

Case No. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**APPENDIX OF EXHIBITS IN SUPPORT OF
REQUEST THAT THE SUPREME COURT APPROVE
PROPOSED RAW PASSING SCORE AND SCORING
ADJUSTMENTS FOR THE FEBRUARY 2025
CALIFORNIA BAR EXAMINATION**



PREPARED BY
THE STATE BAR OF CALIFORNIA

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EXHIBIT 1

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S287231

Case No. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**RENEWED REQUEST THAT THE SUPREME COURT
APPROVE PROPOSED MODIFICATIONS TO THE
CALIFORNIA BAR EXAMINATION**



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I. INTRODUCTION

For approximately two years, the State Bar of California (State Bar) has been evaluating how it can reduce the costs of administering the California Bar Examination—the largest cost center of the Admissions Fund, which is experiencing a structural deficit—in light of the soaring costs of annually administering over 13,000 bar examinations in-person at State Bar-run test centers. Through this petition, the State Bar, following the approval of the Committee of Bar Examiners (CBE), seeks an order modifying this Court’s last-issued order on the California Bar Examination—which includes the two-day General Bar Examination and the one-day Attorneys’ Examination—so that it can achieve these necessary cost savings. The requested modifications will allow the State Bar to efficiently administer the bar examination while ensuring examination security and integrity and eliminating unnecessary barriers to accessing the examination.

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Specifically, the State Bar requests that this Court adopt an order that: eliminates reference to the Multistate Bar Examination (MBE); directs, consistent with prior orders, that the second day of the bar examination will consist of 200 multiple-choice questions covering constitutional law, contracts, criminal law and procedure, civil procedure, evidence, real property, and torts; and permits the bar examination to be delivered remotely and/or in-person at vendor-run or State Bar-run test centers. Such modifications will enable the State Bar to utilize multiple-choice questions developed by Kaplan Exam Services, LLC (Kaplan) rather than purchase the MBE from the National Conference of Bar Examiners (NCBE) and to engage ProctorU, Inc. d/b/a/ Meazure Learning (Meazure Learning) to administer the examination remotely or at Meazure Learning's test centers.

Accordingly, for the reasons set forth in this petition, this Court should adopt the attached proposed administrative order modifying the California Bar Examination.

II. CBE APPROVAL OF AND THIS COURT'S AUTHORITY TO ADOPT PROPOSED MODIFICATIONS TO THE CALIFORNIA BAR EXAMINATION

Under rule 9.6(a) of the California Rules of Court, “[t]he Committee of Bar Examiners, pursuant to the authority delegated to it by the Board of Trustees, is responsible for determining the bar examination’s format, scope, topics, content, questions, and grading process, subject to review and approval by the Supreme Court. The Supreme Court must set the passing score of the examination.” As described below, the CBE has approved the requested modifications and has directed staff to seek an order from this Court approving those modifications, which is necessary to effectuate the changes to the bar examination.

A. CBE Took Necessary Actions to Approve the Proposed Modifications

At the CBE’s April 19, 2024, meeting, the CBE approved a motion recommending that the Board of Trustees (Board) retain a new vendor to develop bar examination questions. (Appendix of Exhibits (AE), Ex. 17 [CBE Open Session Minutes: April 19,

2024] at pp. 166–167.)¹ This approval followed staff’s recommendation that a new vendor was necessary to allow for cost-effective bar examination administration approaches, including remote and vendor-owned test center administration. (Ex. 16 [CBE Staff Report for Agenda Item III.A, dated April 19, 2024] at pp. 133–140.) The CBE’s action in April was the culmination of previous CBE and Board discussions and stakeholder forums regarding the need to explore alternative methods of administering the bar examination, given the increasing costs of administration and the impending Admissions Fund deficit, as further explained in Section IV.A.–B., *post*.

In response to the Supreme Court’s September 18, 2024, order denying without prejudice the State Bar’s earlier filed petition (Case No. S286825) that sought modifications to the bar examination, the CBE held a meeting on September 30, 2024. At that meeting, the CBE unanimously adopted a resolution that specifically approved the following:

¹ Hereafter, all references to exhibits refer to exhibits included in the AE.

