

OREGON STATE BOARD OF BAR EXAMINERS

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(503) 620-0222 or (800) 452-8260 • www.osbar.org

April 19, 2017

Chief Justice Thomas A. Balmer
Oregon Supreme Court
1163 State Street
Salem, Or 97301

Re: Recommendation regarding pass score for the Oregon Bar Examination

Dear Chief Justice Balmer:

The Board of Bar Examiners (BBX) respectfully requests that at its May 2, 2017, public hearing the Court consider setting the pass score of the Oregon Bar examination at 274 beginning with the July 2017 administration of the Oregon Bar examination. The Uniform Bar Exam (UBE) will be administered for the first time in Oregon in July 2017, making this an appropriate time to consider whether Oregon's historic score of 284 should remain the pass score in this state. The recommendation of 274 is made after careful study by a workgroup that included members of the BBX as well as representatives from Oregon's three law schools. In addition to telephonic meetings, the workgroup held two in-person meetings on February 6, and March 17, 2017, and reported back to the full BBX, which in turn discussed and voted upon the recommendation on March 30, 2017. For guidance, the BBX relied not only upon the collective wisdom of the members, but also upon the work of the 2007-2008 Oregon State Bar Task Force on Admissions and the experience of other states that had recently moved to the administration of the Uniform Bar Exam (New York, Washington, Idaho, etc.).

The purpose of the bar examination is to ensure that those persons admitted by examination to practice law in the state of Oregon are minimally competent to do so. Determining the score at which a person is "minimally competent" is challenging, and other UBE states have set differing cut scores, ranging from a low of 260 to a high of 280. The workgroup examined scores of other UBE jurisdictions,

historic bar passage rates in Oregon, and, where available, the reasons behind a given state's cut score. After much study and reflection, the BBX acknowledges that it is difficult to know with certainty that a given score ensures minimal competency to practice law. However, the fact that all other UBE jurisdictions have a cut score below 284 suggests that minimal competency is achievable with a lower score. The BBX also notes that, since establishment of the New Lawyer Mentoring Program (NLMP), passing the bar examination is not the only rite of passage for new members. The NLMP provides hands-on, one-on-one learning opportunities for new members to acquire necessary skills and become familiar with procedures and practices not addressed by the bar examination, whatever the pass score. Finally, it seems reasonable that Oregon's pass score be at least comparable to other western states' scores.

A score of 274 would place Oregon's pass score in line with pass scores in Alaska, Colorado, Idaho, Utah, and Washington, while being neither the lowest nor the highest among them. Pass scores for those jurisdictions range between 266 and 280, with 270 being the most common score. The average score of the western states (excluding Oregon) is 273.6.

Finally, an historical examination of bar passage rates in Oregon helps shed light on the reasonableness of a pass score of 274.

In looking at a ten-year period of exams beginning in February 2007 and ending in July 2016, the average passage rate was 67.7%. In order to have obtained a pass rate of 68% for the July 2016 bar examination, the pass score would have to have been 274. Had the pass score been 274, it would have raised the passage rate by 10%. In short, an adjustment from 284 to 274 would permit the passage rate to return to a percentage in line with a ten-year average.

As a side note, the BBX recognizes the need to periodically review the pass score and intends to do so more frequently.

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April 19, 2017
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The BBX can report that, although the three Oregon law schools recommended and provided arguments in support of a lower number, they have agreed to support the BBX's recommendation of 274. The BBX asks the Court to set the pass score for the Oregon bar examination at 274 beginning with the July 2017 examination at its upcoming May 2, 2017, public hearing.

Sincerely

Jeffrey A. Howes
Jeffrey A. Howes *signed with permission*
Chair, Board of Bar Examiners *by*

David M. Evans

JAH:vh

FINAL

July 2016 Oregon bar exam

MBE Score	Scaled Score	Combined Score	Cut Score (MBE)	Number Passing
173.4	183.1	356.5		
171.6	183.1	354.7		
180.7	172.5	353.2		
continued	continued	continued		
138.6	145.9	284.5		
131.5	152.9	284.4		
147.4	137	284.4		
132.9	151.2	284.1		
140	144.1	284.1		
140	144.1	284.1		
151.9	131.7	283.6	284 (142)	259 Pass - 58%
148.1	135.2	283.3		
131.5	151.2	282.7		
142.2	140.5	282.7		
147.4	135.2	282.6		
132.9	149.4	282.3		
150.4	131.7	282.1		
127.3	154.7	282		
142.9	138.8	281.7		
132.2	149.4	281.6		
139.3	142.3	281.6	282 (141)	269 Pass - 60%
140.8	140.5	281.3		
130.1	151.2	281.3		
124.6	156.5	281.1		
145.9	135.2	281.1		
154.3	126.4	280.7		
150.4	129.9	280.3		
130.8	149.4	280.2		
160.6	119.3	279.9		
137.2	142.3	279.5		
133.6	145.9	279.5	280 (140)	279 Pass - 62%
131.5	147.6	279.1		
147.4	131.7	279.1		
147.4	131.7	279.1		
140	138.8	278.8		
141.5	137	278.5		
132.2	145.9	278.1		
139.3	138.8	278.1		
135.7	142.3	278		
137.2	140.5	277.7	278 (139)	288 Pass - 64%
128	149.4	277.4		
138.6	138.8	277.4		
138.6	138.8	277.4		
140	137	277		
136.4	140.5	276.9		
150.4	128.4	276.8		
145.1	131.7	276.8		
127.3	149.4	276.7		
130.8	145.9	276.7		
144.4	131.7	276.1		
140.8	135.2	276		
145.9	129.9	275.8		

