



# The State Bar *of California*

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## **OPEN SESSION AGENDA ITEM O-201 AUGUST 2020 COMMITTEE OF BAR EXAMINERS**

**DATE:** August 21, 2020

**TO:** Members, Committee of Bar Examiners

**FROM:** Lisa J. Cummins, Program Manager III, Examinations

**SUBJECT:** Discussion and Approval of Grading System Applicable to the California Bar Examination in Light of the California Supreme Court's Directives Issued July 16, 2020

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### **EXECUTIVE SUMMARY**

On July 16, 2020, the California Supreme Court issued its second set of directives pertaining to the California Bar Examination (CBX), which superseded the Court's prior April 27, 2020 directives made in consideration of the issues presented by the COVID-19 pandemic. The April 27 directives included postponement of the July 28-29, 2020 CBX to September 9-10, 2020 and the July 16 directives further postponed the exam to October 5-6, 2020.

The Committee of Bar Examiners, at its April 24, 2020 meeting, adopted three changes to its grading processes for the CBX, to be implemented as soon as practicable. Those changes were adopted based on information and data contained in a phased grading report prepared by the Committee's psychometrician, which was reflective of the longstanding passing score of 1440. Subsequent to the Committee's April 2020 meeting, the Supreme Court's July 16 directive lowered the passing score for the CBX to 1390, to be applied prospectively to future administrations of the CBX, including the October 2020 exam.

In this agenda item, staff lays out the three previously adopted CBX grading changes for the Committee to reaffirm or modify in light of the reduction of the exam's passing score to 1390.

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## BACKGROUND

At its April 24, 2020 meeting, the Committee of Bar Examiners (Committee) reviewed and considered a report prepared by its psychometrician, Roger Bolus, Ph.D. The report, entitled “A Report on the Phased Grading of the California Bar Examination: A Profile of Recent Results and Modeling the Impact of Alternative Approaches,” dated April 9, 2020, was the basis for the Committee’s decision to adopt three changes to its phased grading processes and procedures.

State Bar staff was instructed to implement the following changes to the Committee’s grading processes for the California Bar Examination (CBX) as soon as practicable:

- (1) Eliminate the Phase III (Resolution) grading;
- (2) Compress the regrade band for Phase II grading from 1390 – 1439.99 to 1400 – 1439.99; and
- (3) Add two graders to each CBX question grading team.

At the time these decisions were made, the passing score on the CBX was 1440. Subsequent to the Committee’s April 2020 meeting, the California Supreme Court’s July 16, 2020 directive lowered the passing score for the CBX to 1390, to be applied prospectively to future administrations of the CBX, including the upcoming October 2020 exam.

### Phased Grading

In brief review, the Committee utilizes three phases of grading for the CBX:

- Phase I (First Read): All written answers submitted by applicants who completed the examination in its entirety are read and graded at least once before pass/fail decisions are made.
- Phase II (Second Read): For those applicants whose scores after the first read are below but near the required passing score, all answer books are read a second time, and the scores of the first and second readings are averaged. The total averaged score after two readings is then used to make a second set of pass/fail decisions, providing there are no discrepancies of more than 10 raw points between the first and second read assigned grades on any question.
- Phase III (Third Read - Resolution): Any answers with discrepancies of more than 10 raw points between the first and second read assigned grades are read a third time before a third set of pass/fail decisions is made.

With a passing score of **1440**:

To pass the examination in the first phase of grading, an applicant must have a total scaled score (after one reading) of at least 1440 scaled points out of 2000 possible scaled points. Those with total scaled scores after one reading below 1390 fail the examination. If the applicant's total scaled score is at least 1390 but less than 1440 after one reading, all of the applicant's answers are read a second time by a different set of graders. If the applicant's averaged total scaled score after two readings is 1440 or higher, the applicant passes the examination. Applicants with no discrepancies of more than 10 raw points (answers are graded in 5-point increments) between the first and second read assigned grades on any question with averaged total scaled scores of less than 1440, fail the examination. Applicants with grading discrepancies of more than 10 raw points between the first and second read assigned grades on any answer, whose averaged total scaled score is less than 1440, will have those answers referred to the Supervising Examination Development and Grading (EDG) Team Member of the grading team for that particular question for resolution of the discrepancy. The EDG Team Supervisor will perform a third read of the answer and then assign a resolution grade. That grade will replace the average of the first and second read assigned grades for that question. Scores are calculated again and if the applicant's total scaled score after resolution grading is 1440 points or higher, that applicant passes the examination. If the applicant's total scaled score after resolution grading is less than 1440 points, the applicant fails the examination.

With the new passing score of **1390**:

Under the old passing score scenario of 1440 scaled points out of 2000 scaled points, the regrade score range for Phase II/Second Read is a spread of 50 scaled points, i.e., from 1390 to 1439.99. With the information and data presented in Dr. Bolus's report, based on the 1440 passing score, the Committee adopted a 40-point regrade band, narrowing the range to 1400 to 1439.99.

