

## **FAQ: February 2022 Bar Exam**

During the administration of the February 2022 Oregon State Bar Examination, the HVAC system at the hosting venue malfunctioned, resulting in cold temperatures for most test takers. On Tuesday, May 10, the Oregon Supreme Court adopted several remedial measures proposed by the Oregon Board of Bar Examiners (BBX). Following are answers to questions about the February exam.

### **What happened at the exam site?**

The examination – testing approximately 132 applicants – was held February 22-23 at the Holiday Inn at Jantzen Beach, with a small group of applicants also at the Oregon State Bar Center in Tigard. The HVAC system at the hotel malfunctioned on both days. The temperatures in the six testing rooms ranged between approximately 50 and 60 degrees, with most being on the lower end of that range for most of the exam. The HVAC system in one room at the OSB Center also malfunctioned for a brief period on the first day of testing.

### **What was the impact on the exam and the applicants?**

The Oregon Board of Bar Examiners believes that the testing environment very likely affected the performance of a significant number of applicants. However, we cannot quantify the impact on any individual examinee, nor on the cohort as whole. Given the likelihood that the impact was widespread, the BBX recommended broad remedial measures to the February cohort.

### **What remedial actions did the Oregon Supreme Court adopt?**

During its public meeting on May 10, 2022, the Court voted to take the following remedial measures, applicable solely to the February 2022 bar exam cohort:

- Implement a passage score of 265 for the February 2022 bar exam, specifically for admission to the Oregon State Bar. *See below for discussion on the nationally recognized UBE.*
- Provide a credit for applicants who receive a Uniform Bar Exam (UBE) score of 269 or below to take one Oregon bar exam at no cost between now and February 2024.

- Authorize the creation of a Provisional License Program for applicants with a score of 264 or below. The program would be loosely modeled on the current structure of the OSB's Temporary Practice Program. The BBX will present details of the program in writing to the Court by June 30, 2022; it is anticipated that the program will be finalized at the Court's July 2022 meeting.

It is anticipated that the Court will publish a written order detailing the remedial measures it has authorized no later than May 13, 2022. A link to that order will be added to this FAQ when it is issued.

### **What is the impact on applicants' Uniform Bar Exam (UBE) scores?**

None. The UBE is the bar exam for approximately 40 states, including Oregon. The National Conference of Bar Examiners (NCBE) develops and scores the exam. A UBE score provides applicants with a test score that will be accepted in other UBE jurisdictions, *i.e.* it is a nationally portable bar exam score. Everyone who completed the February 2022 Oregon Bar Examination has received a valid, transferrable, UBE score. The OSB and the Oregon Supreme Court have no authority over UBE scores once the NCBE has established an official UBE score for an applicant, because all UBE states agree that the NCBE is the official holder of such scores.

None of the remedial actions taken by the Court impact that UBE score. Oregon's traditional pass score is in the mid-range nationally, with a pass score of 270. Approximately 30 states have the same or lower pass scores. For the applicants seeking admission to the Oregon State Bar who took the February 2022 *Oregon* Bar Examination (applicants who sat for the exam in Oregon), the Court has set the pass score at 265.

### **When will the bar exam results be announced?**

We do not yet have a firm date for this announcement. The Bar needs to have the results approved by the Court. Now that we know the pass score is 265, the Bar will submit a new exam report to the Court. Once the Court approves the results, then the OSB will publish the names of the successful applicants. Our goal is to publish the names no later than Wednesday, May 18.

## **What is the status of discussions around creating alternative means of admission, in addition to the bar exam?**

At the request of the Oregon Supreme Court, a BBX task force recently studied several alternative methods of admission. The task force recommended moving forward with two programs:

1. The Oregon Experiential Learning Pathway (OEP). A curriculum-based model with a focus on experiential coursework during an applicant's last two years of law school. This would culminate in a capstone portfolio submitted to the BBX to measure minimum competency.
2. Supervised Practice Pathway (SPP). This would be a post-graduation model with applicants working directly under a licensed attorney for 1000-1500 hours of practice, and submitting a portfolio of work samples to the BBX to measure minimum competency.

Neither program would replace the UBE, which would continue to be offered. Similarly, all other requirements for admission would remain, including passing a character and fitness review, and passing the national ethics exam, also developed by the NCBE, known as the Multistate Professional Responsibility Examination (MPRE).

As stated above, the BBX has approved moving forward on these programs, and the Court has approved them in concept. The BBX has created the Pathways to Licensure Committee to develop, in greater detail, the regulatory structure of both programs for presentation to the Court. Information on that task force will be available on the OSB web site within the next few weeks.

## **Why are the BBX and Court interested in alternatives to the bar exam?**

The Bar Exam has both strengths and weaknesses as a tool for measuring minimum competency. Its uniformity across jurisdictions provides the basis for a portable score; the structure lends itself to objectivity in scoring; and it is exceedingly efficient in testing large populations over two days. However, there have been questions historically about whether it measures the knowledge and

skills most relevant to practicing law; and whether the standardized test format reinforces inequities in the scoring and results.

The science confirms that the bar exam, like all standardized tests, produces a percentage of false positives (examinees who pass the bar exam, but actually do not meet the minimum professional standard) and false negatives (examinees who fail the bar exam, but actually meet the minimum professional standard).

The disciplinary system is designed in part to address the false positives. We currently have no mechanism for identifying the false negative results, or minimizing their impact. A carefully constructed apprenticeship-like program could potentially satisfy both issues, and offer a pathway to licensure for applicants who demonstrate to the BBX that they are sufficiently competent to be entrusted with a law license.

The Oregon task force looked at other jurisdictions where a variety of models are in place. Its more detailed report is [here](#).

As they evaluate these proposals, the BBX and the Court are committed to an admission process that maintains the robust public protection offered by the current system.