2%

4%

6%

FINAL

131.5	144.1	275.6		
142.2	133.4	275.6	276 (138)	302 Pass - 67%
136.4	138.8	275.2		
141.5	133.4	274.9		
149.6	124.6	274.2		
135	138.8	273.8		
122.5	151.2	273.7		
143.7	129.9	273.6	274 (137)	308 Pass - 68%
136.4	137	273.4		
145.1	128.1	273.2		
150.4	122.8	273.2		
134.3	138.8	273.1		
130.8	142.3	273.1		
133.6	138.8	272.4		
133.6	138.8	272.4		
133.6	138.8	272.4		
128	144.1	272.1		
142.2	129.9	272.1		
142.2	129.9	272.1		
131.5	140.5	272		
140	131.7	271.7		
132.9	138.8	271.7		
132.9	138.8	271.7		
145.1	128.4	271.5	272 (136)	324 Pass - 72%
137.9	133.4	271.3		
130.8	140.5	271.3		
146.6	124.6	271.2		
132.2	138.8	271		
132.2	138.8	271		
135.7	135.2	270.9	270 (135)	330 Pass - 73%
131.5	138.8	270.3		
135	135.2	270.2		
123.9	145.9	269.8		
135.7	133.4	269.1		
119.7	149.4	269.1		
135.7	133.4	269.1		
130.1	138.8	268.9		
140.8	128.1	268.9		
117	151.2	268.2		
123.9	144.1	268		
137.9	129.9	267.8		
127.3	140.5	267.8		
125.3	142.3	267.6	268	
135.7	131.7	267.4		
132.2	135.2	267.4		
139.3	128.1	267.4		
140.8	128.4	267.2		
133.6	133.4	267		
125.9	140.5	266.4	266	
130.1	135.2	265.3		
131.5	133.4	264.9		
136.4	128.1	264.5		
123.9	140.5	264.4		
130.8	133.4	264.2		
139.3	124.6	263.9		
148.1	115.7	263.8		

970

1070

FINAL			
130.1	133.4	263.5	264
142.2	121	263.2	

CHART 10: Admission by Transferred UBE Score/Fees*

UBE Jurisdiction	Date of first Uniform Bar Examination (UBE) administration	What is your time limit for accepting a UBE score (i.e., maximum age of the UBE score)?	What is the minimum passing UBE score?	Do you require completion of a jurisdiction-specific component† before admission?		Do you require passage of the MPRE?‡		What is the application fee for admission by transferred UBE score?
				Yes	No	Yes	No	
Alabama	July 2011	25 months	260	X		X		\$675**
Alaska	July 2014	5 years	280		X	X		\$800
Arizona	July 2012	5 years	273	X		X		\$675
Colorado	February 2012	3 years / 5 years	276		X	X		\$810
Connecticut	February 2017	3 years	266		X	X		\$750
District of Columbia	July 2016	5 years	268		X	X		\$418
Idaho	February 2012	37 months	272		X	X		\$600 / \$800
Iowa	February 2016	2 years / 5 years	266		X	X		\$525
Kansas	February 2016	36 months	266		X	X		\$1,250
Massachusetts	July 2018	36 months	270	X		X		\$815
Minnesota	February 2014	36 months	260		X	X		\$950
Missouri	February 2011	24 months	260	X		X		\$1,240
Montana	July 2013	3 years	266	X		X		\$150** / \$400**
Nebraska	February 2013	5 years	270		X	X		\$825
New Hampshire	February 2014	3 years / 5 years	270		X	X		\$725
New Jersey	February 2017	36 months	266		X	X		\$575
New Mexico	February 2016	36 months	260	X		X		\$500 / \$1,000
New York	July 2016	3 years	266	X		X		\$250 / \$750
North Dakota	February 2011	2 years	260		X	X		\$400**
Oregon	July 2017	3 years	284		X	X		\$625 / \$1,050
South Carolina	February 2017	3 years	266	X		X		\$1,000 / \$1,750
Utah	February 2013	24 months / 5 years	270		X	X		\$550 / \$850
Vermont	July 2016	3 years / 5 years	270		X	X		\$525
Washington	July 2013	40 months	270	X		X		\$585 / \$620**
West Virginia	July 2017	3 years	270		X	X		\$750**
Wyoming	July 2013	3 years	270		X	X		\$800**

*Jurisdictions may accept transferred UBE scores prior to their date of first UBE administration. See Chart 6, pages 20–21, for which jurisdictions currently accept UBE scores from other jurisdictions.