The new passing score set by the Supreme Court is 1390 scaled points out of 2000 scaled points. If the Committee decides to maintain the same 40-point regrade band that was to be applied to the 1440 passing score, and apply it to the new passing score of 1390, applicants whose total scaled scores are at least 1350, but below 1390, will go into Phase II grading.

However, if the Committee decides instead to revert to the 50-point regrade band that was previously applied to the 1440 passing score, applicants would need to score at least 1340 to be eligible for a second read.

## **DISCUSSION**

In directing that the passing score for the CBX be lowered from 1440 to 1390, the Supreme Court was silent with regard to the Committee's phased grading process.

In his April 9, 2020 report, Dr. Bolus used data from four recent administrations of the exam (July 2017 and 2018 and February 2018 and 2019) to model various options for changing the Committee's grading system in order to reduce grading time and increase efficiency.

The elimination of Phase III/Third Read (Resolution) of grading was estimated to have minimal impact on the passing rates (about 0.1%) and very high consistency with the actual pass/fail decision (99.9%), accompanied by no corresponding impact on any subgroup of test-takers. These estimates were consistent for all exam administrations studied and were expected to speed up results reporting by seven days.

In addition, increasing the number of graders by adding two members to each grading team (i.e., increase from 12 to 14 members per team) was estimated to speed up results without impacting consistency. Dr. Bolus noted in his report that the most recent expansion of grader-team size from 11 to 12 members, from a logistical standpoint, appeared to be easily accommodated. The data suggested that the expansion did not have a negative impact on the overall examination reliability and might have even improved it. These findings leave open the possibility of expanding the teams further.” Staff proposes that the Committee adopt a modified grader policy to allow Staff the flexibility to further increase the previously adopted number of additional graders by another two, i.e., increase from 12 to 16 members per team, when circumstances justify such an increase. At this point, there is a record number of applicants registered to sit for the October 2020 CBX (approximately 12,000 vs. the typical 9,000 or so). While that number can be expected to drop somewhat as the September 8, 2020 deadline for withdrawing from the exam with a full refund (less the credit card processing fee) approaches, an increase in the number of graders will mean better preparedness to meet the mid-January 2020 estimated date for release of results from the October 2020 CBX.

With regard to changing the regrade score range for applicants going into Second Read grading, the model examined the impact of cutting the Phase II regrade score range by 50 percent (i.e., a 25-point score range), based on the 1440 passing score. The estimated impact of this model was to drop passing rates by 0.1%, achieve a 99.9% consistency rate in pass/fail decisions (both identical to the estimates of eliminating Resolution grading), while simultaneously showing no disparate impact on any subgroup and maintaining the same levels of reliability. This model resulted in estimated average savings of 4 days and 8 days of grading for the February and July administrations, respectively.

Staff proposed, and the Committee adopted, a modification of Dr. Bolus’s 25-point regrade score range, so as to create a 40-point regrade score range (1400 to 1439.99) instead. Dr. Bolus’s report demonstrated that, as regraded applicants’ First Read (Phase I) scores decreased, the chances of their passing decreased as well, to the point where no one passed with a first read score of less than 1400.

Since the new passing score of 1390 was the lowest point of the regrade range for the old 1440 passing score, there is no Second Read data from past exams with which Dr. Bolus can model the impact of a 40-point vs. a 50-point regrade score range below 1390. All of the applicants below 1390 failed those exams in First Read, and were therefore never regraded. Given this lack of information, Staff does not have a reliable way to estimate at this time where the start of the regrade score range ought to be placed for the most impact on the ultimate pass rate.

Statistically, on average, minorities (Asians, Blacks, Hispanics) have lower performance on the bar exam than non-minorities (Whites), and thus they will tend to have a disproportionate number of scores in the lower portions of the distribution. This is particularly the case in July, and less so in February. As a consequence, we are not looking at the same composition of applicant populations in the 50-point or 40-point regrade ranges for the 1390 passing score scenario as for the 1440 passing score scenario.

In order to assist the Committee in making its determination as to whether to reaffirm the 40-point regrade band adopted at its April 2020 meeting, to revert to the previously established 50-point regrade band, or to make some other modification to the Committee's phased grading system in light of the reduction of the CBX passing score to 1390, Dr. Bolus provided the information shown in Table 1, Table 2, and Table 3 below, based on data from the last three February and last three July administrations of the General Bar Examination (which does not include applicants who took the Attorneys' Examination).

**TABLE 1. Percentage of Applicants in a 1340-1389.99 Regrade Score Range**

	<u>February</u>		<u>July</u>	
<u>Group</u>	<u>% In Regrade</u>	<u>% Not In Regrade</u>	<u>% In Regrade</u>	<u>% Not In Regrade</u>
<b>Non-Minority</b>	15.4%	84.6%	12.2%	87.8%
<b>Minority</b>	15.6%	84.4%	14.3%	85.7%

**NOTES:**

- % in regrade is the percentage of all test-takers within the ethnic group that scored within that range on the past exams.
- Results in Table 1 indicate that the relative proportions of minorities (Asian, Blacks and Hispanics) who would have fallen into a 50-point regrade range below 1390 was only .2% different on the three February administrations (15.4% vs. 15.6%), and 2.1% (12.2% vs. 14.3%) different on the three July administrations.

