



The State Bar of California

OPEN SESSION

AMENDED AGENDA ITEM O-301

JUNE 2021

COMMITTEE OF BAR EXAMINERS

DATE: June 18, 2021

TO: Members, Committee of Bar Examiners

FROM: Tammy Campbell, Program Manager

SUBJECT: Discussion and Approval of Addition of Proposed Sanction to the Chapter 6 Decisional Matrix

EXECUTIVE SUMMARY

The Chapter 6 decisional matrix assists State Bar staff in making consistent decisions about the appropriate sanctions for examination conduct violations. This agenda item raises for the Committee of Bar Examiners (CBE) the unique examination security issues presented by remote-proctored examinations and recommends approval of revisions to the Chapter 6 decisional matrix to address those issues.

BACKGROUND

Due to the COVID-19 pandemic and related guidelines established by the Centers for Disease Control and Prevention (CDC) and the World Health Organization (WHO), administering the First-Year Law Students' Examination (FYLSE) and the California Bar Examination (CBX) in the traditional in-person format has not been, and remains not feasible. As a result, and pursuant to the direction of the California Supreme Court, examinations have been administered in an online, remote-proctored format based.

Chapter 6 of the Admissions Rules addresses applicant conduct at State Bar-administered examinations. At its June 2020 meeting, the CBE adopted revisions to expand the Chapter 6 decisional matrix to address scenarios unique to the online remote proctored exams. The revisions were for use by State Bar staff to identify the proper sanctions for specific conduct violations as a means of ensuring uniformity and consistency in the application of State Bar rules.

The original revisions presented during the June 2020 meeting were revised again in October 2020 based on security issues encountered during the June 2020 First-Year Law Students' Examination. After review of exam videos from the October 2020 and February 2021 California Bar Examination, it was determined that additional revisions to the Chapter 6 decisional matrix are needed based on incidents encountered. The Chapter 6 decisional matrix will be utilized by State Bar staff to issue sanctions to address prohibited conduct during a remote-proctored examination.

DISCUSSION

The revised decisional matrix will assist State Bar staff in making uniform and consistent determinations regarding the appropriate sanction to issue for Chapter 6 conduct violations in the event an examinee engages in prohibited conduct.

The latest revisions are specific to the remote proctored exam and include the following:

1. The addition of a sanction if an applicant's webcam video or audio functions are not on or are disrupted for any period during the remote session. The video and audio are essential components of remote proctoring. These two categories were previously considered to fall under the sanction of "Any attempt to bypass or avoid the remote proctoring mechanisms and protocols, or to obtain or receive assistance on the exam".

It has been identified that in some instances, the applicant may not be attempting to bypass the remote proctoring mechanisms but nonetheless has disrupted webcam video or audio functions during some or all of one or more remote sessions. For example, an applicant who has insufficient RAM and/or hard drive space to meet the minimum system requirements of the remote exam¹ may have disrupted video for some or all of one or more remote sessions but have made no active attempt to bypass the remote proctoring mechanisms. Regardless of whether the remote proctoring mechanisms are disrupted inadvertently or through an applicant's attempt to bypass those mechanisms, staff are unable to monitor behavior and conduct without both the webcam video and audio remote proctoring mechanisms enabled throughout the remote exam. For that reason, "Disrupted video or audio during the examination" has been added to the Chapter 6 Matrix with a sanction of zero for the session(s) that has been flagged for the violation. The sanction is indisputable.

