



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

**April 16, 2021
Zoom Videoconference**

Chair Megan Livermore called the regular meeting of the Board of Directors to order at approximately 9:00 a.m. via Zoom videoconference. Present in addition to Ms. Livermore were Directors Gina Johnnie, Michael Batlan, Oren Haker, Steve Hill, Harshi Waters, and Chris Karlin. In addition, PLF staff members Carol Bernick (interim CEO), Madeleine Campbell, Betty Lou Morrow, Matt Borrillo, Emilee Preble, Cindy Hill, Douglas Querin, Sheila Blackford, Tanya Hanson, Heather Bowman, Brad Tompkins, Amy Hoven, Maureen DeFrank, Wendy Margolis, and Kyra Hazilla attended all or part of the meeting. Casey Kretz and Cameron Scott of ISI gave a presentation in open session of their database software.

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

1. CHAIR REPORT (Ms. Livermore)

(A) Draft Open Session Minutes (02/05/21):

Ms. Johnnie moved and Mr. Karlin seconded that the Draft minutes of February 5, 2021 be approved as written. Motion passed 7-0 (2 absent).

(B) Committee Meeting Minutes:

- i. February 3, 2021 CEO Search Committee Minutes
- ii. February 23, 2021 CEO Search Committee Minutes

There was no discussion and no action was required.

(C) Congratulations to Board Member:

Ms. Livermore announced the birth of Akeem Williams' baby boy and reported that Mr. Williams is on parental leave.

2. CEO REPORT (Ms. Bernick)

(A) General Report:

Ms. Bernick reported that the PLF has contracted with an outside HR consultant, HR Annie. HR Annie gave a presentation to all staff and plan to do a gap analysis, looking at our policies and practices. The primary role of HR Annie will be to help the PLF with tracking OFLA and FMLA leave, making sure we have the right systems in place, and making sure Carolyn Shearer has the support she needs to be able to take care of those things. The organization is also a resource to managers and staff as essentially an HR person. If there are concerns or issues from employees, they can be taken to HR Annie and they would function the same as an HR Manager within the PLF.

The PLF formed a Return to Office Committee in anticipation that the Governor's restrictions will be lessened in the coming weeks. A survey was sent to staff. The Committee has been helpful and will put together a draft plan. The goal is the safety of our employees. We are taking it slowly and conservatively to be sure we are doing it right.

Ms. Livermore asked what staff are saying and doing about vaccinations and asked if the PLF is going to require it in order to return to the office. Ms. Bernick said that in the draft policy, it says in order to return to the office, staff has to be vaccinated until we are at a place where we can return to normal operations (when the CDC says people can return without masks, etc.). Ms. Bernick said there are exceptions (i.e., medical and religious reasons).

Ms. Bernick reported that there is a record number of suspensions for failure to file exemptions or pay the assessment on time. We believe it is due in large part to the change in the OSB fee structure. Many attorneys went inactive and did not file an exemption.

(B) Proposed Bylaws and Policy Changes:

Ms. Bernick reported that she had intended to take care of this project before leaving at the end of 2019, but was unable to get it done. The managers looked at the proposed changes and made additional changes, and then COVID happened. The goal is to get a clean set of bylaws for the new CEO. Many of the changes have to do with cleaning up antiquated language and bringing clarity to some areas. Chapter 6 (Risk Management/Loss Prevention) does not include any revisions, as the Director of this department is on sabbatical and ongoing discussions are taking place, so there was a decision to leave that section alone until the new CEO is here.

Mr. Karlin discussed the Investment Guidelines listed in the bylaws and felt we should have separate investment policies. Ms. Bernick said the first six pages of the Bylaws and Policy Manual are bylaws. The rest of it is our Policy Manual.

Ms. Johnnie moved and Mr. Karlin seconded that the proposed changes be approved. Motion passed unanimously 7-0 (2 absent).

3. GENERAL COUNSEL REPORT (Ms. Campbell):

(A) Ninth Circuit Court Ruling on OSB Litigation (Crowe):

Ms. Campbell reported that the Ninth Circuit Court of Appeals issued its decision and reversed the district court decision. Ms. Campbell reported the plaintiffs will seek Supreme Court review.

(B) Update on Insurance Code Issue:

Ms. Campbell reported that the bill passed out of committee with a “do pass” recommendation.

4. CLAIMS REPORT (Mr. Borrillo)

(A) General Claims Report (Open Session):

Mr. Borrillo reported that we continue to receive positive evaluations. We are on track for a mid-700 claim count for the year.

Mr. Borrillo introduced our new claims attorney, Wendy Margolis. Ms. Margolis came from the firm of Cosgrave, Vergeer, and Kester and did appellate work for years. We are pleased to welcome her.

