



The State Bar of California

OPEN SESSION AGENDA ITEM 50-4 JANUARY 2022

DATE: January 20, 2022

TO: Members, Board of Trustees

FROM: Donna S. Hershkowitz, Chief of Programs & Legislative Director

SUBJECT: Approval of Revised Requirement for Proof of COVID-19 Vaccination or Negative COVID-19 Test Requirement for February 2022 Bar Examination

EXECUTIVE SUMMARY

On December 10, 2021, the Executive Committee of the Board of Trustees adopted 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 negative test results from a COVID-19 test taken within 72 hours of the start of the bar exam. The following week, the California Department of Public Health (CDPH) updated the public health order that applies to indoor mega-events, and shortened the time in which a test must be taken for which negative test results are received to 24 or 48 hours before the start of an event. This agenda item updates the December 10 resolution to reflect this new timeframe, and recommends that staff be given the authority, in consultation with the Board's admissions liaison, to revise the requirements as needed, consistent with the Board's direction that the rules apply to all test-takers regardless of whether the test site meets the definition of a mega event.

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.

In September 2021, the CDPH required that attendees of indoor mega-events provide proof of full vaccination or a negative COVID-19 test.

Acting on its delegated authority to take action on behalf of the Board in between meetings, on December 10, 2021, the Board Executive Committee adopted a policy requiring all February 2022 bar exam takers at all test sites, regardless of size, to provide proof of full COVID-19 vaccination or negative results from a COVID-19 test taken within 72 hours of the start day and time of the examination. The Executive Committee further provided that specific procedures for implementation of this policy will be developed by staff.

On December 13, the CDPH updated its order, effective December 15, requiring attendees of an indoor mega event who could not provide proof of full vaccination to provide proof of a negative test administered with 48 hours or 24 hours of the start of the event, depending on the type of test, polymerase chain reaction (PCR) or antigen.

On December 31, 2021, the CPDH once again updated its public health order, effective January 15, 2022, changing the definition of an indoor mega-event to one with 500 or more attendees (down from 1000).

On January 10, 2022, all applicants were informed of the obligation to register with CLEAR and upload proof of vaccination by January 18, 2022, or to upload negative test results in advance of the examination.

Beginning January 25, 2022, applicants will be able to download their admittance ticket for the bar exam. Admittance tickets will include a mark, identifiable by admissions staff, for those who have successfully uploaded their proof of vaccination. This process will enable check-in to move more swiftly and help to prevent a crowd of test-takers gathering at the check-in tables.

DISCUSSION

At the Board Executive Committee's meeting on December 10, 2021, the committee agreed with the staff recommendation that test-takers at all sites across California, whether or not the site meets the definition of a mega-event, should be subject to the same requirements regarding vaccination or testing for COVID-19. As a result, the committee adopted a policy that goes further than the State public health order, by requiring all February 2022 bar examinees to provide proof of full COVID-19 vaccination or negative results from a COVID-19 test. State public health orders only apply this requirement to mega-events. As noted above, following the committee's action, the State public health order was revised to require a negative test to be within 48 or 24 hours prior to the start of the event, down from 72 hours. Because the Board policy went further than was required by public health orders, staff believes further Board action is necessary to apply that changed mandate to test-takers attending at sites not deemed to be mega-events.

Since there may be further changes to State or local public health orders between the time of the Board meeting and the administration of the exam, staff recommends that the Board

delegate authority to staff, in consultation with the Board's admissions liaison, to revise the policy as needed to be responsive to the changing health situation. Any changes should be consistent with the rationale behind the initial policy, that the same protections be put in place at all test sites, regardless of the size of the site.

FISCAL/PERSONNEL IMPACT

The State Bar entered into a contract for approximately \$80,000 to allow all test-takers to be able to access CLEAR's Health Pass, with a State Bar specific code, as well as having onsite CLEAR representatives at the largest venues to verify a completed Health Pass for any applicants who uploaded their information after January 18, 2022.

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

None

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees revises the policy adopted on December 10, 2022, to instead provide: All February 2022 California Bar Examination test-takers shall provide one of the following:

- Proof of full COVID-19 vaccination in advance of the examination, or
- Proof of negative results from a PCR test for COVID-19 taken within 48 hours of the start time and date of the exam, or
- Proof of negative results from an antigen test for COVID-19 taken within 24 hours of the start time and date of the exam; and it is

FURTHER RESOLVED, that State Bar staff, in consultation with the Board admissions liaison, may update this policy based on changes to emerging health information and state and county public health orders, consistent with the Board policy to require that COVID-19 safeguards be employed at all test sites, regardless of the numbers of test-takers; and it is

FURTHER RESOLVED, that State Bar staff shall develop the necessary procedures to administer this policy.

ATTACHMENT LIST

None