

**OREGON STATE BAR**  
**PROFESSIONAL LIABILITY FUND**  
**January 2017**  
**BYLAWS AND POLICY MANUAL**

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**Revised January 1, 2017**

**(Showing all amendments adopted by the PLF Board of Directors and approved or ratified by the Board of Governors through December 31, 2016.)**

**JANUARY 2017 BYLAWS AND POLICY MANUAL**

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## **Note**

*Substantive revisions to the PLF Bylaws and Policy Manual are indicated with the dates of approval by the PLF Board of Directors and OSB Board of Governors. The approval dates appear at the end of each section where a revision was adopted. This is to assist in identifying the meetings at which changes to the PLF Bylaws and Policies were adopted by the two boards. Minor revisions that did not change the meaning of text are not noted in this way.*

# **BYLAWS OF THE PROFESSIONAL LIABILITY FUND**

## Preamble

The Professional Liability Fund ("PLF") does hereby adopt the following as its Bylaws.

## ARTICLE 1 PARTICIPATION IN PLF

1.1 Every active member of the Oregon State Bar ("OSB") engaged in the private practice of law with principal office in Oregon is required to participate in the mandatory coverage of the PLF unless otherwise exempt.

(BOD 5/14/93, BOG 8/13/93; BOD 10/22/04; BOG 11/20/04)

## ARTICLE 2 ASSESSMENTS

2.1 The Board of Directors will determine at least annually the assessment for the ensuing Claims Made Plan Period.

(BOD 10/22/04; BOG 11/20/04; BOD 08/10/12; BOG 11/10/12)

## ARTICLE 3 DIRECTORS

3.1 The PLF will be administered by a Board of Directors of nine persons selected by the Board of Governors of the Oregon State Bar. Seven persons will be and two persons will not be members of the Oregon State Bar. Each Director will serve for a term of five years and until a successor is appointed. Unless otherwise specified, a Director's term begins on January 1 of the year following appointment and continues for 5 years.

3.2 If a position becomes vacant, the Board of Governors will appoint a successor to that position for the unexpired period of the term.

3.3 (A) Any Director who has missed two consecutive regularly scheduled Directors meetings or three meetings in any six-months' period must provide an explanation upon request. If such Director fails to respond to the Board of Directors' request, or if a majority of the Board of Directors deems such explanation insufficient, the

Board of Directors may suspend the Director and notify the Board of Governors that it requests that the Director be removed pursuant to Article 23.1 of the Oregon State Bar bylaws. In the event that at the next scheduled meeting of the Board of Governors, the Board elects not to remove the Director, the Director will resume his or her place on the PLF Board.

(B) In addition to removal pursuant to Section 3.3 of this Article, a Director may be suspended for cause only at a meeting called for the purpose of suspending the Director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is to suspend the Director. A two thirds majority is required to suspend the Director. Representative examples of cause include breaches of fiduciary duty to the PLF, the prosecution of the Board member by the State Professional Responsibility Board, a criminal conviction, a court sanction, or any such other conduct that comprises the integrity of the Board member and that creates a reasonable expectation that such conduct will be detrimental to the PLF. If a Director is suspended, the Board of Directors will notify the Board of Governors that it requests that the Director be removed pursuant to Article 23.1 of the Oregon State Bar bylaws. In the event that at the next scheduled meeting of the Board of Governors, the Board elects not to remove the Director, the Director will resume his or her place on the PLF Board.

(C) Any Board member who accepts employment or whose firm accepts employment that is prohibited by Article 11 of the PLF Bylaws will be removed from the Board by a majority vote of the Board.

3.4 By October 31 of each year the Board of Directors will forward to the Board of Governors a list of recommended Director nominees equal to or greater than the number of available positions on the Board in the coming year. The Board will seek nominees according to qualifications determined by the PLF Board. These may include, but are not limited to, consideration of gender,

minority status, ability, experience, type of law practice, and region.

(BOD 7/16/93; BOG 8/13/93; BOD 6/30/97; BOG 7/26/97; BOD 1/28/00; BOG 6/2-3/00; BOD 8/25/00; BOG 9/22/00; BOD 12/12/03; BOG 1/31/04; BOD 10/22/04; BOG 11/20/04; BOD 8/4/05; BOG 8/19/05; BOD 12/8/06; BOG 2/22/07)

#### ARTICLE 4 OFFICERS

4.1 The officers of the PLF Board of Directors will consist of a Chairperson, Vice Chairperson, and Secretary.

4.2 The PLF Board officers will be elected and may be removed by a majority of the PLF Board of Directors.

4.3 Each PLF Board officer will serve successive terms of one year and until the officer's successor is elected.

4.4 The Chairperson will preside at all meetings of the Board of Directors and will have the authority to exercise the power of the Board between meetings of the Board. The Chairperson will perform all other duties as are incident to the office or are properly required by the Board of Directors.

4.5 The Vice Chairperson will perform the duties of the Chairperson in the absence or disability of the Chairperson and such other duties as may be assigned by the Chairperson or the Board. The Vice Chairperson will also be the Chairperson-Designate and will be the sole nominee for Chairperson at the next following election of officers unless at the time of the election, at least five members of the Board vote to permit additional nominations.

4.6 The Secretary will be responsible for maintaining appropriate and accurate minutes of the meetings of the Directors and will perform such other duties as may be assigned by the Chairperson or the Board.

(BOD 10/22/04; BOG 11/20/04)

#### ARTICLE 5 MEETINGS AND RECORDS

5.1 The PLF Board of Directors will meet at least quarterly and will meet more often upon call of the Chairperson, or in the Chairperson's absence, any three members of the Board of Directors. Meeting locations and all notices of the time and place of meetings will be consistent with Oregon law. PLF Board and committee meetings may be held by telephone conference call or other appropriate electronic means.

5.2 A majority of the PLF Board of Directors will constitute a quorum and, except for amendment of bylaws, a majority of those attending will be required to take any action on behalf of or by the PLF Board.

5.3 The records of the PLF pertaining to any particular claim or potential claim, and records and actions relative to the defense of any such claim will be exempt from disclosure under ORS 192.502, and any related meetings of the PLF Board will be executive sessions held under ORS 192.660.

(BOD 10/22/04; BOG 11/20/04)

#### ARTICLE 6 COMMITTEES

6.1 The Chairperson may appoint an Executive Committee consisting of at least three members of the Board of Directors. Such Executive Committee will have authority to act for the full Board of Directors. Actions of the Executive Committee must be ratified by the full Board at its next meeting or by a memorandum signed by all of the members of the Board. The Executive Committee will keep accurate minutes of all matters considered and actions taken by the Executive Committee and the minutes reflecting all such actions will be reported to the next meeting of the PLF Board of Directors.

6.2 The Chairperson of the Board of Directors may, from time to time, appoint other committees as needed for the conduct of PLF business.

6.3 The Chairperson of the PLF Board will appoint the Vice-Chairperson of the Board, an additional attorney member of the Board, and one public member of the Board to serve as liaisons with the OSB Board of Governors. The additional attorney member will serve for at least two years as liaison and will be replaced by a new attorney member to serve for at least two years.

(A) At least one of the liaisons will be scheduled to attend each meeting of the Board of Governors; and

(B) The liaisons will be scheduled to report at each meeting of the PLF Board regarding significant activities of the Board of Governors and any matters regarding the Board of Governors requiring action by or the attention of the PLF Board.

(BOD 6/30/00; BOG 6/30/00; BOD 10/22/04; BOG 11/20/04)

#### ARTICLE 7 AMENDMENTS

7.1 These bylaws may be amended at a meeting of the PLF Board of Directors after written notice of the proposed amendment has been given to each Director at least 30 days in advance of the meeting. The affirmative vote of two-thirds of all Directors will be required for amendment.

(BOD 10/22/04; BOG 11/20/04)

#### ARTICLE 8 COMPENSATION

8.1 PLF Board of Directors members will not be entitled to any compensation for their services in carrying out their duties, except for such compensation as may be provided by policy approved by the PLF Board of Directors and ratified by the OSB Board of Governors. Each Director will be reasonably reimbursed for actual expenses for travel, lodging, and related expenses when engaged in the business of the Board.

(BOD 4/2/99; BOG 6/5/99 (subject to specific wording to be approved by BOD); BOD 8/6/99; BOD 10/22/04; BOG 11/20/04)

#### ARTICLE 9 OPERATIONS

9.1 The PLF Board of Directors will have the authority to employ and discharge, with the participation of the OSB Board of Governors, a Chief Executive Officer of the PLF. The Board of Governors will have direct input into the evaluations of the Chief Executive Officer of the PLF. The Chief Executive Officer of the PLF will have the authority to supervise and administer the PLF and to employ and discharge PLF staff as necessary.

9.2 The PLF may employ, retain and fix the compensation of, or contract for the services of, such managers, legal counsel, consultants, accountants, computer analysts, actuaries, other experts, clerical personnel, defense panel members, and such other persons as are reasonably necessary for the conducts of its affairs. The PLF may contract with any entity or individual, including a bar association, a public body, department of the state, or private persons for the performance of services or the use of facilities. The Chief Executive Officer of the PLF or designee may enter into contracts and lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with, and dispose of real and personal property in connection with handling and settlement of claims. Real property will be acquired and conveyed in the name of the Oregon State Bar.

9.3 The PLF will be audited annually or at such intervals as may be determined by the Board of Directors.

(BOD 6/30/00; BOG 6/30/00; BOD 10/22/04; BOG 11/20/04)

#### ARTICLE 10 LIABILITY OF DIRECTORS

10.1 A Director will perform the duties of a Director, including duties as a member of any committee of the Board upon which the Director may serve in good faith, in a manner such Director believes to be in the best interests of the PLF and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.



10.2 In performing the duties of a Director, a Director will be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(A) One or more officers or employees of the PLF whom the Director believes to be reliable and competent in the matters presented,

(B) Counsel, independent accountants, actuaries, computer analysts, or other persons as to matters which the Director believes to be within such person's professional or expert competence, or

(C) A committee of the Board upon which the Director does not serve, as to matters within its designated authority, which committee the Director believes to merit confidence so long as, in any such case, the Director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

10.3 A person who performs the duties of a Director in accordance with section 10.1 will have no liability based upon any alleged failure to discharge such person's obligations as a Director.

10.4 Indemnification and defense of directors, officers, employees or agents against certain expenses, judgments, fines or settlements; conditions:

(A) The PLF must indemnify its officers, board members, directors, employees and agents and defend them for their acts and omissions occurring in the performance of their duties, to the fullest extent permitted by law. The term "officers, board members, directors, employees and agents" of the PLF includes subordinate groups established by the PLF to perform its authorized functions. This provision does not apply to outside counsel retained by the PLF. The right to defense and indemnity is set forth below.

(B) The PLF has a duty to defend any past or present: officer; board member; director;

employee; or agent (hereinafter "Defendant") against any claim or suit arising from any act, error or omission that occurred in the performance of such Defendant's duties on behalf of the PLF, or arising from such Defendant's employment with the PLF.

(C) The PLF has a duty to indemnify any Defendant for any and all damages awarded against such Defendant arising from any act, error or omission that occurred in the course and scope of such Defendant's performance of duties for the PLF, or employment with the PLF, whether or not such damages are awarded as a result of any claim for "bad faith" and/or punitive damages, unless the act, error or omission on which any such damages are based was the result of dishonest, fraudulent, criminal, intentionally malicious or knowingly wrongful conduct on the part of the Defendant. In the event the PLF denies any duty to indemnify, the Defendant shall be entitled to seek a declaratory judgment in a Court of Law whereby the Court will make a separate determination, independent of any findings in the underlying litigation, as to whether any acts, errors or omissions by the Defendant, resulting in the damage award, were dishonest, fraudulent, criminal, intentionally malicious or knowingly wrongful.

10.5 Defense and Indemnity relating to disciplinary matters.

(A) The PLF will defend any of its current and former officers and employees (hereafter "Accused"), whether elected or appointed, against any complaint of professional misconduct arising out of an act or omission occurring in the performance of his or her official duties on behalf of the PLF as provided in this bylaw.

(B) The duty to defend does not apply in the case of malfeasance, gross negligence or willful or wanton neglect of duty.

(C) If any complaint is made to the Oregon State Bar or other agency or court with disciplinary jurisdiction over the Accused or a disciplinary proceeding is brought by the Oregon State Bar or such agency or court against an Accused which on

its face falls within the provisions of subsection (A) of this bylaw, or which the Accused asserts to be based in fact on an act or omission in the performance of his or her official duties on behalf of the PLF and not within the scope of subsection (B) of this bylaw, the Accused may file a written request for a defense with the Chief Executive Officer, or if the request is by the Chief Executive Officer, the Chair of the Board of Directors. The CEO or Chair, as the case may be, will thereupon present his or her recommendations to the Board of Directors regarding the approval of an agreement to pay for the defense of the Accused, including attorney fees and costs during the investigation, prosecution, and appeal of a complaint of professional misconduct. The Board of Directors will approve such terms and conditions of payment for the defense as it deems appropriate under the circumstances, including the Board's right to selection counsel to defend the Accused, unless the Board determines that the complaint does not arise out of an act or omission occurring in the performance of official duties on behalf of the PLF, or that the act or omission amounted to malfeasance, gross negligence or willful or wanton neglect of duty, in which case the Board will reject the request.

(D) If the Board agrees to pay for the defense of a complaint or disciplinary proceeding, the Accused shall cooperate fully with the lawyer(s) hired by the PLF to defend the Accused. If the Board determines that the Accused has not cooperated with defense counsel or has otherwise acted to prejudice defense counsel's good faith decisions regarding the proper defense of the matter for which a defense is provided, the Board may at any time terminate the continued defense of the matter and require the Accused to reimburse the PLF for all funds it has paid on account of the defense of the Accused. The Board may condition the provision of a defense under this bylaw on the Accused's agreement to make such reimbursement upon the Board's good faith determination that the Accused has failed to cooperate with defense counsel or otherwise acted to prejudice defense counsel's good faith decisions regarding the proper defense of the matter.

(E) If the Board concludes, after undertaking to pay for the Accused's defense, that the conduct was malfeasance, grossly negligent, or the willful or wanton neglect of duty, the Board will terminate the continued defense of the matter and require the Accused to reimburse the PLF for all funds it has paid on account of the defense. The Board may condition the provision of a defense under this bylaw on the Accused's agreement to make such reimbursement upon the Board's good faith determination that the Accused has engaged in such conduct.

(F) If the Accused in a disciplinary proceeding is found to have violated the rules of professional conduct, a disciplinary statute or disciplinary regulation, the Accused must reimburse the PLF for all funds it has paid on account of the defense of the Accused. The Board may condition the provision of a defense under this bylaw on the Accused's agreement to make such reimbursement upon the entry of a final judgment imposing discipline on the Accused. Discipline for purposes of this bylaw should be a reprimand or greater sanction imposed by the Disciplinary Board or the Oregon Supreme Court or other court agency having disciplinary jurisdiction over the Accused. If the discipline is a reprimand, the Board may waive the reimbursement requirement. When considering whether to waive the reimbursement requirement the Board of Directors will consider as a mitigating factor whether the action upon which the reprimand is based was a policy or procedure of the PLF.

(G) If the Board denies an Accused a defense under this bylaw or terminates the provision of such a defense under the terms of this bylaw and the Accused is found in any disciplinary proceeding for which a defense was denied or terminated not to have violated any rule of professional conduct or disciplinary statute or regulation, the PLF will reimburse the Accused for his or her reasonable attorney fees and costs in defense of such matter so long as the Accused's conduct occurred in the performance of official duties on behalf of the PLF and did not separately constitute malfeasance, gross negligence or willful or wanton neglect of duty as, in good faith, is determined by the Board. Pro se representation

does not qualify for the reimbursement of reasonable attorney fees and costs under this subsection.

(BOD 6/17/05; BOG 6/24/05; BOD 10/11/13; BOG 11/23/13)

## ARTICLE 11 CONFLICT OF INTEREST

11.1 In order to properly and effectively manage and administer the PLF and to retain the confidence of members of the Bar and the public, the following conflict of interest rules apply:

(A) No member of the PLF Board of Directors nor member of a director's firm will defend a covered party for the PLF in a malpractice claim which is within the coverage provisions of PLF Coverage.

(B) No member of the Board of Directors of the PLF and no member of a director's firm will (1) accept or continue employment which includes in whole or in part a claim (including a third party claim) against a covered party within the coverage provisions of the PLF, (2) act as personal counsel for any covered party concerning a claim which is or may be within the coverage provisions of the

PLF, or (3) represent any party in litigation against or involving the PLF.

[C] In the event that a Board member's firm begins representation prohibited by sections (A) or (B) of this section the Board member must notify the Chair of the Board, and within 30 days, the firm must fully withdraw from such representation. The Board member may not receive any monetary gain from the representation. In the event that the firm fails to withdraw in the time provided, the Board member is required to resign from the board.

(BOD 10/22/04; BOG 11/20/04; BOD 12/8/06; BOG 2/22/07)

## ARTICLE 12 MISCELLANEOUS

The rules contained in the current edition of Robert's Rules of Order Newly Revised will govern the PLF in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order the PLF may adopt.

(BOD 10/22/04; BOG 11/20/04)

# **PROFESSIONAL LIABILITY FUND BOARD OF DIRECTORS POLICIES**

## **CHAPTER 1 GENERAL POLICIES**

### **1.100 ESTABLISHMENT AND AMENDMENT OF POLICIES**

The Board of Directors of the Professional Liability Fund and the Bar Board of Governors adopt the following policies to govern the operations of the Fund. These policies may be amended from time to time by the Board of Directors in the same manner as other business is conducted according to the Bylaws of the Oregon State Bar Professional Liability Fund, and may be supplemented by other policies established by resolution of the Board. The PLF may also make exceptions to these policies on a case-by-case basis as warranted, and no rights are vested in any person by reason of the existence of these policies.

### **1.150 APPLICABLE OREGON STATUTES; APPLICABLE BOARD OF GOVERNORS BYLAWS, POLICIES, AND RESOLUTIONS:**

The Professional Liability Fund will operate in compliance with ORS 9.080, 9.191, 9.200, and other applicable statutes, and with all bylaws, policies, and resolutions of the OSB Board of Governors pertaining to the Fund.

### **1.250 MISSION STATEMENT AND GOALS OF THE PROFESSIONAL LIABILITY FUND**

**STATEMENT OF MISSION:** The mission of the Professional Liability Fund is to provide primary professional liability coverage to Oregon lawyers in the private practice of law. In doing so, the public is served. We also provide additional coverage and services that support our primary coverage program.

**GOAL NO. 1** – To provide the mandatory professional liability coverage consistent with a sound financial condition, superior claims handling, efficient administration, and effective personal and practice management assistance.

(BOD 8/27/04; BOG 10/13/04)

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**GOAL NO. 2 - Full Funding of Claims and Net Position:** To maintain full funding of estimated claim liabilities net of reinsurance. In addition to full funding, a positive net position may be maintained to stabilize assessments.

(BOD 5/14/04; BOG 6/11/04; BOD 10/16/15; BOG 11/20/15)

**GOAL NO. 3 - Relationship to Board of Governors and Bar Staff:** To maintain a positive relationship with the Bar Governors and Bar staff to create support and confidence for the Fund, and to realize cost savings and economies from joint action while maintaining a necessary degree of autonomy.

**GOAL NO. 4 - Support of Oregon Attorneys:** To maintain an active communication with Oregon attorneys in order to understand and serve their needs.

(BOD 7/31/03; BOG 9/18/03)

**ADMINISTRATION GOAL NO. A-1 - Administration and Staffing Costs:** To keep administrative costs as low as possible, consistent with superior management and employing the best staff available.

**ADMINISTRATION GOAL NO. A-2 - Staff Training and Advancement:** To improve the knowledge, ability, and morale of the staff by providing opportunities for training and advancement on a cost-effective basis.

**CLAIMS GOAL NO. C-1 - Claims Handling:** Claims will be handled in a professional, ethical, and efficient manner which is consistent with the Fund's Claims Made Plan, applicable statutes and case law, the Oregon Code of Professional Responsibility, and the Statement of Professionalism. The Professional Liability Fund's claims evaluation, defense, settlement, and repair practices will comport with these standards. The Professional Liability Fund will instruct the members of its Defense Panel to follow the standards set forth in Claims Goal No. C-1.

**PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE GOAL NO. PPMA-1 - Decreasing**

**Legal Malpractice:** To decrease the severity and frequency of legal malpractice, with a corresponding reduction in indemnity payments and defense costs.

**PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE GOAL NO. PPMA-2 - Coordination**

**with Bar Education Programs:** To increase the effectiveness of the Fund's personal and practice management assistance programs through coordination and participation with the Bar's education programs.

**PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE GOAL NO. PPMA-3 - Oregon**

**Attorney Assistance Program:** To promote and increase the effectiveness of the Oregon Attorney Assistance Program.

**PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE GOAL NO. PPMA-4 - Coordination**

**with Bar Assistance Programs:** To increase the effectiveness of the Fund's loss prevention activities through coordination with the Bar's assistance programs.

**EXCESS PROGRAM GOAL NO. E-1 - Excess Liability**

**Program:** To manage an excess liability program within the Professional Liability Fund which operates at no expense to the mandatory primary fund and provides optional layers of excess coverage on a stable, long-term, underwritten basis.

(BOD 6/26/92; BOG 9/22/92; BOD 7/16/93; BOG 8/13/93; BOD 8/11/95; BOG 11/12/95; BOD 6/23/00; BOG 6/30/00; BOD 5/14/04; BOG 6/11/04; BOD 8/27/04; BOG 10/13/04; BOD 10/22/04; BOG 11/20/04)

**1.300 BUSINESS PRACTICES**

The Professional Liability Fund will utilize the best business practices developed by the private insurance industry and private law firms, and to tailor those practices to benefit the operation of the Professional Liability Fund.

(BOD 10/22/04; BOG 11/20/04)

**CHAPTER 2**

**BOARD OF DIRECTORS AND ADMINISTRATION**

**2.100 RESPONSIBILITY FOR MANAGEMENT OF THE PLF**

The Professional Liability Fund, as a function of the Oregon State Bar as authorized by statute, will be under the control of the Board of Governors as described in ORS 9.080 and applicable Professional Liability Fund and Board of Governors Policies. The administration of the Professional Liability Fund will be under the direction of the Board of Directors of the PLF acting through a Chief Executive Officer hired by the Board of Directors. Employees of the Professional Liability Fund will be under the direct supervision of the Chief Executive Officer. The Chief Executive Officer of the Professional Liability Fund will be responsible for day to day supervision and administration of the Fund and for employment and discharge of such staff as the Chief Executive Officer deems necessary to properly operate the Fund.

**2.110 PERSONNEL MANUAL**

The Chief Executive Officer will adopt and revise from time to time personnel policies which will apply to all personnel of the Fund.

**2.150 EVALUATION OF PLF CEO**

The evaluation process for the PLF CEO is as follows:

(A) An evaluation will be conducted at least annually by a PLF CEO Evaluation Committee appointed to conduct the evaluation. The committee will be appointed by the Chair of the PLF and will include the Chair of the PLF and at least two (2) other BOD members;

(B) The committee will solicit input from all members of the BOD, the PLF staff, and all members of the BOG; and

(C) The results of the evaluation will be provided to the members of the BOD and to the BOG liaisons to the PLF. A confidential written summary of the results will be placed in the CEO's personnel file.

(BOD 2/7/03; BOG N/A)

## **2.200 REPORTING TO BOARD OF GOVERNORS AND MEMBERSHIP**

(A) The Professional Liability Fund will report on its financial position at least quarterly to the Board of Governors. Such financial reporting will include budget reports, balance sheets, and statements of operations. Where applicable, such financial reports will include comparative statements for the corresponding previous period of time.

(B) The Professional Liability Fund will furnish to the Board of Governors all audited or unaudited statements as may be prepared by its auditors and any comments furnished to the Professional Liability Fund by its auditors.

(C) Investment reports will be submitted to such members of the Board of Governors as are designated by the Board of Governors immediately after submission to the Board of Directors.

(D) Status reports of activities of the Fund will be made to the Board of Governors by the Chairperson or Chief Executive Officer upon request.

## **2.250 TRAVEL, EXPENSE, AND REIMBURSEMENT POLICY**

(A) Board members and the Chief Executive Officer are encouraged to promote the aims of the Professional Liability Fund, whether by meeting with interested individuals (whether or not they are members of the Oregon State Bar) or by attending national meetings on the subject of professional errors and omissions coverage so long as attendance at the meetings does not

involve undue time or expense or hinder the Chief Executive Officer's ability to manage the Fund. If Board members or the Chief Executive Officer attend a meeting at the request of another bar association or other group, reimbursement from the meeting sponsor should be obtained if possible.