We will have our claims audit this year. We are speaking with a claims attorney from North Carolina who performed the audit in the past. We are hoping to have him return. We also usually have a former defense panel member who is familiar with our process and we are exploring that option.

Mr. Borrillo reported that the annual Claims Committee has been moved to June 11 of this year (from 8:00 to 9:00 a.m.). It will take place just before the regular board meeting. All board members and claims attorneys are invited to attend.

Mr. Haker exited the meeting from 10:00 to 11:00 a.m.

5. **FINANCIAL REPORTS (Ms. Morrow)**

(A) February 28, 2021 Draft Financial Statements:

Ms. Morrow reported that she has not closed 2020 yet, as she is waiting for the final PERS entry. Retained earnings opening balance for 2019/2020 are identical because of this.

We are seeing the claim count numbers inch up, but still off the budgeted numbers of 846.

The portfolio is sluggish. At the end of February, we had a 1.5% return. It has not improved. We expect more stability in the markets next year. The budgeted 4.25% return remains reasonable and within our reach.

With regard to the Excess Program, there is a \$100,000 surplus.

(B) December 31, 2020 Financial Statements:

Ms. Morrow referred the board to the materials on page 127. Our year-end statements have been given to the auditors. Ms. Morrow feels she can say with near certainty that there will not be any adjustments. This would mean seven years running of no adjustments. Ms. Morrow again thanked the staff in her department for their commitment to the PLF. We currently have about \$7.4 million in surplus in 2020. Once we get PERS data, she expects it will go down to \$6.2 million. The auditors will attend the June meeting.

(C) Investment Update:

- i. Rebalance

Ms. Morrow updated the Board on the rebalance of the portfolio.

- ii. Social Impact Investing

RVK provided a document regarding social investing (see page 129 of the materials). Ms. Morrow discussed this topic with Mr. Karlin. He also has provided materials. There will be more discussion at the next Finance/Investments Committee meeting to determine what, if any, recommendations we want to make. Recommendations will be given to the Board at its next meeting.

(D) Modeling for 2022 Assessment Level:

Ms. Morrow created a modeling template regarding the assessment when it was reduced a few years ago. She will use that template again. This will be discussed at the next Finance/Investments Committee meeting.

Ms. Livermore said she appreciates Ms. Morrow's hard work and her team and the work of the Finance/Investments Committee.

Ms. Livermore thanked Ms. Hanson as well, with all of her work on the annual report. Ms. Hanson said she is open to suggestions from the Board for improvements.

(E) Database Software Evaluation:

i. ISI Presentation (Mr. Kretz and Mr. Scott)

Ms. Morrow introduced Mr. Kretz (President and CEO) and Mr. Scott (Director of Sales/Implementation) from ISI. Mr. Scott has spent an enormous amount of time working with the PLF, including subsequent meetings with PLF staff.

Mr. Kretz gave a company overview. ISI was founded in 1997 and began with custom software solutions. It is privately owned and has six active partners (Mr. Scott is one of them).

Mr. Scott said that ISI would be the PLF core system in partnership with the PLF. He reviewed the process and said there would be in-depth sessions working with the team, making sure we are on budget, etc.

Ms. Livermore asked how long customized software lasts, once implemented. Mr. Scott said their model grows and changes with us. The general time frame is that companies look at updating about every five to seven years. Mr. Scott said that in five to seven years when the PLF is ready to look at the market again, he expects their software will still be the right fit for the PLF.

Mr. Karlin questioned changes in management (i.e., the PLF trains people to understand how the software works today. Would ISI work with the PLF as it changes in the future and help with that migration?). Mr. Scott said it would. They work closely with the team to adjust those processes.

Mr. Karlin asked if ISI has a framework on how we can see a return on investment for this project. Mr. Scott said there is not a spreadsheet for return on investment. They do document efficiencies, but it is more challenging to do a clear line ROI. Mr. Karlin said he understands the variables, but wonders if there is some way for a largely non-financial board to understand the benefits vs. costs. That would be helpful as part of the proposal. Mr. Scott expects to be able to put that into the proposal (what defines success, etc.).

Ms. Campbell said with regard to contract execution, it looks like licensing fees begin upon the signing of the agreement, but she imagines that would not start until they begin work on the project. Mr. Scott confirmed that is how it works.