After each exam administration, and as new circumstances arise, revisions will be presented to the Committee, as needed, for discussion about violations that have not been accounted for in the matrix. This process is intended to ensure consistency, due process, and transparency

¹ Following receipt of public comment regarding the original version of this agenda item, this amended agenda item is intended to clarify that insufficient RAM and/or hard drive space to meet the minimum system requirements of the remote exam may lead to disrupted video and/or audio functions and interfere with staff's ability to monitor applicant conduct during the exam. As several public commenters have pointed out, constant internet connectivity is not required. The current minimum system requirements for the remote exam are available at: <https://examsoft.com/resources/examplify-minimum-system-requirements>.

regarding applicant conduct and discipline.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF THE STATE BAR

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

None

RECOMMENDATIONS

Staff recommends that the Committee of Bar Examiners approve and adopt the revisions to the attached Administrative Hearing Outcomes Decisional Matrix to be used by State Bar staff and the CBE in making decisions about the appropriate sanctions to impose following prohibited conduct at a remote-proctored examination.

PROPOSED MOTION

Should the Committee of Bar Examiners agree with staff recommendations, the following motion should be made:

MOVE, that the Committee of Bar Examiners approve and adopt the revision to the Administrative Hearing Outcomes Decisional Matrix for use to assist in decision making for staff determinations, administrative hearings, and appeals to the Committee of Bar Examiners, pursuant to Chapter 6 of the *Admissions Rules*.

ATTACHMENT(S) LIST

- A. Revised Chapter 6 Decisional Matrix

Violation	Sanction	Eligible for Hearing?
Possession of an electronic device (i.e., cell phones, digital clocks, digital watches, activity trackers/fitbits, etc.)	Receive score of zero for the session during which the Chapter 6 Notice was issued.	No, Indisputable
Possession of notes, or study aids	Receive score of zero for the session during which the Chapter 6 Notice was issued.	No, Indisputable
Accessing any items (other than electronic devices or notes) in personal belongings in secure exam area	<p>First-Time Offense: Issue a Chapter 6 Notice of Violation and applicant will receive a warning alerting them to follow rules for any future examinations and if repeated, a more serious sanction will be imposed.</p> <p>Repeat Offense: (same administration or future administrations): Receive score of zero for the session during which the Chapter 6 Notice was issued if they accessed an electronic device or notes.</p> <p>For repeat offender, accessing other items: Receive a 10-point deduction from the "total written scaled score" if the violation was during the written portion of the exam. If during an MBE session, it will result in a 10 point deduction from the "total MBE scaled score."</p>	<p>If accessing electronic device or notes: Not eligible for hearing</p> <p>If accessing any other item: Eligible for Hearing</p>
Typing or writing before the start of the exam or after time is called	<p>First-Time Offense: Issue a Chapter 6 Notice of Violation and applicant will receive a warning alerting them to follow rules for any future examinations and if repeated, a more serious sanction will be imposed.</p> <p>If applicant was instructed more than once to stop typing or writing, applicant will be issued a Chapter 6 Notice of Violation and will be sanctioned with a zero for the session.</p> <p>Repeat Offense: (applicant repeats the violation during a future administration): Applicant will be sanctioned with a score of zero for that session.</p>	Yes

Administrative Hearing Outcomes Decisional Matrix

<p>Bringing an unauthorized item into the exam room (except for electronic device, notes or study aides)</p> <p>Petitioning for religious headwear at the test center, after the deadline.</p>	<p>First-Time Offense: Issue a Chapter 6 Notice of Violation and applicant will receive a warning alerting them to follow rules for any future examinations and if repeated, a more serious sanction will be imposed.</p> <p>Repeat Offense: Future violations will result in a 10-point deduction from the "total written scaled score" if the violation was during the written portion of the exam. If the violation occurred during an MBE session, this violation will result in a 10-point deduction from the "total MBE scaled score."</p>	Yes
<p>Exam Answer Submittal Violation including writing exams in pencil, highlighting answers, writing in ink other than blue or black, submitting answers on paper other than designated answer booklets/lined sheets, etc.</p>	<p>First-Time Offense: Issue a Chapter 6 Notice of Violation and applicant will receive a warning alerting them to follow rules for any future examinations and if repeated, a more serious sanction will be imposed.</p> <p>Repeat Offense: Applicant will receive a 10-point deduction from the "total written scaled score" if the violation occurred during the written portion of the exam. If violation occurred during an MBE session, applicant will receive a 10-point deduction from the "total MBE scaled score."</p>	Yes
<p>Upload examination answer files after the upload deadline.</p>	<p>If answers are uploaded between the deadline and 2 weeks after the deadline, a sanction of a 10-point deduction from the "total written scaled score" will be imposed, unless good cause is established, as determined by the Director for Admissions or his/her designee. If more than 2 weeks past the deadline, a score of zero for each session for which answers are not uploaded.</p>	No, Indisputable
<p>No good faith effort on exam</p>	<p>First-Time Offense: Issue a Chapter 6 Notice of Violation and applicant will receive a warning alerting them to follow rules for any future examinations and if repeated, a more serious sanction will be imposed.</p> <p>Repeat Offense: A sanction of a zero will be imposed for each session during which there was no good faith effort demonstrated.</p>	Yes

