



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

**August 20, 2021
Zoom Videoconference**

Chair Gina Johnnie called the regular meeting of the Board of Directors to order at 9:01 a.m. Present in addition to Ms. Johnnie were Directors Holly Mitchell, Julia Manela, Harshi Waters, Michael Batlan, Oren Haker, Steve Hill, Akeem Williams, and Chris Karlin. BOG liaisons David Wade and John Grant, as well as OSB CEO Helen Hierschbiel attended open session. In addition, PLF staff members Megan Livermore, Betty Lou Morrow, Jeff Crawford, Matt Borrillo, Emilee Preble, Cindy Hill, Hong Dao, Rachel Edwards, Maureen DeFrank, Heather Bowman, Sharnel Mesirov, Douglas Querin, Kyra Hazilla, and Jennifer Harrington attended all or part of the meeting.

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. Johnnie)

Ms. Johnnie apologized for canceling the Ashland board meeting. Because of COVID and the smoke in the area, it was the right thing to do.

Approval of Open Session Minutes.

Ms. Johnnie asked for a motion to approve the open session minutes below.

(A)i. Draft Open Session Minutes (06/04/21) Special BOD Meeting:

(A)ii. Draft Open Session Minutes (06/11/21) Board of Directors Meeting:

Ms. Mitchell moved and Mr. Haker seconded to approve the Draft open session minutes of June 4, 2021 and June 11, 2021 as written. Motion passed 7-0 (1 abstained [Ms. Manela]; 1 absent [Mr. Williams]).

Approval of Executive Session Minutes in Open Session.

Ms. Johnnie asked for a motion to approve the executive session minutes below.

(A)iii. Executive Session Minutes (06/04/21) Special BOD Meeting:

(A)iv. Executive Session Minutes (06/07/21) Special BOD Meeting:

(A)v. Executive Session Minutes (06/11/21) Board of Directors Meeting:

(A)vi. Executive Session Minutes (07/14/21) Board of Directors Meeting:

Ms. Mitchell moved and Ms. Waters seconded to approve the executive session minutes of June 4, 2021, June 7, 2021, June 11, 2021, and July 14, 2021 as written. Motion passed 7-0 (1 abstained [Ms. Manela], 1 absent [Mr. Williams]).

(B) Committee Minutes (Open Session):

Ms. Johnnie referred the Board to the minutes below and asked if there were any comments.

- i. May 24, 2021 Finance and Investments Committee Minutes
- ii. June 9, 2021 Joint BOG/BOD Special Issues Committee
- iii. June 11, 2021 Annual BOD and Claims Attorney Meeting

There was no discussion and no action was required.

(C) Board Member Congratulations:

Ms. Johnnie gave early happy birthday wishes to Ms. Waters, Mr. Williams, and Ms. Livermore.

Ms. Johnnie thanked Ms. Manela for returning to the PLF Board to fulfill Ms. Livermore's term.

Ms. Johnnie also said she is looking forward to working with Ms. Livermore as the PLF's new CEO.

2. CEO REPORT (Ms. Livermore)

(A) General Report:

Ms. Livermore said she is happy to be giving her first CEO report. She reported that things are going well and she has met with most PLF staff one-on-one, checking in to see how people are doing. Things are going well overall.

Ms. Livermore reported that she is working on a couple of initiatives in the office, including:

1. Return to office policy for future hybrid work model.
2. Technology upgrade to provide equipment necessary to secure data and support staff in expected hybrid work model.
3. Enhanced marketing efforts.
4. Making small tweaks to entity structure to reduce siloing and encourage collaborative work environment.

(B) Board recruitment for terms beginning January 1, 2022:

Ms. Livermore reported it is time to start BOD recruitment efforts with Nominating Committee. Proposed board member names will be presented at the October board meeting.

(C) 2021 Revised/Updated Committee Assignments:

Ms. Livermore referred the Board to the revised committee assignments in the materials.

(D) Proposed 2022 Board Meeting Schedule:

Ms. Livermore discussed the proposed 2022 board meeting schedule and noted several date changes. Ms. Hill will send a final meeting schedule to all.

(E) Licensed Paraprofessional Committee Update:

Ms. Livermore reported that the committee met a couple of weeks ago. Things are moving forward and discussions continue regarding areas of law, restrictions, etc. It is likely proposals will be presented soon to the Oregon Supreme Court for consideration. The PLF may be asked to provide some primary coverage for these paraprofessionals.

