



## **MANDATORY MALPRACTICE INSURANCE TASK FORCE**

(Adopted by the WSBA Board of Governors on September 28, 2017)

### **CHARTER**

#### **Background**

Admission and Practice Rule (APR) 26 requires annual reporting of whether a lawyer is covered by professional liability insurance. Washington State does not, as a condition of licensing, require that lawyers have such insurance. By contrast, Washington's two other licenses to practice law (limited practice officers and limited license legal technicians) are, by court rule, obligated to show proof of insurance coverage or demonstrate financial responsibility in order to obtain and maintain their licenses to practice. In 2016, the Board of Governors (BOG) convened a Mandatory Malpractice Insurance Work Group to gather information about jurisdictions that require lawyers to have professional liability insurance and the systems used to implement such requirements. The Work Group gathered information from Oregon, Idaho, and other non-U.S. jurisdictions, investigated a number of system models, examined data collected from APR 26 insurance disclosure records, and reviewed historical documentation about a 1986 WSBA initiative to adopt a mandatory malpractice rule. Without formulating a recommendation or proposal, the Work Group presented this information to the Board of Governors as a generative discussion topic at the May 2017 Board meeting. After consideration of the information presented, the BOG decided to form a Task Force to review the topic in greater depth, receive member input, and present a recommendation about whether to proceed with a mandatory malpractice insurance proposal.

#### **Task Force Purpose**

1. Solicit and collect input from WSBA members and others about whether to recommend a system of mandatory malpractice insurance for lawyers in Washington State.
2. Review information gathered by Mandatory Malpractice Insurance Work Group and gather any additional information needed for a comprehensive analysis of the topic, including alternative options.
3. Consider oral presentations and/or written materials regarding mandatory malpractice insurance systems used in the U.S. and elsewhere, together with other potential system models, and evaluate the feasibility, suitability, and practicality of such a regulatory requirement in Washington.
4. Determine whether to recommend adoption of a mandatory malpractice insurance requirement in Washington.

5. If a regulatory requirement is recommended, determine the most suitable contours of such a system, including development of a model that addresses the means of providing or procuring coverage, as well as issues of scope, exemptions, and enforcement.
6. After considering relevant materials and input, submit a final report to the BOG, including, as appropriate, draft rules to implement a system of mandatory malpractice insurance for Washington lawyers, and including any minority report(s).

### **Timeline**

- Begin meeting no more than six weeks after appointments are completed;
- Complete work and submit a final report not later than the January 2019 BOG meeting, unless the timeline for completion is extended by the BOG;
- If the task force recommends adoption of a mandatory malpractice system, prepare a BOG-approved set of suggested rule amendments for submission to the Supreme Court before the first GR 9 deadline after the draft amendments are approved by the BOG;
- Provide updates on the work of the task force as requested by the BOG.

### **Task Force Membership**

The task force shall consist of the following voting members:

- A WSBA member who shall be appointed to serve as Chair;
- Three current or former members or officers of the BOG;
- Not fewer than ten at-large members of the WSBA, including
  - at least one lawyer member with substantial experience in insurance coverage law;
  - at least one lawyer member who is also an active member of the Oregon State Bar and who participates in Oregon's Professional Liability Fund;
  - at least one limited practice officer or limited license legal technician member;
- A full-time superior court, district court, municipal court, or court of appeals judge;
- An individual with professional experience in the insurance/risk management industry;
- Two community representatives who are not licensed to practice law.

The Executive Director will designate a WSBA staff liaison.

In accordance with WSBA Bylaws Art. IX(B)(2)(e) and (f), the members and the Chair of the task force will be appointed by the WSBA President subject to being accepted or rejected by the BOG. Such appointment and approval shall be completed by no later than the BOG's November 2017 meeting.