1. The use of the Kaplan-developed multiple-choice questions for the February 2025 bar exam and future bar exams, subject to psychometric validation;
2. Measure Learning as the vendor to provide a secure examination delivery platform, administer the exam either remotely or in-person in the proper format, provide sufficient proctoring and technical support for both remotely administered and test-center administered examinations, and test centers for the February 2025 bar exam, and future bar exams, subject to negotiation of contract terms; and
3. Beginning with the February 2025 administration of the bar exam, (a) the multiple-choice portion of the bar exam shall consist of 200 multiple-choice questions covering constitutional law, contracts, criminal law and procedure, civil procedure, evidence, real property, and torts and (b) be delivered remotely and/or in person at vendor-run or State Bar-run test centers.

(Ex. 25 [CBE Resolution, dated September 30, 2024] at pp. 293–295.)² The CBE’s resolution also “direct[ed] staff to seek appropriate approval from the Supreme Court to modify its prior order on the bar exam in accordance” with the CBE’s foregoing approval. (*Id.* at p. 295.)

² While this petition seeks an order that would apply to the February 2025 administration of the bar examination and future examinations, the Court is currently considering recommendations submitted by the Blue Ribbon Commission on the Future of the Bar Examination, which, when this Court acts on those recommendations, may supersede any order issued in response to the instant petition as it relates to future bar examinations.

B. Action by This Court Is Necessary to Adopt the CBE's Approved Modifications to the Bar Examination

As described above, rule 9.6(a) of the California Rules of Court requires that modifications to the bar examination be approved by the Court. The Court also has inherent authority to admit persons to the practice of law in California. (Cal. Rules of Court, rule 9.3; *In re Attorney Discipline* (1998) 19 Cal.4th 592, 593; *Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329, 336; *Brotsky v. State Bar* (1962) 57 Cal.2d 287, 300; see also Bus. & Prof. Code, §§ 6064, 6066.)

This Court's action to approve the proposed modifications to the bar examination is required by rule 9.6. Further, this Court's action is necessary because the last-issued order on the bar examination for the July 2022 administration provides, in pertinent part, that the General Bar Examination would be held in-person and the second day of the General Bar Examination consists of the MBE.³ (Ex. 2 [California Supreme Court Order

³ The California Bar Examination is also known as the General Bar Examination and consists of multiple-choice, essay, and performance test questions. Qualified attorney applicants may opt not to take the multiple-choice portion of the examination but must take the essay and performance test portion. In such

Concerning the July 2022 California Bar Exam, dated May 19, 2022] at p. 11.) This Court’s approval of the proposed modifications to the bar examination will enable the State Bar to utilize Kaplan as the vendor for the multiple-choice component of the General Bar Examination and Measure Learning as the vendor to administer the bar examination remotely or in vendor-run test sites.

III. PROPOSED MODIFICATIONS TO THE BAR EXAMINATION FOR THIS COURT’S APPROVAL

As reflected in the proposed order attached to this Petition, and following the CBE’s approval, the proposed modifications for this Court’s approval to the bar examination, beginning with the February 2025 administration, are as follows:

1. The reference to the MBE on the second day of the General Bar Examination is omitted and replaced with 200 multiple-choice questions covering constitutional law, contracts, criminal law and

instances, the essay and performance test questions constitute what is known as the Attorneys’ Examination.

The MBE is a six-hour, 200-question, multiple-choice examination developed and graded by the NCBE, a private, not-for-profit corporation that designs and sells licensing tests. The State Bar has historically purchased the MBE from the NCBE and uses it as part of the General Bar Examination. The MBE covers civil procedure, constitutional law, contracts, criminal law and procedure, evidence, real property, and torts.

procedure, civil procedure, evidence, real property, and torts.

2. The reference to the administration of the California Bar Examination being in-person is omitted and replaced with an authorization to administer the examination remotely and/or in-person at vendor-run or State Bar-run test centers.

(Ex. 25 at pp. 292–296.)⁴ In addition, consistent with this Court’s prior orders on the bar examination, the proposed order specifies that the examination will be administered the last week in February and the last week in July of each calendar year.

Through this Petition, the State Bar requests that this Court approve the proposed modifications to the bar examination as set forth in the proposed order.