Mr. Kretz and Mr. Scott left the meeting. Ms. Campbell said that the ISI contract is very long and very technical and because of that, we engaged outside counsel to review it. They have given good advice on the terms of the agreement. Ms. Campbell said that ISI wants us to sign the contract before they begin the work. For us, based on the percentage of premium, it would cost around \$280,000 per year. If we are not satisfied with their Statement of Work, we would still pay the time and materials charges already paid but would not pay

licensing fees following the initial period. We have commonalities with many other bar-related insurance companies, but differences in operations. The proposal is for a five-year period, so we would have access for a period of five years, but they own the system, so the next five years we would be wondering what the next agreement would be and how much it would cost. We are having language inserted that would allow us out of the agreement. Ms. Livermore asked if that also allows language for automatic renewal with a cap. Ms. Campbell said we could do that. We do not expect to change much and as long as it works well, we would want to keep it.

Ms. Livermore feels they did a great job and they are very knowledgeable.

Ms. Bernick said that Ms. Morrow has spent an extraordinary amount of time on this, along with Ms. Preble and Mr. Ouellette. Ms. Bernick wants the board to understand that normally, as an interim CEO, she would not recommend signing a contract like this. But, the challenge for a new CEO coming in is that it would add more time before making a decision (new CEO getting on board with the new software), which pushes the project out even further and it could be another two or three years before launching it. Ms. Bernick wants the Board's comfort level in moving forward. The contract still has to be negotiated. Ms. Bernick asked the Board if they have questions or concerns about moving forward with this before the new CEO is on board. She said even if the new CEO is on board, they would not be sufficiently informed and if the new CEO were someone from outside the organization, they would not know enough about the organization to make that decision. Ms. Morrow said that to support what Ms. Bernick is saying, ISI has told her that at the same level in participation trying to determine if software will work, they have four new projects they have just taken on.

Ms. Livermore said she wants to hear from other board members, but said she has been on the Board and knows Ms. Morrow has done a lot of work trying to find a good fit for us. She appreciates that Ms. Morrow invited members of ISI to present at our meeting. Ms. Livermore feels confident in the team that has pulled this together, including Ms. Morrow's work on this and she supports moving forward as long as the management team is happy with it. They have her support.

Mr. Karlin said he is new on the board, but would agree and trusts them making good decisions. He supports moving forward with the project. Mr. Karlin also noted that he serves on a board for a for-profit company with similar revenue size and they did a major change last year and it has gone famously. They did a great job with change management and things are going very well. He said we do not have to fear the worst, but can plan for the best.

Mr. Borrillo said that watching from a user perspective, he is impressed with ISI. He talked with them about the nuances of a mandatory program and they have not been shaken by any of our concerns. He is very impressed with their ability to grasp what we want from a user perspective and being realistic about it. He is excited about an integrated system.

Ms. Bernick said that one thing we are still working on is a platform that would be a plug-in to ISI that would better support the work of our loss prevention team. It would still be a fully integrated system, but would lay on top of or plug into the ISI system.

Ms. Livermore said she feels they have Board support to move forward.

6. RISK MANAGEMENT SERVICES (Ms. Blackford, Mr. Querin and Ms. Hanson)

(A) 2021 First Quarter Practice Management Assistance Report:

Ms. Blackford highlighted what is going on with the Practice Management Attorneys and referred the board to the written materials. The CLEs have been well attended by Oregon attorneys and it is phenomenal how much things have opened up due to online CLEs.

Ms. Blackford said that Ms. Shields has arranged eight shredding events throughout the year in Burns, John Day, Baker City, Milton-Freewater, La Grande, Pendleton, Medford, and Tigard to assist Oregon lawyers with file destruction. E-blasts will be sent with instructions.

Ms. Livermore said she is happy to hear that the shredding events are returning and happy to hear of the great attendance online for CLEs.

(B) 2021 First Quarter Oregon Attorney Assistance Program (OAAP) Report:

Mr. Querin appreciates the opportunity to report in Mr. Crawford's absence. He referred the Board to the statistics in the materials and asked Ms. Hazilla to interject if she has anything to add or change.

Mr. Querin said he would be less than candid if he did not say that it has been a challenging year and last few months. The OAAP has seen an increase in the number of lawyers seeking services. The good news is that lawyers are becoming more and more willing to reach out. The OAAP is currently working with three attorney counselors, which is a challenge. He is proud of the work everyone has been doing. They are a great group of people to work with. The OAAP continues to facilitate recovery and support groups, as in the past. They have three recovery groups every week and attendance has increased 20 to 25% (possibly as much as 30%) for some of the meetings. Lawyers from other parts of the state are attending and there is an increase in the tri-county area as well. They are going to try to add another recovery meeting via Zoom when the pandemic is over. This is in addition to in-person meetings. They have been well received and give access to people from around the state who were unable to attend in the past.

Mr. Querin announced the 33rd Annual Lawyers in Recovery Celebration, coming up on Thursday, May 13 and it will be held virtually via Zoom. It is attended by lawyers, judges, and law students. He is looking forward to it.

