Malpractice Coverage for Pro Hac Vice and Out-of-State

Oregon State Bar Members

What is the Oregon State Bar Professional Liability Fund?

The Professional Liability Fund (PLF) was established in 1977 to serve as the provider of mandatory primary malpractice coverage for lawyers with their principal law office in Oregon. Since its creation, the PLF remains the only mandatory legal malpractice fund of its kind in the United States. The PLF's mission states that the first duty of the PLF is "...to provide primary professional liability coverage to Oregon State Bar Members in the private practice of law." It also recognizes, however, that providing coverage to OSB members serves the public interest because members who have PLF coverage have a fund from which clients' damages can be paid. Ultimately, the purpose of PLF coverage is to ensure that both Oregon bar members and their clients have some protection in the event of a legal malpractice claim.

What professional liability insurance is required for Pro Hac Vice admissions?

Lawyers seeking admission to Oregon through pro hac vice application are required to demonstrate that they have professional liability insurance that is substantially equivalent to the OSB PLF Primary plan.

What professional liability insurance is required for Out-of-State Members?

Starting in 2025, Rule of Licensure 5.3 will require active members in private practice with a principal office outside of Oregon, who are actively practicing in Oregon, to obtain malpractice coverage that is substantially equivalent to the PLF Primary coverage. This requirement is only for out of state OSB members in private practice. For out-of-state members who are otherwise exempt from PLF coverage (e.g. in-house or government attorneys) there is no requirement to carry substantially equivalent coverage.

What constitutes "substantially equivalent" for these applications?

Although not exhaustive, the following list details some features of PLF Primary coverage:

- Current PLF Primary coverage limits are $300,000 per claim and $300,000 for all claims made against each covered party each year. Those coverage limits are inclusive of claims defense and indemnity costs.
- In addition, there is a $75,000 expense allowance available only for defense costs.
- Coverage renews on a calendar-year basis.
- There is no deductible under the Primary plan.
- PLF coverage is claims-made coverage as opposed to occurrence coverage. Claims made means that whatever coverage is in place when the claim is made applies to that claim (rather than when the activity giving rise to the claim occurred).

- Extended reporting coverage (ERC or “tail” coverage) begins automatically when a covered party exits the private practice of law. There is no charge for this coverage. The remaining limits from the last year of coverage continue to be available for future claims against the covered party for work performed during the coverage period

Does substantially equivalent coverage look identical to PLF coverage?

Not necessarily. Keeping in mind that the “substantially equivalent” coverage requirement for out-of-state OSB members is intended to serve the same purpose as PLF coverage, then an out-of-state member should demonstrate an adequate combination of insurance and financial reserves to cover a claim for malpractice. Because insurance that is identical to PLF coverage is almost impossible to find in the commercial market (specifically the absence of a deductible), malpractice insurance coverage must be evaluated on a case-by-case basis to determine whether it provides adequate financial coverage in the event of a claim for legal malpractice.

As an example, a large firm in California with a $50 million malpractice policy and a $1 million deductible may meet the requirement; despite the large deductible, the firm may be able to demonstrate that they have the means to cover it, and the limit is much greater than the PLF coverage. Alternatively, a solo practitioner with $300,000 in coverage and a $100,000 deductible might not meet the requirement despite the identical coverage amount, if they could not cover the large deductible with demonstrated reserves.

Rules for Admission (See RFA 15.05)

Rules of Licensure (01/01/2025) (See RL 5.3)