IV. BACKGROUND AND BASIS FOR PROPOSED MODIFICATIONS TO THE CALIFORNIA BAR EXAMINATION

The bar examination tests the knowledge and abilities of those seeking admission. The requested modifications do not seek to change that fundamental purpose, but, instead, would permit the State Bar to administer the examination in more

⁴ Because the proposed modifications eliminate reference to the MBE, inclusion of the subject matters in the proposed order directs that the same subject matters in the multiple-choice questions will continue to be tested as in prior years. (See fn. 3, *ante*; Bus. & Prof. Code, § 6046.6.)

cost-effective ways that are preferred by applicants. This request is the culmination of CBE action, previous CBE and Board discussions, stakeholder and public input, vetting of vendors, and consultation with experts to ensure that the proposed changes to the bar examination do not negatively affect its integrity or security. (See Ex. 24 [CBE Staff Report for Agenda Item 1.1, dated September 30, 2024] at pp. 224–233.)

A. Increasing Costs for Administering the Examination Required the State Bar to Explore Alternative Methods of Examination Administration

When the bar examination returned to in-person administration in 2022, the State Bar faced significant increased examination administration costs, including rising facility and proctor expenses. State Bar staff began to evaluate how to reduce examination-related expenses in 2022. As part of those efforts, the State Bar requested authorization from NCBE to administer the MBE remotely, but NCBE was and continues to be unwilling to alter its position that the MBE must be administered at jurisdiction-run facilities. As such, the State Bar could not substantially reduce the examination-related expenses and correct the budget shortfall without replacing the MBE.

Examination administration expenses comprise the largest non-personnel cost in the State Bar's Admissions Fund; the 2024 Office of Admissions' budget reflected deficit spending of \$3.8 million, which would leave only \$3.3 million in reserves at year's end. (Ex. 12 [Board Staff Report for Item 701, dated February 26, 2024] at pp. 109–111; Ex. 13 [Relevant Excerpts of State Bar 2024 Adopted Final Budget, dated February 28, 2024] at pp. 115–118.)

During the CBE's June 28, 2023, meeting, following a staff presentation that explained that the Admissions Fund was facing insolvency by 2026, and that the budgetary issues were primarily attributable to examination-related expenses, including escalating testing facility and proctor costs, the CBE recommended that the Board consider a cost-reduction model whereby the MBE would be administered at a reduced number of test sites, and the essays and performance test portion of the bar examination would be administered remotely. (See Ex. 3 [CBE Staff Presentation for Agenda Item VI.E, dated June 28, 2023] at p. 15–23; Ex. 4 [CBE Open Session Minutes: June 28, 2023] at

p. 27.)⁵ On August 10, 2023, the Board approved a reduced number of testing locations for the February 2024 bar examination, with the understanding that staff would return to the Board at later date to discuss proposals for remote testing. (Ex. 5 [Board Executive Committee Staff Report for Agenda Item II.B, dated August 10, 2023] at pp. 29–37; Ex. 6 [Board Executive Committee Open Session Minutes: August 10, 2023] at p. 42].)

Concurrent with consideration of ways to reduce the cost of examination administration, the Board adopted fee increases to stabilize the Admissions Fund; effective with the February 2024 examination, application fees for non-attorneys increased 26 percent from \$677 to \$850. Attorney applicant fees increased 52.6 percent from \$983 to \$1500. (Ex. 7 [Board Staff Report for Agenda Item 701, dated September 21, 2023] at p. 53; Ex. 8 [Board Open Session Minutes: September 21–22, 2023] at p. 71;

⁵ State Bar staff also solicited public comment regarding the reduction in the number of test sites. (See Public Comment Solicitation on Proposed Changes to the Administration of the California Bar Exam, available at: <<https://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Public-Comment/Public-Comment-Archives/2023-Public-Comment/Proposed-Changes-to-the-Administration-of-the-California-Bar-Exam>> [as of October 1, 2024].)

Ex. 20 [Board Staff Report for Agenda Item 3.2, dated September 19, 2024] at pp. 195–196; Ex. 21 [Board Resolution on September 22, 2023 Open Session Minutes, dated September 19, 2024] at p. 212.)

During the Board’s November 2023 meeting, staff presented updates to the proposed cost-reduction models and advised that a remote model for the essay and performance test portion of the examination was not feasible for July 2024. (See Ex. 9 [Board Staff Presentation for Agenda Item 702, dated November 16–17, 2023] at pp. 76–83.) Subsequently, during its January 18, 2024, meeting, the Board approved administering the July 2024 examination at a reduced number of test sites. (Ex. 10 [Board Staff Report for Agenda Item 703, dated January 18, 2024] at pp. 90–92; Ex. 11 [Board Open Session Minutes: January 18–19, 2024] at pp. 98–99.)