(F) Alternatives to the Bar Exam Task Force Update:

Ms. Livermore reported that the Task Force met a couple of weeks ago. The options that will be presented to the Oregon Supreme Court for consideration are (1) doing practical skills the last two years of law school or (2) participating in an apprenticeship program.

3. CLAIMS REPORT (Mr. Borrillo):

(A) General Claims Report:

Mr. Borrillo reported that his department continues to work remotely. Everyone is still working well together, nonetheless.

The claims evaluations continue to be positive. They reflect the work of PMAs and the OAAP as well, so the positive comments involve the overall process. The claims department, OAAP, and PMAs are working well together to address issues.

Mr. Haker commented on certain practice areas that might need additional support, including bankruptcy. Mr. Borrillo noted that domestic relations is traditionally high and has increased. Some things are unique to the pandemic.

Mr. Haker said domestic relations and bankruptcy often go hand in hand. He would be happy to devote some time to conversations with Mr. Borrillo and Ms. Manela.

4. FINANCIAL REPORTS (Ms. Morrow)

(A) 2021-June 30 Financial Statements:

Ms. Morrow reported a mistake in the June 30, 2021 financial statements. The claim liabilities have been overstated by about \$2.3 million and, therefore, the in year surplus should increase by about \$2.3 million. This is good news. The mistake will be corrected.

Assessments are down by about 3%, compared to December 31, 2020. There are fewer covered parties. At July 31, 2021, ROI is at about 7.8%; we budgeted 4.25%, so we are clearly ahead.

The annualized claim count is currently at 704. We budgeted 846 for 2021 and 820 for 2022. Ms. Morrow's prediction is a claim count of 735 claims by the end of the year.

The actuarial adjustment to the reserves is \$6.1 million. We have approximately \$2.7-\$2.8 million in surplus. It will increase to approximately \$5 million. People are still not traveling and individual expenses are not what was projected. We continue to be under budget in our expenses for those reasons.

The Excess Program continues to do well. Expenses are in check, as always. Because we negotiated higher premiums, reinsurers imposed higher premiums, therefore our ceding commissions are higher than budgeted and we are expecting an approximate \$270,000 surplus this year.

(B) Update on ISI Database Software:

Ms. Morrow gave a brief update on the ISI Database software negotiations and implementation.

5. RISK MANAGEMENT SERVICES (Mr. Crawford/Ms. Dao/Ms. Hazilla/Mr. Querin/Ms. Harrington)

(A) Risk Management Services Update:

Mr. Crawford said that since he will be leaving the PLF soon, he has asked staff to prepare and present the OAAP and PMA reports. Ms. Hazilla and Mr. Querin will give the OAAP report and Ms. Dao will give the PMA report.

Practice Management Report

Ms. Dao reported that the PMA program has received over 200 contacts with PMAs in the last two months through various forms, mostly through phone and email. More lawyers are leaving law firms to start a solo practice. Some lawyers are leaving the practice of law all together due to uncertainties with return to work policies and office transition issues. We are also seeing more lawyers planning for retirement. They are looking for advice not seen before. They are doing more planning and many have anxiety about retiring. Many are joining lawyer support groups. They are also receiving calls from individual lawyers and law firms looking at systems to better manage their firms and firm data. They want access to be more user-friendly for their clients, mostly due to COVID, to make their services more compatible. The PMAs expect their services to grow with changes in the landscape with employment issues and changes in the market.

CLEs have been offered online and have been positively received by lawyers and judges.

Learning the Ropes is well underway and will be held November 17-19 at The DoubleTree in Portland. All speakers have been confirmed. They are expecting a hybrid event (part on-line and part in-person). They will proceed with their plans for a hybrid event until more guidance is received from the Governor regarding indoor gatherings. Ms. Dao noted that programs are more easily found on the new website.

Ms. Dao reported that the last shredding event for this year was held in August.

Ms. Dao reported that Sheila Blackford retired at the end of May and they have started the hiring process for a new PMA.

With regard to office closures, in the last few months, the PMAs have assisted in seven office closures due to death or health problems. Some have involved disciplinary issues. Many of the closures involved assistance from the OAAP and claims attorneys. We expect to handle more office closures as people retire.

Ms. Dao reported that statistical information is available in the materials.

OAAP Report

Ms. Hazilla gave the OAAP report, but asked Mr. Querin and Ms. Harrington to chime in if they have anything to add.

Ms. Hazilla introduced new attorney counselor, Jennifer Harrington, and said they are so happy to have her here.

Ms. Harrington said she has been with the OAAP for a little over a month and is impressed with the work of her colleagues at the OAAP and throughout the PLF. She is looking forward to all the great work in the future.