Administrative Hearing Outcomes Decisional Matrix

Disruptive behavior at test center	Staff will advise the applicant to calm down and to stop being disruptive. If the behavior continues, the applicant will be informed that a Chapter 6 Notice will be issued if they do not immediately change their behavior. If applicant continues to be disruptive, sanctions may be imposed, including a zero for the session during which the behavior occurs and ejection from the test center.	Yes
Suspected cheating - observed at test center	Current policy is not to intervene while the exam is in session; a Chapter 6 Notice will be issued post-exam, along with a score of zero sanction. The incident will also be referred to moral character.	Yes
Suspected cheating - discovered post-exam	Once the suspected cheating has been identified or discovered, applicant will be issued a Chapter 6 Notice by mail and a score of zero sanction. The incident will also be referred to moral character.	Yes
[For remote proctored exams only] Leaving the view of the webcam outside of scheduled breaks	Receive score of zero for the session during which the Chapter 6 Notice was issued. The incident will also be referred to moral character.	No, Indisputable
[For remote proctored exams only] Any attempt to bypass or avoid the remote proctoring mechanisms and protocols, or to obtain or receive assistance on the exam	Receive score of zero for the session during which the Chapter 6 Notice was issued.	Yes
[For remote proctored exams only] Individuals (other than the applicant) coming into the exam room	Receive score of zero for the session during which the Chapter 6 Notice was issued.	Yes
[For remote proctored exams only] Having papers or books within view or reach of the applicant's desk in the exam room, including scratch paper	Receive score of zero for the session during which the Chapter 6 Notice was issued. The incident will also be referred to moral character.	No, Indisputable
[For remote proctored exams only] Having food or beverages, including but not limited to coffee and water, in the exam room	First-Time Offense: Issue and affirm a Chapter 6 Notice of Violation and applicant will receive a warning alerting them to follow rules for any future examinations and if repeated, a more serious sanction will be imposed. Repeat Offense: (future administrations): Receive score of zero for the session during which the Chapter 6 Notice was issued if they had food & beverage.	Yes
[For remote proctored exams only] Having any radios, stereos or other devices/equipment that will make audible sounds in the exam room	Receive score of zero for the session during which the Chapter 6 Notice was issued.	Yes

Administrative Hearing Outcomes Decisional Matrix

<p>[For remote proctored exams only] Upload examination monitor video files after the upload deadline.</p>	<p>If exam videos are uploaded between the deadline and 2 weeks after the deadline, a sanction of a 10-point deduction from the "total written scaled score" will be imposed, unless good cause is established, as determined by the Director for Admissions or his/her designee.</p> <p>If more than 2 weeks past the deadline, a score of zero for each session for which exam videos are not uploaded.</p> <p>The incident will also be referred to moral character.</p>	<p>No, Indisputable</p>
<p>[For remote proctored exams only] Disrupted video or audio during the examination.</p>	<p>Receive score of zero for the session during which the Chapter 6 Notice was issued.</p>	<p>No, Indisputable</p>