B. Following the CBE’s Recommendation, the Board Approved a Contract with Kaplan to Develop Examination Questions

While the reduced site option generated examination administration savings, those savings, even if annualized, are insufficient to address the structural deficit in the Admissions Fund. Reliance on the fund’s reserve balance is not sustainable in

the long term, necessitating consideration of a more significant change to examination development and delivery processes. With this imperative in mind, in January 2024, State Bar staff posted a Request for Information to identify vendors who could develop multiple-choice, essay, and performance test questions for the bar examination, which would permit remote administration of the examination. Kaplan was the sole respondent.

During its March 2024 meeting, the CBE discussed a proposal to allow the State Bar to contract with a new vendor to develop multiple-choice questions for the bar examination. (Ex. 14 [CBE Staff Report for Item III.A, dated March 15, 2024] at pp. 120–124.) The staff report noted that the NCBE requires that the MBE be administered in “jurisdiction-run facilities” and prohibits the MBE from being administered remotely or in vendor-owned test centers. (*Id.* at p. 120.) The staff report further explained that if the State Bar had its own bank of multiple-choice questions, the State Bar would be able to administer the examination in a more cost-effective manner. (*Ibid.*)

Following the March 2024 CBE meeting and with input from CBE liaisons, the State Bar held two separate stakeholder meetings with law school deans who emphasized the need to

ensure that applicants would not need to modify their preparation for the bar examination upon the transition to a new vendor, that any new questions should be psychometrically pre-tested and validated, and the need to see examples of the newly developed questions as soon as possible to ensure sufficient time to prepare students for the examination.

On April 16, 2024, the State Bar held a public stakeholder input forum to solicit feedback on the proposal to contract with a new vendor to develop examination questions. (See Ex. 15 [Stakeholder Input Forum: Bar Exam Question Development with a New Vendor: April 16, 2024] at pp. 126–131.) Consistent with post-examination survey data revealing that more than 75 percent of applicants prefer to take the bar examination remotely or in a small test center setting, applicants participating in the stakeholder sessions were generally supportive of remote and test center examination delivery.

Following the stakeholder forums, at its April 19, 2024, meeting, the CBE voted to recommend to the Board that the State Bar retain a new vendor to develop bar examination questions, including multiple-choice questions. (Ex. 17 [CBE Open Session Minutes: April 19–20, 2024] at pp. 166–167.) On

July 18, 2024, staff reported to the Board that it was continuing to negotiate with Kaplan to reach a contract on examination question development for the February 2025 bar examination. (Ex. 18 [Board Staff Report for Item 6.2, dated July 18, 2024] at p. 172.) Consistent with the CBE's recommendation, the Board authorized and delegated authority to the Board chair and executive director to execute an agreement with Kaplan to develop multiple-choice, essay, and performance test questions for the bar examination. (Ex. 19 [Board Open Session Minutes: July 18–19, 2024] at p. 190.)

On August 9, 2024, the State Bar entered into a contract with Kaplan for development of bar exam materials, including

multiple-choice questions starting with the February 2025 bar examination.⁶ (Ex. 24 at p. 259.)⁷

The CBE was advised during its August 16, 2024, meeting that the State Bar entered into a contract with Kaplan to supply multiple-choice questions for future bar examinations, beginning with the February 2025 bar examination.

As described in Section II, *ante*, on September 30, 2024, the CBE specifically approved using Kaplan-developed

⁶ For February 2025, Kaplan will only develop multiple-choice questions. (Ex. 24 at p. 259.) Among other key provisions, the contract requires Kaplan to exit the retail bar preparation business specific to the California Bar Examination by October 1, 2024, though it may continue to offer preparation services and products for bar examinations administered by other jurisdictions. And, in response to concerns raised by the law school deans, pursuant to the contact, Kaplan will develop, and the State Bar will provide, a free study guide for applicants and a free faculty guide. (Ex. 24 at p. 278.)

⁷ Portions of the agreement have been redacted pursuant to Government Code section 7929.605, which exempts from public disclosure “test questions, scoring keys, and other examination data used to administer a licensing examination,” and Government Code section 7922, which exempts records from public disclosure if “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” Disclosure of this information would reveal confidential information about the development of the California Bar Examination that, if disclosed, would compromise examination integrity and security.

multiple-choice questions on the February 2025 bar examination and on future examinations as well as seeking an order from this Court removing reference to the MBE. (Ex. 25 at pp. 293–295.) As explained in Section III, *ante*, such an order will enable the State Bar to utilize Kaplan to develop the multiple-choice questions for the bar examination.