(B) Board members (as designated by the Chairperson of the Board of the Professional Liability Fund) may attend meetings of the National Association of Bar Related Insurance Companies (NABRICO) or relevant American Bar Association committees on legal malpractice. Generally, Board members attend the NABRICO meeting in the second and fourth years of their terms.

(C) Board and committee members (as designated by the Chairperson) may be requested to accompany the Chief Executive Officer to meet with representatives of the national insurance market to arrange excess coverage in following form to Oregon's plan or to assist in negotiations with any reinsurance carrier for the Professional Liability Fund.

(D) Board members are required to attend Board meetings in various locations throughout the state of Oregon and to attend Oregon State Bar Board of Governors meetings when acting as liaisons between the two Boards (see PLF Bylaws 6.3). The Chief Executive Officer will attend all such meetings.

(E) Current policies provide for reimbursement for travel, meals, lodging, daycare and other child-related expenses, and business connected miscellaneous expenses when they are on approved travel or business. Spousal/Domestic Partner expenses are included for Board members. Reimbursement for the spouse/domestic partner of the Chief Executive Officer is not included. Supporting documentation is required for air, bus, train and rental car transportation, lodging, and certain miscellaneous expenditures. Personal expense

items will not be reimbursed. Reimbursable expenses will include:

(1) Lodging: Standard double room unless the location of a meeting or conference requires other arrangements. If meetings are to be held in lodging assigned to Directors, an appropriate suite with meeting facilities is authorized.

(2) Meals: At actual cost. Receipts will be furnished for all meals over \$15, along with an explanation of whether it was a “host” business meal or entertainment, the parties present, and the subject matter, if applicable. PLF funds will not be used to pay the cost of alcoholic beverages.

(3) Transportation:

(a) Use of personal automobile - reimbursed at allowable IRS rate;

(b) Actual cost of air coach fare; if unavailable or if required by meeting schedule or other special circumstances approved by the Chairperson, business class or first class will be honored with appropriate explanation.

(c) Actual cost of car rental, taxi, bus or other public transportation;

(4) Miscellaneous Charges:

(a) Telephone: PLF credit card will be used for all PLF-related telephone calls or they may be charged along with a master lodging bill. Reasonable charges for telephone calls by Directors or Chief Executive Officer to his or her home will be reimbursed.

(b) Postage, office expense, registration fees, other business expenses: Reimbursed at cost with explanation of purpose of expense.

(c) Services and gratuities: Business-related tips, gratuities and valet service will be reimbursed.

(d) Other Miscellaneous Charges: Other necessary and reasonable expenses incurred in connection with attendance at meetings or conferences will be reimbursed if approved by the Chairperson or Board.

(BOD 6/20/03; BOG 9/18/03; BOD 06/08/12; BOG 11/10/12; BOD 12/06/13)

(F) (1) Directors and the Chief Executive Officer will be entitled to retain as compensation any mileage credit awarded by the airline(s) on which they travel, and any “vouchers” or “coupons” for free flights received in exchange for being “bumped” from a flight. Directors and the Chief Executive Officer may not delay their business travel, fly other than by the most direct route possible, or purchase tickets that are of greater cost to the PLF than are otherwise readily available in order to insure the receipt of mileage credit or other airline inducements. Other travel arrangements that do not create any additional cost to the PLF are permitted.

(2) Directors and the Chief Executive Officer will be entitled to retain as compensation any product or service usage incentives received as a result of using a product or service in connection with reimbursable expenses covered by this policy. Directors and the Chief Executive Officer may not make their travel arrangements or purchase products or services for the purpose of obtaining these incentives if it would result in any greater expense for the PLF.

(3) Directors and the Chief Executive Officer may also retain as part of their compensation any airline mileage credits or other credits awarded in connection with the use of their personal airline or other “affinity” credit card when the card is used for business travel, regardless of whether the travel expense is reimbursed by the PLF.

(4) The value of compensation to Directors under this subsection will not exceed

\$500 so as to be consistent with the Federal Volunteer Protection Act.

(BOD 4/2/99; BOG 6/5/99 (subject to specific wording to be approved by BOD); BOD 8/6/99; BOD 10/22/04; BOG 11/20/04; BOD 6/8/12; BOG 11/10/12)

## 2.300 COMMITTEES

(A) The following are the PLF Board of Directors committees:

(1) Claims: Carries out the duties specified in Policy 4.200(C). Conducts quarterly review of all pending claims with defense costs or indemnity reserves of \$50,000 or more. Advises the Chief Executive Officer on a periodic basis concerning (a) selection and removal of Defense Panel members, (b) review, revision, and development of Defense Panel policies and procedures as needed, and (c) the need for and content and scheduling of Defense Panel workshops. Conducts periodic review of claims handling.

(2) Coverage: Formulates recommendations for changes in the Claims Made Plans and related PLF Policies for consideration by the Board of Directors.

(3) Excess Program: Advises CEO regarding underwriting decisions for a PLF Excess Program as outlined in Chapter 7. Recommends changes to Excess Program policies.

(4) Executive: Acts on behalf of the Board of Directors pursuant to Article 6.1 of the PLF Bylaws.

(5) Finance: Reviews the PLF's annual budget and recommends proposed budget to the Board of Directors. Reviews actuarial reports and estimates of the PLF's estimated claim liabilities and makes recommendations to the Board of Directors regarding financial presentation of claim liabilities. Makes recommendations to the Board of Directors regarding the selection of the independent financial auditor. The Finance Committee reviews each financial audit report of the PLF and makes

recommendations to the Board of Directors concerning audit results.

(BOD 5/14/04; BOG 6/11/04)

(6) Investments: Monitors Fund investments and presents recommendations for changes in investment policy to the Board of Directors.

(7) Long Range Planning/Communications: Develops issues for discussion by the Board of Directors at periodic annual long range planning meeting and presents the issues at the meeting.

(8) Personal and Practice Management Assistance: Consists of the entire PLF Board of Directors and is created by ORS 9.568. Provides personal and practice management assistance through the Oregon Attorney Assistance Program (OAAP) and the Practice Management Advisor Program (PMAP) as described in PLF Policy 6.150.

(9) Special Issues Committee: This committee was created on June 30, 2000 as part of the OSB/PLF Governance Task Force. The committee convenes (1) whenever there is a potential controversial claims defense strategy sought to be used in a PLF claim or defense; or (2) when a lawsuit is filed, or a written claim or demand in excess of \$300,000 is made, against the PLF as an entity.

This committee is a standing committee comprised of three members of the Board of Governors and three members of the Board of Directors. One of the three members from the Board of Governors will be a public member and one of the three members from the Board of Directors will be a public member. The terms of appointment will be for one calendar year and are renewable so long as the appointee remains on the Board of Governors or the Board of Directors.



In order to decide whether a potentially controversial claims defense strategy is appropriate, the Special Issues Committee will obtain the input of the PLF Claims Director, the PLF Claims Attorney assigned to the case, the outside counsel retained to defend the case and any other parties deemed necessary to fully consider the propriety of the proffered defense strategy.

Once the business of the Special Issues Committee has been considered, it will render its decision, which is binding to the extent permitted by law, regarding the appropriateness of proceeding with the proposed strategy. This decision will be reached by majority vote among the committee members. In the event the committee fails to render an opinion by majority vote, said business will be referred to the full Board of Governors and Board of Directors for resolution at a joint board meeting.

In order to consider litigation in which the PLF is a named defendant, the Special Issues Committee shall, at their discretion, call parties deemed necessary to assist in evaluating the nature, merits and further steps needed by the PLF to defend such litigation.

All Special Issues Committee meetings and Special Issues Committee agenda items referred out to for joint deliberation by the Board of Governors and the Board of Directors will be designated closed executive session.

(BOD 08/10/12; BOG 11/10/12)

(B) The Chairperson may designate additional committees as appropriate, and will appoint the membership of each committee. Non-directors are eligible to serve on committees.

(BOD 12/4/92; BOG 1/22/93; BOD 6/30/97; BOG 7/26/97; BOD 11/19/99; BOG 1/28/00; BOD 6/23/00; BOG 6/30/00; BOD 10/22/04; BOG 11/20/04; BOD 6/17/05; BOG 6/24/05)

## **2.350 EXECUTIVE SESSION**

Executive sessions may be called when permitted by Oregon law. All discussions regarding the handling of specific claims or other appropriate issues will be conducted in executive sessions for reasons of confidentiality pursuant to ORS 192.660 (2) (f) and (h).

(BOD 5/19/95; BOG 6/9/95)

## **2.400 INSURANCE COVERAGE**

(A) The Professional Liability Fund will obtain blanket liability, fire and other similar types of insurance coverages. The PLF may obtain directors and officers liability coverage and errors and omissions coverage when, in the opinion of the board, it is prudent and economic to do so. Such coverage may be purchased in conjunction with the Oregon State Bar.

(B) In addition to normal and ordinary insurance coverages, it is anticipated that the PLF may obtain certain forms of insurance coverage limiting the liability of the PLF under any one claim or any group of claims through reinsurance.

## **2.500 GIFTS**

(A) The Chief Executive Officer or individual PLF staff member may not accept any gifts from a Defense Panel member.

(B) The Chief Executive Officer and PLF staff may not accept any gifts in violation of Oregon law. The Chief Executive Officer will approve the receipt of any questioned gifts under this policy.

(BOD 2/21/92; BOG 3/13/92; BOD 10/22/04; BOG 11/20/04)

**CHAPTER 3**  
**PRIMARY PLAN COVERAGE AND ASSESSMENT**

**3.100 CLAIMS MADE PLAN AND RETROACTIVE DATE**

(A) Primary coverage will be provided to active members of the Oregon State Bar engaged in the private practice of law whose principal offices are in Oregon in accordance with the applicable Claims Made Plan adopted by the Board of Directors in each year.

(B) Attorneys who have maintained continuous PLF coverage since July 1, 1978 will have no retroactive Date for their current primary coverage. Attorneys who have maintained continuous PLF primary coverage since a date after July 1, 1978 will have a Retroactive Date which is the date on which the attorney's PLF primary coverage first commenced.

(C) If an attorney terminates his or her PLF primary coverage, the attorney will receive a new Retroactive Date upon returning to PLF primary coverage which is the date on which the attorney's new period of PLF primary coverage commenced.

(BOD 10/9/09; BOG 10/30/09)

(D) Any attorney formerly exempt from PLF participation under Policy 3.150(C) who applies for PLF primary coverage during 2003 or 2004 will receive a Retroactive Date which will be the date on which the attorney's PLF primary coverage first commenced; or, upon provision of satisfactory information to the PLF, the attorney will receive an earlier Retroactive Date which will be the date beginning the continuous period in which the attorney met the primary coverage criteria under PLF Policy 3.100 prior to applying for PLF primary coverage. Any attorney to whom this subsection applies will be assessed under PLF Policies 3.200 and 3.250 as if that attorney had had PLF primary coverage continuously from the date of the attorney's Retroactive Date.

(BOD 8/11/95; BOG 11/12/95; BOD 2/7/03; BOG 2/27/03)

**3.130 SPECIAL COVERAGE SITUATIONS**

(A) Assistance for Impaired or Disabled Attorneys: An attorney who provides assistance to impaired or disabled attorneys at the request of the PLF or according to procedures recommended by the PLF will not be considered to be functioning as a "BUSINESS TRUSTEE" under Section III.3 of the PLF Claims Made Plan.

(BOD 4/10/98; BOG 5/30/98)

**3.150 EXEMPTIONS FROM PLF PARTICIPATION**

(A) (1) Active members of the Oregon State Bar whose principal office is not in Oregon are not eligible to obtain primary coverage from the Professional Liability Fund, and are required to sign a request for exemption from PLF participation at least annually. Attorneys in this category will be required to inform the PLF whether or not they engage in the private practice of law in Oregon, and if so, will be required to provide the following additional information to the PLF at least annually upon request: whether or not they maintain professional liability insurance which covers them for their private practice of law in Oregon, the name and address of the insurance carrier, the name of the insured, the coverage limits and deductible, the retroactive date of the insurance policy, the policy period, a copy of the declarations sheet, and a copy of the policy and any endorsements. Attorneys are required to respond to information requests within 30 days.

(2) As used in subsection (1) of this section, an active member of the Oregon State Bar whose principal office is not in Oregon and is not otherwise exempt from the PLF primary coverage requirement is deemed to be engaging in the private practice of law in Oregon if the attorney meets any of the following criteria:

(a) The attorney appears as an attorney for a party in a proceeding before any court or administrative agency in the state of Oregon, or

(b) The attorney meets with current or prospective clients in Oregon, or

(c) The attorney maintains an office in Oregon. The term "office" is defined at PLF Policy 3.180(B).

(B) Attorneys not in private practice in the state of Oregon, either on a full-time or part-time basis with or without remuneration, are not subject to the annual assessment and may file a request for exemption based upon one of the following categories:

(1) employed exclusively as a government attorney or judge;

(2) employed exclusively by a corporation or business entity (including non-profit organizations but not including law entities);

(3) an employee or independent contractor with a legal aid or public defender office which provides professional liability coverage for the attorney through an Acceptable Alternative Insurer as defined at Subsection (D);

(4) employed in a non-law related field;

(5) retired;

(6) law clerk/supervised attorney not engaged in the private practice of law;

(7) unemployed;

(8) any other category which does not constitute the private practice of law in Oregon, or any activity which would be excluded or otherwise not covered by the PLF Claims Made Plan.

(C) [Reserved for future use]

(BOD 7/31/03; BOG 9/18/03)

(D) (1) An "Acceptable Alternative Insurer" is defined as an insurer which meets both of the following qualifications:

(a) The insurer is (1) an admitted insurer in Oregon, (2) a surplus lines insurer which has complied with all applicable Oregon statutes and regulations of the Insurance Division of the State of Oregon, or (3) a risk retention group or purchasing group formed under federal statute and registered with the Insurance Division of the State of Oregon.

(b) The insurer provides claims made professional malpractice insurance covering the activities of the exempt attorney with coverage limits of at least \$250,000 per claim/\$250,000 aggregate, regardless of the amount of any applicable deductible.

(2) Attorneys claiming exemption under any exemption category which requires the attorney to maintain professional liability coverage for the attorney through an Acceptable Alternative Insurer must maintain the coverage at all times during the year while the exemption is in effect, and may be required to provide proof of such coverage upon request. Any attorney who fails to maintain such coverage will be referred to the Oregon State Bar for disciplinary action.

(E) Requests for exemption will be handled in accordance with procedures adopted by the Chief Executive Officer. Attorneys requesting exemption will be required to sign the following statement:

I hereby certify that I am exempt from the [year] assessment to the Professional Liability Fund for the following reason:

[List exemption categories]

I agree to notify the Professional Liability Fund immediately if I cease to be exempt at any time during [year].

(F) Exemptions from assessment must be applied for on an annual basis or when the attorney's status changes from private practice in accordance with the administrative procedures of the PLF. It remains the obligation of an exempt attorney to notify the PLF of any change in status to private practice status and to pay the prorated assessment due at that time.

(G) Special policy consideration has been given by the PLF Board of Directors to exempt attorneys in the following situations:

(1) Non-Active and Out-of-State Attorneys: The Plan covers only those active members of the Oregon State Bar whose principal office is in the state of Oregon. Attorneys who are not active members of the Oregon State Bar or whose principal office is not in Oregon are not entitled to participate in the PLF even if they serve Oregon clients.

(2) [Reserved.]

(3) Amicus Curiae: An attorney who has claimed exemption from the PLF may appear and file an amicus curiae brief on behalf of another without remuneration.

(4) Pro Bono Service: Attorneys who represent or perform services for clients on a pro bono basis are required to obtain PLF coverage. However, exempt attorneys may provide pro bono services through OSB-certified or other volunteer lawyer programs that provide professional liability coverage for the attorney through an acceptable Alternative Insurer or the PLF's pro bono coverage program as defined at Subsection (D).

(5) Family Practice: An exempt attorney may represent his or her spouse, parent, step-parent, child, step-child, sibling, or any member of the attorney's household. An exempt attorney also may represent a business entity owned or controlled by one or more of these listed family members if the representation is excluded under the terms of the PLF Claims Made Plan.

(6) Student Legal Advisers and Attorneys With Law School Legal Clinics: Attorneys who serve as student legal advisers at any college or graduate school, and attorneys who supervise law students serving clients through any law school legal clinic, are permitted and required to claim exemption from PLF participation under Subsection (B)(1) or (B)(2) on account of such activities so long as (a) they are employees of the college, graduate school, law school, or legal clinic, and (b) the services they provide to students or clients are within the scope of their employment.

(7) Law Clerks/Supervised Attorneys (Including Retired and "Of Counsel" Attorneys): An attorney may perform legal research and writing without obtaining PLF coverage provided:

(a) the attorney's work is reviewed and supervised by an attorney with PLF coverage (or an attorney who is permitted to engage in private practice while claiming exemption from the PLF);

(b) the attorney makes no strategy or case decisions;

(c) the attorney does not hold himself or herself out to any client as an attorney or represent any party;

(d) the attorney signs no pleadings or briefs;

(e) the attorney attends no depositions as the attorney of record;

(f) the attorney makes no court appearances as the attorney of record;

(g) the attorney does not use the title "attorney," "attorney at law," or "lawyer" on any correspondence or documents; and

(h) the attorney is not listed in the firm name or on the firm letterhead as an attorney or firm members (unless specified as retired). If the attorney is retired, the attorney's

name may be listed on the firm letterhead as “retired” or “of counsel (retired),” whichever applies.

Attorneys may request exemption from participation in the PLF if they are retired or are “of counsel” to a law firm and will be acting in the same capacity as a law clerk so long as the limitations stated in this subsection are observed. Part-time or “of counsel” attorneys who do not follow these limitations must obtain current PLF coverage.

(8) Arbitration and Mediation: An attorney may serve as an arbitrator without obtaining PLF coverage provided that the attorney’s services are limited to serving as an arbitrator and do not include representing any of the parties in the arbitration. This exemption is available only if the attorney’s practice is limited to serving as an arbitrator (or other exempt activity). An attorney claiming exemption under this provision may not use the title “attorney,” “attorney at law,” “attorney/arbitrator,” “lawyer,” “legal services,” or similar phrase on any stationary, cards, billing forms, or professional listings unless the title is followed by an asterisk or other mark and the phrase “\*Not engaged in the private practice of law” appears on the same page. However, attorneys claiming exemption under this category may use the title “J.D.” after their name.

An attorney may perform mediation services without obtaining PLF coverage providing that the attorney’s practice is exclusively limited to mediation (or other exempt activity) and the attorney complies with Rule 2.4 relating to mediation. An attorney claiming exemption under this provision may not use the title “attorney,” “attorney at law,” “attorney/mediator,” “lawyer,” “legal services,” or similar phrase on any stationary, cards, billing forms, or professional listings unless the title is followed by an asterisk or other mark and the phrase “\*Not engaged in the private practice of law” appears on the same page. However, attorneys claiming exemption under

this category may use the title “J.D.” after their name.

(9) Non-Covered Activities: An attorney who is otherwise exempt from participation in the PLF may engage in law-related activities and represent a client without obtaining PLF coverage if all of the attorney’s activities would be excluded or otherwise not covered by the PLF Claims Made Plan.

(10) Government Activity Exemption: An attorney who is otherwise exempt from participation in the PLF may act on behalf of a government entity as a public official, employee or in any other capacity that comes within the defense and indemnity requirements of ORS 30.285 and 30.287, or similar state or federal statute rules or case law.

(BOD 08/10/12; BOG 11/10/12)

(11) Active Emeritus and Active Retired Membership Status: Attorneys who maintain Active Emeritus or Active Retired membership status with the Oregon State Bar are limited by the OSB as to their permitted activities. Attorneys in these membership statuses are exempt from PLF participation by definition and will not receive an annual billing statement and request for exemption form.

(12) Employed Attorneys: Employed attorneys claiming exemption under subsections (B)(1) through (3) above may represent a third party in an attorney-client relationship so long as such representation is within the attorney’s scope of employment. Examples include employment by an insurance company, labor organization, member association, or governmental entity which involves representation of the rights of insureds, union or association members, clients of the employer, or the employer itself.

(H) It is the policy of the PLF Board of Directors and the OSB Board of Governors that “private practice of law” be construed strictly and include any part-time work, whether for

remuneration or on a pro bono basis, except as specified above.

(I) All requests for exemption or failures to request an exemption are subject to verification by the attorney upon request by the Professional Liability Fund. Any misstatement may constitute a violation of Rule 8.4(a)(3) and may be the basis for disciplinary proceedings.

(BOG 8/14/92; BOG 9/22/92; BOD 7/16/93; BOG 8/13/93; BOD 5/6/94; BOG 8/12/94; BOD 8/11/95; BOG 11/12/95; BOD 12/1/95; BOG 1/20/96; BOD 8/9/96; BOG 9/25/96; BOD 2/28/97; BOG 4/5/97; BOD 4/25/97; BOG 7/26/97; BOD 10/3/97; BOG 11/16/97; BOD 4/10/98; BOG 5/30/98)

### **3.180 OUT-OF-STATE ATTORNEYS; PRINCIPAL OFFICE**

(A) The provisions of ORS 9.080 (2) (a) and (c) concerning the location of the principal office of an active member of the Oregon State Bar are interpreted by the Professional Liability Fund as stated in this policy. This policy will apply to all active members of the Oregon State Bar.

(B) Definition of Office: As used in this policy, the term “office” will mean a location which is held out to the public by an attorney as an office where the attorney engages in the private practice of law. Indicia that a location is held out to the public in this manner will include, but not be limited to, the following:

(1) Listing of the location on an attorney’s letterhead, business cards, and billing forms as the attorney’s office.

(2) Listing the location in local telephone directories, bar directories, the Martindale-Hubbell directory, and other directories as the attorney’s office address.

(3) Exterior and interior signage indicating to the public that the location is an attorney’s office.

(4) The existence of an office at the location which is dedicated solely to the attorney’s use.

(5) Configuration of the location as an attorney’s office, separation of the location from other offices of the attorney not used as an attorney’s office, and separation of the location from the residence or personal living space of the attorney or another person.

(6) Maintenance of a telephone number for the location which is separate from the telephone number of any other office of the attorney and from the residence or personal living space of the attorney or another person.

(7) Holding of meetings with clients, potential clients, or other counsel at the location as part of the attorney’s private practice of law.

(C) No Office: If an attorney has no office as defined in subsection (B) above, the attorney’s principal office as defined by ORS 9.080 (2)(a) will be defined as the attorney’s principal residence if the attorney is an active member of the bar association of the state of residence; otherwise, the attorney’s principal office will be deemed to be in Oregon unless the attorney affirmatively demonstrates to the PLF that the attorney does not engage in the private practice of law in Oregon.

(D) One Office: If an attorney maintains only one office as defined in subsection (B) above, the attorney’s principal office as defined by ORS 9.080 (2) (a) will be defined as that office.

(E) Two or More Offices:

(1) Two Offices: If an attorney maintains two offices as defined in subsection (B) above, the attorney’s principal office as defined by ORS 9.080 (2) (a) will be defined as the office where the attorney is physically present more than 50 percent of the time engaged in the private practice of law.

(2) Multiple Offices: If an attorney maintains more than two offices as defined in subsection (B) above, the location of the attorney’s principal office as defined by ORS 9.080

(2) (a) will be defined by making the following calculation:

(a) All the time the attorney is physically present in all offices of the attorney in Oregon will be aggregated the "Oregon Office Time".

(b) All the time the attorney is physically present in all offices of the attorney outside of Oregon will be aggregated the "Non-Oregon Office Time".

(c) The two totals calculated under subsections (1) and (2) above will be compared. If the Oregon Office Time is greater than the Non-Oregon Office Time, the attorney's principal office is in Oregon. If the Non-Oregon Office Time is greater than or equal to the Oregon Office Time, the attorney's principal office is not in Oregon.

(F) In determining the location where an attorney engages in the private practice of law more than 50 percent of the time engaged in the private practice of law for the purposes of ORS 9.080 (2) (c) and this policy, only the amount of time the attorney is physically present at each office of the attorney (as defined under subsection (B) above) while engaged in the private practice of law will be considered. Time spent at any office unrelated to the private practice of law will not be considered. Other factors will not be relevant to this determination, including, but not limited to, the following:

(1) The fact that an attorney lives in any particular state.

(2) The fact that the attorney sometimes engages in the private practice of law at home if the home is not an office as defined under subsection (B) above.

(3) The fact that the preponderance of an attorney's clients are located in any particular state.

(4) The fact that an attorney's practice is concentrated before the courts or agencies of any particular state.

(5) The fact that an attorney uses secretarial, administrative, or research facilities located in any particular state.

