

## Statement from the Oregon State Board of Bar Examiners

### Planning an In-Person July Exam

The Oregon State Board of Bar Examiners is pleased to return this year to our standard schedule of hosting two bar exams in 2021. We held a successful remote exam in February, and we are planning to host an in-person UBE exam in July.

We continue to pay close attention to public health guidance related to the COVID-19 pandemic, and have several contingencies in place, including a shift to a remote exam if necessary. Using established criteria, and allowing us the time to evaluate public health conditions as they continue to change, we will make a final decision on the type of exam at our May 21, 2021 public meeting.

Our decisions will be guided by our commitment to the health and safety of applicants, staff and volunteers; to the administration of an exam that is equitable and accessible; and to the public protection and service mission of the OSB and its admissions process.

Among the criteria we will use in making a decision:

- **Equity.** We believe that an in-person exam provides the fairest and most equitable exam for all applicants, and it is our preference to host an onsite exam. Should a remote exam become necessary, we will take every step to mitigate equity issues that can arise from remote administration.
- **Health and Safety.** We will follow public health guidance, and will wait long enough to allow that guidance to be as current as possible when we make a final decision. We established safe and secure protocols for our July 2020 exam that resulted in zero transmissions of COVID-19, and these protocols are repeatable (if necessary) in July.
- **Exam Security.** Regardless of exam type, we will apply the same rigorous exam security standards, to ensure that the test is fair and secure, in keeping with the public protection mission of the OSB and its role in regulating the legal profession.

Our current plan is for an in-person exam, with the primary site to be the Red Lion Hotel in Jantzen Beach, Portland. If site or safety protocols demand, we will have additional sites available, which will be announced as those plans are finalized. If we are unable to accommodate all applicants, we will provide exam seating on a first-come/first-serve basis. With the current trend in Oregon vaccinations, and the stated goal of having sufficient vaccines for 100% of our willing population vaccinated by the end of May, there is good reason to be confident in this plan.

The two factors that could trigger a move to a 100% remote exam include a significant change in the projected public health guidance for July; or a conclusion that the equity consequences of either the exam type or the awarding of exam seats dictate a move to a remote exam.

We published the July exam application on March 15, 2021, and notified applicants that the application was for the July Oregon Bar Exam, regardless of exam format. We recognize that this is not ideal for all, but we are committed to basing our final decision on sound scientific data and public health guidance as we move closer to the exam date. We also remain committed to hosting a fair and equitable exam, and complying with best practices for exam security.

Applicants seeking accommodation under the Americans with Disabilities Act should request accommodations for an in-person exam. If the Board elects to host a remote exam, any approved accommodations will be restructured to address the exam environment differences between remote and in-person exams.

We appreciate the trust that you have placed in us, and assure you that decisions will be made with the utmost care and deliberation. We intend to keep applicants and the public advised of any changes to our exam approach. Interested parties should check the OSB Admissions Web Page regularly as we move toward July. Finally, we hope this is the last exam that will require so many contingencies, and so much flexibility on the part all stakeholders, and particularly our applicants.

The Oregon State Bar is committed to protecting the health and safety of OSB applicants, staff and volunteers. On February 2, 2021, the National Conference of Bar Examiners announced that jurisdictions can offer a remote exam for the July 2021 bar exam, and that they will equate the MBE, calculate scaled scores for the written components, and provide UBE and MBE score transfer services for both the in-person and the remote administrations. While a remote exam may decrease the chances of contracting COVID-19 if the virus is still a concern in July 2021, there are other health and equity concerns that the BBX must take into consideration in deciding which type of exam to host (in-person or remote). These considerations include: the disparity in exam environments between affluent and disadvantaged applicants, the strict code of conduct required to ensure exam security and integrity, and the palpable anxiety that some remote applicants feel while trying to comply these policies. Additionally, with the increasing number of vaccines and populations eligible for vaccination, coupled with the present trend of decreasing COVID-19 infections in Oregon; the Board believes that it is prudent to give more time to the development of these trends before deciding which type of exam to host (remote or in-person). We have read the considered opinions of law faculty and deans who argue that jurisdictions must announce the type of exam they present as early as possible. We agree with these opinions for the most part, but not to the extent where jurisdictions make fundamental exam decisions based on data that will be irrelevant at the time of the exam. Therefore, we propose the following policies and timelines:

1. We believe that an in-person exam provides the fairest exam for all applicants, and provides applicants from diverse communities the best possible equitable outcomes when compared to a remote exam. Additionally, we established safe and secure protocols in our July 2020 exam that resulted in zero transmissions of COVID-19, and are repeatable (if necessary) for the July 2021 exam. Because of this, we have every intention of hosting an in-person exam in July. In furtherance of this intention, we are under contract with the Red Lion Hotel to host the July 2021 bar exam at their site, and we intend to host as many applicants at that site as health, safety and then current laws and regulations allow.
2. In the event our exam population exceeds our seating capacity at the Red Lion, we will have contingencies in place to test at other site locations. For planning and exam security purposes, we will announce the names of these contingency locations as they come under contract and become necessary for overflow seating or to comply with other regulations. While these sites may be a contingency to the Red Lion, because of our concern for a fair and equitable exam, these contingencies will be selected over a remote exam option as long as they do not pose an increased risk to the health and safety of our examinees, staff and volunteers.

3. If trends in the pandemic worsen, or rules and laws that apply to the bar exam tighten to such an extent that we cannot offer an in-person exam to all of our examinees, we will choose an in-person exam for those who we can host in-person over a remote exam for all. As a result of this preference, we will provide exam seating on a first-come/first-serve basis, unless the execution of this policy creates substantial equity issues to those applicants who could not be seated.
4. If the equitable consequences are untenable, we will test 100% of our applicants via a remote exam. Likewise, if the Board determines that pandemic trends are worsening or that the Oregon State Bar's resources are insufficient to host the number of seats and sites required for an in-person exam, then the Board may elect to host the exam remotely.
5. We published our July exam application on or about March 15, 2021. It notified applicants that they were applying for the Oregon Bar Exam, regardless of whether it was an in-person or remote exam. We recognize that this is less than ideal for an applicant who is seeking a particular type of exam and merely wants to obtain a UBE score to transfer to another jurisdiction. While we are a UBE state, our core function is not to host UBE bar exams, but to admit new Oregon lawyers, and because of that charge we will make the decision on exam type closer to the actual exam. Using the first four policy statements as guidance, we will elect our exam type at our May 21, 2021 public meeting. We will base our decision on the then available accepted scientific data and projections from OHA, while still taking into account the need to provide the most fair and equitable exam possible. We will post our decision on the Admissions Homepage of the Oregon State Bar. We recognize that this date is after the current late filing deadline; however, it is before most law school students will graduate or enter their summer break and start their bar study courses in earnest.
6. Applicants who are seeking accommodations under the Americans with Disabilities Act should request accommodations for an in-person exam. If the Board elects to host a remote exam on May 21, 2021, then the accommodations will be tailored to address the applicant's request for a remote exam.

We appreciate the trust that students, parents, professors, deans and anyone else effected by our decisions have placed in us in this process. We hope this announcement helps those applicants who wish to practice in Oregon apply with confidence that our decision will be sound when made, and will not be made out of convenience or political expediency. We also hope this is the last exam that we will be required to plan this number of contingencies and ask our applicants to be this flexible when it comes to exam type and sites.