of support groups, and lots of individual counseling in 2019. One of the newer support groups is the REBAR group, a program set up through the OSB for students re-taking the Bar Exam. The OAAP provides support to this program and to the students in it, including offering a support group specifically designed for the program. Ms. Neri shared that she recently

also facilitated a support group for women of color. She noted that the response to the group was excellent and that the women were very appreciative. Ms. Neri discussed other upcoming groups. She also gave thanks to the PMAs for their work and assistance.

Carol Bernick reported that the OAAP has been very busy this year with the added MHSU credit. There has been a lot of feedback from people who hated being forced into the CLE, but have said they got a lot out of it. Helen Hirschbiel stated that it is great to hear positive feedback and she feels the BOG should hear about the positive feedback.

Rob Raschio stated that he feels the Board still needs to continue to work on diversity issues.

Rachel Edwards gave the PMA report. She noted that many attorneys make practice changes at this time of year, including decisions related to closing their offices. In 2020, the PMAs will offer a series of CLEs in February and will be taking a CLE around the state from March through June, in order to visit communities that are not served as much as the metro area. Rob Raschio would recommend including Baker and La Grande.

The new Oregon State Bar *Bulletin* editor plans a technology issue for 2020 and has done a great job of including information about the PLF into the publication.

The PMAs may also produce some additional audio or video podcasts this year.

**6. COMMITTEE REPORTS AND ASSIGNMENTS**

**(A) Claims:**

Rob Raschio stated that there is nothing to report.

**(B) Coverage:**

Holly Mitchell was not at the meeting. Madeleine Campbell said there was nothing to report.

**(C) Excess Program: Renewal Update:**

Emilee Preble provided an update on the Excess renewal. It is proceeding along well and in line with prior years in terms of the pace of incoming applications (renewal and new firm). There is a 10% across the board increase in premium for 2020. So far, that increase has been well communicated to firms and there has been minimal negative feedback. We will not know until the renewal is done how those rate increases have impacted the renewal rate; but we will know that close to the end of January 2020.

**(D) Finance/Investments: RVK Presentation: September 30, 2019 Quarterly Investment Performance Report:**

Tom Newhouse turned this portion of the meeting over to Betty Lou Morrow who, in turn, turned it over to Mark Higgins of RVK. RVK is the PLF's investment consultants.

Mark Higgins referred the Board to the 2019 Performance Report, beginning on page 4 of the materials. He first gave a general market update. The outlook coming off a strong year is to exercise caution, but it is possible that things could continue to go well. There are potential shocks for 2020; inversion of the yield curve could indicate a recession, the U.S. election, and trade wars with China continue to give uncertainty to the market. The PLF will continue with its current allocation which is reflective of long term return goals.

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

Saville Easley stated that there is nothing to report.

**(F) Loss Prevention:**

Megan Livermore stated that there is nothing to report.

**(G) Special Issues:**

Susan Marmaduke stated that there is nothing to report.

**7. LIAISONS' REPORT (BOG): November 23, 2019 BOG Agenda**

John Bachofner gave the report.

Mr. Bachofner reported that the BOG met on November 23 and updated the BOD on the agenda items.

Helen Hirschbiel commented on the important relationship between the PLF Board and the BOG. The other component is a good relationship between the CEOs of the PLF and OSB. Ms. Hirschbiel gave a big thank you to Carol Bernick and said she is looking forward to working with Nena Cook.

**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 at 11:00 a.m., 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 at 11:50 a.m. to approve the executive session minutes and other executive session issues.

**11. OPEN SESSION**

**(A) Approval of Executive Session Minutes in Open Session: October 18, 2019 and November 13, 2019:**

*Rob Raschio moved and Megan Livermore seconded that the executive session minutes of October 18, 2019 be approved as written. Motion passed unanimously 7-0 (2 absent).*

*Rob Raschio moved and Gina Johnnie seconded that the executive session minutes of November 13, 2019 be approved as written. Motion passed unanimously 7-0 (2 absent).*

**12. UNFINISHED AND NEW BUSINESS**

There was no unfinished or new business to discuss.

**13. ADJOURNMENT**

The meetings adjourned at approximately 11:51 a.m.

**These minutes were approved by the PLF Board of Directors at its February 21, 2020 board meeting in Tigard.**