†A jurisdiction-specific component is a separate test, course, or some combination of the two that is administered by a UBE jurisdiction to assess candidate knowledge of jurisdiction-specific law. The component can be offered live or online. See Chart 5, page 17, for possible other pre-admission requirements.

‡ See supplemental remarks for time parameters governing acceptance of MPRE scores.

** Plus NCBE report fee.

(continued)

March 16, 2017

Oregon State Bar
Board of Bar Examiners
P.O. Box 231935
Tigard, OR 97281-1935

Dear members of the Oregon Board of Bar Examiners,

We, the deans of the three Oregon law schools, write to encourage the Board of Bar Examiners (BBX) to recommend to the Oregon Supreme Court that the minimum passing score – the so called “cut score” – for the Oregon bar exam be reduced for the July 2017 bar examination and thereafter.

At the moment, Oregon’s cut score of 284 is the third-highest in the United States, exceeding every state but California and Delaware. Moreover, with the state’s recent adoption of the Uniform Bar Exam, Oregon will have the highest cut score of any UBE state and by a significant margin. By way of comparison, most of the twenty-seven states that have adopted the UBE have a cut score of either 266 or 270, including such standard-setting jurisdictions as New York (266) and the District of Columbia (266). Washington, the state geographically closest to Oregon’s legal centers and therefore the state with which Oregon competes most for legal talent, has a cut score of 270. Indeed, aside from Oregon, only four UBE states have a cut score above 270, and five states have a cut score of 260. In short, half of the states that have adopted the UBE have a cut score of 266 or lower, making Oregon well out of the mainstream with respect to its current cut score.

Nor is it necessary for Oregon to maintain such a high cut score in order to ensure that new attorneys are minimally competent to practice law. As an initial matter, there is no evidence to show that such a high cut score is necessary to protect consumers from incompetent attorneys, nor is there any evidence that other states with lower cut scores have experienced greater competence-related complaints. Rather, Oregon set its cut score at 284 more than thirty years ago for reasons that are unclear to this day, and, despite significant changes in the bar exam since that time, it has not revisited the cut score. Notably, however, three other states (Montana, Idaho, and Oklahoma) recently reexamined their cut scores, and those states, which possessed cut scores already lower than Oregon’s, decided to reduce their cut scores to even lower levels. Moreover, the two UBE states in that group (Montana and Idaho) did so in response to concerns that the UBE is a more difficult exam than previously used and that therefore maintaining a high cut score was not justified as a way to ensure minimal competence but was instead serving as an inappropriate barrier to entry for many otherwise qualified aspiring attorneys. Similarly, California is currently considering whether to reduce its cut score in response to similar concerns.

We likewise reject the notion that a concern for the public justifies erring on the side of a high cut score. Although we fully endorse the need to protect the public from incompetent lawyers, it is important to recall that the bar exam is but one mechanism – and perhaps not even the best mechanism – for ascertaining whether a law graduate possesses sufficient legal knowledge and skills to represent members of the public. First, the attorney job market itself serves as a potent filter. While the bar exam tests proficiency in fourteen different subjects over just two days of testing, experienced attorneys often assess a graduate’s legal knowledge and skills by reviewing the graduate’s own work performance in the

real world as a law clerk over the course of weeks or months before making a permanent offer of employment to a recent graduate. Moreover, the attorney's own livelihood (and perhaps own bar license) depends on the attorney's confidence in the graduate's ability to practice law in a competent manner. Indeed, if anything, the job market itself is demonstrating that Oregon has set its cut score too high as dozens of graduates who have already persuaded an experienced attorney of their competence to practice law and obtained a permanent job offer have received scores below 284 on the Oregon bar exam in recent years.

Second and more important, Oregon is now five years into the New Attorney Mentoring Program, and that program, along with the Bar's oversight of attorney performance, ensures that new attorneys will begin and continue the practice of law in Oregon with adequate oversight and training. The point here is not to question the continuing utility of using the bar examination as a mechanism for assessing minimal competence; rather, the point is to illuminate that there is no need to err on the side of a high cut score in order to perform that function since there are other mechanisms working to protect the public from substandard attorneys.