(G) The determination of where the principal office of an attorney is located will be made as of January 1 of each year based upon an attorney's activities during the prior 12 months (or during such continuous period ending on December 31 as the attorney has maintained at least one office in Oregon and at least one office outside Oregon, whichever time period is shorter). Subsequent mid-year changes in the amount of time spent at various offices will not affect the attorney's status except under the following circumstances:

(1) If the attorney's principal office as of January 1 was in Oregon, but the attorney ceases mid-year to have an office in Oregon, the attorney's principal office will cease to be in Oregon as of the date the attorney ceases to have an office in Oregon. The attorney's Claims Made Plan will automatically convert to Extended Reporting Coverage as provided under Policy 3.620, and the attorney will have no PLF coverage for any acts, errors, or omissions which occur after the date the attorney ceases to have an office in Oregon. The attorney may be entitled to a prorated refund of the annual PLF assessment.

(2) If the attorney's principal office as of January 1 was not in Oregon, the attorney has an office in Oregon, and the attorney ceases mid-year to have an office outside of Oregon, the attorney's principal office will be in Oregon as of the date the attorney ceases to have an office outside of Oregon. The attorney must notify the PLF within ten days, and will receive a prorated billing statement for PLF primary coverage for the balance of the year.

(H) An attorney who opens an office in Oregon but continues to maintain an office outside Oregon will not be permitted or required

to obtain PLF coverage until the next January 1, and then only if the attorney was physically present at the Oregon office a greater amount of time than at the office outside Oregon during the period when the attorney maintained the two offices. If the attorney wishes to have malpractice coverage before the attorney is permitted and required to obtain PLF coverage, the attorney should either continue whatever coverage was in place before the attorney established an Oregon office or obtain appropriate coverage from the commercial market.

(I) An attorney whose principal office as defined in this policy is not in Oregon is not entitled to obtain PLF primary coverage. If an attorney whose principal office is not in Oregon nevertheless pays the PLF annual assessment intentionally or in error, the attorney will not have any coverage for claims which are made against the attorney which would otherwise be covered by the Claims Made Plan then in effect, and the attorney will be entitled to a refund of any assessment paid upon notice to the PLF and be exempt from participation in the PLF.

(J) (1) The PLF does not have adequate information in its files to determine whether or not an attorney's principal office is in Oregon, and it is the responsibility of each attorney to make the correct determination for himself or herself each year and update the determination mid-year if appropriate. In the event the PLF has any question concerning whether or not an attorney's principal office was in Oregon at any particular time, attorneys may be required to provide the PLF with relevant information and supporting documentation upon request. Attorneys may be required to provide such information and documentation as office schedules, time slips, and billing statements; office and docket calendars; travel records and invoices; photographs of office areas and signage; and copies of letterhead, business cards, billing forms, and telephone directory listings. Failure of an attorney to provide information and documentation within 30 days of request will be treated the same as a payment default under Policy 3.350 and ORS 9.200.

(2) The principal office of an attorney whose official mailing address (as maintained by the Oregon State Bar) is outside Oregon will be presumed to be outside Oregon for the purpose of this policy. Such a presumption may be rebutted if the attorney completes such forms and provides such information and documentation as the PLF may request and the PLF is satisfied that the attorney's principal office is in Oregon. Notwithstanding the rebuttable presumption stated in this subsection (2), all active members of the Oregon State Bar whose official mailing address is outside Oregon will be required to file an annual Request for Exemption with the PLF.

(3) No payments for coverage will be accepted, and no coverage will be issued, to any attorney who does not provide the forms, information, and documentation requested by the PLF under subsections (1) and (2) above.

(K) Special Situations:

(1) If an active member of the Oregon State Bar (a) does not maintain an office in Oregon, (b) maintains an office in another state, and (c) is not a member of the bar association in the other state, the attorney's principal office is not in Oregon and the attorney must claim exemption from PLF participation.

(2) If an active member of the Oregon State Bar (a) maintains an office and engages in private practice in Oregon, (b) is a member of the bar of another state, and (c) engages in law-related activities at an office in the other state which do not constitute the private practice of law, the attorney's principal office is in Oregon and the attorney must obtain PLF coverage. The attorney will not have PLF coverage for his or her law-related activities in the other state which do not constitute the private practice of law.

(L) Examples: This policy is illustrated by the following examples. (The attorney in each example is assumed to be an active member of the



Oregon State Bar engaged in the private practice of law.)

Example: Attorney A does not maintain an office anywhere and lives in Vancouver, Washington. Attorney A is not an active member of the Washington State Bar. Her principal office is in Oregon.

Example: Same facts as prior example for Attorney B, except that Attorney B is also an active member of the Washington State Bar. Attorney B's principal office is not in Oregon, even if the majority of B's practice and clients are in Oregon.

Example: Attorney C maintains an office in Vancouver, Washington, but is not a member of the Washington State Bar. Attorney C does not maintain an office in Oregon, but all of her practice is in the court of Oregon. Her principal office is not in Oregon.

Example: Attorney D maintains an office in Ontario, Oregon, and an office in Fruitland, Idaho. On January 1, Attorney D determines that he spent more time during the prior year physically located at his Oregon office than at his Idaho office. Attorney D's principal office is in Oregon.

Example: Same facts as prior example, except that Attorney D closes his Ontario, Oregon office on the following May 15. Attorney D's principal office ceases to be in Oregon on May 15, and his current PLF Claims Made Plan ends as of that date and automatically converts to extended reporting coverage. Attorney D may be entitled to a prorated refund of his annual PLF assessment.

Example: Attorney E maintains an office in Portland, Oregon and an office in Oakland, California. On January 1, Attorney E determines that she spent

more time during the prior year physically located at her California office than at her Oregon office. Attorney E's principal office is not in Oregon.

Example: Same facts as prior example, except that Attorney E closes her Oakland, California office on the following August 23. Attorney E's principal office ceases to be outside Oregon on August 23, and she must notify the PLF within the next ten days. The PLF will send Attorney E a prorated assessment billing statement with coverage to commence August 23.

Example: Attorney F maintains an office in Portland, Oregon and an office in Seattle, Washington. On January 1, Attorney F determines that he spent more time during the prior year physically located at his Seattle office than at his Portland office. Attorney E's principal office is therefore not in Oregon. However, during the year it becomes obvious to Attorney F that he will spend more than 90 percent of his time in his Portland office. So long as Attorney F maintains a Seattle office, the location of his principal office does not change during the year and Attorney F is neither required nor permitted to obtain PLF coverage; however, the following January 1 his principal office for the coming year will be determined to be in Oregon.

Example: Attorney G maintains three offices, one in Portland, Oregon, one in Salem, Oregon, and one in Vancouver, Washington. On January 1, he determines that he spent 25 percent of his time at his Portland office, 15 percent of his time at his Salem office, and 60 percent of his time at his Vancouver office during the prior 12 months. Because the Oregon office time (40 percent) is less than the non-Oregon office time (60 percent), Attorney F's principal office is not in Oregon.

Example: Attorney H maintains three offices, one in Medford, Oregon, one in Yreka, California, and one in Denio, Nevada. On January 1, she determines that she spent 45 percent of her time at her Medford office, 20 percent of her time at her Yreka office, and 35 percent of her time at her Denio office during the prior 12 months. Because the Oregon office time (45 percent) is less than the non-Oregon office time (55 percent), Attorney H's principal office is not in Oregon. On July 12, Attorney H closes her Denio, Nevada office. Because she still maintains an office outside of Oregon, the location of Attorney F's principal office for the year does not change even though she spends more time at her Medford office than at her Yreka office during the rest of the year. However, the following January 1 her principal office for the coming year may be in Oregon if her total Oregon office time the previous year exceeded the total non-Oregon office time.

Example: Attorney I is a member of both the Oregon and California State Bars, but maintains only an office in Los Angeles. On September 1, he opens an office in Portland, but he keeps his Los Angeles office as well. During the balance of the year, Attorney I is physically present 80 percent of the time in his Portland office and 20 percent in his Los Angeles office. Attorney I is neither required nor permitted to maintain PLF coverage for the period September 1 through December 31, but he is required and permitted to obtain PLF coverage for the following year as of January 1.

(BOD 7/16/93; BOG 8/13/93; BOD 2/18/94; BOG 3/12/94; BOD 12/1/95; BOG 1/20/96; BOD 8/14/98; BOG 9/25/98)

### **3.200 REGULAR ASSESSMENT**

(A) Assessments of the Professional Liability Fund will be established on the basis of the PLF's

experience, operating needs, and projections of future claim development. The projected assessment for the following Plan Period will be submitted to the Board of Governors for their approval no later than November 1 of each year.

(B) Payment of the basic assessment is due on or before January 1. Attorneys entering private practice in Oregon after January 1 of any Plan Period will pay a proportionate assessment on the basis of one-twelfth of the total for each full or partial month that the lawyer will be in practice during the year, including the month entering private practice. The default date for all assessments will be 10 days after the due date, or on the first regular business day thereafter.

(BOD 08/10/12; BOG 11/10/12)

(C) If the lawyer is not eligible for exemption as described in section 3.150, the staff of the Professional Liability Fund is not authorized to waive or reduce the assessment amount without prior approval of the Board of Directors. The assessment amount includes the basic assessment and any appropriate late payment charge.

(BOD 7/16/93; BOG 8/13/93; BOD 8/9/96; BOG 9/25/96; BOD 10/25/02; BOG 11/16/02; BOD 08/10/12; BOG11/10/12)

### **3.250 STEP-RATED ASSESSMENT**

(A) Attorneys will receive a discount on the cost of their PLF coverage during their first periods of coverage as provided in this policy. The annual assessment rate for an attorney's PLF coverage will be determined as of January 1 of each year, and the rate will apply to all periods of coverage obtained by the attorney during the year. The PLF will calculate the total number of full or partial months of PLF coverage which the attorney has maintained in all prior years as of January 1 of the current year (the "Prior Coverage Period Total"). Each partial month of coverage will be counted as a full month. The attorney will then be entitled to a Step Rating Credit in calculation of the attorney's annual assessment rate as stated in the following table:

Prior Coverage Period Total	Step Rating Credit
0 months to 12 months	40 percent
Over 12 months to 24 months	20 percent
Over 24 months	20 percent
Over 36 months	0 percent

The Step Rating Credit will be applied as a reduction only to the regular assessment established for the year by the Board of Governors.

(B) The Step Rating Credit will not apply to any installment service charge, late payment charge, or any other charge.

(BOD 9/25/96; BOG 11/17/96; BOD 9/14/05; BOG 9/30/05; BOD 08/14/14; BOG 09/05/14)

### **3.300 INSTALLMENT PRIVILEGES**

(A) Installment payment of the annual assessment shall be allowed as follows: An attorney may elect to pay the annual assessment in four quarterly installments. The default date for the first installment is January 10 together with full payment of an installment service charge, and the default dates for the remaining installments are April 10, July 10, and October 10 or the first regular business day thereafter. The installment service charge shall be calculated as an administrative charge of \$10 plus a finance charge of 7% on the total assessment due. The service charge may be rounded up or down to the nearest whole dollar. Attorneys who fail to pay the first installment and full service charge together with any applicable late payment charges, reinstatement charges, and other amounts due to the Bar or the PLF by February 10 or the first regular business day thereafter may not thereafter elect to pay on the installment payment plan for the balance of the year.

(B) If the assessment default date is after January 10, the number of installments available will be fewer than four and will be equal to the number of full quarters left in the year after the

default date. No installment payment plan is available if the default date is after June 30.

(C) Attorneys who elect to pay the annual assessment in installments but who fail to make any payment by one month following the applicable installment default date shall be required to pay the entire remaining assessment balance immediately and shall not be entitled to a partial or full refund of any installment service charge previously paid. The attorney shall be charged a late payment charge of \$100 per month for each partial or full calendar month the attorney is in default. The PLF will also begin the notice requirements pursuant to statute. Notwithstanding the foregoing, attorneys who pay their second quarterly installment with any applicable late payment charges by May 10 or the first regular business day thereafter, may still pay the remaining assessment in installments.

(D) Attorneys who elect to pay the annual assessment in installments and who subsequently choose to pay some or all of the remaining balance before the default dates shall not be entitled to a partial or full refund of any installment service charge previously paid.

(E) Attorneys employed by OSB-certified pro bono programs may elect to pay the annual assessment in quarterly installments without paying the installment service charge described in subsection (A).

(BOD 4/10/92; BOG 5/1/92; BOD 7/16/93; BOG 8/16/93; BOD 2/18/94; BOG 3/12/94; BOD 8/9/96; BOG 9/25/96; BOD 4/25/97; BOG 5/31/97; BOD 2/20/04; BOG 4/02/04; BOD 10/11/13; BOG 11/23/13; BOD 6/3/16; BOG 6/24/16)

### **3.350 PAYMENT DEFAULT AND LATE PAYMENT CHARGES**

(A) Late Payment Charges: The default date for assessment payment will be listed on assessment notices and will be at least 10 days after the start of coverage. In the event a payment which is due is not received by the initial default date, the attorney shall be charged a late payment charge of \$100 per month for each partial or full calendar month the attorney is in default. Late

payment charges shall be considered a part of the assessment which is in default.

(BOD 6/21/02; BOG 8/3/02; BOD 2/20/04; BOG 4/02/04; BOD 6/3/16; BOG 6/24/16)

(B) The chief executive officer may waive or reduce late payment charges for newly-admitted attorneys during the first partial year of PLF coverage upon a showing of good cause for the delay in payment.

(C) Attorneys Who Fail to Respond to Billing Statements: An active member of the Oregon State Bar whose official mailing address (as maintained by the member with the Oregon State Bar) is in Oregon is provisionally presumed to be engaging in the private practice of law in Oregon and shall be obliged to pay the annual assessment unless an appropriate Request for Exemption is filed with the PLF. A member who fails to pay either the required full or installment assessment amount (plus any applicable late payment charges) or to file a Request for Exemption by the default date and who is suspended as a result shall be provided with coverage provisionally under the applicable Coverage Plan for claims arising from acts, errors, or omissions occurring during the period covered by the billing statement but prior to the date of suspension. Such provisional coverage shall be subject to verification that the member was, in fact, eligible and required to purchase coverage during the period from the PLF. The burden of establishing that the member was, in fact, eligible and required to purchase coverage during the period from the PLF shall be on the claimant and/or the member, and the PLF may challenge the member's right and obligation to obtain coverage based upon the facts. Once the claimant and/or the member has met this burden, (1) the PLF shall provide applicable coverage for the member (subject to all Coverage Plan terms and conditions) regardless of whether or not the member has paid for the coverage, (2) the member shall be required to pay the PLF immediately for the cost of the coverage, together with all applicable late payment charges, (3) if the member does not pay, the PLF shall pursue collection efforts against the member for payment

of the assessment and other charges and interest, and (4) the PLF shall report the attorney to Bar Discipline for appropriate disciplinary action.

(D) Attorneys Who Incorrectly Claim Exemption: An attorney who claims exemption from participation in the PLF during any period when the attorney is not, in fact, eligible to claim exemption shall be subject to the following provisions:

(1) The PLF will provide coverage to the attorney (subject to all Coverage Plan terms and conditions) for the period when the attorney was not eligible to claim exemption.

(2) The attorney will be required to pay the PLF for coverage for the period when the attorney was not eligible to claim exemption, together with all applicable late payment charges to a maximum of three months' late payment charges. Payment will be due immediately upon billing. Failure to pay shall result in suspension from membership according to the same procedures as apply to any other late payment of a PLF assessment.

(3) The coverage provided to the attorney under this Subsection (D) will be provisional, subject to verification that the attorney was, in fact, eligible and required to obtain PLF coverage for the period in question. The attorney will be required to provide the PLF with such information as the PLF may request in order to determine the attorney's eligibility for coverage, and the PLF shall have the sole authority to make that determination, subject to applicable statutes and policies governing eligibility. If the PLF provisionally provides coverage to an attorney and later determines that the attorney was not, in fact, eligible for coverage, the PLF shall not be estopped from withdrawing coverage and the attorney shall be required to reimburse the PLF for all expense and indemnity incurred during the period of provisional coverage.

(E) Emergency Provisions: The PLF CEO has the authority to take reasonable and necessary

actions, including extending deadlines and suspending late fees, if national or statewide events occur that severely disrupt the normal course of business.

(BOD 2/18/94; BOG 3/12/94; BOD 4/25/97; BOG 5/31/97; BOD 11/21/97; BOD 2/6/98; BOG 4/4/98; BOD 6/21/02; BOG 8/3/02)

### **3.400 PRORATION FOR ATTORNEYS LEAVING PRIVATE PRACTICE DURING THE PLAN YEAR**

(A) An attorney with PLF coverage who leaves the private practice of law in Oregon during the Plan Year is entitled to proration of the applicable PLF assessment if the attorney meets the criteria stated in subsection (B). The attorney will pay a proportionate assessment on the basis of one-twelfth of the total assessment for each partial or full calendar month that the attorney was in private practice, including the month the attorney leaves private practice. No reduction, proration, or refund will occur for any service charge, late payment charge, or other charges or fees paid or owed by the attorney. Attorneys seeking proration of the applicable PLF assessment under this policy will be required to complete an Application for Proration and sign a Request for Exemption.

(B) To qualify for proration of the applicable PLF assessment under this policy, an attorney must cease to engage in any private practice of law which would require PLF coverage. This means, among other things, that the attorney may not consult with a current, former, or prospective client, partner, fellow shareholder, associate, employee, or associated lawyer concerning the ongoing progress or handling of an existing matter or new matter unless permitted to do so within the scope of the attorney's PLF exemption.

(C) If an attorney obtains proration of his or her assessment under subsection (A) and returns to PLF coverage in the same Plan Year with a gap in continuous coverage of less than two full calendar months, upon returning to coverage the attorney will be required to pay his or her full annual assessment as if there had been no gap in coverage. In all other cases, an attorney who

returns to PLF coverage in the same Plan Year will be assessed according to Policy 3.200(B) upon returning to coverage. Attorneys subject to this subsection may qualify for installment payment privileges according to Policy 3.300(B).

(D) The Retroactive Date for an attorney who obtains proration of his or her assessment under Policy 3.400 and later returns to PLF coverage will be determined according to Policy 3.100.

(E) If an attorney is paying his or her assessment on an installment basis and will be leaving the private practice of law in Oregon prior to the last calendar month of the next installment period, the attorney may simultaneously (1) file an Application for Proration and Request for Exemption indicating the anticipated date of leaving the private practice of law in Oregon, and (2) pay a reduced installment payment as calculated by the PLF based on the anticipated date of leaving the private practice of law in Oregon. The attorney will be responsible for notifying the PLF immediately if the attorney's actual last day of private practice in Oregon is different than the date previously indicated to the PLF, and will be required to pay immediately any additional assessment amounts which may be due based upon the correct date.

(BOD 9/26/94; BOG 11/12/94; BOD 8/11/95; BOG 11/12/95; BOD 8/9/96; BOG 9/25/96)

### **3.450 PAYMENTS MADE IN ERROR**

In the discretion of the Chief Executive Officer, assessments which were inadvertently or erroneously paid to the Professional Liability Fund when an attorney was eligible or required to claim an exemption from participation in the PLF may be refunded upon request. Refunds are limited to the current plan year and the prior plan year assessments paid in error and will not include service charges or late fees. No more than two plan years shall be included in the refund calculation. As payments are accepted on an individual attorney basis, and not on a firm or partnership basis, the staff of the PLF will inquire as to the party who made the assessment

payment, and if payment was made by the attorney's former firm on his or her behalf, the refund check will be made payable to both the individual attorney and to the firm.

(BOD 9/26/94; BOG 11/12/94; BOD 8/9/96; BOG 9/25/96; BOD 08/10/12; BOG 11/10/12)

### **3.620 EXTENDED REPORTING COVERAGE (1996 AND LATER YEARS)**

#### **PLAN FOR EXTENDED REPORTING COVERAGE FOR PLAN YEAR 1996 AND LATER YEARS (For Attorneys Leaving Private Practice in 1995 and Later Years)**

The Board of Directors of the Professional Liability Fund adopts the following Plan for Extended Reporting Coverage for Claims Made Plan Year 1996 and subsequent years. This Plan for Extended Reporting Coverage is subject to amendment or termination by the Board of Directors at any time. No rights are vested as to Extended Reporting Coverage (including rights as to the cost or scope of coverage) until such time as an attorney has obtained Extended Reporting Coverage.

(A) Definitions: For the purposes of this policy, the following will apply.

(1) Regular Coverage will mean the current annual PLF coverage maintained by Oregon attorneys engaged in the private practice of law.

(2) Retirement will mean the "last act" in private practice in Oregon which would require an attorney to maintain current PLF coverage under applicable PLF statutes and policies, whether the attorney retires, dies, leaves private practice, or begins private practice in another state after such date.

(B) Time When Extended Reporting Coverage Takes Effect: An attorney's Extended Reporting Coverage (ERC) takes effect as of the first day of the next calendar month following an attorney's date of retirement. ERC will be governed by the

terms and conditions of the PLF Claims Made Plan in effect in the year of retirement.

Example: Attorney retires on August 31, 1996. The ERC would take effect for covered claims first made against the attorney on or after September 1, 1996. The 1996 Claims Made Plan would apply to all ERC claims.

Example: Attorney retires on January 4, 1996. Attorney must obtain regular 1996 coverage. ERC takes effect on February 1, 1996.

Example: Attorney retires on December 31, 1996. ERC takes effect on January 1, 1997.

(C) Cost of ERC: There is no cost for Extended Reporting Coverage for 1996 and later years. ERC will be granted automatically to attorneys who do not maintain regular PLF coverage. However, ERC will not be granted to attorneys who are in default in payment of any amounts due to the PLF.

(D) Limits of Coverage: An attorney who obtains ERC in 1996 and later years does not obtain new Limits of Coverage as defined at Section VI of the PLF Claims Made Plan. Instead, the attorney obtains true "extended reporting" coverage based upon the Claims Made Plan in effect during the year of retirement. This means the Coverage Period during the last year of regular coverage is extended to a single lifetime Coverage Period for the attorney. The defense and indemnity costs for claims made during the year of retirement will reduce the Limits of Coverage available to the attorney for claims made in the years after retirement, when ERC is in effect. For this reason, attorneys with claims made against them during the year planned for retirement may wish to continue in private practice and obtain regular PLF coverage instead of ERC for one or more years to obtain new Limits of Coverage, then obtain ERC in a later year. However, attorneys should remember that claims made against an attorney should be immediately reported to the

PLF, and no advantage or extra coverage limits will result by delaying reporting until a later Claims Made Plan year. In addition, there is no coverage for claims based on acts, errors, or omissions which occur after the ERC has commenced.

Example: Attorney retires on August 31, 1996. All covered claims made against the attorney after that date will be covered by the attorney's extended reporting coverage. When ERC takes effect on September 1, 1996, the reporting period for the attorney's regular 1996 coverage will be extended to a single lifetime reporting period commencing September 1, 1996. All claims made in 1997 or later years would fall within this single life-time reporting period, and would be subject to all terms and conditions of the 1996 Claims Made Plan and limited to the remaining Limits of Coverage available under the 1996 Claims Made Plan.

Example: Same facts as in the preceding example. The attorney had one claim made in May, 1996 which was closed in 1998 with a combined defense and indemnity cost of \$85,000 (including the attorney's entire Claims Expense Allowance). Assuming the 1996 Limits of Coverage were \$300,000 plus a Claims Expense Allowance of \$25,000, only \$240,000 in coverage remains available for all claims made during the balance of 1996 or in 1997 or later years (when the ERC is in effect).

If the attorney wants new limits of coverage for claims made in 1997 or later years, the attorney should delay retirement, remain in private practice, obtain regular 1997 coverage, and obtain ERC in a later year.

(E) Conversion of Regular Coverage to ERC During the Plan Year: A prorated refund of an attorney's PLF assessment may be available under the provisions of PLF Policy 3.400 if an attorney retires during the Plan Year.

(F) Filing Request for Exemption After Retirement: An attorney who retires but remains an active member of the Oregon State Bar will receive a PLF Billing Statement each year and should complete a Request for Exemption annually. If the attorney does not file a Request for Exemption or other request for ERC within four months after the end of the last Claims Made Plan year for which the attorney has regular coverage, the PLF will automatically grant ERC. No ERC will be granted if the attorney has other insurance coverage which applies to the claim. ERC applies only to claims arising from acts in the private practice of law which occurred during a period of regular PLF coverage as provided in the applicable Claims Made Plan.

Example: Attorney retires on December 31, 1996. The attorney will be granted ERC upon filing a Request for Exemption from regular PLF coverage (which should be filed by the default date of January 10, 1997).

