



August 17, 2022

The State Bar of California
Committee of Bar Examiners
180 Howard St.
San Francisco, CA 94105

Re: Response to the Office of Admissions Memorandum – Lincoln Law School of San Jose Probation

Dear Committee:

Lincoln Law School of San Jose ("Lincoln") hereby responds to the Office of Admissions Memorandum ("Admissions Memo") for the August 19 Committee of Bar Examiner's meeting as it relates to Lincoln's progress on improving Bar Pass Rates during its probationary period.

In submitting this response, Lincoln is not intending to waive any legal or factual arguments contained in its Combined Application for (1) a one- or two-year extension based on extraordinary circumstances under Rule 4.127(E), or (2) a six-month extension of the 16-month probationary period allowed to Lincoln, based on good cause and which would still be in compliance with the two-year probationary period allowed by Rule 4.127(C).

The Admissions Memo recommends that the Committee deny the above-stated requests and give Lincoln notice that it intends to terminate Lincoln's accreditation effective December 31, 2022, based on not meeting the Minimum Bar Pass Rate (MBPR) in July of 2022. It is not clear whether the 4+-month time frame between the notice and the December 31 termination contained in the recommendation was intended, at least in part, to allow Lincoln to submit for consideration its July 2022 Bar Exam results, as they are announced in November.

If, after an evaluation of Lincoln's combined documentation and the Admissions Memo recommendations, the Committee is inclined to deny Lincoln's extension requests and give Lincoln notice of a December 31, 2022 accreditation termination, Lincoln makes only the following request:

That the Committee give Lincoln the opportunity to present the results of the July 2022 Bar Exam as evidence of compliance before the Committee acts to terminate Lincoln's accreditation on December 31, 2022.

Discussion

As the basis for its recommendation that the Committee terminate Lincoln's accreditation, the Staff Report makes three points:

1. The Committee must weigh Lincoln's request for additional time against fairness to other schools that have met the standard, and to the public which expects all schools to meet the standard;
2. The Covid-19 pandemic similarly impacted all accredited schools; and
3. Lincoln's Bar Pass Rate decreased from last year, and its calculations relative to 2023 are speculative.

Lincoln will address each basis in opposite order below.

1. Lincoln's Bar Pass Rate Actually Improved Year Over Year And Its 2022 Class Has Already Reached 40%.

Lincoln acknowledges that its MBPR of 36.1% is still not compliant with the cumulative 5 year 40% requirement. However, Lincoln's establishment of its own Bar preparation course (mandatory for students and available for free to graduates) and changes to its core curriculum focused on the Bar Exam, has had a profound positive effect on the Bar Exam results of its students and graduates. This is shown in the charts attached to Lincoln's Combined Application and is summarized below.

A. Lincoln's students are taking progressively less and less time to pass the Bar Exam

Prior to the Barbri program (2015-2019) Lincoln's 2013 and 2014 graduates exceeded a 40% Bar Pass Rate by the end of their first-year post-graduation. In contrast, under the Barbri program and former curriculum, the 2015 class required 2 years to pass the 40% mark, and the 2016 class required 3 years to pass that mark.

After Barbri was replaced with the Lincoln proprietary Bar Review program and curriculum changes were made, Lincoln graduate performance on the Bar has reverted back to earlier success rates. For example, the 2019 class again required only 2 years to get to 40%, and the 2021 class reached 40% after the first year. (See Combined Application, Table 2)

B. Lincoln's first-time pass rate is improving year over year.

Similarly (again referencing Table 2), Lincoln's first time Bar Pass Rate was at 39% and 40% in 2013 and 2014 respectively, then dipped from 18% to 0 during the Barbri program years. Since Lincoln began to adjust its curriculum post-Barbri (in 2019), that percentage has improved 100% year over year (from 0 to 10% to 20%) and that trend is expected to continue with subsequent years (indeed, it is expected the pass rate for the 2022 class will double again to 40%).

C. The overall pass rate for Lincoln's most recent classes has improved to over four times what it was three years ago.

The effect of the shift from Barbri to Lincoln's proprietary Bar Review course is most pronounced when the success rates of the most recent classes are reviewed pre-2019 and post-2019. The 2018 class relied on Barbri for its graduation year, and its repeat guarantee the year after. But its 8% pass rate jumped to 42% in 2020 with the help of Lincoln's proprietary Bar Review. The 2019 class went from 10% in 2019 to 40% in 2020. And the 2021 class (which had the benefit of a full year of Lincoln Bar Review before graduation) reached 40% its first year. As a result, the overall cumulative Bar Pass Rate for the most recent 4 class years improved from 8% to 38.8% in the past three years.

D. Lincoln's MBPR Actually Improved In 2022.

Lincoln's MBPR for 2021 was reported as 36.5%, and for 2022 was reported as 36.1%. However, the 2021 MBPR was artificially inflated as one of Lincoln's 2016 graduates was participating in the PLP program, thus removing that graduate from the 2021 MBPR denominator. The actual percentage of students passing the Bar without that PLP graduate would have been 35.8% in 2021. Since that graduate was a member of the 2016 class, both him and his PLP participation has no bearing on Lincoln's 2022 MBPR. Lincoln's Bar Pass Rate thus actually improved slightly from 2021 to 2022 - from 35.8% to 36.1%.