C. The State Bar Will Engage in Quality Assurance and Content Validation of Kaplan-Developed Multiple-Choice Questions

Since entering into the agreement with Kaplan, the State Bar, in consultation with its expert psychometrician, has established a plan to ensure that the multiple-choice questions Kaplan develops will be properly vetted and prepared before the February 2025 bar examination; that process will continue through the end of the year, as further discussed below. Additionally, the State Bar plans to “field test” the Kaplan questions on November 8 and 9.⁸

⁸ On September 9, 2024, the State Bar submitted a petition to the Supreme Court that sought an order that would permit the State Bar to implement a scoring adjustment on the 2025 bar examination administrations. (Case No. S286827.) The petition described that the proposed bar examination experiment would also allow the State Bar to field test the Kaplan-developed questions in advance of the February 2025 bar examination.

Pursuant to the agreement, Kaplan will provide the State Bar with batches of questions on a rolling basis. (See Ex. 24 at pp. 259–260.) Upon receipt of a batch of questions, the State Bar will convene a content validation team comprised of psychometricians, recently licensed attorneys, individuals that supervise recently licensed attorneys, and law school faculty. (See *id.* at p. 262.) The content validation teams will review each question to ensure that the item: (1) tests for minimum competence to practice law; (2) is not biased; (3) is clear; (4) is cohesive in style with other questions; and (5) accurately tests the intended legal issue. The validation team will then recommend edits, as needed, to achieve these criteria and return them to Kaplan. Kaplan will finalize the questions and return them to the State Bar within 10 days. Consistent with Business and Professions Code section 6046.6, the new questions will not require substantial modification of the training or preparation required to pass the bar examination.

In conducting the content validation activities, the State Bar will be relying on its over four decades of experience in developing, vetting, and administering both the bar examination and the First-Year Law Students' Examination (FYLSE). The

Examinations Unit, within the Office of Admissions, manages the comprehensive process of examination development, from soliciting essay questions to overseeing the grading of both the FYLSX and bar examination. The Examinations Unit has expertise in developing questions for the FYLSX, which consists of 100 multiple-choice questions and is administered twice per year. Three of the seven subject areas tested on the multiple-choice section of the bar examination are also covered on the FYLSX—contracts, criminal law, and torts. Recently, the unit conducted a comprehensive refresh of the FYLSX multiple-choice questions, utilizing a panel of subject matter experts to ensure that the questions remain relevant and reflective of current legal standards.

The State Bar also has experience in vetting bar examination questions through its Examination Development and Grading Team. This team comprises experts with a minimum of 10 years' experience and is responsible for ensuring that all essay and performance questions undergo rigorous editing, pre-testing, and refinement before administration. This extensive expertise and attention to detail allow the State Bar to maintain high standards in assessing the competencies of both

law students and prospective attorneys, ensuring that only qualified candidates are licensed to practice law.

The proposed modifications do not seek any change to the scaled passing score for the bar examination, which is currently 1390, pursuant to this Court’s August 10, 2020, Order Concerning Modifications to the California Bar Examination. (See Ex. 1 [California Supreme Court Order Concerning Modifications to the California Bar Examination, dated August 10, 2020] at pp. 6–7.) For many years, the State Bar has anchored its grading of the bar examination to the MBE to control for variation in examination difficulty across years of examinations. This process involves adjusting the raw passing score for each examination administration and is called equating. The process of equating preserves the interpretation of what it means to pass the examination and ensures fairness across different examination administrations.

If the Court permits the State Bar to utilize non-MBE multiple-choice questions, because the examination will no longer be anchored to the MBE, the CBE will be required to set a raw passing score through a standard validation study. Importantly, this is not a change to the scaled passing score of 1390. The State

Bar’s psychometrician will convene an expert panel to review the examination data following the February 2025 administration to develop a recommendation for a raw passing score that is equivalent to current expectations. Thereafter, the CBE will make a policy determination to set a raw passing score that will establish the baseline for what is considered passing performance on the examination. The raw scores will be converted in a linear transformation to maintain the scaled passing score of 1390.