**TABLE 2. Percentage of Applicants in a 1350-1389.99 Regrade Score Range**

	<u>February</u>		<u>July</u>	
<u>Group</u>	<u>% In Regrade</u>	<u>% Not In Regrade</u>	<u>% In Regrade</u>	<u>% Not In Regrade</u>
<b>Non-Minority</b>	11.9%	88.1%	9.9%	90.1%
<b>Minority</b>	12.4%	87.6%	11.6%	88.4%

- % in regrade is the percentage of all test-takers within the ethnic group that scored within that range on the past exams.
- Results in Table 2 indicate that the relative proportions of minorities (Asian, Blacks and Hispanics) who fell into the range was only .5% different on the February administrations (11.9% vs. 12.4%), and 1.7% (9.9% vs. 11.6%) different on the July administrations.

**TABLE 3: Percentage of Applicants in Alternative Regrade Score Ranges**

<b><u>FEBRUARY</u></b>				
<b><u>Group</u></b>	<b><u>50-Points</u></b>		<b><u>40-Points</u></b>	
	<b><u>1340-1389.99</u></b>		<b><u>1350-1389.99</u></b>	
	<b><u>(N=1875)</u></b>		<b><u>(N=1466)</u></b>	
	<b><u>%</u></b>	<b><u>N</u></b>	<b><u>%</u></b>	<b><u>N</u></b>
<b>Non-Minority</b>	15.4%	876	11.9%	674
<b>Minority</b>	15.6%	999	12.4%	792
<b>Difference Likelihood</b>	0.2%		0.5%	
	1.0		1.0	
<b><u>JULY</u></b>				
<b><u>Group</u></b>	<b><u>50-Points</u></b>		<b><u>40-Points</u></b>	
	<b><u>1340-1389.99</u></b>		<b><u>1350-1389.99</u></b>	
	<b><u>(N=2539)</u></b>		<b><u>(N=2053)</u></b>	
	<b><u>%</u></b>	<b><u>N</u></b>	<b><u>%</u></b>	<b><u>N</u></b>
<b>Non-Minority</b>	12.2%	1171	9.9%	949
<b>Minority</b>	14.3%	1368	11.6%	1104
<b>Difference Likelihood</b>	2.1%		1.7%	
	1.2		1.2	

**NOTES:**

- Percentages in the cells represent the percentage of all applicants within the ethnic group that scored within the 50-point and 40-point regrade score ranges, respectively, for the last three February and last three July administrations of the General Bar Exam.
- The likelihood is the ratio of the percentage of minorities to the percentage of non-minorities.
- The closer the likelihood is to 1, the less the difference between groups.
- Examinee Counts: 12,080 in February and 19,149 in July.
- Only includes records with a race designation of Asian, Black, Hispanic or White.

**FISCAL/PERSONNEL IMPACT**

If a 40-point regrade range is chosen over a 50-point regrade range, there would be some amount of cost savings resulting from less applicant answer files going into regrade and correspondingly less per “book” fees being paid. The amount of such savings will vary from exam to exam.

**AMENDMENTS TO RULES OF THE STATE BAR**

None

**AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

**STRATEGIC PLAN GOALS & OBJECTIVES**

None – Core Business

**RECOMMENDATION**

It is recommended that the Committee take the following action and approve the grading process in light of the reduction in the passing score from 1440 to 1390.:

- (1) Reaffirm the decision made at its April 24, 2020 meeting to eliminate the Phase III (Resolution) grading;



- (2) Reaffirm the decision made at its April 24, 2020 meeting to add two graders to each CBX question grading team, and adopt a modification to allow Staff the flexibility to further increase the previously adopted number of additional graders by another two, i.e., increase from 12 to 16 members per team; and
- (3) Decide whether to reaffirm the 40-point regrade band adopted at its April 24, 2020 meeting, to revert to the previously established 50-point regrade band, or to make some other modification to the Committee's phased grading system in light of the reduction of the CBX passing score to 1390.

## **PROPOSED MOTION**

If the Committee agrees with staff recommendations, the following motion should be made:

**MOVE** that staff is instructed to implement the following changes to the Committee of Bar Examiners' grading processes for the California Bar Examination as soon as practicable:

- (1) Eliminate the Phase III (Resolution) grading;
- (2) Add two graders to each California Bar Examination question grading team, with the flexibility to add up to another two graders (for a total of 16) per grading team; and
- (3) [PENDING – Committee decision on the regrade band applicable to the new 1390 passing score.]

## **ATTACHMENT(S) LIST**

None