Example: Same facts as prior example. Attorney fails to file a Request for Exemption by the default date (January 10, 1997). If the attorney does not correct this over-sight, the attorney will be suspended from membership in the Oregon State Bar by mid-April, 1997. However, even if the attorney takes no action and is suspended, the PLF will grant ERC on May 1, 1997, effective January 1, 1997. The ERC based on the attorney's 1996 Claims Made Plan will apply to claims first made on or after January 1, 1997 arising from the attorney's private practice of law prior to 1997.

Example: Attorney has 1996 regular coverage, but does not either pay for 1997 coverage or request exemption by the January 10, 1997 deadline. A claim is made against the attorney in February, 1997 based on an alleged error occurring in October 1996. Because the attorney has not obtained regular 1997 coverage,

the PLF will provision-ally apply ERC to the claim. If the attorney obtains regular 1997 coverage by the final date for obtaining the coverage, the 1997 regular coverage will apply to the claim; otherwise, ERC will apply to the claim. If the attorney fails to act by May 1, 1997, the attorney may be suspended from membership in the Bar but ERC based on the attorney's 1996 Claims Made Plan will apply to the claim.

Example: Attorney retires on December 31, 1996 and commences practice in California on January 1, 1997. Attorney obtains malpractice insurance in California which covers new claims from the attorney's prior practice in Oregon. A claim is made on June 15, 1997 based on the attorney's prior practice in Oregon. ERC does not apply to the claim.

(BOG 6/21/91; BOG 10/1/91; BOD 12/1/95; BOG 1/20/96; BOD 4/25/97; BOG 5/31/97)

### **3.700 DEDUCTIBLE**

Coverage under the Professional Liability Fund is not subject to a deductible under the current Claims Made Plan. However, a deductible may be adopted at a future date, and may apply to all claims made on or after that date regardless of when the act, error, or omission giving rise to the claim occurred.

### **3.750 COVERAGE EXCLUSIONS (PRIOR CARRIER)**

If a prior carrier is defending an attorney under its prior policy subject to a deductible, the PLF will refuse coverage of the deductible amount pursuant to provisions of the Claims Made Plan.

### **3.800 COVERAGE FOR PRO BONO PROGRAMS**

(A) The PLF will provide professional liability coverage without charge for claims made against PLF-exempt Oregon attorneys arising from their

work for OSB certified pro bono programs under the specific provisions of this policy.

(B) As used in this policy:

(1) The words "Pro Bono Coverage" mean the PLF coverage provided to a Pro Bono Program through a PLF Master Plan pursuant to this policy.

(2) The words "Pro Bono Program" mean an organized program which has been certified by the Oregon State Bar as an OSB Pro Bono Program under OSB Bylaw 13.201 and does not present an unacceptably high risk of professional liability claims.

(BOG 11/15/03; BOD 12/12/03; BOD 10/9/09; BOG 10/30/09)

(3) The words "Volunteer Attorney" means an active member of the Oregon State Bar who has claimed exemption from PLF participation at the time of providing legal services to clients without compensation through the Pro Bono Program.

(C) A Pro Bono Program may apply to the PLF for Pro Bono Coverage under a PLF Master Plan by providing the following information:

(1) A copy of the application submitted to the Oregon State Bar in connection with its request for certification as an OSB Pro Bono Program under OSB Bylaws Article 13 and all supplemental and renewal applications;

(2) A list of all staff officers and staff attorneys, as well as a list of all Volunteer Attorneys who have provided services through the Pro Bono Program within the prior 12 months;

(3) A projection of the likely number of Volunteer Attorneys who will participate in the program during the coming 12 months, the number of matters or clients which the Volunteer Attorneys will likely handle, and the estimated percent of volunteer attorneys who will not have regular PLF coverage;



(4) Details of the Pro Bono Program's existing malpractice coverage, including a copy of the declarations sheet and policy; and

(5) Such other information as the PLF may request.

(D) Upon receipt of the information listed in subsection (C), the PLF will issue a Master Plan to the Pro Bono Program at no charge providing malpractice coverage for Volunteer Attorneys who provide legal services to clients through the Pro Bono Program. The exact scope and nature of the Pro Bono Coverage will be as provided in the master policy, as such master policy may be modified by the Board of Directors from time to time in the future. Pro Bono Coverage may be terminated by the PLF at any time upon notice to the Pro Bono Program, and will automatically terminate at such time as any Pro Bono Program ceases to qualify as an OSB Pro Bono Program under OSB Bylaws Article 13.

(E) Each Pro Bono Program receiving Pro Bono Coverage will submit an annual report in such form as the PLF may request listing the names of the Volunteer Attorneys who provided services to clients through the Pro Bono Program during the prior calendar year as well as details of the number of clients and matters handled and the nature of the services provided.

(F) Malpractice coverage provided under this Policy 3.800 may be terminated by the PLF at any time upon 30 days' notice to participating Pro Bono Programs.

(BOD 9/26/94; BOG 11/12/94; BOD 12/6/96; BOG 2/7/97; BOD 10/22/04; BOG 11/20/04)

## **CHAPTER 4 CLAIMS**

### **4.100 CLAIMS DEFENSE**

The Chief Executive Officer will have the power and authority to appoint counsel for review and evaluation as well as to appoint counsel to defend a Covered Party in trial or on appeal. Such appointments of counsel to review or defend will

be made from the established Claims Defense Panel as have been designated by the Chief Executive Officer unless the Chief Executive Officer determines that it is necessary to retain other counsel because of conflicts, the need for special expertise, the need for services in a special venue, or for other reasons.

### **4.150 CLAIMS MANAGEMENT**

(A) The Chief Executive Officer will have responsibility for the following claims management functions:

(1) Evaluation, investigation, negotiation and defense of legal malpractice claims;

(2) Development of central, comprehensive and consistent policies to effectuate these claims-handling functions;

(3) Appointment and maintenance of a defense panel of qualified attorneys for defense of litigated malpractice cases;

(4) Appointment and maintenance of claims review attorneys on the defense panel with expertise in various fields of the law;

(5) Assignment of cases to defense panel attorneys, and

(6) Ensuring that the provisions of this policy manual, including the PLF Mission and Goals stated at Policy 1.250 and the provisions of this chapter, are fully complied with.

(B) The Chief Executive Officer may delegate such duties and responsibilities as deemed appropriate. The Chief Executive Officer will see that uniform billing procedures, formats and reports from the claims review and defense panel members are developed and implemented.

(C) The Chief Executive Officer will utilize such outside technical experts in the investigation, evaluation and defense of claims as the Chief

Executive Officer or his or her designees will deem appropriate, giving due consideration to the seriousness and exposure to loss in each case. Such outside experts will be obtained from the defense panel where possible. The Chief Executive Officer is authorized, however, to seek an expert opinion from an attorney not a member of the defense panel in the event no lawyer on the defense panel has the requisite expertise to furnish the requested opinion, or if the Chief Executive Officer determines that a non-defense panel expert is preferable.

(D) Retention of Support Services: The Chief Executive Officer will have the authority to retain outside experts, expert witnesses, investigators or consultants in connection with the handling or defense of any claim, action or suit.

(E) Cost and Expense Records: All employees of the PLF will maintain expense records with documentation, where possible, for all amounts expended by the PLF in such form as the Chief Executive Officer may require.

(F) Notice to Board of Directors: The Board of Directors will be notified immediately whenever the PLF, a member of the PLF staff, an agent of the PLF, or a Defense Panel member is informed that the PLF, staff member, agent, or panel member has been, will, or may be made a party, witness, or deponent, or has been, will, or may be the subject of a disciplinary complaint, in connection with the investigation or defense of a PLF claim.

#### **4.200 CLAIMS HANDLING PRACTICES AND PROCEDURES**

(A) The Professional Liability Fund and its Defense Panel shall:

(1) Promptly acknowledge and act upon communications relating to claims;

(2) Not misrepresent facts or Claims Made Plan provisions in handling and settling claims;

(3) Accept or deny claims or coverage within a reasonable time after review of such information as is necessary in order to properly evaluate the claim or coverage.

(4) Provide an explanation of the basis for the denial of any claim or coverage.

(5) Attempt in good faith to promptly and equitably settle claims in which liability has become reasonably clear and damages have become reasonably ascertainable.

(B) Claims Handling Practices and Procedures Manual: The Chief Executive Officer will adopt and revise from time to time a Claims Handling Practices and Procedures Manual which will apply to all Claims Department activities.

(C) Oversight by Claims Committee:

(1) PLF staff will bring all new or difficult claims handling issues to the Claims Committee, together with such recommendations as staff may present. The Claims Committee will instruct staff how to proceed, and the Committee's decisions will be recorded by minutes distributed to all members of the PLF Board of Directors. From time to time, the Chief Executive Officer will memorialize decisions of the Committee which have general and ongoing applicability through amendments to the Claims Handling Practices and Procedures Manual referred to in Subsection (B), and all amendments will be distributed to the PLF Board of Directors and the Board of Governors liaison. Decisions on issues which affect handling of claims by Defense Panel members will be communicated to them as provided at Policy 4.500(C).

(2) The Claims Committee will meet with the Chief Executive Officer and all claims attorneys at least annually to conduct a general review of PLF claims handling practices and procedures and to confirm that the PLF is

following the claims handling practices and procedures established in this policy as well as the PLF's Mission Statement and Claims Goals established under Policy 1.250. The Board of Governors liaison to the PLF Board of Directors will be encouraged to attend this meeting. The Claims Committee will thereafter report to the PLF Board of Directors and the Board of Governors liaison.

(D) Outside Claims Department Audit:

From time to time, but at least every five years, the PLF Board of Directors will commission a claims department audit by an outside auditor familiar with insurance program claims handling. The auditor will be asked (1) to conduct an ordinary claims department performance audit based on insurance industry standards, (2) confirm compliance with the claims handling practices and procedures established in this Chapter as well as the PLF's Mission Statement and Claims Goals, and (3) to audit such other matters as the PLF Board of Directors may request. A copy of each final audit report will be sent directly to each member of the PLF Board of Directors and the Board of Governors liaison.

**4.250 CONFIDENTIALITY AND PRIVILEGE**

(A) It is the policy of the Oregon State Bar that all claims records of the Professional Liability Fund are confidential and privileged in accordance with the laws of the State of Oregon and other applicable law. No confidential or privileged claim records will be disclosed. Where applicable, the confidentiality and privileges provided under ORS 9.080(2), ORS 9.460(3), ORS Chapter 192.410 et seq., and the attorney-client and work product privileges, and other available protections will be asserted to the utmost against any attempts to obtain such information. This includes, where applicable, a request for confidential claim files and records by the Oregon State Bar or the Oregon State Bar Board of Governors, except as provided in subsection (D) of this policy. It is considered to be in the public interest and essential for purposes of the coverage afforded by the PLF and the

complete cooperation of the members of the Bar that every effort be made to maintain confidentiality and privilege of all information acquired through the operation of the PLF.

(B) The term "claims records" includes but is not limited to all reports of claims, actual or potential, questionnaires, reserve information, statistics, and all files and oral or written communications in any way relating to the investigation, repair, or defense of claims against any covered party.

(C) (1) In accordance with this policy, the PLF will not respond to requests for claim information from third parties, with or without a waiver or authorization from the covered party. This policy will apply to requests received in connection with hiring decisions, judicial appointments, disciplinary proceedings, news stories, and similar matters.

(2) The PLF will respond to subpoenas and other litigation discovery requests seeking claim information, but will assert all available privileges and objections as appropriate.

(3) The PLF will respond to requests for claim information from a covered party, but will provide in writing only a basic listing of claim information from the PLF's computer records (claim number, claimant, date of claim, and defense costs and indemnity paid). Written claim information will be provided only to the covered party directly. The PLF reserves the right not to provide any written claim information to a covered party if the PLF is not satisfied that the covered party's request for written information is completely voluntary.

(D) If the Oregon State Bar, Oregon State Bar Board of Governors, Professional Liability Fund, or Professional Liability Fund Board of Directors are named parties in an action, confidential claim file information will be provided to all named defendants to the extent permitted by the Oregon

Code of Professional Responsibility, ORS 9.460(3), ORS Chapter 192.410 et seq., the attorney-client privilege, work product privilege, and other fiduciary obligations owed by the PLF.

(E) Any request by the Oregon State Bar Board of Governors for confidential claim file information from the Professional Liability Fund will be directed by the President of the Oregon State Bar Board of Governors to the Chair of the Professional Liability Fund Board of Directors. No material or information will be released by the Oregon State Bar Board of Governors without first receiving the approval for such release from the Chair of the Professional Liability Fund Board of Directors.

(F) The Chair of the Professional Liability Fund Board of Directors will review all public statements pertaining to confidential claim files and records made by the Oregon State Bar or Oregon State Bar Board of Governors for compliance with the claim file protections set forth in this section.

(BOD 6/3/00; BOG 6/30/00)

#### **4.275 DISCLOSURE OF PLF INVOLVEMENT**

Except where legal, ethical, and professional constraints dictate otherwise, the PLF's policy is to fully and voluntarily disclose to the claimant or the claimant's attorney that the PLF is defending the claim, and to the court where the litigation is pending when the PLF is providing a defense to the covered party in that litigation.

(BOD 1/19/01; BOG 1/26/01)

#### **4.300 FILE REPAIR**

(A) Any Oregon attorney covered by the Professional Liability Fund may contact the PLF for assistance concerning any act, error or omission which the Covered Party believes may give rise to a claim potentially covered under the Professional Liability Fund Plan. This procedure will be known as "file repair." The decision whether to

undertake file repair is discretionary with the PLF based upon all relevant factors.

(B) If the PLF incurs any expense in the handling of the repair matter, then a claim file will be opened.

(C) This service is designed to prevent or mitigate claims against Covered Parties, and all disclosures made to the PLF are confidential, privileged, and not subject to discovery in any subsequent suit, action, claim or proceeding in accordance with the laws of the State of Oregon and other applicable law.

(D) The PLF's strong preference is in favor of full and voluntary disclosure of the PLF's involvement in a repair, but the final decision concerning disclosure will be left to repair counsel based on all legal, ethical, and professionalism requirements.

#### **4.350 RESERVING POLICY AND PROCEDURES**

(A) It is the policy of the Professional Liability Fund to establish both loss and expense reserves as quickly and accurately as possible as part of the claim file set-up procedure. Consideration is to be given to the following factors in light of what is known at any given time:

(1) The degree of potential liability of the Covered Party for negligent acts or omissions.

(2) The nature and extent of the claimant's damages.

(3) Coverage questions.

(4) Defenses available to the Covered Party on the malpractice issue.

(5) The nature of the underlying case.

(6) Defenses available in the underlying case.

(7) Jurisdiction in which the claim is or would be filed.

(8) Mitigation efforts by claimant in the underlying case.

(9) Opinion of defense counsel.

(10) Character and reputation of the Covered Party and the claimant.

(11) General assessment of the overall situation, both as to the underlying and malpractice cases.

(12) Reports and assessments of liability received from outside experts.

(13) Such other factors as may be deemed relevant to the claim.

(B) It is the PLF's policy that all loss reserves will be reviewed by the Professional Liability Fund staff attorney assigned to the case at least every 90 days, and more often if new information is received which bears on file evaluation.

(BOD 10/14/16; BOG 11/19/16)

#### **4.400 CLAIM SETTLEMENT PROCEDURES**

(A) The Chief Executive Offer will appoint a designated member of the Board of Directors to review any claim for which a negotiated settlement of \$100,001 or more is anticipated. Any negotiated claim settlement in the amount of \$100,001 or more must be approved by the Director designated for review of the claim. Any negotiated claim settlement in excess of \$150,000 must be discussed by the Board of Directors in executive session pursuant to ORS 192.660(2)(f) and (h), either at a Board meeting or by telephone conference call, but all final actions or decisions concerning negotiation and settlement of any claim for \$100,001 or more will be made solely by the Chief Executive Officer or his staff designee with the approval of the designated director.

(B) In the event a judgment has already been rendered against a covered party on a claim, there is an opportunity to satisfy the judgment or to settle the claim for an amount less than the judgment, and the PLF claims department wants to satisfy the judgment or enter into the settlement, any payment in the amount of \$100,001 or more must be approved by the Director designated for review of the claim, but need not be discussed by the Board of Directors even if the payment is in excess of \$150,000 unless the assigned Director so elects. Any payment in satisfaction of a judgment or in settlement in excess of \$150,000 will be reported to the Board of Directors at its next regular meeting.

(C) When the settlement or repair of any claim includes the purchase of real property the matter must be presented to the Board in the same manner as if it were the settlement of a claim in excess of \$150,000. If the purchase of real property is made, any subsequent change to the status of the property including the eviction of tenants, foreclosure of the property, or sale of the property must also be discussed by the Board of Directors, but all final actions or decisions concerning the real property will be made solely by the Chief Executive Officer or his or her staff designee with the approval of a designated-director.

(D) In order to maintain the integrity of the claim-handling process, neither the Board of Directors nor any individual director will communicate with any claimant or any attorney for a claimant regarding any pending claim.

(BOD 6/23/00; BOG 7/22/00; BOD 12/8/06; BOG 2/22/07; BOD 4/30/10; BOG 6/18/10)

#### **4.450 MONTHLY CLAIM REPORTS**

The Board will be provided with monthly reports indicating pertinent details of all claims closed in the preceding calendar month.

#### **4.500 DEFENSE PANEL**

(A) A Defense Panel has been established to assist the Chief Executive Officer in the handling of claims against the Professional Liability Fund. Members of the panel are called upon to evaluate claims, make recommendations as to claims handling, advise regarding coverage, work on claims repair matters, and represent Covered Party attorneys against whom claims have been made.

(B) Attorneys may be added to or deleted from the Defense Panel from time to time by the Chief Executive Officer after consultation with the Defense Panel Committee of the Board of Directors.

(C) The Defense Panel will be chosen from attorneys who have expertise in handling the defense of legal malpractice cases. Experience in handling insurance defense cases and general tort litigation is desirable. Panel members should be appointed in all geographical areas of the state where legal malpractice litigation occurs, and where attorneys with the requisite expertise are available. Defense Panel members will be informed in writing of the PLF's Mission Statement and Claims Goals, and the requirements and standards of this chapter when added to the panel and at least every two years thereafter, and these same requirements and standards will be discussed with the Defense Panel at any general meeting or seminar scheduled for the Panel.

(D) The Defense Panel members will be paid the hourly rate which they normally charge for defense work. The Professional Liability Fund may set a maximum hourly rate for claims review work by panel members.

(E) Uniform billing procedures for use by Defense and Review Panel members will be developed and provided to panel members. Strict adherence to these procedures will be required, and the panel members will be required to agree to such procedures as a condition of appointment. As an additional condition of appointment, panel

members must agree to arbitrate any disputes which may arise over fee bills. All fee bills submitted by Defense Panel members will be subject to review and approval by the Chief Executive Officer or designee. The Chief Executive Officer will attempt to work out any dispute over fees which may occur, and if unable to do so, will submit the disputed fee to arbitration.

(F) The Chief Executive Officer has authority to select an attorney not presently on the defense panel, if necessary, to provide legal services when required due to conflicts preventing use of a defense panel member, the need for special expertise, the need for services in an unusual forum, or for other special reasons.

(G) No member of the Defense Panel, nor any other attorney employed by the Professional Liability Fund in the defense of claims against Covered Parties, nor any member of their respective firms, will represent a claimant in prosecuting a claim against the Professional Liability Fund or against any Covered Party if the claim is or may be covered by the PLF in whole or part. This limitation will not apply:

(1) where a third party or cross-claim should, in the judgment of the attorney defending a claim for the Professional Liability Fund, be prosecuted in order to fully represent the interests of the Covered Party-attorney, or

(2) where a third party or cross-claim should, in the judgment of the attorney, be made against an attorney in order to represent the interests of the client and the attorney could not reasonably anticipate the necessity of making such a claim against an attorney at the time the attorney began working on the matter.

(H) No member of the Defense Panel, nor any other attorney employed by the Professional Liability Fund in the defense of claims against covered parties, nor any member of their respective firms, will act as personal counsel for any Covered Party concerning a claim which is or may be within the coverage provisions of the

Professional Liability Fund, or represent any party in litigation against or involving the Professional Liability Fund.

(I) No member of the Defense Panel, nor any other attorney employed by the Professional Liability Fund in the defense of claims against Covered Parties, nor any member of their respective firms, will serve as an expert witness for any claimant in prosecuting a claim against the Professional Liability Fund or against any Covered Party if the claim is or may be covered by the PLF in whole or part.

(J) Attorneys hired by the PLF will comply with all requirements of the Defense Panel File Reporting Guidelines.

(K) All members of the Defense Panel are required to maintain malpractice coverage of not less than \$700,000.00 in excess of current Claims Made Plan limits.

(BOD 9/15/06; BOG 11/18/06)

#### **4.550 DEFENSE PANEL FILE REPORTING GUIDELINES**

The Chief Executive Officer will adopt and revise from time to time Defense Panel File Reporting Guidelines which will apply to all Claims Department activities.

#### **4.600 LEGAL RESEARCH LIBRARY**

The Professional Liability Fund shall maintain a legal research library covering the law of professional liability and the substantive legal areas in which the frequency of malpractice claims is high.

#### **4.650 PUBLICATIONS AND TRAINING**

The Fund shall subscribe to such publications dealing with legal malpractice as are available, and the Chief Executive Officer, staff attorneys, and defense panel members shall be required to attend conferences or seminars, and to study to improve their knowledge concerning

Professional Liability Fund and personal and practice management assistance, on an ongoing basis.

(BOD 6/23/00; BOG 6/30/00; BOD 8/27/04; BOG 10/13/04; BOD 10/22/04; BOG 11/20/04)

## **CHAPTER 5 FINANCIAL**

### **5.100 BANKING**

(A) The Board of Directors will designate bank depositories under the standard bank resolution forms. Authorized signatories to such bank accounts will be the Chief Executive Officer or Chief Financial Officer or one or more employees designated by the Chief Executive Officer and reported to the Board of Directors. One signature will be required on any check under \$10,000, with two signatures required on any check of \$10,000 or more. At least one signature on any check of \$25,000 or more will be the signature of the Chief Executive Officer or the Chief Financial Officer. In the absence of the CEO and CFO, either one may designate either the Director of Administration, Director of Claims, or Director of Personal and Practice Management.

(B) Any check payable to a Director, the Chief Executive Officer, or the Chief Financial Officer will bear two signatures, not to include the signature of the payee.

(C) The Chief Executive Officer or Chief Financial Officer will review a copy or record of any check not signed by either of them, together with supporting documentation, within ten days of disbursement.

(BOD 12/6/91; BOG 3/13/92; BOD 12/3/93; BOG 3/12/94; BOD 11/02/15; BOG 11/20/15)

### **5.150 FIDELITY BOND**

The Professional Liability Fund will maintain a fidelity bond with limits for any single defalcation of not less than \$1 million. If financially advantageous, the PLF may purchase a fidelity bond jointly with the Oregon State Bar.

(BOD 12/3/93; BOG 3/12/94)

## 5.200 INVESTMENT GUIDELINES

The funds of the Oregon State Bar Professional Liability Fund are to be invested in the following manner:

(A) Prudence: All participants in the investment process shall act responsibly. The standard of prudence to be applied by the Board of Directors, the Investment Committee, PLF staff and external service providers shall be the “prudent investor” rule, as provided in ORS 128.196.

(BOD 12/12/03; BOG 01/31/04)

(B) Ethics and Conflicts of Interest: The Board of Directors, Investment Committee, PLF staff, and outside managers and advisors involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. These parties are required to reveal all relationships that could create or appear to create a conflict of interest in their unbiased involvement in the investment process. The Board of Directors and PLF staff shall be subject to applicable State statutes and opinions of the Oregon Government Standards and Practices Commissions. All external service providers shall be governed by the Standards of Professional Conduct established by the Association of Investment Management and Research (AIMR) and applicable State statutes.

(C) Diversification: The investments of the Oregon State Bar Professional Liability Fund shall be diversified as to type of investment, issuer, and industry sector. Investments will not be made in individual securities. Commingled funds or mutual funds will be used as investment instruments. For commingled funds or mutual funds there is a pooling of securities owned by multiple clients for diversification, lower expense, and improved liquidity. Investments in real estate will be implemented through a

diversified commingled fund structure. For absolute return investments, only “funds of funds” will be used to promote diversification and limit volatility. A fund of funds is defined as a pool of investments managed by multiple organizations that have different investment strategies or approaches. Investments in the real return strategy shall be made in an investment vehicle targeting a “real” return in excess of inflation, utilizing a core investment in inflation protected securities.

(BOD 12/12/03; BOG 01/31/04)

(D) Investment Committee: The role of the Investment Committee is to advise the Board of Directors. The Board of Directors will approve the hiring of the investment advisor / consultant, the selection of all investment managers, and all changes to the investment guidelines including the asset allocation.