D. Administering the Bar Examination Remotely or at Test Centers Is Expected to Achieve Cost Savings

With the exception of bar examinations administered during the height of the COVID-19 pandemic, the State Bar has historically contracted with various facilities to administer the bar examination in-person, consistent with the NCBE’s requirement that the MBE be delivered only at in-person jurisdiction-run examination sites.

Now that the State Bar has contracted with Kaplan, if this Court issues the proposed order, the State Bar will have the flexibility to administer the examination remotely or at vendor-run test centers, which is expected to significantly reduce the bar examination-related expenditures. To realize the potential

savings, after significant research, State Bar staff identified Meazure Learning as the most suitable vendor to administer an examination remotely and/or at vendor-run test centers based on their experience, technological capability, and relative affordability.

State Bar staff considered several examination administration vendors to administer the bar examination before recommending Meazure Learning. (Ex. 24 at pp. 230–232.) Staff’s recommendation to engage Meazure Learning is grounded in their capacity and ability to deliver a high volume of complex examinations efficiently and securely.

Meazure Learning is a leading provider of online proctoring and examination administration services, with extensive experience administering high-stakes examinations for various professional licensing bodies and educational institutions.

Meazure Learning has also demonstrated the capacity and ability to deliver complex examinations efficiently and securely. Their platform offers live proctoring instead of record and review, which provides real-time supervision and reduces the need for post-examination review. Remote proctoring allows the proctors to monitor applicants through their webcam as well as being able

to view their screen. Additionally, the proctor-to-applicant ratio is significantly lower than other vendors at one proctor to four applicants. The Measure Learning platform utilizes a proprietary secure browser that can also detect security incidents that will be reported to the State Bar.

In addition to offering a remote administration option, Measure Learning will also provide small, in-person testing centers, and temporary pop-up centers in larger geographic areas for applicants who wish to test in-person or are unable to test remotely. Measure Learning also has test centers across the United States and globally to ensure accessibility for candidates who prefer or require in-person testing.⁹ Via its remote and in-personal testing capabilities, Measure Learning has confirmed its

⁹ The CBE is scheduled to take action on whether to permit applicants to take the bar examination from locations outside of California, including out-of-state and internationally at its October 11, 2024, meeting. During the COVID-19 pandemic, applicants were permitted to take the bar examination from any location but were required to take the examination during the same hours as all other applicants.

ability to deliver the bar examination to all applicants over the course of the two-day examination.¹⁰

Meazure Learning also provides applicant support in advance of the examination through the post-examination period. Applicants may take a pre-test to ensure that their equipment meets the specifications for running the Meazure Learning platform, and applicants participating in the “field test” of the Kaplan questions in November 2024 will be using the platform. In addition, Meazure Learning provides chat, phone, and email support for technical issues. The State Bar will continue to accept and process testing accommodation requests and Meazure Learning will implement the approved accommodations for all applicants.

Once staff identified Meazure Learning as a potential vendor, staff, Board, and CBE representatives tested the examination platform. Some participants identified certain

¹⁰ During the September 30, 2024, CBE meeting, State Bar staff indicated that for the July 2025 bar examination, staff anticipated that there would be two forms of the bar examination and that the examination would occur over the course of four days to accommodate all applicants; however, the State Bar will proceed with a two-day examination in July, requiring only one form of the examination.

desired enhancements with the product or test centers; Meazure Learning has worked collaboratively and promptly with State Bar staff to correct those issues.

On September 19, 2024, the Board approved a contract amount of \$4,108,500 for Meazure Learning, subject to negotiation of appropriate contractual terms and action by the CBE, to provide a test administration platform, remote and in-person proctoring, and vendor-run test centers for the 2025 bar examination administrations.¹¹ (Ex. 22 [Board Staff Report for Agenda Item 4.1, dated September 19, 2024] at pp. 214–220; Ex. 23 [Board Resolution on Approval of Specified Contracts, dated September 19, 2024] at p. 222.)

On September 30, 2024, the CBE unanimously passed a resolution to approve Meazure Learning as the vendor to provide a secure examination delivery platform, administer the examination either remotely or in-person in the proper format, provide sufficient proctoring and technical support for both remotely administered and test-centered administered

¹¹ This contract amount also includes delivery of legal specialization examinations in fall 2025.

examinations, and test centers for the February 2025 bar examination, and future bar examinations, subject to negotiation of the contract terms. (Ex. 25 at pp. 293–295.)

