

Changes to 2016 PLF Primary Claims Made Plan

A number of changes were made to the 2016 PLF Primary Claims Made Plan. The majority were ministerial – simplifying terms, removing outdated language, and streamlining plan commentary. More significant changes were made to Exclusions 2, 4, 8, 10, and 11.

Exclusion 2 – Wrongful Conduct Exclusion

Exclusion 2 is now broken into subsections that more specifically describe the activities to be excluded. These changes are meant to explain existing policy and practice rather than to create new exclusions. Excluded from coverage are claims for actual or alleged criminal, dishonest, knowingly wrongful, fraudulent, and malicious acts or conduct, as well as intentional violations of the Oregon Rules of Professional Conduct. Also now specifically excluded from coverage are claims arising out of non-payment of a valid and enforceable lien if actual notice of such lien was provided to you, or anyone in your office, prior to payment of the funds to a person or entity other than the rightful lien-holder.

Exclusion 4 – Punitive Damages and Cost Award Exclusions

Exclusion 4 now specifies that claims arising from false or unwarranted certification in a pleading, or for monetary sanctions for improper conduct, are excluded from coverage. These changes are meant to define existing policy and practice rather than to create new exclusions.

Exclusion 8 – ORPC 1.8 Exclusion (Business Transactions with Clients)

When Oregon lawyers engage in a business

transaction with a client, they have an ethical duty to make certain disclosures to the client pursuant to ORPC 1.0(g) and 1.8(a). In prior plan years, covered parties were required to make the appropriate disclosures and provide the PLF with copies of such disclosure letters or risk exclusion of coverage. The reporting requirement to the PLF has been removed. You are no longer required to provide the PLF with copies of disclosure and consent letters when engaging in business transactions with clients. **Caveat:** Your ethical duty of disclosure and consent is unchanged. For the convenience of practitioners, a sample disclosure and consent letter for engaging in business transactions with clients is available on the PLF website at www.osbplf.org. Under Practice Management, select Forms, then search for the Disclosure of Potential Malpractice category.

Although the reporting requirement to the PLF was eliminated, Exclusion 8 still stands. The Plan excludes from coverage any claim arising from a business transaction subject to ORPC 1.8(a) in which you participate with a client, unless any required written disclosure has been properly executed in compliance with the rule and fully executed by you and the client before the business transaction giving rise to the claim.

Exclusion 10 – Law Practice Business Activities or Benefits Exclusion

Exclusion 10 was changed to further distinguish covered activities – the practice of law – from activities that relate to the business of practicing law, which are excluded from coverage.

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Exclusion 10 is now broken out into more specific subsections. Excluded from coverage are claims for amounts paid, incurred, or charged as fees, costs, or disbursements, including amounts claimed as restitution, forfeiture, financial loss, or set-off. Also excluded from coverage are claims arising from or related to the negotiation, securing, or collection of fees, costs, or disbursements, and claims for damages or the recovery of funds or property that will benefit you. These changes are meant to clarify existing policy and practice rather than to create new exclusions.

If the PLF defends a claim that includes any claim within the scope of this exclusion, the PLF can settle or attempt to dismiss the other claims not falling within this exclusion and can withdraw from defense following the settlement or dismissal of those claims. In essence, the PLF has no obligation to defend claims that are entirely excluded under Exclusion 10. This amendment represents a change in PLF policy.

Exclusion 10 does not apply to claims based on your malpractice regarding your client's right or ability to recover fees, costs, or expenses; the PLF will defend those claims.

Exclusion 11 – Family Member and Ownership Exclusion

Exclusion 11 was amended to prevent coverage through vicarious liability for otherwise excluded claims. Now excluded from coverage are any claims against you arising out of another lawyer having provided legal services or representation to his or her own spouse, parent, child, stepchild, sibling, or member of his or her household, or on behalf of a business entity in which any of them individually or collectively, have a controlling interest. The other exclusion for claims based on your legal work for your own family members or their business interests remains unchanged.

A complete copy of the 2016 PLF Primary Claims Made Plan may be found on the PLF website at www.osbplf.org.

If you have questions about the PLF Primary Claims Made Plan or changes in coverage, call Jeff Crawford or Emilee Preble at 503.639.6911 or 1.800.452.1639.