(E) Investment Advisor/Consultant: The Board of Directors will hire an independent consulting organization to provide expert advice and assistance regarding investments. This organization shall not be involved in any investment management of PLF funds. This organization will monitor investment results and report to the Board of Directors as soon as practicable after each calendar quarter. A representative of the investment consultant will meet with the Investment Committee to review each manager’s performance. Any noncompliance with the PLF Investment Guidelines will be reported to the Board of Directors as quickly as possible. The quarterly investment performance report will also be distributed to the Board of Governors of the Oregon State Bar.

The investment consultant may offer the Investment Committee and Board of Directors other expert assistance including formulating investment policies, preparation of asset allocation reports, and selection of investment managers.



(F) Investment Managers: The Board of Directors will select investment managers, including commingled funds, mutual funds and funds of funds, after reviewing recommendations from the Investment Committee. For each investment manager, an applicable index or indices will be selected as a gauge to evaluate future performance. For some asset classes, a fixed or absolute return percentage may be used instead of an index. In addition, performance will be evaluated with a universe of other managers within the same asset class. Generally, performance measurement shall be based on total rate of return and shall be monitored over a sufficient time period to reflect the investment expertise of the investment manager over one full market cycle, or three years, whichever is less. Investment managers are requested to meet with the Investment Committee at least annually to review past performance and the investment forecast for the following year.

(G) Short Term Investments: The Chief Executive Officer and Chief Financial Officer will project the annual cash needs for PLF administration and claim payments. Based upon these projections, amounts shall be allocated to short term investments including fixed income funds, money market funds or bank accounts. The Chief Executive Officer or Chief Financial Officer may withdraw funds or liquidate any short term investments as needed to pay claims or cover the cost of PLF operations.

(H) Long Term Investments: Investment funds intended to be held more than one year shall be called long term investments. The Chief Executive Officer or Chief Financial Officer may

withdraw funds or liquidate long term investments as needed to pay claims or cover the cost of PLF operations.

(BOD 12/12/03; BOG 01/31/04)

(I) Asset Allocation: An important component of an investment strategy for long term investments is the asset mix, or the resource allocation, among the various classes of securities available for PLF investments. The Board of Directors will be responsible for minimum, target and maximum asset allocation for investments intended to maximize investment return with limited volatility. The Board of Directors shall make use of formal asset allocation studies to help set allocations. These studies, reviewing the appropriate asset mix for the PLF, will be completed every two years at a minimum. The investment portfolio shall be diversified among the asset classes listed in the asset allocation table below, and such holdings themselves shall be prudently diversified.

The Board of Directors will adopt a long-term “target” strategic asset allocation. The Board of Directors will periodically review the asset allocation to deem that it is appropriate for the PLF investment objectives. Within each asset class, the Board of Directors shall adopt portfolio implementation strategies and investment styles to meet the overall investment objective of each asset class.

The following is intended to represent the current target mix of asset classes for long term investments:

ASSET CLASS	MINIMUM PERCENT	TARGET PERCENT	MAXIMUM PERCENT
U.S. Equities	17%	24%	31%
International Equities	12%	21%	30%
Fixed Income	20%	31%	32%
Real Estate	5.0%	10.0%	15.0%
Absolute Return	9.0%	14.0%	19.0%
Real Return Strategy	5%	0%	5%

(BOD 12/12/03; BOG 01/31/04; BOD 5/14/04; BOG 6/11/04; BOD 6/23/06; BOG 7/7/06; BOD 10/8/10; BOG 11/12/10; BOD 10/14/16; BOG 11/19/16; BOD 12/09/16)

(J) **Rebalancing:** The Chief Executive Officer and Chief Financial Officer, on an ongoing basis and in accordance with market fluctuations, shall rebalance the investment portfolio so it remains within the range of minimum and maximum allocations.

(BOD 5/17/91; BOG 10/1/91; BOD 8/14/92; BOG 9/22/92; BOD 12/3/93; 12/17/93; 2/18/94; BOG 3/12/94; BOD 8/11/95; BOG 11/12/95; BOD 8/15/97; BOG 9/25/97; BOD 2/12/99; BOG 4/3/99; BOD 1/28/00; BOG 6/3/00; BOD 8/9/01; BOG 11/17/01; BOD 4/19/02; BOG 8/3/02)

#### **5.250 AUDITING AND ACCOUNTING ASSISTANCE**

The Board of Directors hires the independent financial auditor subject to the requirements of the Oregon Secretary of State. Any audit report will be made directly to the Board of Directors. The Board of Directors may retain additional outside accounting advice whenever it deems necessary.

(BOD 5/14/04; BOG 6/11/04)

#### **5.300 CLAIMS RESERVES**

The estimated liability for claims is the major item in the Liabilities and Equity portion of the Professional Liability Fund's Balance Sheet. The accuracy of this item is crucial when presenting the financial condition of the PLF. The Chief Executive Officer will periodically review the case-by-case indemnity and expense reserves required under section 4.350 and will adjust these figures to present at all times as accurate a picture as possible of the total claims liabilities incurred by the PLF. The Chief Executive Officer will use consulting actuaries when appropriate. The method of calculating estimated liabilities will be

reported in detail to the Board on at least an annual basis.

(BOD 7/16/93; BOG 8/13/93)

#### **5.350 BUDGET**

A budget for the Primary and Excess Programs will be as approved by the Board of Directors and the Board of Governors. The budget will reflect the PLF's mission and goals as stated at Policy 1.250. The Excess Program will be allocated a portion of all common costs based upon the benefits received from PLF departments and programs. The budget will be prepared and submitted for approval of the Board of Governors in the same manner as budgets of other functions of the bar. The Primary Program budget will be presented to the Board of Governors in conjunction with the recommended Primary Program assessment for the coming year.

(BOD 10/2/91; BOG 12/13/91; BOD 10/25/02; BOG 11/16/02; BOD 5/14/04; BOG 6/11/04)

#### **5.400 REPORTS TO BOARD OF DIRECTORS**

The Board of Directors will receive on a monthly basis a copy of the PLF's financial statement, a copy of any investment reports prepared by the PLF's investment advisors, and such other financial reports as the Chief Executive Officer may present. In addition, the Board of Directors will receive copies of all reports from consulting actuaries and any consultants who evaluate the performance of the PLF's investment advisors. All members of the Board of Directors and Board of Governors will receive a copy of the final annual audit of the PLF.

(BOD 7/16/93; BOG 8/13/93)

**5.450 SUBROGATION AND RECEIVABLES; WRITE-OFFS**

The Chief Executive Officer will establish procedures and forms for handling subrogation matters and receivables, including judgments for costs and disbursements, assignments of contracts, notes, and other assets, and subrogation actions against third parties. Uncollectible obligations valued at \$50,000 or less may be written off with proper documentation including an appropriate justification based upon standard financial and accounting practices. Uncollectible obligations valued at more than \$50,000 may be written off only with approval of the Board of Directors with proper documentation including an appropriate justification based upon standard financial and accounting practices. The Chief Executive Officer will present a report of all write-offs in excess of \$10,000 to the Finance Committee at least annually.

(BOD 7/16/93; BOG 8/13/93)

**5.550 SALARY ADJUSTMENT**

(A) Joint Procedures Concerning Annual Budgeting for Salary Increases: It is the goal of the Oregon State Bar and the Professional Liability Fund to coordinate their annual budgeting for salary increases in order that the two organizations will select the same percentage increase for their respective salary pools. In order to foster such coordination, the two organizations hereby adopt the following procedures:

(B) The Bar's Chief Executive Officer and the PLF's Chief Executive Officer will confer from time to time concerning the appropriate percentage figure to be used in their respective budgets for the following year. In initial budget drafts, the percentage increase figure selected for the prior year may be used as a tentative figure.

(C) Beginning midsummer each year, the OSB and PLF CEOs will assemble the following data: (a) projected cost of living increase figures for Portland and U. S. cities; (b) projected salary pool percentage increases for comparable businesses

and organizations, and (c) such other information as they may choose. They will also give due consideration to the correctness of the underlying assumptions and percentage increase figure chosen in the prior year, and whether any adjustment in the next year's figure is warranted.

(D) Based upon available data, the OSB and PLF CEO's will attempt to select an appropriate percentage increase figure for the following year. In making this selection, their goal will be to create an available salary pool which is adjusted from the prior year's pool (adjusted for any increase or decrease in number of personnel) by an appropriate amount, taking into consideration such factors as merit and inflation. Individual salary adjustments for personnel will be decided separately by the CEO for the Bar and the CEO for the PLF as an administrative matter at a later date. Salary adjustments for the OSB CEO and PLF CEO, if any, will be determined through a separate procedure within each organization.

(E) The OSB CEO and PLF CEO will forward their joint recommendation to their respective budget committees by August 1. In the event they are unable to agree, they will forward both of their recommendations to the committees and the committees will thereafter confer with one another for the purpose of trying to reach agreement on a single figure. Each budget committee will thereafter forward its recommendation to its full board for action.

(F) It is expected that in most or all years the two organizations will jointly select a single percentage increase figure. However, it is also recognized that in certain circumstances it may be appropriate for each organization to select a different percentage increase figure. The final choice of a figure is left to the best judgment of the board of each organization after the full communication and cooperation as described by this statement of procedures.

(BOD 10/22/04; BOG 11/20/04)

**CHAPTER 6  
PERSONAL AND PRACTICE MANAGEMENT  
ASSISTANCE**

**6.100 GENERAL STATEMENT**

Personal and practice management assistance programs are of primary importance to the Professional Liability Fund to reduce the frequency and severity of future claims. Personal and practice management programs will include 1) educating lawyers on avoiding malpractice 2) practice management assistance and 3) personal assistance. The education activities will include collection and analysis of claims data, periodic publications, handbooks, workshops, seminars (including participation in programs and seminars of the Oregon State Bar and other organizations) and audiotapes and videotapes of programs. Practice management assistance will include assistance with docket control, tickler systems, conflict of interest systems, mail handling, billing, trust accounting, general accounting, time management, file management, client communications, computer systems, and other practice management issues. Personal assistance will include assistance with alcoholism, drug addiction, burnout, career change and satisfaction, depression, anxiety, gambling addiction, procrastination, relationship issues, stress management, time management or other distress that impairs a lawyer's or judge's ability to function.

(BOD 6/18/99; BOD 8/6/99; BOG 9/16/99; BOD 11/19/99; BOG 1/28/00; BOD 8/27/04; BOG 10/13/04)

**6.150 PLF PERSONAL AND PRACTICE  
MANAGEMENT ASSISTANCE COMMITTEE  
(PLF-PPMAC)**

(A) The PLF Personal and Practice Management Assistance Committee (PLF-PPMAC) has been created by the Board of Governors under OSB Bylaw 24 pursuant to ORS 9.568. The members of the PLF Board of Directors will serve as the members of the PLF-PPMAC (the "Committee").

(BOD 6/17/05; BOG 6/24/05)

(B) (1) The Committee will provide personal and practice management assistance through the Oregon Attorney Assistance Program (OAAP) and the Practice Management Adviser Program (PMAP) described in these policies. The Committee delegates to PLF CEO and OAAP Executive Director such authority as is necessary to administer those programs, to receive complaints and referrals under ORS 9.568(6), and to provide assistance to attorneys pursuant to PLF Policy 6.100. All assistance will be provided in accordance with the Bylaws and Policies of the Oregon State Bar and of the Professional Liability Fund. Neither the Committee nor the PLF CEO will request or require disclosure of the names of participants in the OAAP or PMAP.

(BOD 8/27/04; BOG 10/13/04)

(2) PLF CEO or OAAP Executive Director will report general program results to the Committee at each regularly scheduled meeting of the Committee, and will provide periodic written reports to the Committee at least annually. The reports will contain program statistics, a description of program changes and developments, a narrative summary of results, suggestions for program changes, proposed amendments to applicable bylaws and policies, and such other general information as the Committee may request. However, the periodic reports will not disclose the identity of any person who has received assistance from the OAAP or the PMAP, and in all cases the confidentiality of program participants will be maintained consistent with the provisions of ORS 9.568 and applicable Bar and PLF policies.

(BOD 6/20/03; BOG 9/18/03)

(C) The Committee will meet with the Board of Governors and provide periodic written reports of its activities at least annually. The reports will contain program statistics, a description of program changes and developments, a narrative summary of results, suggestions for program changes, proposed amendments to applicable bylaws and policies, and such other general information as the Board of Governors may

request. However, the identity of any person who has received assistance from the OAAP or the PMAP will not be requested or required to be disclosed, the periodic reports will not disclose the identity of any person who has received assistance from the OAAP or the PMAP, and in all cases the confidentiality of program participants will be maintained consistent with the provisions of ORS 9.568 and applicable Bar and PLF policies.

(D) For the purposes of ORS 9.568, all PLF employees as well as all other persons providing help through, at the request of, or with the approval of the OAAP and PMAP, will be deemed to be agents of the PLF-PPMAC (in addition to all others who fall within the definition of ORS 9.568(8)).

(BOD 6/18/99; BOD 8/6/99; BOG 9/16/99; BOD 11/19/99; BOG 1/28/00)

#### **6.200 OREGON ATTORNEY ASSISTANCE PROGRAM (OAAP)**

The Professional Liability Fund has established an assistance program called the Oregon Attorney Assistance Program (OAAP). The purpose of the OAAP is to provide personal assistance to lawyers and judges pursuant to ORS 9.568.

(A) The purpose of the OAAP is:

(1) To provide assistance to Oregon lawyers and judges who experience problem alcohol, drug, and/or other substance use, burnout, career transition, depression, anxiety, compulsive disorders (including gambling addiction), time management issues, relationship issues, stress, or other distress that impairs a lawyer's or judge's ability to function:

(2) To aid in the curtailment of malpractice claims and disciplinary complaints;

(3) To educate the legal community about sources of distress and/or impairment, such as the diseases of alcoholism, problem substance use, anxiety, depression, relationship issues,

compulsive disorders, chronic illness, and career transition; and

(4) To educate the legal community and families of Oregon lawyers and judges about the scope of services offered by the OAAP and resources that are available for assistance.

(BOD 8/27/04; BOG 10/13/04; BOD 04/27/12; BOG 11/10/12)

(B) The OAAP will be based on the concept of lawyers helping lawyers.

(C) In order to assist Oregon lawyers and judges, the OAAP will be available to all Oregon lawyers and judges. In addition, to the extent permitted by available resources, the OAAP will also be available to law office staff, court staff, families of lawyers and judges, and law students in Oregon law schools.

(D) The OAAP will be conducted in the strictest basis of confidentiality. The OAAP program will use federal and state regulations on confidentiality of alcohol and chemical dependency programs as a basis for all OAAP guidelines and procedures. The confidentiality and privilege provided under ORS 9.080(2), ORS 9.568, ORS Chapter 192.410 et seq., and the attorney-client and work product privileges, and other available protection will be asserted to the utmost against any attempts to obtain such information. No information learned about or provided by any person will be disclosed to any person, agency, or organization outside the OAAP or the PMAP without the consent of the lawyer or judge accessing the program. The only exceptions are: 1) to avert a serious, imminent threat to the person's health or safety or that of another person and 2) to comply with legal obligations such as ORS 419B.010 and ORS 124.060 (child abuse and elder abuse).

BOD 02/08/08; BOG 02/22/08; BOD 12/11/09; BOG 2/19/10

(E) OAAP services will be provided at a physical location that is separate from the Oregon State Bar and the Oregon State Bar Professional Liability Fund offices in order to maintain the program's confidentiality and anonymity and to

enhance participation in the programs by lawyers and judges seeking assistance.

(BOD 8/27/04; BOG 10/13/04)

(F) The OAAP will maintain statistical data, including the number of people accessing the OAAP and the type of services provided. Statistical reports will be produced periodically as requested by the OAAP executive director. The reports will not disclose the identity of any person who has received assistance from the OAAP.

(BOD 02/06/15; BOG 04/24/15)

(G) The OAAP services will be provided by attorney counselors who are trained to provide problem identification, assessment, motivation, and referral to appropriate services. All OAAP Attorney Counselors will (1) be licensed attorneys (2) have experience or training in alcohol and chemical dependency, intervention, mental health issues, group dynamics, and public speaking, (3) have an understanding of or experience with 12-Step programs, and (4) if in recovery, have at least five years of consecutive recovery. OAAP Attorney Counselors will attain CEAP (Certified Employee Assistance Professional), CADC (Certified Alcohol and Drug Counselor), or other comparable counseling credentials within four years of employment and will maintain the certification or credential in addition to other appropriate continuing education.

(BOD 2/8/02; BOG 4/5/02; BOD 6/20/03; BOG 9/18/03; BOD 8/27/04; BOG 10/13/04; BOD 12/11/09; BOG 02/19/10)

(H) The OAAP Attorney Counselors will provide knowledgeable referrals to the community, public and private resources for diagnostic and/or treatment services including therapists, treatment centers or other appropriate community resources. The OAAP Attorney Counselors may also refer individuals to the attorney and judge support networks of the OAAP or other available organizations, agencies or resources.

(BOD 6/20/03; BOG 9/18/03; BOD 12/11/09; BOG 02/19/10)

(I) Involvement in the OAAP will be at no or nominal cost to the program participant.

(BOD 6/21/91, BOG 10/1/91; BOD 8/6/99; BOG 9/16/99; BOD 11/19/99; BOG 1/28/00; BOD 8/9/01; BOG 11/17/01; BOD 2/8/02; BOG 4/5/02; BOD 6/20/03; BOG 9/18/03; BOD 12/11/09; BOG 02/19/10)

## **6.250 PRACTICE MANAGEMENT ADVISOR PROGRAM (PMAP)**

The Professional Liability Fund has established an assistance program called the Practice Management Advisor Program (PMAP). The purpose of the PMAP is to provide practice management assistance to attorneys pursuant to ORS 9.568.

(A) The PMAP shall:

(1) provide assistance to Oregon attorneys in the areas of mail handling, conflict of interest systems, computer software and hardware, general and trust accounting, tickler systems, client relations, time management, and billing systems.

(2) aid in the curtailment of malpractice claims and disciplinary complaints arising from practice management errors.

(3) educate the legal community about practice management issues.

(B) The PMAP will be available to all Oregon lawyers, Oregon judges, and Oregon law students.

(C) The Practice Management Advisor Program will be conducted on the strictest basis of confidentiality. The confidentiality and privilege provided under ORS 9.080(2), ORS 9.568, ORS 192.410 et seq., and the attorney-client and work product privileges, and other available protection will be asserted to the utmost against any attempts to obtain such information. No information learned about or provided by any person will be disclosed to any person, agency, or organization outside the OAAP or the PMAP without the consent of the lawyer or judge accessing the program. The only exceptions are:

1) to avert a serious, imminent threat to the person's health or safety or that of another person and 2) to comply with legal obligations such as ORS 419B.010 and ORS 124.060 (child abuse and elder abuse).

(BOD 02/08/08; BOG 02/22/08)

(D) The PMAP practice management advisers will have (1) a minimum of five years experience in law office systems and management, (2) experience and expertise in teaching, (3) familiarity with a wide range of computer software and hardware, and (4) excellent interpersonal skills.

(E) Involvement in the PMAP will be at no or nominal cost to the program participant.

(BOD 8/6/99; BOG 9/16/99; BOD 11/19/99; BOG 1/28/00; BOD 6/20/03; BOG 9/18/03; BOD 12/11/09; BOG 02/19/10)

### **6.300 CONFIDENTIALITY**

All personal and practice management assistance programs provided by the Oregon Attorney Assistance Program (OAAP) and Practice Management Advisor Program (PMAP) will be conducted on the strictest basis of confidentiality. The confidentiality and privilege provided under ORS 9.080(2), ORS 9.568, ORS Chapter 192.410 et seq., and the attorney-client and work product privileges, and other available protection will be asserted to the utmost against any attempts to obtain such information. No information learned about or provided by an attorney or judge will be disclosed to any person, agency, or organization outside the OAAP or the PMAP without the consent of the lawyer or judge accessing the program. The only exceptions are: 1) to avert a serious, imminent threat to the person's health or safety or that of another person and 2) to comply with legal obligations such as ORS 419B.010 and ORS 124.060 (child abuse and elder abuse).

(BOD 8/6/99; BOG 9/16/99; BOD 8/27/04; BOG 10/13/04; BOD 02/08/08; BOG 02/22/08; BOD 12/11/09; BOG 02/19/10)

### **6.400 COOPERATION WITH BAR DISCIPLINE COUNSEL AND STATE LAWYERS' ASSISTANCE COMMITTEE**

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The PLF's personal and practice management assistance programs will cooperate with the Oregon State Bar's Disciplinary Counsel and the State Lawyers Assistance Committee in the following areas:

(1) provision of general claims and other statistics as appropriate which do not disclose the identity of any lawyer being assisted by the personal and practice management assistance programs and which does not otherwise breach Policy 6.150 concerning confidentiality, and

(2) supervision and progress reports about an attorney who is already within the jurisdiction of the State Bar's disciplinary process or the State Lawyers Assistance Committee and who is undergoing a prescribed program of treatment or remedial efforts under the supervision of PLF staff members. Such reports will be provided only with the prior approval of the attorney who is subject of the reports.

(BOD 6/18/99; BOD 8/6/99; BOG 9/16/99; BOD 8/27/04; BOG 10/13/04; BOD 12/11/09; BOG 02/19/10)

### **6.450 SHORT-TERM LOANS FOR TREATMENT**

The Chief Executive Officer may authorize loans to attorneys in an amount not to exceed \$2,500 for the purpose of obtaining immediate treatment for alcohol, chemical dependency, or other problems which impair a lawyer's ability to practice law. The loan will be used only for the purpose of such treatment, and will be evidenced by a promissory note of the attorney.

(BOD 2/21/92; BOG 3/13/92; BOD 4/23/93; BOG 8/13/93; BOD 6/18/99; BOD 8/6/99; BOG 9/16/99)

### **6.500 MULTIPLE CLAIMS**

It will be the responsibility of the Chief Executive Officer and staff of the PLF to contact any attorney with multiple claims to attempt to mitigate future damages.

(BOD 6/18/99; BOD 8/6/99; BOG 9/16/99)

**CHAPTER 7  
EXCESS COVERAGE PROGRAM**

**7.100 EXCESS COVERAGE PROGRAM**

(A) The PLF will offer excess coverage through an excess program within the PLF as authorized under ORS 9.080(2)(a). The Board of Directors of the PLF will be responsible for the excess program (subject to the ultimate control of the Board of Governors as in other matters), but delegates underwriting to the Chief Executive Officer.

(B) The excess program may maintain a positive net position established from capital contribution, profit commissions, ceding commissions, investment income, and other sources. The purpose of the excess program net position is to provide excess program stability, capital to permit the PLF to retain some risk in its reinsurance agreements, and reserves against the possibility of failure by a reinsurer.

(BOD 6/30/97; BOG 7/26/97; BOD 10/3/97; BOG 11/15/97; BOD 5/14/04; BOG 6/11/04; BOD 10/16/15; BOG 11/20/15)

**7.150 MANAGEMENT**

The Professional Liability Fund will manage the excess program in accordance with the policies of the PLF Board of Directors. The excess program will reimburse the Professional Liability Fund for services so that the cost of the excess program is borne by the participants in the excess program through their excess coverage assessments and is not subsidized by the primary fund. All assets, liabilities, revenues and expenses of the excess program will be accounted for as a separate fund.

**7.200 EXCESS CLAIMS SETTLEMENT**

(A) The Board of Directors will have settlement authority for all claims in the primary and excess layers. In each case, settlement decisions are to be made by the board considering only the interest of each respective fund, with due consideration to the duties owed under law by a primary carrier to an excess carrier, and vice versa. In the event of uncertainty or potential conflict as

to appropriate trial strategy or settlement of a particular claim between the interests of the primary and excess programs, the Board of Directors may establish one or more advisory committees, seek legal or expert advice, or take such other action as the Board deems appropriate.

(B) All discussions regarding the handling of specific claims covered by the excess program will be conducted in executive sessions for reasons of confidentiality pursuant to ORS 192.660(2) (f) and (h).

(C) Excess claims will be settled according to the procedures stated at Policy 4.400. The member of the Board of Directors designated to review a claim for settlement purposes under Policy 4.400(A) will have authority over the claim at both the primary and excess layers.

(BOD 8/11/95; BOG 11/12/95; BOD 6/30/97; BOG 7/26/97)

**7.250 APPLICATION AND UNDERWRITING**

(A) The PLF may require firms seeking excess coverage to complete an application form designated by the PLF. The PLF may request additional relevant information at any stage of the underwriting process. Firms will be underwritten based upon this application, such other information as the PLF deems relevant, and the underwriting guidelines established in section 7.300. Because the information requested from firms is personal, sensitive, confidential, and relates to litigation matters, applications and other underwriting materials will be exempt from disclosure under the Public Records Law, ORS 192.410 et seq. Because some meetings of the Excess Committee may be for the purpose of considering and discussing the information contained in the applications submitted by firms as well as the confidential claims information maintained by the PLF, the meetings of the Excess Committee may be held in executive session under the Public Meetings Law, ORS 192.610 et seq., pursuant to the provisions of ORS 192.660 (1)(f) and other applicable sections.