If the benefits of a high cut score are illusory, its costs are real and overwhelmingly negative. Oregon's high cut score unnecessarily punishes perfectly competent recent law graduates who must now spend additional time and money (both in terms of the cost of additional bar preparation courses, exam fees, and loss of income for months) to prepare to retake the exam at a later date. Those costs are particularly frustrating for the many graduates who would have been admitted to practice in other nearby states had they chosen to take the bar exam there. It is no answer to say that, with the adoption of the UBE, graduates who fail to receive a passing score in Oregon may now transfer their scores to other states where their score would qualify as passing, as the cost of "failing" the Oregon exam forever stays with the graduate, who must presumably disclose that fact to other bar organizations, potential employers, and future clients who ask. For that reason, it is unsurprising to us that so many of our current students are asking us whether they would be better off taking the UBE in Washington and seeking to obtain a job there.

For this same reason, it is also true that the Oregon public loses out as a result of the unnecessarily high cut score. Perfectly competent graduates are looking to leave the state to launch their legal careers. This brain drain will ultimately harm the Oregon public and make access to justice, especially for low and middle income Oregonians, even more difficult to obtain. To be sure, these graduates may ultimately return to Oregon and become members of the Oregon bar by virtue of reciprocity with Washington or other states, but that fact only underscores the inequity and ultimately self-defeating effect of maintaining a high cut score that forces recent graduates to temporarily exile themselves from the state.

Last but not least, there is significant reason to worry that the high cut score unnecessarily undermines the Oregon bar's ability to create a diverse bar membership. Fifty percent of the UBE consists of multiple-choice questions. Of course, the very notion of testing lawyerly competence via multiple-choice questions is anachronistic for graduates of all races and ethnicities — we have yet to find one experienced lawyer who has had a client enter their office, recite three or four lines of facts, and then ask the client whether the answer to their legal question is (a), (b), (c), or (d). More importantly, though, studies have shown that performance on multiple choice tests is highly coachable, and

therefore multiple-choice tests favor test-takers who either have a lot of experience with multiple-choice tests and/or who have sufficient monetary resources to pay for expensive and time-consuming exam preparation courses. This phenomenon tends to favor students from wealthier backgrounds and correspondingly works against students from poorer and middle-class backgrounds, who disproportionately also come from historically under-represented groups, such as racial and ethnic minorities. For this reason, academic studies have found that the bar exam tends to disproportionately burden racial minorities,¹ and, therefore, maintaining a higher-than-average cut score will further undermine the diversity of the Oregon bar.

In short, Oregon's current cut score is well out of the mainstream of other UBE states, including Washington, and unjustifiably so. We therefore urge that the cut score be reduced to 266, which eight UBE states including New York use, but in no event higher than 270. Thank you for your time and attention to this matter.

Sincerely,



Curtis Bridgeman
Dean, Willamette University
College of Law



Jennifer Johnson
Dean, Lewis & Clark
School of Law



Michael Moffitt
Dean, University of
Oregon School of Law

¹ See, e.g., Andrea A. Curcio, *A Better Bar: Why and How the Existing Bar Exam Should Change*, 81 NEB. L. REV. 363, 389-90 (noting that a "six-year longitudinal study done by the Law School Admissions Council (LSAC) found a large disparity in the pass rates for [different racial groups of] first-time bar exam takers across the country.").

March 16, 2017

Oregon State Bar
Board of Examiners
P.O. Box 231935
Tigard, Oregon 97278-1935

The Student Bar Associations of the law schools at University of Oregon, Willamette University, and Lewis & Clark College join the March 16, 2017 letter from Deans Moffitt, Bridgeman, and Johnson, requesting that the Board of Examiners lower the cut score for the state of Oregon for the July 2017 bar exam and thereafter.

As leaders of the Student Bar Associations of these three law schools, we represent all law students within the state of Oregon. We agree with the deans that the current cut score for admission to the Oregon State Bar unnecessarily burdens bar applicants to the Oregon bar and law students within Oregon. As it currently stands, Oregon has the third-highest cut score. Moreover, Oregon's current cut score of 284 for the Universal Bar Exam is the highest cut score of all UBE member states. This represents a large departure from the norm.

Lowering the cut score would bring Oregon in line with other states, both regionally and nationwide. As the deans outlined, a lower cut score would benefit Oregon State for several reasons, but perhaps most pressingly, it would allow for "an increasingly diverse membership." This is a value to which we students are dedicated, and a goal on which action by BBX is very urgently needed. Furthermore, by setting the cut score drastically high, BBX risks exiling recent graduates of Oregon law schools who did not meet the burdensome standard, but need to seek employment to pay back loans.

We support for the arguments outlined by Deans Moffitt, Bridgeman, and Johnson, and we thank BBX for its efforts to make Oregon's bar more accessible for students and other bar applicants.

Sincerely,



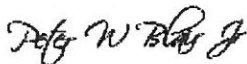
Diana Wildridge
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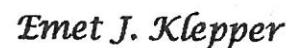
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