Ms. Johnnie congratulated Mr. Crawford on his retirement. Mr. Crawford said he has formally retired but was asked to stay on to help with the transition with a new CEO. His work officially ends at the end of September. Ms. Johnnie said that he has been a great part of the PLF and he will be missed when he leaves.

6. EXCESS PROGRAM AND NEW WEBSITE (Ms. Preble)

(A) Excess Program Update:

Ms. Preble updated the Board on the excess program renewals.

(B) Aon Reinsurance Talks:

Ms. Preble reported on the Aon reinsurance discussions and the annual reinsurance renewal. Ms. Morrow, Ms. Livermore and Ms. Preble attended eight reinsurance meetings this week. All meetings were held virtually. We are hoping for rate stabilization. The renewal will not be finalized until October 1, so we are still in the early stages of reinsurance talks. We are starting in a good position this year and are looking forward to proceeding.

(C) Preview of the new PLF Website:

Ms. Preble gave a demonstration of the new PLF website.

7. COMMITTEE REPORTS

(A) Finance and Investments Committee (Mr. Haker/Ms. Morrow):

Mr. Haker reported that the committee met on August 2. Despite the challenges that COVID has presented, the PLF is on very firm financial footing. Mr. Haker discussed the need to consider a one-time credit related to the assessment, rather than a reduction due to economic uncertainties when our financial health is so tied to the market. It is difficult navigating that issue in light of economic uncertainties, not knowing if there will be an increase in claims down the road. We need to be conservative but also understand that we are doing very well

financially right now. Ms. Livermore and Ms. Morrow are mindful that if we reduce the assessment, there are concerns with having to increase it down the road if economic circumstances change.

i. 2020 and 2019 – December 31 Audited Financial Statements.

Ms. Morrow discussed the audited financial statements and said she is incredibly proud of the accounting staff. This is the 7th year in a row without a single adjustment to the audited financial statements. She noted that mistakes are made but they are found and corrected. Staff goes above and beyond all the time.

Ms. Morrow said the PERS entry was expected to bring a \$1 million decline in surplus. It turned out to be about \$350,000. The liabilities increased more than anticipated, as did assets. The post-employment benefits report created a decrease to overall liabilities. We continue to do well everywhere. At the end of 2020, the PLF had a surplus of \$7.1 million (aggregate with excess and primary).

Mr. Haker moved and Mr. Karlin seconded to approve the December 31, 2020 and 2019 audited financial statements. Motion passed unanimously 9-0.

ii. June 30, 2021 Actuarial Recommendations.

The committee recommends the following actions.

(a) Claim liabilities at June 30, 2021

Adopt indemnity liabilities of \$12.7 million (an increase due to the value of settlements) and expense liabilities of \$10.1 million – for total liabilities of \$22.8 million.

(b) Cost of new claims, final six months of 2021

Approve the cost of new claims, which remains at \$22,500 for the final six months of 2021. This cost is comprised of \$11,000 indemnity and \$11,500 expense. This represents a decrease of \$500 per claim compared to the first six months of 2021.

(c) Assessment Level

Approve the Primary Program assessment of \$3,300 with a one-time COVID discount of \$300 per full-pay assessment, prorated for mid-year coverage and new members.

The actuarial recommendation is \$2,875. Assessments do not cover the entire cost of claims. We have an operational shortfall. We want to keep the true assessment at \$3,300 but want to recognize a \$300 discount for all full-pay attorneys. It will be prorated for those who already have a step-rated discount and/or prorated assessment. In-year admittees will be able to avail themselves to a prorated assessment as well. The bottom line is a \$3,000 assessment for full-pay attorneys for 2022.

Mr. Haker moved and Mr. Karlin seconded that the Board approve the actuarial recommendations for claim liabilities at June 30, 2021 and cost of new claims for the final six months of 2021, as well the \$3,300 assessment with a \$300 one-time credit for full pay attorneys (bringing the 2022 assessment to \$3,000), and prorated assessment for those with a step-rated discount and/or prorated assessment, including in-year admittees with prorated assessment.

Mr. Haker added that with regard to the assessment recommendation of \$3,300 with a \$300 credit (\$3,000 for 2022), there has not been a decision made as to what will happen the following year. This topic will be revisited in 2022.

Ms. Manela feels this is a great way to address the issue. Ms. Morrow said in 2018, we had a loss of 2.35% on the portfolio; in 2019, we had around 16% increase on the portfolio; and last year, we had about 13% increase on the portfolio. We have had two great years in a row. That in combination with a low claim count last year has driven the surplus.