It is clear that Lincoln should have been minding the "Barbri effect" on its unique student population and taking corrective action sooner. However, the problem has been corrected and one more data set will confirm the upward trend is continuing and will result in compliance starting with the July 2022 Bar Exam. It seems counterproductive slow this extraordinary progress now by turning the attention of the School to converting itself to Registered status, which will require significant administrative and budgetary adjustments. This is particularly true when Lincoln can show continued forward progress, and ultimate compliance, with a single additional data set in December and, if it does not, students will already have been advised that Registered status is imminent.

2. The Committee's Mandate To Diversify The Legal Profession Cannot Be Advanced If The Committee Refuses To Acknowledge Disparate Impacts Of COVID-19 On Diverse Populations.

The second reason cited by staff for recommending Lincoln's accreditation be revoked is that the Covid-19 pandemic affected all schools equally. While the Bar Exam was administered evenly (and its technical glitches were global), it is undisputed that Asian and Latino families were disparately impacted by Covid-19 (see Attachment E to the Combined Application), as were cities impacted differently than rural towns.

Lincoln is located in the County which recorded the first Covid case in California at the beginning of 2020, and its diverse population experienced extremely high rates of infection resulting in extended lockdowns. So, while the Bar Exam may have been evenly administered, the students at various schools were not evenly able to adjust to the pandemic's impacts on their personal circumstances, which personal circumstances necessarily impacted their ability to take, and pass, the Bar Exam.

Lincoln is not asking that the Committee adopt a different standard for students of diverse backgrounds. But, when the Committee has in front of it two studies showing the disparate impact on Asian and Latino populations both of the pandemic and the Bar Exam cut score, and a school which prioritizes diversification requests such a minor accommodation (that it be given an opportunity to present one additional data point to prove the underlying problem has been corrected), the Committee's refusal to allow that additional data point has the effect of encouraging accredited schools to abandon diversification because there is no benefit to offset the risk. Sometimes it takes a little bit longer to work out what leads to success for these unique students.

3. Other Accredited Schools And The Public Will Not Be Harmed By Consideration of Lincoln's July 2022 Exam Results.

Lincoln is the only on-site non-ABA option for students residing between San Francisco and Monterey. This area has one of the most diverse populations in California. Thus, to the extent the Committee seeks to increase diversity in the legal profession, having a high-quality on-site school in this area serves that purpose. A Registered school does not appeal to the same demographic, and cannot accommodate the number and type of community clinics currently in operation. The public is therefore served by the small accommodation requested, as it is designed to preserve the status quo.

The effect on other schools would be negligible. All schools are independently motivated to maintain high Bar Pass Rates because such rates attract high quality students. Additionally, other schools and the public are not prejudiced in that the issues precipitating Lincoln's probation are demonstrably in its past. Lincoln's performance over the past two years has been on par with its peer schools. Had it not been for Covid interruptions, it surely would have seen an additional 2 students pass, which is all it needed to exceed the standard.

As set forth in its Combined Application, the average Bar Pass Rate percentage increase from 2020-2021 for all CALS schools was 5.98%, with a median improvement of 5.6%. Removing the outliers on both ends, four schools increased their scores between 3% and 4.6%, and four schools improved their scores between 6.2% and 8.9%. Lincoln improved its score by 5% - right in the middle and on par with the other CALS schools.

Similarly, with respect to the 2022 MBPR results, of the 18 Accredited schools, 8 had their Bar Pass Rates improve, 8 had theirs decline, and two stayed the same. The average improvement was .12, and the mean was zero. Lincoln's improvement of .4% is better than both the mean and the average.

Lincoln's comparative results on the February 2022 exam were impressive compared both to other Accredited (16.7% better) schools and to all takers (6.7% better).

The purpose of probation is to allow for course correction when a mistake is made. Its existence – even its extension – does not give the impression that non-compliance will be tolerated without end. It simply acknowledges that complete correction is imminent and failure to accommodate final proof of that correction would cause significant unnecessary disruption.

CONCLUSION:

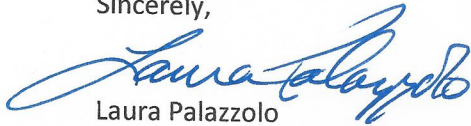
The focus at the end of a probationary period should be the results of corrective action – whether the school has adequately addressed the source of the problem. Thus the more immediate improvements

and the demonstrated trajectory toward continued success should be paramount where the purpose is public protection.

As noted in its July 27 Combined Application, and above, Lincoln's extraordinary progress over the past two years is compelling, and demonstrates that the issue has been corrected, and Lincoln's recent graduates are succeeding again at historically compliant rates.

For the reasons set forth above, Lincoln requests that the Committee allow Lincoln to present the results of the July 2022 Bar Exam for the Committee's consideration before it acts to terminate Lincoln's accreditation.

Sincerely,



Laura Palazzolo
Dean