

AGENDA ITEM

III F May 2017

DATE: May 4, 2017

TO: **Members**, Stakeholders & Access to Justice Committee

FROM: **Raquel Hines**, Staff, Committee on Professional Liability Insurance (COPLI) and Committee on Group Insurance Programs (COGIP)
Randall Miller, Chair, Committee on Professional Liability Ins.

SUBJECT: **Insurance Committees Annual Report**

BACKGROUND

Staff advisory committee coordinators annually submit reports summarizing committee accomplishments and activities and to identify current and future areas of focus. The reports are distributed to the pertinent Board committees with oversight responsibility for respective advisory committees.

The 2016 Annual Reports for the Committee on Professional Liability Insurance (COPLI) and the Committee on Group Insurance Programs (COGIP) are attached. As a reminder, the Board of Trustees acted to terminate COGIP effective May 31, 2017.

ATTACHMENT(S)

Attachment 1: 2016 COPLI Annual Report

Attachment 2: 2016 COGIP Annual Report

Committee on Professional Liability Insurance (COPLI) 2016 Year-End Assessment

The following is a summary of COPLI's activities in 2016; the committee's charge is provided as Attachment 1A.

Professional Liability Insurance Program (PLI)

The committee held four meetings, including a planning session in November 2016.

The committee performed a full actuarial review of the PLI program to evaluate the program's loss ratio and profitability. COPLI continues to ensure access to a viable market for professional liability insurance, sustainable over time. COPLI members actively respond, interact, and serve as program liaison for member needs and suggestions about the program, including scope of coverage, practices covered, application rejections, and policy declinations.

Professional Liability Insurance - Data Breach Endorsement

In addition in 2014, COPLI approved the addition of a Lawyers PLI policy endorsement, providing up to \$25,000 in coverage for the expense of remediation and mitigation in the event an insured suffers a data breach. This product provides assistance with maintaining adherence to applicable legal requirements. Due to its success, the Committee began evaluating the need for a full cyber product for California Attorneys. COPLI has now approved a product through Arch. Arch is now finalizing the details of the filing with the California Department of Insurance. This will not be a standalone cyber policy, but will be offered as an affordable optional endorsement to the Professional Liability Insurance policy.

Market Review

COPLI continued to monitor the market to ensure the availability of coverage to all members and adequacy of policy features.

Education

In 2016, the Education Subcommittee conducted four (4) live malpractice prevention seminars for MCLE credit, one at the State Bar Solo and Small Firm Summit and another three at the State Bar Annual Meeting. In addition, COPLI conducted four (4) webinars available through the State Bar's Online CLE site. These outreach efforts protect the public by educating attorneys on the need to be insured, ensuring compliance with applicable ethical standards and the standard of care, and avoiding malpractice claims. In addition to these courses, COPLI members continue to contribute to the insurance portion of the State Bar's "Opening a Law Office" publication.

Broker Agreement

The State Bar of California's agreement with our managing broker, Marsh (now Mercer) was solidified and made effective July 2012 for a period of 5 years. As a direct result of this relationship, policy holders now also receive 25 hours of CLE at no cost, a 50% discount on both the Solo Summit and Annual meeting, as well as a free Section Membership with no direct increase in premium.

As of January 2014, Marsh, the association arm of Marsh & McLennan was absorbed into their sister company, Mercer. This in turn produced a management change in the oversight of the State Bar Program. State Bar staff and COPLI leadership have continued to work closely to ensure the Marsh/Mercer restructuring did not impact program performance.

With the term of the contract set to expire in June 2017, COPLI spent most of 2016 reviewing the available marketplace, identifying new brokers in the industry and competitors showing interest in working with the State Bar program. Final recommendations will be provided to State Bar staff in May, 2017.

Attachment 1A:

Committee on Professional Liability Insurance (COPLI) Charge

The committee was established by Board resolution in July 1990. Its purpose is to:

Oversee a professional liability program that has congruent goals of providing attorneys with insurance coverage and clients with recourse for malpractice. COPLI should also explore and pursue programs and strategies consistent with the economic viability of the program, to make professional liability insurance available to as many California attorneys as possible. COPLI oversees and reports to the Board of Trustees and/or its designated board standing committee on all aspects of the State Bar approved Professional Liability Insurance Program including, but not limited to, the following:

1. Interact with the Program Administrator and the Underwriter. Make recommendations, consider premium rates, benefits, limitations, exclusions and other contract provisions in relation to needs of the members of the State Bar generally as well as those provisions necessary to maintain the economic viability and stability of the program;
2. Oversee and interact with the Program Administrator to ensure the broadest dissemination of information regarding the program, the ease of members in applying for the program and other such steps as may be necessary or appropriate to precipitate program growth consistent with economic stability of the program;
3. Interact with both the Program Administrator and the Underwriter to anticipate and implement program changes, coverages, specialty policies, and such matters as may respond to the needs of California's practicing attorneys and otherwise precipitate additional programs growth;
4. Undertake such activities as may be necessary or appropriate to advocate with the underwriter on behalf of attorneys desiring to be included in the endorsed program and/or those who may be declined etc.;
5. Conduct such studies as may be necessary or appropriate to identify causes, frequency, and severity of legal malpractice claims; interact with the carrier to both precipitate and assess satisfaction levels of program members following initiation of legal malpractice claims;
6. Design, schedule, and conduct malpractice avoidance education programs available to attorneys throughout the state which qualify for MCLE credit for program members, develop and update materials on malpractice prevention;