Motioned passed unanimously 9-0.

- iii. (a) 2022 Budget Memo and 2022 Budget.

Ms. Morrow and Mr. Haker reviewed some of the highlights in the budget.

- (1) Recommending a 4% salary pool for 2022;
- (2) Recommending a 6.5% increase in healthcare premiums for 2022;
- (3) PERS employer contributions will increase by 0.24% and 2.54% for Tiers 1 and 2 and OPRSP respectively.
- (4) Recommending a cost of new claims for 2022 of \$22,500;
- (5) Recommending the assessment remain at the current level of \$3,300 with a one-time COVID discount of \$300 per full-pay attorney;
- (6) Recommending the use of 6,646 full pay covered parties in calculating assessment revenue for 2022;
- (7) Recommending an ROI of 5% for 2022;
- (8) Recommending a claim count of 820 for 2022;
- (9) Recommending an additional \$50,000 to the annual salary budget to accommodate pay equity adjustment;
- (10) Recommending equipment expenditures of \$350,000 and ongoing annual costs of \$42,000 for licenses, subscriptions, and support services;
- (11) We are anticipating travel associated costs will return to normal levels in 2022, as well as associated costs of conferences, training, and meetings that include transportation, accommodations, meals, and mileage. We also expect staff functions (summer picnic and holiday luncheon) to resume in 2022;
- (12) The PLF has committed to reestablishing an annual payment of \$125,000 to support the Bar in the preparation and availability of BarBooks to Oregon attorneys; and

(13) There is the possible implementation of ISI software. We are allocating \$1,000,000 in capital project implementation costs for 2022 and \$140,000 in ongoing operating costs for the software in 2022.

Mr. Haker moved that the Board approve the 2022 budget, including the general operating capital costs as presented. Mr. Karlin seconded the motion. Motion passed unanimously 9-0.

8. LIAISONS' REPORT (BOG) (Mr. Wade/Mr. Grant/Ms. Hirschbiel):

Mr. Wade reported that the BOG is busy working on the Alternative to the Bar Exam and Paraprofessional Program. It is now before the Oregon Supreme Court for approval.

Mr. Wade gave extreme compliments on the PLF operating results. The results are outstanding. It is miraculous in this climate. He said he is delighted that things are settling down at the PLF under Ms. Livermore's leadership.

The OSB finances are also extremely good. One of the biggest issues for the Oregon State Bar is that the DEI assessment is expiring this year. They are going to the HOD to get it renewed and want to renew it permanently. Renewal is not a separate assessment but part of the regular budget.

Mr. Grant said that the upshot of the DEI assessment becoming part of the ongoing budget is that there will technically be a bar fee increase that will be offset by the removal of a separate DEI assessment. They are looking at a likely reduction in the CSF assessment so Oregon lawyers will pay less to the OSB directly.

Mr. Wade reported that the BOG approved the Diversity Action Plan for 2021-2023 and are already implementing it. This was a great achievement by OSB staff.

Mr. Grant reported that the OSB has seen some recovery in the total number of active attorneys and believes it has to do with the diploma privilege from last year. Ms. Morrow said that she believes the reason for the PLF covered party numbers decreasing in spite of increased OSB membership has to do with lawyers leaving private practice and moving to government work.

Ms. Hirschbiel reported that at the last BOG meeting in Baker City, they had an educational session discussing the alternative legal profession models. The purpose of the session was to understand models for lawyer regulation that are different from unified bar models. Ms. Livermore and Ms. Hirschbiel have discussed how to bring the PLF into that discussion.

Ms. Hirschbiel reported that, operationally, she echoes the collaborative efforts of the PLF staff and noted that the collaboration extends into work with the OSB staff. Ms. Hirschbiel thanked the many PLF staff who serve as liaisons to various OSB task forces and committees. It is invaluable to have PLF participation in both the alternatives to the bar exam task force and paraprofessional licensing committee, as well as standing committees such as SLAC.

Ms. Hirschbiel said she is excited about the tool kits on the PLF website and asked if there is a way to collaborate around that as well. There will be a meeting to discuss BarBooks and she looks forward to working together.

9. UNFINISHED AND NEW BUSINESS:

There was no unfinished or new business to discuss.

10. EXECUTIVE SESSION

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

Ms. Johnnie called the meeting into executive session at approximately 11:12 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.

11. ADJOURNMENT

The meeting adjourned at approximately 11:12 a.m.

These minutes were approved by the PLF Board of Directors at its October 15, 2021 board meeting.