



The State Bar of California

OPEN SESSION AGENDA ITEM DECEMBER 2021 BOARD EXECUTIVE COMMITTEE III.A

DATE: December 10, 2021

TO: Members, Board Executive Committee

FROM: Donna S. Hershkowitz, Chief of Programs
Nicole Pereira, Assistant General Counsel, Office of General Counsel

SUBJECT: Discussion of February 2022 Bar Examination Test-Taker Proof of COVID-19 Vaccination or Negative COVID-19 Test Requirement

EXECUTIVE SUMMARY

This item requests Board approval of a requirement that all February 2022 California Bar Examination test-takers provide the State Bar of California with either proof of full COVID-19 vaccination or a negative COVID-19 test within 72-hours of the start of the February 2022 California Bar Exam.

BACKGROUND

On October 21, 2021, the Supreme Court of California ordered the February 2022 California Bar Exam be administered in-person over two consecutive days on Tuesday, February 22 and Wednesday, February 23, 2022, subject to any restrictions that may be imposed by any state or local public health orders in effect on those dates.

The State Bar Board of Trustees is the governing body with authority over the State Bar, including Admissions and the California Bar Exam. Business and Professions Code (B&P Code), Division 3, Professions and Vocations Generally, Chapter 4 Attorneys, Section 6010, sets forth that the State Bar is governed by Board of Trustees of the State Bar. Business and Professions Code section 6025, provides that the Board may formulate and declare rules and regulations necessary or expedient for carrying out this chapter.

For almost two years, the COVID-19 pandemic, and recently, the emergence of the highly contagious Delta and Omicron variants, has created a public health crisis of great proportion. Although vaccination and other anti-COVID-19 protocols have made significant progress in suppressing the spread of COVID-19, the Delta variant has caused increases in infection transmission and hospitalization rates, particularly among the unvaccinated. Concerns about the Omicron variant are on the rise, as that variant appears to be rapidly spreading well beyond South Africa where it was first identified.

Various government orders impose requirements on public and private entities for the containment of COVID-19 transmission. For example, as of December 1, 2021, the California Department of Public Health requires that attendees of indoor events with 1,000 or more people provide proof of full vaccination or a negative COVID-19 test. With respect to the bar exam, two sites—the Pasadena Convention Center and the Ontario Convention Center—have capacity for a total of 1,000 test-takers. Based on prior years it is expected that these sites will exceed 1,000 test-takers or combination of test-takers and proctors. Under the applicable government order, test-takers and all others present at these sites will have to provide proof of vaccination or a negative COVID-19 test in order to gain entry into these sites. The other eight bar exam sites have capacity for fewer than 1,000 test-takers and thus the government order does not apply to those test-takers.

The State Bar Board of Trustees Executive Committee Charter delegates authority to the Executive Committee to take action on behalf of the Board when obtaining a quorum of the full Board would not be feasible before it is necessary to take action. The next bar exam will take place on February 22 and 23, 2022. The next regular meeting of the Board is not until January 20, 2022. Meanwhile, the State Bar must provide notice as soon as possible to the public so test takers can comply with any vaccine and negative testing requirements to sit for the February bar exam. It is not feasible to obtain a quorum of the full Board in the time necessary to notify the public of these requirements. Thus, the Executive Committee, on behalf of the Board, is being asked to approve vaccine and negative testing requirements for test takers on the February 2022 bar exam.

DISCUSSION

The State Bar takes seriously its obligations to ensure the well-being of its test-takers, employees, and proctors at all of its bar exam locations. COVID-19 vaccination of the types approved by the CDC (i.e., Johnson & Johnson, Moderna, or Pfizer) affords the best protection for test-takers, State Bar employees, and proctors. Requiring proof that the test taker has been fully vaccinated, with the COVID-19 vaccination provided by Johnson & Johnson, Moderna, or Pfizer, or in the alternative, at the test-taker's election, proof of a negative COVID-19 test within 72-hours of the bar exam start date and time, as a condition precedent for sitting for the bar exam, would be consistent with the State Bar's responsibility to safeguard the health and well-being of test-takers, employees, and proctors. State Bar staff are already required to be vaccinated; proctors will similarly be required to be vaccinated.

The same rationale provided by the State as to why there are vaccination or negative testing requirements for mega events applies to bar exam settings where there are less than 1,000 test-takers and proctors combined. Specifically, bar exam settings have the following characteristics:

1. Persons sitting for the exam often travel from outside the immediate testing area, and may travel via modalities that increase the risk of exposure;
2. Bar exams are events of prolonged duration;
3. Test-takers are often in close contact;
4. Masks though required will be removed for eating and drinking; and
5. Large numbers of people gathered, increasing the likelihood that contagious persons are present.¹

The bar exam is generally administered over a two-day period, with test-takers surrounded by the same individuals for as much as 10 hours per day. Requiring proof of vaccination or a negative test is the responsible approach. This requirement will be in addition to masking and distancing requirements in effect at all of the exam sites at the time of the February 2021 bar exam, and as set forth in the State Bar's Healthy Exam Plan.

FISCAL/PERSONNEL IMPACT

The State Bar will have to institute a procedure for tracking proof of vaccination or negative test results of all test-takers. The fiscal impact is estimated to be approximately \$70,000, based on pricing received from Clear Secure, Inc., which provides proof of vaccination for various venues and the State of Hawaii.

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

None

RECOMMENDATIONS

Should the Board Executive Committee concur in the proposed action, approval of the following resolution is recommended:

¹ Beyond the Blueprint Questions & Answers: Industry & Sector Guidance, available on the California Department of Public Health website at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Beyond-Blueprint-QA.aspx>. Last visited November 22, 2021.

RESOLVED, that the Board Executive Committee adopts a policy requiring all February 2022 California Bar Examination test-takers to provide proof of full COVID-19 vaccination in advance of the examination or a negative COVID-19 test within 72-hours of the examination, the specific procedures to be developed and administered by State Bar staff consistent with this resolution.

ATTACHMENT LIST

None