(B) No final decisions or action on an application will be made by the Excess Committee. The committee may review and discuss firm applications, but all final decisions or action on applications will be taken by the Chief Executive Officer or the Chief Executive Officer's designee with a right of appeal to the PLF Board of Directors.

(C) For underwriting purposes the PLF may limit the excess coverage offered to a firm in such areas as, but not limited to, imposition of a retroactive date as to a firm or individual members; imposition of an exclusion as to claims from particular claimants, transactions, events, or subject matters; imposition of an exclusion as to claims from business entities in which the firm, firm members, or their families have an ownership or management interest or for which they serve as an officer or director; and other coverage limitations. For underwriting purposes, the PLF may impose additional requirements as a condition to obtaining coverage including, but not limited to, higher assessment rates, additional surcharges, or a requirement that the firm or firm members undertake specified education or personal and practice management assistance.

(BOD 8/27/04; BOG 10/13/04; BOD 10/9/09; BOG 10/30/09; BOD 10/16/15; BOG 11/20/15)

(D) In order to ensure the integrity and quality of the underwriting process and to maintain the viability of the excess program, the individual underwriting decisions of the PLF will be final and will not be reviewed by the Board of Governors.

(E) Excess plans are underwritten and issued on an annual basis and are not renewable.

(F) No information from the Oregon Attorney Assistance Program or the PLF's other assistance programs will be obtained or used in the underwriting process unless both the applicant firm and affected firm member(s) request that it be considered. See PLF Policy 6.300.

(BOD 2/18/94; BOG 3/12/94; BOD 6/30/97; BOG 7/26/97; BOD 10/3/97; BOG 11/15/97; BOD as rev. 11/21/97; BOD 8/16/02; BOG 10/3/02; BOD 8/27/04; BOG 10/13/04)

## **7.300 EXCESS COVERAGE ASSESSMENT**

(A) Applications submitted for underwriting will be evaluated against a variety of factors, including, but not limited to: prior claims experience, area of practice, CLE history, firm size, amount of excess insurance sought, and the use and quality of standard practice management systems.

(B) If the PLF determines that an application is unlikely to be accepted for underwriting, the PLF will notify the applicant of its likely decision and the reasons. The applicant will be offered an opportunity (1) to present additional information to the PLF to demonstrate why its application meets the criteria for acceptance, (2) to withdraw its application, or (3) to have its application rejected by the PLF. If the applicant does not withdraw its application, the PLF will notify the applicant of its final underwriting decision and the reasons.

(BOD 10/9/09; BOG 10/30/09; BOD 10/16/15; BOG 11/20/15)

(C) If a firm has not been accepted for underwriting in a given year, the firm will not be considered for underwriting in the following two years unless there is a showing of an acceptable change in circumstances. It will be the responsibility of the firm seeking excess coverage to show an acceptable change in circumstances.

(D) If in a given year the PLF has offered excess coverage to a firm on the basis of any special coverage or practice limitations, restrictions, or conditions, those same limitations, restrictions, or conditions will apply to any offers of excess coverage in the following two years unless there is a showing of an acceptable change in circumstances. It will be the responsibility of the firm seeking excess coverage to show an acceptable change in circumstances.

(BOD 10/2/91, BOG 11/8/91; BOD 9/23/92, BOG 11/13/92; BOD 9/24/93, BOG 11/19/93; BOD 10/3/97, BOG 11/15/97; BOD 8/16/02, BOG 10/2-3/02; BOD 10/28/03; BOG 11/15/03; BOD 10/16/15; BOG 11/20/15)

(E) Assessments for excess coverage will be determined through an underwriting formula and

rate sheet. Base rates will be set by the PLF in agreement with reinsurers and will be reported to the Board of Directors and the Board of Governors.

(BOD 10/14/16; BOG 11/19/16)

(F) The Board may establish requirements and procedures concerning the payment of excess coverage assessments including, but not limited to, payment due dates, cancellation for non-payment, and financing of assessments.

(G) The excess program may be assessable against the program participants, including firm members. Supplemental assessments will be made if required according to the terms of the excess coverage plan.

(BOD 12/6/91, BOG 3/13/92; BOD 9/23/92, BOG 11/13/92; BOD 10/9/09; BOG 10/30/09; BOD 10/16/15; BOG 11/20/15)

#### **7.400 REINSURANCE**

The Professional Liability Fund may obtain such reinsurance for the excess program as it deems appropriate and economically advantageous. The PLF will obtain a formal reinsurance security report at least annually concerning the reinsurers participating in the excess program.

(BOD 9/24/93, BOG 11/19/93; BOD 6/30/97; BOG 7/26/97; BOD 10/16/15; BOG 11/20/15)

#### **7.500 REPORTS**

On a quarterly basis, the Chief Executive Officer will report to the Board of Directors concerning the status of claims with excess liability potential and will furnish such additional information as the Board of Directors may request.

(BOD 6/30/97; BOG 7/26/97; BOD 10/16/15; BOG 11/20/15)

#### **7.600 ADDITIONAL EXCESS PROGRAM RULES**

(A) Former firm attorneys may inquire in writing regarding their former law firm's excess coverage status. Information provided may

include whether the former attorney's firm had or has excess coverage, the coverage period (and applicable coverage limits, if any), and whether the former attorney is listed on the firm's coverage documents.

(B) Coverage Limits and Primary Coverage: A firm which obtains excess coverage from the PLF must obtain the same amount of excess coverage for each member of the firm. Excess coverage will not be extended to any firm which includes any attorney who does not maintain current primary PLF coverage unless the firm obtains coverage for the attorney under the provisions of Section (D) below. Firms will not be offered excess coverage limits over \$1.7 million unless they have maintained excess coverage of at least \$1.7 million with some carrier for one year prior to applying for PLF excess coverage. Firms may be offered coverage excess coverage over \$1.7 million without having had excess coverage of at least \$1.7 million with some carrier for one year prior to applying for PLF excess coverage if the firm does not present an unacceptable level of risk and the firm can demonstrate that the reason for the limits increase is due solely to client coverage requirements (See Section (M) below regarding coverage limits restrictions at the \$9.7 million level).

(C) Prior Acts Coverage/Retroactive Date:

(1) The retroactive date applicable to claims made under the excess coverage plan will be the same retroactive date that applies under the applicable primary PLF Claims Made Plan or Plans or the firm's retroactive date, whichever date is more recent.

(2) The PLF may give a credit to firms with recent excess coverage retroactive dates according to the following schedule:

Period between Firm  
Retroactive Date and  
Start of Coverage Period      Excess Assessment Credit

0 months to 18 months	50 percent
Over 18 months to 30 months	30 percent
Over 30 months to 42 months	15 percent
Over 42 months	No credit

The PLF may choose not to offer the credit to a firm for the underwriting considerations stated at Policies 7.250 and 7.300.

(D)      Non-Oregon Attorneys and Out-of-State Branch Offices:

(1)      Firms with non-Oregon attorneys or out-of-state branch offices may be offered coverage subject to the Excess Program underwriting criteria, the restrictions of this section and any other additional underwriting and coverage limitations imposed by the PLF or its reinsurers. For the purposes of PLF Policy 7.700(D), registered patent agents will be treated the same as non-Oregon attorneys. Non-Oregon attorneys whose principal office is in Oregon must be practicing in areas of law that do not require Oregon bar membership.

(a)      Excess coverage may be offered to firms which maintain out-of-state branch offices if the attorneys in such branch offices meet the underwriting criteria established for Oregon firms and such additional criteria as may be established by the PLF and the reinsurers. Coverage will not be offered for branch offices in any state determined by the PLF to represent an unacceptable level of risk.

(b)      Excess coverage may be offered to firms with non-Oregon attorneys if the non-Oregon attorneys maintain principal offices in Oregon and if the non-Oregon attorneys meet the underwriting criteria established for

Oregon firms and such additional criteria as may be established by the PLF and its reinsurers.

(2)      The PLF may establish conditions, terms, and rates for coverage for firms with non-Oregon attorneys and/or out-of-state branches, including additional endorsements and exclusions. The PLF may offer “drop-down” coverage for the firm for any firm members not covered by the PLF primary fund, subject to such deductibles or self-insured retentions as the PLF may establish.

(3)      The PLF may not offer excess coverage to any firm if the total number of out-of-state lawyers in the firm exceeds more than 30% of total firm lawyers at the time of application or at any time during the past five years.

(4)      Unless otherwise determined by the PLF, firms will be charged for excess coverage for non-Oregon and out-of-state attorneys at a per-attorney rate equal to the current primary rate plus the rate for excess coverage applicable to other firm attorneys.

(5)      Coverage for non-Oregon and out-of-state attorneys will be subject to a deductible of \$5,000 per claim.

(BOD 10/21/05; BOG 11/19/05; BOD 6/27/08; BOG 7/18/08; BOD 10/9/09; BOG 10/30/09; BOD 10/16/15; BOG 11/20/15)

(E)      Installment Payment Plan:

(1)      Firms will have the option of paying the excess coverage assessment on an installment basis as follows:

<u>Payment Due Date</u>	<u>Percent of Total</u>
January 1	40%
May 1	35%
September 1	25%

(2)      Firms that choose the installment payment plan will be charged a service charge equal to \$25 plus interest of 7% per annum on the outstanding balance. The service charge must be paid with the first installment and is non-refundable. Installment payments are only

available in a given year if the coverage period for a firm begins prior to March 1; if the coverage period for a firm begins on March 1 or later, the firm will be required to pay its annual excess assessment in a single payment.

(3) Firms will have a ten-day grace period for payment of installments. If payments are not received during the grace period, the firm's excess coverage plan will be canceled as provided under the excess coverage plan. The PLF may, but will not be required to, reinstate coverage if payment of an installment is made within ten days after the expiration of a grace period, and may require that the balance of the firm's assessment for the year be paid in full as a condition of reinstatement.

(F) Cancellation: If an excess coverage plan is canceled by the PLF, the assessment will be determined on a pro rata basis. If excess coverage is canceled, the firm will still remain liable for supplemental assessment but on a pro rata basis according to the period of coverage during the year.

(G) Predecessor Firm Endorsement:

(1) A former firm which does not meet the Excess Plan definition of a "predecessor firm" may be added for underwriting reasons as a "predecessor firm" by special endorsement. The following conditions, among others, must ordinarily be met:

(a) The former firm is no longer engaged in the practice of law;

(b) The former firm is not covered by any excess policy, including extended reporting coverage under such policy;

(c) The former firm and the attorneys who worked for the firm do not present an unacceptable level of risk in the view of the PLF; and

(d) At least 50 percent of the firm attorneys who were with the former firm during its last year of operation and who are presently engaged in the private practice of law in Oregon will carry current PLF excess coverage during the year.

The PLF may impose special limitations or conditions, and may impose an additional assessment for underwriting reasons as a condition to granting the endorsement, or may decline to grant the endorsement for underwriting reasons.

(2) No firm may be listed as a predecessor firm (by endorsement or otherwise) for the same or an overlapping period of time on more than one Excess Plan.

(H) Firm Changes After the Start of the Coverage Period:

(1) Except as provided in subsection (2), firms are not required to notify the PLF if an attorney joins or leaves the firm after the start of the Coverage Period, and will neither be charged a prorated excess assessment nor receive a prorated refund for such changes. New attorneys who join after the start of the Coverage Period will be covered for their actions on behalf of the firm during the remainder of the year, but will not be covered for their actions prior to joining the firm. All changes after the start of the Coverage Period must be reported to the PLF on a firm's renewal application for the next year.

(2) Firms are required to notify the PLF after the start of the Coverage Period if:

(a) The total number of current attorneys in the firm either increases by more than 100 percent or decreases by more than 50 percent from the number of current attorneys at the start of the Coverage Period.

(b) There is a firm merger. A firm merger is defined as the addition of one attorney

who practiced as a sole practitioner or the addition of multiple attorneys who practiced together at a different firm (the “merging firm”) immediately before joining the firm with PLF excess coverage (the “current firm”). It is only necessary to report a firm merger to the PLF if the current firm is seeking to add the merging firm as a predecessor firm or specially endorsed predecessor firm to the current firm’s Excess Plan.

(c) There is a firm split. A firm split is defined as the departure of one or more attorneys from a firm with PLF Excess Coverage if one or more of the departing attorneys form a new firm which first seeks PLF Excess Coverage during the same Coverage Period.

(d) An attorney joins or leaves an existing branch office of the firm outside of Oregon.

(e) The firm establishes a new branch office outside of Oregon.

(f) The firm or a current attorney with the firm enters into an “of counsel” relationship with another firm or with an attorney who was not listed as a current attorney at the start of the Coverage Period.

(g) A non-Oregon attorney joins, or leaves the firm.

In each case under this subsection (2), the firm’s coverage will again be subject to underwriting, and a prorated adjustment may be made to the firm’s excess assessment.

(I) Discretionary Continuity Credit:

(1) Firms that are offered excess coverage may receive a continuity credit for each year of continuous PLF Excess Coverage (2% for one year, up to a maximum credit of 20% for ten years – see table below) at the underwriters discretion if the firm has no negative claims experience, does not practice in a Higher Risk

Practice Area, and meets acceptable practice management criteria. See PLF Policy 7.300(A).

No firm will be entitled to receive a continuity credit if the firm is receiving a credit for a recent retroactive date under Policy 7.600(C)(2).

(BOD 6/20/03; BOG 9/18/03; BOD 08/14/14; BOG 09/05/14; BOD 10/16/15; BOG 11/20/15)

(J) Extended Reporting Coverage:

(1) Firms that purchase excess coverage for two full years may be offered the following extended reporting coverage (ERC) options at the following prices (stated as a percentage of the firms’ annual excess assessment for the last full or partial year of coverage):

Extended Reporting Coverage Period	ERC Premium
12 months	100%
24 months	160%
36 months	200%
60 months	250%

(2) A firm must exercise its right to purchase ERC and must pay for the ERC coverage within 30 days of termination or cancellation of its PLF excess coverage. The Chief Executive Officer may include wording in the Excess Coverage Plan to indicate that ERC options vary from year to year, and that any particular option may be unavailable in a future year.

(K) Continuous Coverage: The PLF will not offer a renewing firm continuous coverage from January 1 unless the firm’s renewal application is received by the PLF in substantially completed form by January 10 (or the next business day if January 10 is a weekend or holiday). If a renewal application is received after that date and the firm is approved for underwriting, the coverage period offered to the firm will begin on the day the renewal application was approved for underwriting and the assessment will be prorated accordingly. Renewing firms may qualify for the discretionary continuity credits pursuant to subsection (I) so long as the firm renews its

coverage no later than January 31. Renewal after January 31 will result in the automatic loss of any accumulated discretionary continuity credit.

(BOD 08/14/14; BOG 09/05/14; BOD 10/16/15; BOG 11/20/15)

(L) Current and Former Attorneys:

(1) No attorney may be listed as a current attorney for the same or an overlapping period of time on more than one Excess Plan.

(2) No attorney may be listed as a former attorney for the same or an overlapping period of time on more than one Excess Plan.

(M) Higher limits coverage: Firms who meet the additional underwriting criteria and procedures established by the PLF and its reinsurers may be eligible to purchase limits in excess of the \$4.7 million excess limits offered by the PLF's standard excess program. In accordance with reinsurance agreements, firms applying for higher limits coverage may be subject to additional underwriting considerations and may not be eligible for credits available with the standard excess program coverage.

(1) The higher limits coverage will be an additional \$5 million in excess of the \$4.7

million standard excess coverage. Firms seeking coverage above the \$4.7 million standard excess coverage will be subject to the standard underwriting formula and rate sheet and also subject to reinsurer approval and rating adjustment.

(BOD 10/14/16; BOG 11/19/16)

(2) Firms will not be offered higher limits coverage above \$4.7 million unless they have maintained excess coverage with limits of at least \$4.7 million with the PLF or some other carrier for the prior two years.

(N) Non-Standard Excess Coverage: Firms who do not meet the underwriting criteria established by the PLF and its reinsurers under PLF Policy 7.300 may be eligible to purchase non-standard excess coverage offered by the PLF and its reinsurers. In accordance with reinsurance agreements, firms applying for non-standard excess coverage may be subject to additional underwriting considerations and may not be eligible for credits available with the standard excess program coverage.

(BOD 10/2/91; BOG 11/8/91; BOD 12/6/91; BOG 3/13/92; BOD 9/23/92; BOG 11/13/92; BOD 9/24/93; BOG 11/19/93; BOD; 2/18/94; BOG 3/12/94; BOD 8/12/94; BOG 9/26/94; BOD 9/26/94; BOG 11/12/94; BOD 8/11/95; BOG 11/12/95; BOD 8/9/96; BOG 9/25/96; BOD 8/15/97; BOG 9/26/97; BOD 10/3/97; BOG 11/15/97; BOD 8/14/98; BOG 9/25/98; BOD 8/6/99; BOG 9/16/99; BOD 11/19/99; BOG 1/28/00; BOD 10/20/00; BOG 11/20/00; BOD 12/7/01; BOG 12/6/01; BOD 12/3/02; BOG 12/16/02; BOD 10/28/03; BOG 11/15/03; BOD 10/22/04; BOG 11/20/04; BOD 6/27/08; BOG 7/18/08; BOD 10/16/15; BOG 11/20/15)

**APPENDIX A**  
**APPLICABLE OREGON REVISED STATUTES**  
(as of 2013)

**9.080 Duties of board of governors; professional liability fund; quorum; status of employees of bar.** (1) The state bar shall be governed by the board of governors, except as provided in ORS 9.136 to 9.155. The board is charged with the executive functions of the state bar and shall at all times direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice. It shall have the authority to adopt, alter, amend and repeal bylaws and to adopt new bylaws containing provisions for the regulation and management of the affairs of the state bar not inconsistent with law.

(2)(a) The board shall have the authority to require all active members of the state bar engaged in the private practice of law whose principal offices are in Oregon to carry professional liability insurance and shall be empowered, either by itself or in conjunction with other bar organizations, to do whatever is necessary and convenient to implement this provision, including the authority to own, organize and sponsor any insurance organization authorized under the laws of the State of Oregon and to establish a lawyer's professional liability fund. This fund shall pay, on behalf of active members of the state bar engaged in the private practice of law whose principal offices are in Oregon, all sums as may be provided under such plan which any such member shall become legally obligated to pay as money damages because of any claim made against such member as a result of any act or omission of such member in rendering or failing to render professional services for others in the member's capacity as an attorney or caused by any other person for whose acts or omissions the member is legally responsible. The board shall have the authority to assess each active member of the state bar engaged in the private practice of law whose

principal office is in Oregon for contributions to such fund, to establish definitions of coverage to be provided by such fund and to retain or employ legal counsel to represent such fund and defend and control the defense against any covered claim made against such member. The board shall have the further authority to offer optional professional liability coverage on an underwritten basis above the minimum required coverage limits provided under such fund, either through such fund, through a separate fund or through any insurance organization authorized under the laws of the State of Oregon, and may do whatever is necessary and convenient to implement this provision. Any fund so established shall not be subject to the Insurance Code of the State of Oregon. Records of a claim against the fund are exempt from disclosure under ORS 192.410 to 192.505.

(b) For purposes of paragraph (a) of this subsection, an attorney is not engaged in the private practice of law if the attorney is a full-time employee of a corporation other than a corporation incorporated under ORS chapter 58, the state, an agency or department thereof, a county, city, special district or any other public or municipal corporation or any instrumentality thereof. However, an attorney who practices law outside of the attorney's full-time employment is engaged in the private practice of law.

(c) For the purposes of paragraph (a) of this subsection, the principal office of an attorney is considered to be the location where the attorney engages in the private practice of law more than 50 percent of the time engaged in that practice. In the case of an attorney in a branch office outside Oregon and the main office to which the branch office is connected is in Oregon, the principal office of the attorney is not considered to be in Oregon unless the attorney engages in the private practice of law in Oregon

more than 50 percent of the time engaged in the private practice of law.

(3) The board may appoint such committees, officers and employees as it deems necessary or proper and fix and pay their compensation and necessary expenses. At any meeting of the board, two-thirds of the total number of members then in office shall constitute a quorum. It shall promote and encourage voluntary county or other local bar associations.

(4) Except as provided in this subsection, an employee of the state bar shall not be considered an "employee" as the term is defined in the public employees' retirement laws. However, an employee of the state bar may, at the option of the employee, for the purpose of becoming a member of the Public Employees Retirement System, be considered an "employee" as the term is defined in the public employees' retirement laws. The option, once exercised by written notification directed to the Public Employees Retirement Board, may not be revoked subsequently, except as may otherwise be provided by law. Upon receipt of such notification by the Public Employees Retirement Board, an employee of the state bar who would otherwise, but for the exemption provided in this subsection, be considered an "employee," as the term is defined in the public employees' retirement laws, shall be so considered. The state bar and its employees shall be exempt from the provisions of the State Personnel Relations Law. No member of the state bar shall be considered an "employee" as the term is defined in the public employees' retirement laws, the unemployment compensation laws and the State Personnel Relations Law solely by reason of membership in the state bar. [Amended by 1955 c.463 §2; 1975 c.641 §3; 1977 c.527 §1; 1979 c.508 §1; 1983 c.128 §2; 1985 c.486 §1; 1989 c.1052 §5; 1995 c.302 §17]

**9.191 Annual membership fees; professional liability assessments.** (1) Except as provided in subsection (2) of this section, the annual membership fees to be paid by members of the Oregon State Bar shall be established by the Board of Governors of the Oregon State Bar,

and each year notice of the proposed fees for the coming year shall be published and distributed to the membership not later than 20 days before the annual meeting of the house of delegates. Any increase in annual membership fees over the amount established for the preceding year must be approved by a majority of delegates of the house of delegates voting thereon at the annual meeting of the house of delegates. The board shall establish the date by which annual membership fees must be paid.

(2) The board shall establish prorated membership fees payable for the year that a member is admitted to the practice of law in this state. If the new member is admitted on or before the date established by the board for the payment of annual membership fees under subsection (1) of this section, the new member must pay the full annual membership fees established under subsection (1) of this section.

(3) In establishing annual membership fees, the board shall consider and be guided by the anticipated financial needs of the state bar for the year for which the fees are established, time periods of membership and active or inactive status of members. Annual membership fees may include any amount assessed under any plan for professional liability insurance for active members engaged in the private practice of law whose principal offices are in Oregon as provided in ORS 9.080 (2). The board may not require that a member who has been admitted to practice law in Oregon for 50 years or more pay membership fees, assessments or any amount under ORS 9.645, except that the member shall be required to pay any amount assessed under any plan for professional liability insurance if the member is engaged in the private practice of law and the member's principal office is in Oregon. [1969 c.602 §2 (enacted in lieu of 9.190); 1973 c.21 §1; 1975 c.641 §5; 1977 c.527 §2; 1979 c.508 §3; 1985 c.486 §2; 1985 c.512 §3; 1995 c.302 §18; 1999 c.171 §7; 2001 c.104 §2; 2003 c.192 §3]

**9.200 Effect of failure to pay membership fees; reinstatement.** (1) Any member in default in payment of membership fees established



under ORS 9.191 (1) for a period of 30 days, or any person in default in payment of membership fees established under ORS 9.191 (2) for a period of 30 days after admission or as otherwise provided by the board, or any member in default in payment of assessed contributions to a professional liability fund under ORS 9.080 (2) for a period of 30 days, shall, after 60 days' written notice of the delinquency, be suspended from membership in the bar. The CEO of the Oregon State Bar shall send the notice of delinquency to the delinquent member at the member's electronic mail address on file with the bar on the date of the notice. The CEO shall send the notice by mail to any member who is not required to have an electronic mail address on file with the bar under the rules of procedure. If a delinquent member fails to pay the fees or contributions within 60 days after the date of the notice, the member is automatically suspended. The CEO shall provide the names of all members suspended under this section to the State Court Administrator and to each of the judges of the Court of Appeals, circuit and tax courts of the state.

(2) An active member delinquent in the payment of fees or contributions is not entitled to vote.

(3) A member suspended for delinquency under this section may be reinstated only on compliance with the rules of the Supreme Court and the rules of procedure and payment of all required fees or contributions. [Amended by 1957 c.271 §1; 1961 c.499 §2; subsection (2) formerly part of 9.190; 1979 c.508 §4a; 2013 c. 3 §2]

**9.568 State lawyers assistance committee; personal and practice management assistance committees; rules; confidentiality; civil immunity.** (1)(a) The board of governors of the Oregon State Bar may create a state lawyers assistance committee for the purpose of implementing a lawyers assistance program and, pursuant thereto, authorize the state lawyers assistance committee to investigate and resolve complaints or referrals regarding lawyers whose performance or conduct may impair their ability

to practice law or their professional competence.

