

Executive Summary

On June 23, 2009, outgoing State Bar of Texas President Harper Estes and incoming President Roland Johnson received a letter from the Supreme Court of Texas asking the State Bar Board of Directors to make a recommendation on the issue of professional liability insurance disclosure.

The issue of professional liability insurance disclosure is not a new issue and has been debated by other states, on the national level, and by task forces and committees in the state of Texas. In 2008, a State Bar of Texas task force narrowly voted, by one vote, against requiring lawyers to inform potential clients of whether or not they were covered by PLI. The Board accepted that report and forwarded it to the Court. In June 2009, the Grievance Oversight Committee, a Supreme Court committee, reported in favor of requiring attorneys who do *not* carry professional liability insurance to inform their potential clients in writing prior to taking the case.

The discussion among law professionals on this matter has led to good arguments both for and against disclosure, with many thoughtful arguments on both sides of the issue. To ensure that current directors had thorough insight into the issue and to provide the Court with accurate information about the perspectives of Texas lawyers and Texas citizens, the State Bar of Texas worked throughout the summer, fall, and winter of 2009-2010 to gather information and solicit input from across the state prior to the Board's vote on January 29, 2010. This executive summary provides an overview of the State Bar's efforts to understand the issue and the perspectives of individual lawyers, sections, local bar associations, and members of the public.

Communications

State Bar Directors sent first-class letters to each of their constituents that provided an overview of the issue, timeline, and information on where to find additional

resources. Directors personalized the information but essentially sent the same information to every licensed Texas lawyer, including those who practice outside the borders of Texas. Attorneys could respond to their director(s), post comments to a blog on the State Bar of Texas website, email the State Bar president, or send written responses to the State Bar president. One director wrote a column for a major city business newspaper informing the public of the issue and asking for input.

Pro and con articles were published in the November issue of the *Texas Bar Journal*. An email letter from State Bar President Roland Johnson was sent to all members in December. Numerous sections and local bar associations polled their members and discussed this issue at council and board meetings.

The Texas Bar Blog was active with 204 comments posted as of Jan. 15, 2010 — 187 (92 percent) were opposed to mandatory disclosure; 16 (8 percent) were in favor of disclosure (10 of those appear to be by doctors or other non-lawyers who find the idea that lawyers are worried about getting sued “ironic”); one neutral (written by an “independent insurance broker specializing in legal malpractice insurance” detailing why attorneys should consider insurance).

The email set up for responses to be sent to the State Bar president generated 182 letters and comments, 151 (83 percent) opposed to mandatory disclosure, 21 (12 percent) in favor of disclosure, and 10 (5 percent) were neutral.

Eight responses were received from State Bar Sections and Committees with six against and two neutral (letters encouraging members to send feedback). Likewise, six responses were received from local bar associations with five against (in the form of resolutions and polls) and one neutral (an informational newsletter article).

Public Hearings

In an effort to ensure that both lawyers and members of the public had an

opportunity to provide input, the State Bar conducted a series of public hearings around the state. The seven hearings were publicized through press releases, community calendars, the *Texas Bar Journal*, the State Bar website, and other social media avenues (blogs, Facebook, Twitter). The information was published and printed in various newspapers and on radio and television news programs prior to the hearings.

Beginning in October 2009, the State Bar held public hearings in San Antonio, Harlingen, Houston, El Paso, Dallas, Lubbock, and Austin. Directors from districts surrounding each public hearing were in attendance at each of the hearings. All attendees were afforded the opportunity to speak and, in addition to or in lieu of testifying, submit their position or comments in writing. One-hundred and twenty-five people signed in at the hearings, with six indicating they were for requiring disclosure, 12 indicating no position, and the remainder of those signing in indicating they were against required disclosure. Of those in attendance at the public hearings, 61 testified. All of the hearings were audio-recorded and within 24 hours of each hearing, the full recording was made available on the State Bar website for download, and a written report on the hearing was posted to the Texas Bar Blog.

Survey

In an effort to update and expand on information gathered in a survey of Texans in 2008, the State Bar of Texas commissioned the University of North Texas (in November 2009?) to conduct a survey of 500 Texans regarding their opinions on the issue of professional liability insurance disclosure by lawyers. Responding to some of the issues raised during the public hearings and in an effort to have a better understanding of how lawyers and the State Bar might better serve the public interest, the survey included open-ended questions about what individuals sought in their attorney as well as more directed questions related to professional liability insurance disclosure.

The survey found that the top five factors the public considers when hiring an attorney are price, success rate, experience, specialty, and personality/character. While professional liability insurance did not make the top 10 list of factors that those surveyed look for when hiring an attorney, when asked whether lawyers should be required to disclose whether or not they have professional liability insurance, 64 percent responded affirmatively. Only 36 percent of those asked would be willing to pay more in legal fees to ensure that their attorney carried professional liability insurance, compared with 49 percent who indicated they would pay more in doctors' fees to ensure that their doctor was covered by professional liability insurance.

The survey also asked questions to ascertain the public's understanding of what professional liability insurance might cover. That information is included in the survey results.

Focus Groups

In spite of numerous announcements published in numerous media and community calendars, the public essentially did not attend the public hearings. To build on the information gathered through the phone survey and to gain further insight into the public's knowledge, understanding, and opinions of the complicated issue of professional liability insurance, the State Bar conducted focus groups in four Texas cities as the final step in gathering public input on the issue of professional liability insurance disclosure.

Human Interfaces, an Austin-based professional consulting firm, obtained up to 10 participants for each focus group, based on screening criteria developed jointly with the State Bar Research and Analysis Department in order to ensure that the participants accurately reflected the demographics of their community and of the state as a whole (e.g., age, ethnicity, gender). The focus groups were held at facilities acquired by Human Interfaces and each was videotaped. The focus group was asked the same questions asked in the phone survey on a continuum of information. As the

focus groups learned more about professional liability insurance disclosure and heard arguments both for and against disclosure their opinion softened on requiring disclosure. Initially, about 70 percent of those who participated in the focus group believed that attorneys should be required to disclose whether or not they carried professional liability insurance. By the end of the presentation and open discussion among attendees, that number had decreased to about 53 percent believing that attorneys should be required to disclose.

For many participants, the issue of professional liability insurance disclosure was not on their radar. Throughout the focus group session, participants were fairly consistent as to what considerations they thought would be important when hiring an attorney. The top considerations that were listed as the most important throughout (initially and after discussion) were success rate, experience, and price. Also seen as important throughout were reputation, specialty, and honesty. (Honesty was listed more often after participants were shown the list, and again after the open discussion.) After the discussion of PLI disclosure coverage, some participants listed it in their top 5 considerations (9 of 37); however, none placed it as the most important consideration. Many of the participants had hired attorneys but had no knowledge of professional liability insurance. In addition to learning about the issue of professional liability insurance, the State Bar learned more about what people are looking for in a lawyer and their understanding of the legal system and the State Bar of Texas.

The focus groups were videotaped and are available for review. The audio files of the focus groups are posted on the website and links to the audio files are included on the flash drive.