

MANDATORY MALPRACTICE INSURANCE TASK FORCE

MEETING MINUTES

November 28, 2018

Members present were Chair Hugh Spitzer, John Bachofner (by phone), Stan Bastian (by phone), Christy Carpenter, P.J. Grabicki, Mark Johnson (by phone), Rob Karl, Kara Masters, Evan McCauley (by phone), Brad Ogura, Suzanne Pierce (by phone), Brooke Pinkham (by phone), Todd Startzel, Stephanie Wilson (by phone), and Annie Yu (by phone). Task Force members Dan Bridges, Gretchen Gale, and Lucy Isaki were not present at the meeting.

Also present were WSBA Governor Michael Cherry, Doug Ende (WSBA Staff Liaison and Chief Disciplinary Counsel), Thea Jennings (Office of Disciplinary Counsel Disciplinary Program Manager), Rachel Konkler (Office of Disciplinary Counsel Legal Administrative Assistant), Jean McElroy (WSBA Chief Regulatory Counsel), and WSBA member Inez Petersen (by phone).

The meeting was called to order at 1:05 p.m.

A. MINUTES

The minutes of the October 24, 2018 meeting were approved.

B. DISCUSSION OF DRAFT FINAL REPORT

The Task Force discussed and made revisions to its draft final report to the Board of Governors. The final report will be presented to the Board of Governors in March 2019. Among the suggested revisions to the final report included:

- Under the section *The Professional Liability Insurance Market and Malpractice Descriptions*, include data regarding the fact that lawyer malpractice claims peak in a lawyer's eighth to tenth year of practice;
- Under the section *The Professional Liability Insurance Market and Malpractice Descriptions*, include a description of what a typical malpractice insurance policy covers;
- Under the section *The Professional Liability Insurance Market and Malpractice Descriptions*, address concerns that mandatory malpractice insurance may affect insurance rates due to a bigger risk pool;
- Create a new section under *Key Findings* regarding the impact of uninsured lawyers on clients;



- Under the section *Recommendations*, make clear that a lawyer's employer may provide the insurance coverage, and that the firm need not purchase excess coverage for each lawyer;
- Under the section *Recommendations*, include more detailed explanations of the recommended exemptions;
- Under the section *Recommendations*, make clear that public defenders and civil legal aid lawyers will not be required to obtain individual insurance policies if they are covered by a nonprofit entity insurance policy, are government employees, or are subject to government indemnification; and
- Under the section *WSBA Member Concerns and Task Force Responses*, add an additional cost model of an experienced lawyer who leaves a large firm to start a solo practice.
- Add clarification about which research methods the Task Force used, or considered, during the information gathering process

The Task Force further discussed revisiting an exemption for lawyers who only represent family members, which the Task Force previously voted against recommending. Task Force member Rob Karl will review standard policies to determine whether they typically include such an exclusion to assist the Task Force in determining whether such an exemption is necessary.

The Task Force also discussed member concerns that malpractice insurance rates might increase if insurance is mandated. As the Task Force's insurance industry professional, Mr. Karl noted that based on his experience, it is unrealistic that a mandate would materially change the market.

Based on discussion, the Task Force members will revise the report for the next Task Force meeting on December 19, 2018. Prior to submitting the final report to the Board of Governors, the Task Force will share the report with the membership.

C. DISCUSSION OF DRAFT OF AMENDED APR 26

The Task Force discussed and made revisions to the draft of amended APR 26, including clarifying that exempt in-house counsel may be employed by either for-profit or not-for-profit organizations, and that volunteer lawyers who provide legal services for a qualified legal services provider (QLSP), as defined in APR 1(e)(8), are only exempt if the QLSP provides insurance to its volunteer lawyers.

D. NEXT STEPS

The Task Force will continue to receive comments from the membership regarding mandatory malpractice insurance through December 1, 2018. It will review all of the comments received in consideration of its final recommendation and report to the Board of Governors.

E. ADJOURNMENT

The meeting adjourned at 3:47 p.m.