(b) The board may adopt rules for the operation of the state lawyers assistance committee.

(c) The purpose of the state lawyers assistance committee is the provision of supervision and assistance to those lawyers whose performance or conduct may impair their ability to practice law or their professional competence.

(2)(a) In addition to the state lawyers assistance committee created under subsection (1) of this section, the board may create personal and practice management assistance committees to provide assistance to lawyers who are suffering from impairment or other circumstances that may adversely affect professional competence or conduct. Personal and practice management assistance committees may also provide advice and training to lawyers in practice management.

(b) The board may adopt rules governing the provision of assistance to lawyers by personal and practice management assistance committees.

(c) The purpose of a personal and practice management assistance committee is the provision of completely confidential assistance, advice and training to lawyers in a manner that fosters maximum openness in communications between a lawyer and the committee and that encourages a lawyer to seek assistance from the committee.

(3) Any information provided to or obtained by the state lawyers assistance committee or any personal and practice management assistance committee, or provided to or obtained by any agent of those committees, is:

(a) Confidential;

(b) Exempt from the provisions of ORS 192.410 to 192.505;

(c) Not discoverable or admissible in any civil proceeding without the written consent of the lawyer to whom the information pertains; and

(d) Not discoverable or admissible in any disciplinary proceeding except to the extent provided by rules of procedure adopted

pursuant to ORS 9.542.

(4) The limitations placed on the disclosure and admissibility of information in this section shall not apply to information relating to a lawyer's noncooperation with the state lawyers assistance committee or any agent of the committee, or to information otherwise obtained by the bar from any other source.

(5) The board may authorize the state lawyers assistance committee to act as the monitor or supervisor for lawyers placed on probation or in diversion in connection with a disciplinary investigation or proceeding, or who have been conditionally admitted or reinstated to the practice of law. Any information provided to or obtained by the state lawyers assistance committee when the committee acts as a monitor or supervisor under the provisions of this subsection is not subject to subsection (3) of this section.

(6) All meetings of the state lawyers assistance committee and the personal and practice management assistance committees are exempt from the provisions of ORS 192.610 to 192.690.

(7) Any person who makes a complaint or referral to the bar as to the competence of an attorney or provides information or testimony in connection with the state lawyers assistance committee or any personal and practice management assistance committee is not subject to an action for civil damages as a result thereof.

(8) With respect to their acts in connection with the state lawyers assistance committee or any personal and practice management assistance committee, the same privileges and immunities from civil and criminal proceedings that apply to prosecuting and judicial officers of the state shall apply to the board, all officers and employees of the bar, and the members of the committees and their agents.

(9) For the purposes of this section, agents of the state lawyers assistance committee or a personal and practice management assistance committee include investigators, attorneys, counselors, staff personnel and any other individual or entity acting on behalf of or at the

request of the committees. [Formerly 9.545; 2005 c.347 §3]

## **SETTLEMENT OR COMPROMISE BY PUBLIC BODY**

**17.095 Prohibition of confidential settlements and compromises; exceptions.** (1) A public body, or officer, employee or agent of a public body, who is a defendant in an action under ORS 30.260 to 30.300, or who is a defendant in an action under ORS 294.100, may not enter into any settlement or compromise of the action if the settlement or compromise requires that the terms or conditions of the settlement or compromise be confidential.

(2) Notwithstanding subsection (1) of this section:

(a) A public body, or officer, employee or agent of a public body, may enter into a settlement or compromise that requires the terms or conditions to be confidential if federal law requires terms or conditions of that settlement or compromise to be confidential. Only terms and conditions that are required to be confidential under federal law may be confidential in the settlement or compromise.

(b) A court may order that the terms or conditions of a settlement or compromise that reveal the identity of a person be confidential if:

(A) The person whose identity is revealed is a victim of sexual abuse or is under 18 years of age; and

(B) The court determines, by written findings, that the specific privacy interests of the person outweigh the public's interest in the terms or conditions.

(3) Any public body, or officer, employee or agent of a public body, who is a defendant in an action under ORS 30.260 to 30.300, or who is a defendant in an action under ORS 294.100, shall file with the court a full and complete disclosure of the terms and conditions of any settlement or compromise of the claims against the public body, its officers, employees or agents. The disclosure shall be filed prior to the dismissal of the action.

(4) For the purposes of this section:

(a) "Action" means a legal proceeding that has been commenced as provided in ORCP 3; and

(b) "Public body" has that meaning given in ORS 30.260. [Formerly 30.402; 2005 c.352 §1]

## **PUBLIC MEETINGS**

**192.610 Definitions for ORS 192.610 to 192.690.** As used in ORS 192.610 to 192.690:

(1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.

(2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.

(3) "Governing body" means the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.

(4) "Public body" means the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.

(5) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any on-site inspection of any project or program. "Meeting" also does not include the attendance of members of a governing body at any national, regional or state association to which the public body or the members belong. [1973 c.172 §2; 1979 c.644 §1]

**192.620 Policy.** The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS

192.610 to 192.690 that decisions of governing bodies be arrived at openly. [1973 c.172 §1]

**192.630 Meetings of governing body to be open to public; location of meetings; accommodation for person with disability; interpreters.** (1) All meetings of the governing body of a public body shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by ORS 192.610 to 192.690.

(2) A quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by ORS 192.610 to 192.690.

(3) A governing body may not hold a meeting at any place where discrimination on the basis of race, color, creed, sex, sexual orientation, national origin, age or disability is practiced. However, the fact that organizations with restricted membership hold meetings at the place does not restrict its use by a public body if use of the place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the governing body of a public body shall be held within the geographic boundaries over which the public body has jurisdiction, or at the administrative headquarters of the public body or at the other nearest practical location. Training sessions may be held outside the jurisdiction as long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies or of one or more governing bodies and the elected officials of one or more federally recognized Oregon Indian tribes shall be held within the geographic boundaries over which one of the participating public bodies or one of the Oregon Indian tribes has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action.

(5)(a) It is discrimination on the basis of disability for a governing body of a public body to meet in a place inaccessible to persons with

disabilities, or, upon request of a person who is deaf or hard of hearing, to fail to make a good faith effort to have an interpreter for persons who are deaf or hard of hearing provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in ORS 192.680.

(b) The person requesting the interpreter shall give the governing body at least 48 hours' notice of the request for an interpreter, shall provide the name of the requester, sign language preference and any other relevant information the governing body may request.

(c) If a meeting is held upon less than 48 hours' notice, reasonable effort shall be made to have an interpreter present, but the requirement for an interpreter does not apply to emergency meetings.

(d) If certification of interpreters occurs under state or federal law, the Oregon Health Authority or other state or local agency shall try to refer only certified interpreters to governing bodies for purposes of this subsection.

(e) As used in this subsection, "good faith effort" includes, but is not limited to, contacting the department or other state or local agency that maintains a list of qualified interpreters and arranging for the referral of one or more qualified interpreters to provide interpreter services. [1973 c.172 §3; 1979 c.644 §2; 1989 c.1019 §1; 1995 c.626 §1; 2003 c.14 §95; 2005 c.663 §12; 2007 c.70 §52; 2007 c.100 §21; 2009 c.595 §173]

**192.640 Public notice required; special notice for executive sessions, special or emergency meetings.** (1) The governing body of a public body shall provide for and give public notice, reasonably calculated to give actual notice to interested persons including news media which have requested notice, of the time and place for holding regular meetings. The notice shall also include a list of the principal subjects anticipated to be considered at the meeting, but this requirement shall not limit the ability of a governing body to consider additional subjects.

(2) If an executive session only will be held, the notice shall be given to the members of the governing body, to the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

(3) No special meeting shall be held without at least 24 hours' notice to the members of the governing body, the news media which have requested notice and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. [1973 c.172 §4; 1979 c.644 §3; 1981 c.182 §1]

**192.650 Recording or written minutes required; content; fees.** (1) The governing body of a public body shall provide for the sound, video or digital recording or the taking of written minutes of all its meetings. Neither a full transcript nor a full recording of the meeting is required, except as otherwise provided by law, but the written minutes or recording must give a true reflection of the matters discussed at the meeting and the views of the participants. All minutes or recordings shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition;

(c) The results of all votes and, except for public bodies consisting of more than 25 members unless requested by a member of that body, the vote of each member by name;

(d) The substance of any discussion on any matter; and

(e) Subject to ORS 192.410 to 192.505 relating to public records, a reference to any document discussed at the meeting.

(2) Minutes of executive sessions shall be kept in accordance with subsection (1) of this section. However, the minutes of a hearing held

under ORS 332.061 shall contain only the material not excluded under ORS 332.061 (2). Instead of written minutes, a record of any executive session may be kept in the form of a sound or video tape or digital recording, which need not be transcribed unless otherwise provided by law. If the disclosure of certain material is inconsistent with the purpose for which a meeting under ORS 192.660 is authorized to be held, that material may be excluded from disclosure. However, excluded materials are authorized to be examined privately by a court in any legal action and the court shall determine their admissibility.

(3) A reference in minutes or a recording to a document discussed at a meeting of a governing body of a public body does not affect the status of the document under ORS 192.410 to 192.505.

(4) A public body may charge a person a fee under ORS 192.440 for the preparation of a transcript from a recording. [1973 c.172 §5; 1975 c.664 §1; 1979 c.644 §4; 1999 c.59 §44; 2003 c.803 §14]

**192.660 Executive sessions permitted on certain matters; procedures; news media representatives' attendance; limits.** (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

(2) The governing body of a public body may hold an executive session:

(a) To consider the employment of a public officer, employee, staff member or individual agent.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063

including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider information or records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(k) If the governing body is a health professional regulatory board, to consider information obtained as part of an investigation of licensee or applicant conduct.

(L) If the governing body is the State Landscape Architect Board, or an advisory committee to the board, to consider information obtained as part of an investigation of registrant or applicant conduct.

(m) To discuss information about review or approval of programs relating to the security of any of the following:

(A) A nuclear-powered thermal power plant or nuclear installation.

(B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.

(C) Generation, storage or conveyance of:

- (i) Electricity;
- (ii) Gas in liquefied or gaseous form;
- (iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);
- (iv) Petroleum products;
- (v) Sewage; or
- (vi) Water.

(D) Telecommunication systems, including cellular, wireless or radio systems.

(E) Data transmissions by whatever means provided.

(3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides request that negotiations be conducted in executive session. Labor negotiations conducted in executive session are not subject to the notification requirements of ORS 192.640.

(4) Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information be undisclosed.

(5) When a governing body convenes an executive session under subsection (2)(h) of this section relating to conferring with counsel on current litigation or litigation likely to be filed, the governing body shall bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.

(6) No executive session may be held for the purpose of taking any final action or making any final decision.

(7) The exception granted by subsection (2)(a) of this section does not apply to:

(a) The filling of a vacancy in an elective office.

(b) The filling of a vacancy on any public committee, commission or other advisory group.

(c) The consideration of general employment policies.

(d) The employment of the chief executive officer, other public officers, employees and staff members of a public body unless:

(A) The public body has advertised the vacancy;

(B) The public body has adopted regular hiring procedures;

(C) In the case of an officer, the public has had the opportunity to comment on the employment of the officer; and

(D) In the case of a chief executive officer, the governing body has adopted hiring standards, criteria and policy directives in meetings open to the public in which the public has had the opportunity to comment on the standards, criteria and policy directives.

(8) A governing body may not use an executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member to conduct a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:

(a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of licensee or applicant conduct investigated by a health professional regulatory board.

(b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of registrant or applicant conduct investigated by the State Landscape Architect Board or an advisory committee to the board. [1973 c.172 §6; 1975 c.664 §2; 1979 c.644 §5; 1981 c.302 §1; 1983 c.453 §1; 1985 c.657 §2; 1995 c.779 §1; 1997 c.173 §1; 1997 c.594 §1; 1997 c.791 §9; 2001 c.950 §10; 2003 c.524 §4; 2005 c.22 §134; 2007 c.602 §11; 2009 c.792 §32]

**192.670 Meetings by means of telephone or electronic communication.** (1) Any meeting, including an executive session, of a governing body of a public body which is held through the use of telephone or other electronic communication shall be conducted in accordance with ORS 192.610 to 192.690.

(2) When telephone or other electronic means of communication is used and the

meeting is not an executive session, the governing body of the public body shall make available to the public at least one place where, or at least one electronic means by which, the public can listen to the communication at the

time it occurs. A place provided may be a place where no member of the governing body of the public body is present. [1973 c.172 §7; 1979 c.361 §1; 2011 c.272 §2]

**APPENDIX B**  
**APPLICABLE OREGON STATE BAR BYLAWS**  
(As of November 2013)

**Article 2 Board of Governors**

**Section 2.1 Duties and Responsibilities**

***Subsection 2.106 Indemnification***

The Bar must indemnify its officers, board members, directors, employees and agents and defend them for their acts and omissions occurring in the performance of their duties, to the fullest extent permitted by ORS Chapter 30 relating to indemnification by public bodies, especially the provisions of ORS 30.285. The term "officers, board members, directors, employees and agents" of the Bar includes subordinate groups established by the Bar to perform one or more of its authorized functions, including the Professional Liability Fund, the State Professional Responsibility Board, the Disciplinary Board, the Local Professional Responsibility Committees and bar counsel and the State Lawyers Assistance Committee. The right to and method and amount of defense and indemnification are determined in accordance with the provisions of ORS 30.285 or comparable provisions of law governing indemnity of state agents in effect at the time of a claim.

**Article 12 Legislation and Public Policy**

**Section 12.5 Professional Liability Fund Legislation**

The Professional Liability Fund ("PLF") may not present to the legislature or any individual, committee or agency thereof, a position or proposal or any bill or act, as the position of the PLF without the majority approval of the Board of Directors of the PLF and the prior approval of the Board of Governors, except as is provided in Section 12.4 of the Bar's Bylaws.

**Article 23 Professional Liability Fund**

**Section 23.1 Board of Directors**

The Professional Liability Fund ("PLF") will conduct its business through a Board of Directors appointed by the Board of Governors. The PLF Board consists of nine members, seven of which must be active, resident members of the Bar and two of which must be non-lawyers. The terms of office of PLF Board members is five years, as staggered by the Board of Governors, with the term of office of each board member beginning on January 1 of each year. The Board of Governors may remove any member of the PLF Board without cause and must fill the positions that become vacant as expeditiously as possible to ensure continuity in the governance of the PLF. Persons appointed to fill vacancies on the Board of Directors serve the unexpired term of the member who is replaced. If a replacement appointment to an unexpired term is for two (2) years or less, the Board of Governors may thereafter reappoint that person to a term of up to five years. In considering the length of the reappointment, the Board will take into account the experience level of the PLF Board of Directors and the effect on the rotation cycle of the Board of Governors.

**Section 23.2 Authority**

The Board of Governors vests in the Board of Directors of the PLF the authority that is necessary and convenient to carry out the provisions of ORS 9.080 relative to the requirement that all active members of the Oregon State Bar in the private practice of law in Oregon carry professional liability coverage, the establishment of the terms of that coverage and the defense and payment of claims under that coverage. The Board of Directors of the PLF must recommend to the Board of Governors appropriate requirements for PLF coverage and



amounts of money that active members in the private practice of law will be assessed for participation in the PLF.

### **Section 23.3 Operation**

Subject to the authority of the Board of Governors to take the action that is authorized by ORS 9.080 and its authority to amend these policies to provide otherwise, the Board of Directors of the PLF has sole and exclusive authority and responsibility to operate and manage all aspects of the PLF. The Board of Directors of the PLF has authority to adopt its own bylaws and policies to assist it in conducting the business of the PLF. No PLF bylaw, coverage plan, or assessment, or amendment thereto, can take effect until approved by the Board of Governors. The policies of the PLF must be consistent with the Bar's Bylaws regarding the PLF and will be effective on approval by the PLF Board of Directors, subject to review and ratification by the Board of Governors within 60 days after notice of the policies has been given to the Board of Governors.

### **Section 23.4 Reports**

The PLF must present an annual report to the bar membership at the annual meeting of the House of Delegates and must report periodically to the membership.

### **Section 23.5 Relationship with the Board of Governors**

#### ***Subsection 23.500 Liaisons***

(a) It is the goal of the Board of Governors that there be free, open, and informal communication between the Board of Governors and PLF Board of Directors. Constructive communication among Board of Governors members, bar management, PLF Board of Directors members and PLF management is encouraged; however, in such communication it is recognized that the authority to manage the PLF is vested in the PLF Board of Directors.

(b) Each year the President of the Bar appoints the President-elect of the Bar, an additional lawyer member of the Board, and one public member of the Board to serve as liaisons with the PLF Board of Directors. The additional lawyer member of the Board serves at least two years as liaison and will be replaced by a new lawyer member of the Board who will serve at least two years.

(c) At least one of the Board's PLF liaisons must be present at each meeting of the PLF Board of Directors and each attending Board of Governors PLF liaison must make every effort to attend those meetings in person rather than by telephone.

(d) One or more of the Board's PLF liaisons must make a report at each meeting of the Board of Governors regarding the significant activities of the PLF and any matters regarding the PLF requiring action by or the attention of the Board of Governors.

(e) The Board of Governors' PLF liaisons are responsible for keeping the Board advised of the activities of the PLF to ensure good communications between the Board of Governors and the PLF Board of Directors and to ensure that the Board is fully informed of the background and rationale for all PLF bylaw, policy, coverage plan, and assessment recommendations to it. The Board's PLF liaisons must not participate in the consideration of any specific PLF claim or other confidential PLF matter except as provided in PLF Policy 4.250(D) (Bar and/or Board of Governors is/are named parties in an action).

#### ***Subsection 23.501 Reports***

The PLF must regularly provide to the BOG the following:

(a) All financial statements when completed;

(b) All minutes of meetings of the Board of Directors of the PLF or committees of the Board of Directors, excepting the parts that are made confidential by Oregon Revised Statutes;

(c) All reports of investment performance and changes in investments;

(d) All proposed changes in the primary and excess coverage plans with an explanation of the reasons for and effects of the changes;

(e) On or before September 1 of each year, the proposed assessments for primary and excess coverage along with the actuarial reports and the information described in Subsection 23.600 of the Bar's Bylaws to enable the Board of Governors to understand and evaluate the proposed assessments;

(f) All closed claim reports prepared in a manner consistent with the confidentiality requirements of ORS 9.080(2)(a);

(g) All projections, forecasts, prospective financial statements and the like prepared by or for the PLF;

(h) Any other information that the Board of Governors may request to assist it in discharging its responsibility to the membership of the Bar.

#### ***Subsection 23.502 Release of Information***

All requests by the Board for confidential claim file information from the Professional Liability Fund must be directed by the President of the Board of Governors to the Chair of the PLF Board of Directors. No such material or information will be released by the Board of Governors without first receiving the approval for release from the Chair of the PLF Board of Directors. The Board of Governors must coordinate and consult with the Chair of the PLF Board of Directors before releasing public statements regarding the PLF and its operations.

#### ***Subsection 23.503 BOG Members Participating in PLF Claims***

A member of the Board of Governors who is representing either the plaintiff or the PLF in a PLF-covered claim shall not participate in any discussion of a PLF-related matter that comes before the Board of Governors. Upon undertaking the representation, the Board of

Governors member shall inform the CEO in writing as soon as practicable. During the course of the representation, at any time that a PLF-related matter comes before the Board of Governors, the Board of Governors members shall announce the fact of the representation and recuse himself or herself from discussing or otherwise participating in the matter. The minutes of Board of Governors meetings shall reflect the announcement and the recusal.

#### ***Subsection 23.504 Annual Meeting***

The Board of Governors will invite the PLF Board of Directors and the PLF management to meet annually with the Board of Governors to: Discuss the results of the business of the PLF for the preceding calendar year; discuss the PLF's long-range plans and goals; generally inform the Board of Governors of the condition of the PLF and discuss matters of common interest to the Board of Governors and the PLF. The meeting must include a report by the Personal and Practice Management Committee of the PLF pursuant to PLF Policy 6.150(C). This meeting must occur as soon as practicable after completion of the year-end financial reports of the PLF, or by April 1st of each year, whichever is earlier.

#### ***Subsection 23.505 Audit***

The Board of Governors may cause a special audit of the performance and financial statement of the PLF in addition to the statutory audit. Special audits are at the expense of the general membership of the Bar.

#### ***Subsection 23.506 Location of Office***

The physical location of the PLF will be determined by the Board of Governors on recommendation of the PLF Board of Directors.

#### ***Subsection 23.507 Staff Responsibility***

The CEO of the Bar and the bar staff have no responsibility or authority with respect to the management of the PLF. However, because the PLF is a function of the Bar, the CEO and bar staff

will cooperate with the Board of Directors of the PLF, its Chief Executive Officer, and staff in all areas of the PLF's business and activities. Likewise, it is expected that the PLF Chief Executive Officer and staff will cooperate with the Bar, its CEO and staff in all areas of the Bar's business and activities. The CEO of the Bar will make the PLF aware of all personnel and other policies of the Bar so that there may be uniformity for all bar functions recognizing, however, that the nature of the PLF may justify deviations from such policies in certain circumstances.

## **Section 23.6 Assessment**

### ***Subsection 23.600 Principles***

The Board of Governors recognizes that assessments for coverage are derived by the prudent application of actuarial principles, responsible evaluation of past and present operations and investments of the PLF and judgments about future revenue and losses. Assessments vitally affect the members of the Bar and the public, which must rely on the general availability of a wide range of legal services. The PLF has the responsibility to submit proposals to the Board of Governors for all recommended assessments supported by a report evidencing: The actuarial principles and assumptions used in the proposed assessment, the evaluations of the past and current operations and investments of the PLF with respect to their effect on the proposed assessment, the judgments and assumptions employed about future revenue and losses, and all other factors that the PLF believes will or may affect the adequacy and appropriateness of the proposed assessment. The Board of Governors must review the proposed assessment, the PLF's reports, and such other information as may be appropriate. On completion of the review, the Board of Governors must adopt assessments that it reasonably believes to be actuarially prudent and reasonably believes will provide assurance of continued financial stability of the PLF.

### ***Subsection 23.601 Appeals by Members***

#### **(a) Review by the Professional Liability Fund Board of Directors**

The PLF Board of Directors must establish and maintain a procedure to permit members to appeal to the PLF Board for relief from any amount claimed by the appealing member to have been improperly assessed against that member. The procedure must assure that:

(1) All notices of assessments and invoices for assessments to members include language that gives notice to the assessed member of the right to appeal to the PLF, the appeal procedure to be followed, and the time limits to perfect the appeal.

(2) The PLF Board of Directors' decision on appeal is communicated to the appealing member in writing by certified mail or registered mail with return receipt requested, and that all written notices communicating denial of relief requested on appeal must include the following language or its substantive equivalent:

"You have the right to request the Board of Governors of the Oregon State Bar to review the action by the PLF Board of Directors in denying the relief requested by your petition. To be entitled to Board of Governors review, a written request for review must be physically received by the CEO of the Oregon State Bar within 30 days after the date of this letter. The CEO's address is PO Box 231935, Tigard, OR 97281-1935. A request for Board of Governors review constitutes and evidences your consent for the Board of Governors and others designated by the Board to review all pertinent files of the PLF relating to you. Review by the Board of Governors is de novo and on the record. Only the grounds set forth in your petition to the PLF Board of Directors and the written materials that were available to the PLF Board of Directors will be reviewed, unless the Board of Governors, upon its own motion, requests additional materials from the member and from the PLF. The Board of Governors will

notify you in writing of its decision and the decision is final. A request for Board of Governors review does not relieve you from paying the assessment, nor does a review pending before the Board of Governors suspend or toll the default date. Please remember that you must pay your total assessment by the default date to avoid the imposition of late payment penalties and suspension proceedings. If an adjustment is necessary as a result of the review, you will receive an appropriate refund together with statutory interest."

(3) Assure that all steps necessary are taken by the PLF Board of Directors and staff to facilitate the Board of Governors review of the action by the PLF Board of Directors in denying relief requested in the petition.

(b) Review by the Board of Governors.

(1) Any member who, after properly and timely filing a petition, is denied requested relief by the PLF Board of Directors has a right to request the Board of Governors to review the action of the PLF Board of Directors in denying the relief requested in that petition. To be entitled to such review, a written request for review must be physically received by the CEO of the Oregon State Bar within 30 days after the date of the written notice from the PLF to the member denying the requested relief. Review by the Board of Governors on a timely filed request is de novo and on the record. In making the determination whether to affirm the action of the PLF Board of Directors, only the grounds asserted in the petition and written materials that were available to the PLF Board of Directors will be reviewed, unless the Board of Governors, on its own motion, requests additional materials from the member and from the PLF.

