

# **AGENDA ITEM**

**701 JULY 2017**

**DATE:** September 1, 2017

**TO:** Members, Board of Trustees

**FROM:** State Bar Staff

**SUBJECT:** Decision and Action on Recommendation from Committee of Bar Examiners re California Bar Examination Pass Line - Return from Public Comment

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## **EXECUTIVE SUMMARY**

A special joint meeting of the Board of Trustees Admissions and Education Committee (Board Committee) and the Committee of Bar Examiners (CBE) was held July 31, 2017. At that meeting, the Board Committee authorized circulating for public comment the report entitled: "Conducting a Standard Setting Study for the California Bar Exam" prepared by psychometrician Chad Buckendahl, Ph.D., together with staff's recommendation that two options relative to the California Bar Examination (CBX) pass line be considered: 1) No change to the current CBX cut score of 1440; or 2) A reduced interim CBX cut score of 1414 to be used for the July 2017 CBX only.

Following a period of extensive public comment, which closed on August 25, staff presented a report with final recommendations on the CBX pass line for consideration. In addition to the two options previously circulated for public comment, staff presented an additional third option of a reduced interim score of 1390, and recommended that that option also be forwarded to the Supreme Court for consideration.

On August 30, 2017, the Law School Council, an advisory committee to the CBE, met and considered the staff report. The Council voted to recommend that the Supreme Court consider adoption of an interim CBX cut score within the range of 1350 to 1390 and that if any lower interim cut score were to be approved by the Supreme Court, the score remain in place for no less than three years. The next day, August 31, 2017, a joint meeting of the CBE and the Board Committee considered the staff report and the comments received, along with the recommendation from the Law School Council. With one abstention and one dissent, the CBE voted to recommend maintaining the pass line at 1440 until such time as the two pending studies on the CBX, a Content Validation Study and a Student Performance Study, are completed and can also be considered in connection with making a recommendation relative to an appropriate cut score.

At this time, staff has updated the report and continues to advance its recommendation that the Board of Trustees advance three cut score options to the Supreme Court for consideration: 1) no change; 2) 1414; and 3) 1390.

## **BACKGROUND/DISCUSSION**

After a series of changes that were enacted throughout the 1970's and 1980's, the structure and cut score for the California Bar Exam that would ultimately stay in place for thirty years, was established in 1987. While most recently the CBX has been reduced from a three- to a two-day format, and the relative weighting of the essay/performance test and MBE portions of the exam have been adjusted in response to this change, at no time previously in the State Bar's history has either a formal standard setting or content validation study been conducted to inform these various exam content and grading modifications.

Thus, the present effort, which comes at a time of declining CBX pass rates, is both critically important and historic.

In the attached "Report to the Board of Trustees of the California State Bar Final Report on the Standard Setting Study and Public Comments Regarding Pass Line Options" (Report), staff presents the Board with a detailed overview of the 2017 Standard Setting Study, the history of previous CBX content, grading and cut score modifications, and an analysis of the various cut score options that were identified through the standard setting exercise. Staff's recommendation to advance three cut score options to the Supreme Court, representing the status quo of 1440 and scores that fall one and two standard errors below the 1440 level, is informed by, first and foremost, the results of the study itself. The Board can be confident – 95 percent confident specifically – that a cut score within the range of 1388 to 1504, is the "right" cut score as determined by the Standard Setting Study.

Within this relatively narrow band of a confidence range, staff provides in the attached Report important contextual and policy considerations for the Board to consider. A Standard Setting Study is one, albeit important, element of data on which to base a cut score determination. Other important public policy considerations, such as access to justice, professional diversity and public protection are also relevant to such a determination and must be evaluated. Accordingly, the Report includes the reactions to these additional policy issues as submitted through the public comment process by the law school community, licensed California attorneys, applicants for admission, and other key stakeholders.

## **FISCAL/PERSONNEL IMPACT**

To be determined.

## **RULE AMENDMENTS**

None.

## **BOARD BOOK IMPACT**

None

## **BOARD GOALS & OBJECTIVES**

Goals II. h. Conduct Bar Exam validity and pass line studies to determine whether or not additional changes to exam content, format, administration, or grading are needed, and implement needed changes.

## **BOARD RECOMMENDATIONS**

It is recommended that the Board approve the following resolution:

**RESOLVED**, that following a period of public comment, which included two public hearings, the Board of Trustees accepts the "Report to the Board of Trustees of the California State Bar Final Report on the Standard Setting Study and Public Comments Regarding Pass Line Options" dated September 5, 2017, prepared by State Bar staff; and it is

**FURTHER RESOLVED**, that the Board of Trustees, following consideration of the recommendation from the Committee of Bar Examiners to maintain the current California Bar Examination cut score at 1440 pending receipt and review of two additional reports concerning the CBX, approves recommending to the Supreme Court of California that it consider the three options relative to the California Bar Examination cut score: 1) maintain the current cut score of 1440, 2) reduce the cut score to 1414 on an interim basis and 3) reduce the cut score to 1390 on an interim basis, effective with the July 2017 California Bar Examination.

**FURTHER RESOLVED**, that staff is authorized to make technical amendments to the Report prior to its submission to the Supreme Court

## **ATTACHMENT(S) LIST**

- A: Report to the Board of Trustees of the California State Bar Final Report on the Standard Setting Study and Public Comments Regarding Pass Line Options