Mr. Querin reported that over the last couple of months, the Attorney Counselors have met with the Practice Management Attorneys to address and improve communication and mutually improve their understanding of how different parts of the organization are working. They plan to meet regularly to collaborate in accomplishing that. The OAAP continues to meet regularly with Mr. Crawford and/or Ms. Bernick to discuss any areas of concern. Attorney Counselors are filing weekly reports with statistical information and a description of the

various activities for the preceding week. The team then meets on a regular basis. Adjustments to the confidential case management system to improve clinical recordkeeping and to improve recordkeeping as it relates to statistics continues to unfold and is going well. They had to reduce presentations statewide, mainly because of reduced staff and workload demands. There were six presentations in the last 1-1/2 months at law schools and law associations in Bend and Medford, all via Zoom. They were well attended.

We are presently advertising for an Attorney Counselor position.

Ms. Livermore appreciates their report. These have been difficult times and they have dealt with difficult situations. She appreciates serving the lawyers of this state and people are taking advantage of what they have available. She appreciates the groups dealing with vicarious trauma and burnout. She thanked the OAAP for the work they do and that they are collaborating with other parts of the PLF.

(C) Oregon Statutory Time Limitations Handbook (Red Book) Update (Ms. Hanson):

Ms. Hanson introduced herself. She is a PLF Communications Coordinator and Staff Attorney as well as the PLF project manager of the 2022 update of the Red Book.

Ms. Hanson reported that she has worked with Linda Kruschke in the legal publications department of the Oregon State Bar in lining up authors and editors to update the Red Book. The next step is to send authors the OSB's Oregon Legislation Highlights (2018, 2019, and 2020 legislative sessions) that pertain to their specific areas of law. The substantive changes are mostly enacted in odd years, but some occur in even years as well.

Ms. Hanson expressed her appreciation for Ms. Kruschke and her department.

Ms. Livermore asked if there is a timeline for publishing. Ms. Hanson said the goal is the second quarter of 2022. It is usually an 18-month project from inception to posting on the website.

7. EXCESS PROGRAM (Ms. Preble)

(A) 2021 Excess Enrollment Report:

Ms. Preble referred the Board to the materials and said this report is similar to the report that is given to the Board of Governors each year. Ms. Preble feels this is a solid renewal during the pandemic and is pleased with where we landed. We will continue to grow the excess book this year and are working with the reinsurers. We plan to schedule a meeting in August and there will be more to report later.

8. COMMITTEE REPORTS AND ASSIGNMENTS

(A) CEO Search Committee Update (Ms. Johnnie/Mr. Haker/Mr. Williams/Ms. Graham/Ms. Hazilla/Ms. Mesirow):

Ms. Livermore excused herself from this portion of the meeting, as she is applying for the position. Prior to exiting the meeting, she asked if there is any old or new business to discuss. If not, there is no reason to return to open session following the CEO Search Committee update. Ms. Livermore will return in executive session.

Ms. Johnnie reported that there has been a lot of work behind the scenes. The position has been posted with a deadline to apply of April 30. Time has been set aside for interviews at the committee level for May 5, 6 and 7. Mr. Williams is on paternity leave due to the birth of his baby boy and Mr. Hill has agreed to fill his position on the committee. The committee hopes to have a recommendation at the next board meeting.

9. LIAISONS' REPORT (BOG):

There was no report from the OSB or BOG, as they were unavailable due to BOG meetings. See materials (beginning on page 352) for the February 12, 2021 BOG minutes.

10. EXECUTIVE SESSION

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

Ms. Livermore called the meeting into executive session at approximately 1:09 p.m., pursuant to ORS 192.660(2)(f) and (h) to discuss claim matters and other executive session issues. See separate executive session minutes.

11. OPEN SESSION

(A) Approval of Executive Session Minutes in Open Session:

- i. 2020-12-04 Executive Session Minutes.
- ii. 2020-12-04 Executive Session Minutes – BOD CEO Evaluation.
- iii. 2020-12-07 Executive Session Minutes.

Ms. Johnnie moved and Mr. Batlan seconded that the 2020 minutes listed above be approved as written. Motion passed unanimously 5-0 (2 abstained; 2 absent).

- iv. 2021-01-13 Executive Session Minutes.

- v. 2021-02-05 Draft Executive Session Minutes.
- vi. 2021-03-10 Draft Executive Session Minutes.

Ms. Johnnie moved and Ms. Waters seconded that the 2021 minutes listed above be approved as written. Motion passed unanimously 7-0 (2 absent).

11. UNFINISHED AND NEW BUSINESS

There was no unfinished or new business to discuss.

12. ADJOURNMENT

The meeting adjourned at approximately 11:23 a.m.

These minutes were approved by the PLF Board of Directors at its board meeting on June 11, 2021.