7. Engage in audits and reviews necessary to ensure both the economic viability of the program and the availability thereof to the broadest range of California attorneys. Propose such changes in the program structure, etc., as may be necessary or appropriate to accomplish such goals;
8. Take steps to identify those aspects of the Professional Liability Insurance Program that may generate additional non-dues revenue;
9. Assist the Office of General Counsel in providing legal advice to the Board of Trustees with respect to all of the foregoing items;
10. Conduct an annual orientation session for new members of the Committee, Board members, State Bar staff, and the Executive Director on all of the above listed aspects of Committee oversight of the State Bar sponsored professional liability program;
11. Comply with all reporting and planning requirements of the Board of Trustees approved Strategic and Operational plans. Comply with the annual work plan requirement for all Board of Trustees' committees;
12. Ensure that all the above listed advisory responsibilities, 1-11, are conducted in consultation with State Bar of California staff designated by the Executive Director.

Committee on Group Insurance Programs (COGIP) 2016 Year-End Assessment

The following is a summary of COGIP's activities in 2016; the committee's charge is provided as Attachment 2A.

Group Insurance Programs

The Committee held four (4) quarterly meetings, including a planning session in November 2016. The Committee performed an actuarial review of the programs to evaluate each program's loss ratio and profitability. In addition, each program was reviewed with the partners on a quarterly basis.

Group Insurance Programs – Life Insurance New Admit Program

During the 2016 Planning Session in November, the committee was made aware of the carrier's, American General (AG), interest in withdrawing from Group Life and Disability Insurance in the US. The committee at that time granted approval for the Life Subcommittee to begin establishing a timeline of work to be completed in anticipation of the Formal Termination Notice from AG. State Bar staff and management are now intimately involved in this process. Resources are being secured at this time to prepare for the transition, but Formal Notice from AG has yet to be given to the Bar.

Group Insurance Programs – Healthcare

The committee continued to monitor the State Bar sponsored Healthcare Program which is primarily focused on solo and small firm practitioners. This program provides a way for California attorneys to gain access to healthcare coverage through the private market or the federal exchange.

Renewal of Broker Agreement – Long Term Care and Disability Insurance

In October 2016, the agreement with the incumbent managing broker, AI&PS was renewed for a period of one year. Long-term care insurance protects the attorney or an elder parent by providing care generally not covered by health insurance, Medicare, or Medicaid. Separately, disability insurance insures the beneficiary's earned income against the risk of disability.

Marketing Oversight

A marketing plan is established for each product line annually and attached to the broker administrator that provides oversight. An update on the progress of each plan is provided at each meeting. The Committee continues to look for opportunities to educate new attorneys of the need for coverage and the protection it provides.

This year the marketing plan included a multi-faceted outreach campaign to the new and existing members of the bar. Utilizing several mediums and leveraging the State Bar's marketing and branding arm, CalBar Connect, social media and mail campaigns, thereby increasing awareness of the Programs.

Education

COGIP conducted MCLE credit approved seminars at State Bar's Solo and Small Firm Summit and the State Bar Annual Meeting. The presentations focused on how insurance coverage may protect your law firm and how the Affordable Care Act impacts solos and small firms. In addition to these courses, COGIP produced a self-study article on market reform changes and employer obligations as a result of healthcare reform.

Attachment 2A:

Committee on Group Insurance Programs (COGIP) Charge

COGIP is composed of 12 attorney members with expertise and experience in insurance and insurance law, in dealing with brokers and insurance carriers and in understanding insurance policies and the business aspects of insurance particularly group and/or association plans. The committee acts as a counselor and advisor to the Board of Governors. Currently State Bar sponsored group insurance programs include: Accidental Death & Dismemberment, Life, Group Disability Income and Group Long Term Disability, Workers' Compensation, Long Term Care and Auto/Homeowners Insurance. The charge of the committee is as follows:

1. Studies and makes recommendations on new, member group insurance programs to be sponsored by the State Bar and proposes changes in existing programs; recommends actuarial and other consulting studies as needed.
2. In making recommendations, considers premium rates, benefits, limitations, exclusions and other contract provisions in relation to the needs of the members of the State Bar generally and provisions designed to achieve program stability.
3. Works with the administrator/broker, carrier, General Counsel's office and designated State Bar staff to prepare contracts for new programs and revisions to existing programs.
4. Monitors ongoing approved programs and reviews sales literature for all approved programs on an ongoing basis.
5. Provides legal advice to the Board of Governors concerning insurance law aspects of its recommendations.
6. Perform such other functions relevant to the committee's subject area as the Board of Governors may from time to time assign.
7. Make recommendations and assist on request, the Board of Governors for ways and means of increasing non-dues revenue.