(2) The President of the Oregon State Bar must appoint a committee of at least three of the members of the Board of Governors, which must meet and review the appropriate materials and make a recommendation to the Board whether to affirm the action of the PLF Board of Directors. The Board of Governors must make a

determination and notify the member in writing of its decision, including any adjustment to the assessment. The decision of the Board of Governors is final.

(3) A request for Board of Governors review does not relieve a member from the obligation to pay the contested assessment, nor does a review pending before the Board of Governors suspend or toll the default date or delay the imposition of late payment penalties or suspension proceedings. If the Board of Governors review results in an adjustment to the assessment requiring a refund to the member, the PLF must pay the member an appropriate refund together with statutory interest thereon.

## **Article 24 Attorney Assistance**

### **Section 24.1 Creation and Purpose**

There is hereby created, pursuant to ORS 9.568, the State Lawyers Assistance Committee ("SLAC") and the Professional Liability Fund Personal and Practice Management Assistance Committee ("PLF-PPMAC"). The purpose of the SLAC is to supervise and assist lawyers whose performance or conduct may impair their ability to practice law or their professional competence. The purpose of the PLF-PPMAC is to provide voluntary personal and practice management assistance to lawyers.

### **Section 24.2 Authority**

#### ***Subsection 24.200 State Lawyers Assistance Committee***

The SLAC has authority:

(a) To receive, review, investigate, process and resolve all complaints and referrals to SLAC regarding lawyers whose performance or conduct may impair their ability to practice law or their professional competence.

(b) To require lawyers within SLAC's jurisdiction to submit to a professional assessment and diagnosis and to comply with any remedial

program that SLAC has established. A remedial program may include conditions on the law practice and other law-related activities of any lawyer found to be within SLAC's jurisdiction. Conditions may include, but are not limited to, requiring a lawyer to obtain medical or psychological treatment at his or her expense and to discontinue the practice of law and/or law-related activities pending completion of such treatment.

(c) To monitor a lawyer's compliance with the recommended measures of a remedial program.

(d) To maintain records regarding a lawyer's assistance referrals.

(e) To prepare an annual report to the Board of Governors.

(f) To recommend, for approval by the Board of Governors, such rules as may be necessary to properly operate SLAC.

(g) To appoint local bar members as it may deem appropriate for carrying out the work and purpose of SLAC.

#### ***Subsection 24.201 Professional Liability Fund Personal and Practice Management Assistance Committee***

The Professional Liability Fund Personal and Practice Management Assistance Committee ("PLF-PPMAC ") has the authority to provide assistance to lawyers and judges who are suffering from impairment or other circumstances that may adversely affect professional competence or conduct and may also provide advice and training in law practice management. The PLF-PPMAC may provide this assistance through the PLF's Oregon Attorney Assistance Program and the Practice Management Advisor Program and by the use of the PLF staff and volunteers.

### **Section 24.3 Composition**

#### ***Subsection 24.300 State Lawyers Assistance Committee***

SLAC will be comprised of not more than 12

members, including two public members, appointed by the Board of Governors. Terms will be for four years or as otherwise deemed necessary by the Board to maintain staggered terms and to fill vacancies. The lawyer members of SLAC will be active members of the Bar reflecting as closely as possible the geographic distribution of bar members. The Board of Governors will designate one of the lawyer members as chair and one to serve as secretary, each to serve a term of two years. The underlying terms of either secretary or chair will be extended for one additional year so as to coincide with the underlying terms of office, if necessary. Rules for the provision of assistance by SLAC will be as set forth in this bylaw.

#### ***Subsection 24.301 Professional Liability Fund Personal and Practice Management Assistance Committee***

The PLF-PPMAC consists of the members of the PLF's Board of Directors. The PLF will have authority to promulgate rules concerning the provision of assistance by the PLF-PPMAC which, on approval by the Board of Governors, will govern its activities.

### **Section 24.4 State Lawyers Assistance Committee Review and Intake**

#### ***Subsection 24.400 Complaints and Referrals***

(a) Any person may submit directly to SLAC, either orally or in writing, the name of any lawyer whose performance or conduct appears to be impairing the lawyer's professional competence or ability to practice law. A referral of a lawyer to SLAC should include a description of the circumstances and copies of any relevant documents. SLAC members who are contacted regarding a complaint or referral will obtain preliminary information and refer the matter to the chairperson. The chairperson will confirm receipt of a referral in a letter to the person making the referral. The letter must contain a disclosure substantially as follows:

"We appreciate your interest in bringing

this matter to our attention. Our Committee will respond by contacting the lawyer to discuss the problem. It is important for you to understand, however, that the purpose of this Committee is to provide confidential assistance to lawyers who are impaired in the practice of law for reasons such as drug or alcohol problems, emotional problems or lack of competence. For that reason, we focus our work on determining the specific assistance that the lawyer needs and making sure that the lawyer follows a treatment or assistance program. This Committee does not deal with lawyer discipline issues. All information we receive from you will be kept confidential and will not be reported to the bar disciplinary authorities. If you believe that this lawyer has acted improperly and you wish to make a complaint to the bar, you should write to Client Assistance Office, Oregon State Bar, P.O. Box 231935, Tigard, OR 97281."

(b) If a referral is received from a member of the Bar, the letter required in paragraph (A) must also contain the following statement:

"If you are a member of the Bar, please review Oregon RPC 8.3(a) to determine whether you may have an independent obligation to contact the Bar."

(c) The OSB Client Assistance Office and the OSB Disciplinary Counsel may refer to SLAC the name of any lawyer whose performance or conduct appears to be impairing the lawyer's ability to practice law or professional competence. The referral will include a description of the circumstances and copies of any relevant documents. The State Professional Responsibility Board may refer to SLAC any lawyer whose performance or conduct may be impairing the lawyer's ability to practice or professional competence whether or not the SPRB authorizes prosecution for misconduct.

The chairperson will confirm in writing referrals from the Client Assistance Office, Disciplinary Counsel's Office, or the SPRB.

#### ***Subsection 24.401 Designees***

SLAC members, lawyers and other persons assisting SLAC and employees thereof working on a matter related to the Lawyers Assistance Program authorized by ORS 9.568 are designees of SLAC. Designees are subject to SLAC rules, including the confidentiality requirements set forth in Section 24.701. Appointment of a designee who is not a SLAC member will be at the discretion of the chairperson. Considerations for appointment of such a designee include, but are not limited to, the designee's qualifications, the designee's previous experience with the referred person or with a situation similar to that of the referred person and the location of the referred person and designee. The chairperson will confirm the appointment of a designee. The chairperson will advise the designee of his or her authority and obligations and will include a copy of the SLAC's rules and other pertinent SLAC information. The designee will be notified of SLAC meetings while the referral is pending and must give regular progress reports to SLAC. Those reports may be given in person, in writing, by telephone or through the chairperson. The appointment of a designee will remain in effect until the case is concluded or SLAC otherwise provides.

#### ***Subsection 24.402 Preliminary Assessment and Intake***

Upon receipt of a referral, the chairperson will assign the matter to one or more designees to conduct a preliminary assessment and make a recommendation to the committee. The Intake designee will gather relevant information regarding the referral including, but not limited to, interviewing the referred lawyers and the person who made the referral, and any other person who may have knowledge about the lawyer's ability to practice law or professional competence.

Prior to making initial contact with the referred lawyer, the SLAC designee will notify the Oregon Attorney Assistance Program (OAAP) of the

referred lawyer's name. If the OAAP informs the SLAC designee that the referred lawyer poses a substantial and imminent risk of harm to the referred lawyer or others, the SLAC designee will wait a reasonable amount of time before contacting the referred lawyer and will coordinate and communicate with OAAP about how to make contact with the referred lawyer.

If, based on the preliminary assessment, the committee determines that the lawyer's professional competence or ability to practice law may be impaired, SLAC will have jurisdiction over the matter. Otherwise, the matter will be dismissed without further action.

#### ***Subsection 24.403 Notice to Referred Lawyer***

Prior to assuming jurisdiction, SLAC will notify the referred lawyer and provide an opportunity to respond. If jurisdiction is assumed, the chairperson will assign the matter to a designee for case development, notify the referred lawyer of the matter and direct the lawyer to meet with the designee. Notices to the referred lawyer will include a reminder that failure to respond to or cooperate with SLAC is grounds for discipline under Oregon RPC 8.1(c) and may be reported to the proper authority. If a case is not opened, the chairperson will notify the source of the referral that the matter is being dismissed without further SLAC action.

### **Section 24.5 State Lawyers Assistance Committee Investigations**

#### ***Subsection 24.500 Meeting with Referred Lawyer***

Within 30 days after notice has been given as provided in Subsection 24.403 of the Bar's Bylaws, the designee, either individually or with another designee, will meet with the referred lawyer to discuss the nature of the referral, SLAC's function, the general steps that will be taken, any questions that the referred lawyer may have about the process and the lawyer's explanation, opinion or questions about the referral.

#### ***Subsection 24.501 Release of Information***

The designee may require the referred lawyer to authorize the release of relevant medical or other background information regarding the referred lawyer to SLAC or to a professional selected to evaluate the referred lawyer. Medical or background information is relevant, if it relates to the referred lawyer's professional competence or ability to practice law. The referred lawyer may voluntarily provide additional information.

#### ***Subsection 24.502 Professional Evaluation***

The designee may require the referred lawyer to obtain a medical or other diagnostic evaluation from a professional or a panel of professionals selected by SLAC. The scope of the medical or other diagnostic evaluation will be limited to issues related to the referred lawyer's professional competence or ability to practice law. The designee may inform the medical or other professional of the general nature of SLAC's concerns but will not disclose to the professional the identity of the referral source or any other confidential information. The lawyer must bear the expenses of the medical or other diagnostic evaluation, except that SLAC may advance the costs in cases of demonstrated financial hardship.

#### ***Subsection 24.503 Remedial Action Plan***

(a) Based on all the information gathered by the designee, SLAC will consider and determine whether the referred lawyer's performance or conduct may be impairing the lawyer's professional competence or ability to practice law. If SLAC finds that the lawyer's performance or conduct may not impair the lawyer's professional competence or ability to practice law, the matter will be dismissed and the lawyer notified of the disposition of the matter. If SLAC finds that the lawyer's professional competence or ability to practice law is impaired, SLAC will so advise the referred lawyer in writing and require the lawyer to participate in a remedial program of monitoring, treatment, counseling or training.

(b) The referred lawyer will have the opportunity to participate in determining the nature and extent of the remedial program to be undertaken, but SLAC's decision regarding the program is final.

(c) SLAC will set forth the remedial measures to be undertaken in a written agreement to be signed by the lawyer. The agreement will contain the referred lawyer's acknowledgement that failure or refusal to cooperate in the remedial program is grounds for discipline under Oregon RPC 8.1(c) and may be reported to the proper authority.

(d) SLAC may require the lawyer to submit periodic reports from persons responsible for implementing the remedial program or who have information about the lawyer's compliance.

(e) The referred lawyer must pay the costs of the remedial program that SLAC requires.

(f) The designee will monitor the referred lawyer's participation in the remedial program and will report regularly to SLAC.

(g) The remedial program may be revised from time to time, as SLAC deems appropriate, and may include an extended period of monitoring.

(h) When SLAC determines that the referred lawyer has successfully completed the remedial program and that the lawyer's ability to practice law and professional competence is no longer impaired, the case will be closed.

#### **Section 24.6 State Lawyers Assistance Committee Records**

The chairperson will maintain an intake log as a permanent record of SLAC. In it will be noted each referral to SLAC, the date of the referral, the name of the person making the referral, the name of the referred lawyer, action taken on the referral and the ultimate disposition of the referral. Written materials regarding a referral which does not result in a case being opened will be kept with the intake log. The designee to whom a case is assigned will create a file and will maintain all reports, correspondence, records

and other documents pertaining to the case. The designee is responsible for maintaining the confidentiality of the file and the information it contains while the file is in the designee's possession. The file on a case will be closed when the referral is dismissed, on notice to Disciplinary Counsel of non-cooperation or as provided in Subsection 24.503(H) of the Bar's Bylaws. Closed files will be maintained permanently in locked storage at the Bar's offices. SLAC will notify the referring person of the general disposition of the referral, but not of its detailed findings or the remedial measures taken.

#### **Section 24.7 Other State Lawyers Assistance Committee Policies**

##### ***Subsection 24.700 Non-cooperation***

The failure or refusal of the referred lawyer to respond to SLAC's initial inquiry; to participate in interviews with designees during the course of SLAC's investigation; to respond to SLAC requests for information or for a professional evaluation; or to participate in and comply with a remedial program, may result in the lawyer being referred to Disciplinary Counsel for possible action under Oregon RPC 8.1(c).

##### ***Subsection 24.701 Confidentiality***

SLAC records and any information provided to or obtained by it or its designees including, without limitation, medical information, is confidential. Those records and information are not subject to public disclosure and are inadmissible as evidence in any disciplinary or civil proceeding. Pursuant to ORS 9.568(4), the confidentiality does not apply to information relating to a lawyer's non-cooperation with SLAC or its designees or to information obtained by the Bar from any other source not connected with the referral to SLAC. Pursuant to Subsection 24.402 of the Bar's Bylaws, the SLAC chairperson or designee may release the name of the referred lawyer to the OAAP. SLAC may also release statistical data, pursuant to Subsection 24.703 of the Bar's Bylaws.



***Subsection 24.702 Duty to Report Unethical Conduct***

SLAC and its designee are exempt from the reporting requirements of Oregon RPC 8.3(a) pursuant to Oregon RPC 8.3(c)(1).

***Subsection 24.703 Statistical Data***

SLAC will prepare a written annual report of its activities. The report will include statistical data such as: the total number of referrals received by SLAC, the number of direct referrals, the number of referrals received from the State Professional Responsibility Board, the number of referrals to the Client Assistance Office as a result of non-cooperation with SLAC, the number and types of cases in which assistance was provided through SLAC, the number of cases completed during the

reporting period and other information that will assist the Bar in evaluating the workload and effectiveness of the SLAC program. The report will not include any information that could jeopardize the confidentiality of persons participating in SLAC's programs. The report will be delivered to the Bar annually as an attachment to SLAC's annual report.

***Subsection 24.704 Public Meetings***

SLAC meetings are exempt from the provisions of ORS 192.610 to 192.690, pursuant to ORS 9.568(3)(b). OAAP staff may be invited to attend SLAC meetings, including case review of referred lawyers, if appropriate releases have been signed by the referred lawyers.

**APPENDIX C**  
**OSB Rules of Procedure 5.9**

**Rule 5.9 Attorney Assistance Evidence.**

**(a) Definition.** For the purposes of this rule, an "attorney assistance program" is any treatment, counseling, training or remedial service, created under ORS 9.568 or otherwise, designed to provide assistance to attorneys who are suffering from impairment or other circumstances which may adversely affect their professional competence or conduct, or to provide advice and training to attorneys in practice management.

**(b) Use of Evidence by Accused.** Subject to the provisions of BR 5.1(a) and this rule, the accused may offer evidence at a disciplinary hearing concerning the accused's participation in or communication with an attorney assistance program. If the accused fails to provide timely notice to Disciplinary Counsel as required under BR 5.9(c), the accused may not offer evidence of the accused's participation in or communication with an attorney assistance program at the hearing.

**(c) Prior Notice.** If the accused intends to offer evidence at a hearing concerning the accused's participation in or communication with an attorney assistance program, the accused shall file with the Disciplinary Board Clerk, with proof of service on Disciplinary Counsel, written notice of such intent, not less than 63 days prior to the date the hearing is scheduled to commence. For good cause shown, the trial panel chairperson may permit the accused to give the notice within a shorter period of time. The notice shall specify the identity of the attorney assistance program, the nature of the evidence that will be offered, the names of the service providers with whom the accused dealt, and the names and addresses of witnesses the accused intends to call to present the evidence. The notice shall also include the

consent or waiver required by BR 5.9(d). The accused shall provide a copy of the notice to the attorney assistance program.

**(d) Discovery.** In the event the accused provides a notice to Disciplinary Counsel under BR 5.9(c), Disciplinary Counsel may conduct discovery concerning the accused's participation in or communication with the attorney assistance program. The accused shall provide any consent or waiver necessary to permit Disciplinary Counsel to obtain discovery from the attorney assistance program or its service providers at the time the accused provides the notice required by BR 5.9(c). Questions regarding the permissible scope of discovery under this rule shall be resolved by the trial panel chairperson on motion pursuant to BR 4.5(c).

**(e) Discovery not Public.** Records and information obtained by Disciplinary Counsel through discovery under this rule shall not be subject to public disclosure, and shall be disclosed by the parties only in the disciplinary proceeding.

**(f) Use of Evidence by Bar.** The Bar shall have the right to introduce evidence obtained through discovery under this rule only if the accused introduces evidence of participation in or communication with an attorney assistance program.

**(g) Enforcement.** The trial panel chairperson may issue a protective order and impose sanctions to enforce this rule pursuant to BR 4.5(d) and (e).

*(Rule 5.9 added by Order dated November 30, 1999.)*  
*(Rule 5.9(a) amended by Order dated February 5, 2001.)*  
*(Rule 5.9(c) amended by Order dated June 17, 2003, effective July 1, 2003.)*

**APPENDIX D**  
**APPLICABLE BOARD OF GOVERNORS RESOLUTIONS**  
**1977 Board of Governors Resolution**

1. Effective July 1, 1978, all active members of the Oregon State Bar engaged in the private practice of law in Oregon shall carry professional liability coverage with aggregate limits of not less than \$100,000.

2. Such professional liability coverage for all active members engaged in the private practice of law in Oregon, except patent attorneys, shall be obtained through the Oregon state Bar Professional Liability Fund. Each patent attorney shall be required to furnish evidence, by February 1, 1978, that he or she has or will have in force at least \$100,000 of comparable coverage with a private insurance carrier covering the period July 1 to December 31, 1978, and shall be required to furnish evidence, by February 1 of each year thereafter, of the same coverage for that full year.

3. The Oregon State Bar does hereby establish a fund, to be known as the Oregon State Bar Professional Liability Fund; and its duration shall be perpetual unless and until such Fund shall be dissolved pursuant to law.

4. The Fund shall be under the control of the Board of Governors of the Oregon State Bar, but shall be managed by a Board of Directors appointed by the Board of Governors. The initial Board of Directors shall be appointed by October 1, 1977. The Board of Directors of the Fund shall consist of seven active members of the Oregon State Bar in the private practice of law in Oregon. The term of such Directors shall be three years, on staggered terms, with the term of two members expiring at the conclusion of the 1978 annual meeting of the Oregon State Bar; the terms of two members expiring at the conclusion of the 1979 annual meeting; and the terms of

three members expiring at the conclusion of the 1980 annual meeting.

5. The bylaws of the Fund shall be promulgated by the Board of Directors, subject to the approval of the Board of Governors.

6. The Board of Governors shall have authority to vest in the Board of Directors of the Fund such authority as is necessary or convenient to carry out the provisions of ORS 9.080 relative to the requirement that all active members carry professional liability coverage, establish and manage the Fund to provide such coverage and recommend to the Board of Governors amounts active members shall be assessed for participation therein.

7. As a contribution to the Fund, the Board of Governors shall assess each active member of the Oregon State Bar in the private practice of law in Oregon as part of his or her annual membership fee, or otherwise pursuant to law. For the year 1978, for professional liability coverage from July 1, 1978 through December 31, 1978, the assessment shall be \$250, to be paid with and as a part of the annual membership fee. Any member admitted to practice in Oregon after September 1, 1977 shall be assessed one-half the assessment for 1978. Any member entering the private practice of law in Oregon between July 1, 1978 and December 31, 1978, but admitted in Oregon prior to September 1, 1977, shall be assessed a prorata portion of the 1978 assessment. Members of the bar in the practice of law in Oregon for whom annual membership fees are waived shall, nevertheless, be subject to assessment for professional liability coverage under the provisions of this resolution.

8. All active members of the Oregon State Bar in the private practice of law in Oregon shall, prior to November 1, 1977, complete and return a claims information form to be transmitted by the Board of Directors of the Fund.

9. The assessments for the Fund for 1978 shall be included in the 1978 membership fee resolution submitted to the membership of the Bar at the 1977 annual meeting.

10. The Oregon State Bar shall lend such sums to the Fund as necessary for organizational expenses to be repaid by the Fund.

#### **1986 Board of Governors Resolution**

IT IS HEREBY RESOLVED, that the Board of Directors of the Professional Liability Fund shall have the sole and exclusive authority and responsibility to operate and manage all aspects of its affairs.

IT IS FURTHER RESOLVED, that the Oregon State Bar Board of Governors shall:

1. Establish the terms and appoint and remove at will members of the Board of Directors of the Professional Liability Fund; and

2. Retain the authority granted to it by Oregon Revised Statutes, including to create other such insurance entities, to permit commercial carriers to sell insurance, and to abolish the Professional Liability Fund.

IT IS FURTHER RESOLVED, that the Resolution creating the Professional Liability Fund adopted by the Board of Governors in July of 1977 be amended in part as follows:

4. The Fund shall be ~~under the control of the Board of Governors of the Oregon State Bar, but shall be managed by a Board of Directors, appointed whose members shall be appointed and removed at will by the Board of Governors and whose terms shall be established by the Board of Governors.~~ The initial Board of Directors shall be appointed by October 1, 1977. The Board of Directors of the Fund shall consist of seven active members of the Oregon State Bar in the private practice of law in Oregon. The term of such Directors shall be ~~three~~ five years, on staggered terms, with the term of two members expiring at the conclusion of the 1978 annual meeting of the Oregon State Bar; the terms of two members expiring at the conclusion of the 1979 annual meeting; and the terms of three members expiring at the conclusion of the 1980 annual meeting.

5. The bylaws of the Fund shall be promulgated by the Board of Directors ~~[subject to the approval of the Board of Governors]~~. No amendment to the bylaws shall take effect until after 30 days' written notice to the Board of Governors.

6. The Board of Governors ~~[shall have authority to]~~ does hereby vest in the Board of Directors of the Fund such authority as is necessary and convenient to carry out the provisions of ORS 9.080 relative to the requirement that all active members carry professional liability coverage, establish and manage the Fund to provide such coverage, and recommend to the Board of Governors amounts active members shall be assessed for participation therein.

IT IS FURTHER HEREBY RESOLVED that the resolution creating the Professional Liability Fund adopted by the Board of Governors in July of 1977 shall not be further amended without the affirmative vote of two-thirds of the membership of the Board of Governors present and voting.

(Adopted by the BOG 3/14/86)

**APPENDIX E  
RESOLUTION OF OSB BOG AND PLF BOD**

**RE PLF CEO EVALUATION AND OSB ED EVALUATION**

**October/November, 2002**

RECITALS:

A. On June 30, 2000, the Oregon State Bar Board of Governors ("BOG") and the Professional Liability Fund Board of Directors ("BOD") adopted the Report of the Joint OSB/PLF Governance Task Force to the OSB Board of Directors and the PLF Board of Directors (the "Report"), including "Section III. Operational Oversight of the PLF CEO." A copy of section III of the Report is attached hereto and incorporated herein.

B. The Boards note that circumstances have changed since the adoption of the June 30, 2000 report, and that the BOG liaisons to the PLF and the BOD liaisons to the OSB have substantially enhanced contact and communication between the two Boards. In light of these changed circumstances, it is appropriate to change the procedures for evaluation as set forth in the Report.

C. The Boards would therefore like to modify the specific resolution contained in item B.3 of section III of the Report with respect to operational oversight of the PLF CEO and also to modify item B.6 as set forth below:

NOW THEREFORE, IT IS HEREBY RESOLVED, that the language of the Resolution contained in item B.3 of section III of the Report shall be replaced by the following language to provide that the evaluation process for the PLF CEO shall include:

- a. An evaluation shall be conducted at least annually by a PLF CEO Evaluation Committee appointed to conduct the evaluation. The committee shall be appointed by the Chair of the PLF and shall include the Chair of the PLF and at least two (2) other BOD members;
- b. The committee shall solicit input from all members of the BOD, the PLF staff, and all members of the BOG.
- c. The results of the evaluation shall be provided to the members of the BOD and to the BOG liaisons to the PLF. A confidential written summary of the results shall be placed in the CEO's personnel file.

AND IT IS FURTHER RESOLVED, that the language contained in item B.6 of section III of the Report shall be replaced with the following language:

- a. The BOG shall invite input from all members of the BOD with respect to the evaluation of the OSB CEO.

APPROVED by the PLF Board of Directors on October 25, 2002.

APPROVED by the OSB Board of Governors on November 15, 2002.