Since the Board and CBE approved the use of Meazure Learning, the State Bar has engaged in negotiations, which has resulted in an agreed-upon term sheet confirming that Meazure Learning: (1) has the capacity to deliver all examinations remotely through its online platform and the ability to provide in-person test center options; (2) has skilled technical support staffing; (3) will limit changes to the administration platform in advance of the examination; (4) has committed to provide adequate testing centers; (5) will employ a proctor-to-applicant ratio of no more than one proctor to every four applicants; and (6) will comply with the necessary data security requirements. (Ex. 26 [Terms Sheet Between Meazure Learning and the State Bar] at pp. 297–299.)¹²

¹² The State Bar is continuing to negotiate the terms of the Meazure Learning contract, which will set forth specific technical support terms. Meazure Learning provides support services 24-hours per day. (See Meazure Learning Online Proctoring Services and Test Center Services Support Operations available at: <<https://www.meazurelearning.com/support-operations>> [as of October 4, 2024].) Additionally, the contract will ensure that

Accordingly, following approval from this Court, the State Bar will be able to use Meazure Learning, beginning with the February 2025 examination, to administer the bar examination remotely or at Meazure Learning's sites.

V. CONCLUSION

For the foregoing reasons, the State Bar respectfully requests that the Court issue an administrative order approving the proposed modifications to the California Bar Examination, effective for the February 2025 administration of the examination, as set forth in the attached proposed order.

Dated: October 4, 2024

Respectfully submitted,

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By: /s/ *Ellin Davtyan*
ELLIN DAVTYAN

General Counsel
Office of General Counsel
The State Bar of California

Meazure Learning complies with industry standard data security requirements.

[PROPOSED] ADMINISTRATIVE ORDER

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

**ORDER APPROVING MODIFICATIONS TO
THE CALIFORNIA BAR EXAMINATION**

The Court is in receipt of the State Bar of California's Renewed Request That the Supreme Court Approve Proposed Modifications to the California Bar Examination, filed on October 4, 2024. The Court, having considered the State Bar's request, approves the modifications below beginning with the February 2025 California Bar Examination.

The General Bar Examination will be administered the last week in February and the last week in July of each calendar year remotely and/or in-person at vendor-run or State-Bar run test centers.

The first day of the General Bar Examination will be comprised of five one-hour essay questions and one 90-minute Performance Test.

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The second day of the General Bar Examination will consist of 200 multiple-choice questions covering constitutional law, contracts, criminal law and procedure, civil procedure, evidence, real property, and torts.

The first day of testing will also constitute the Attorneys' Examination. Qualified attorney applicants are not required to take the multiple-choice portion of the examination but may opt to do so by enrolling for and taking the full General Bar Examination

The length of each session, the order of testing, and the overall length of the examination may be modified for applicants granted certain testing accommodations.

The answers to the five essays and the Performance Test questions will be graded on the basis of 700 possible raw points—representing up to 100 raw points for each of the five essay questions and up to 200 raw points for the 90-minute Performance Test question.

During the grading process, the written and multiple-choice components will be scaled and weighted equally (50 percent assigned to each). Applicants who take the Attorney Examination will have their scores scaled, and the answers to the

five essays and the Performance Test questions will be weighted at 100 percent.

The passing score for the General Bar Examination and Attorneys' Examination will be a total scaled score of 1390 or better out of 2000 points.

This order supersedes the Court's May 19, 2022, order. The Court will revise or supersede this order, as necessary, regarding this and future administrations of the General Bar Examination.

Chief Justice

Document received by the CA Supreme Court.

EXHIBIT 2

Document received by the CA Supreme Court.

S287231

Case No. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**APPENDIX OF EXHIBITS IN SUPPORT OF
RENEWED REQUEST THAT THE SUPREME COURT
APPROVE PROPOSED MODIFICATIONS TO THE
CALIFORNIA BAR EXAMINATION**

(Vol. I of I)



PREPARED BY
THE STATE BAR OF CALIFORNIA

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Document received by the CA Supreme Court.

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EXHIBIT 24

Document received by the CA Supreme Court.



The State Bar of California

OPEN SESSION

AGENDA ITEM

1.1 SEPTEMBER 2024

COMMITTEE OF BAR EXAMINERS

DATE: September 30, 2024

TO: Members, Committee of Bar Examiners

FROM: Audrey Ching, Director, Office of Admissions
Bridget Gramme, Special Counsel, Division of Consumer Protection,
Admissions, Access and Inclusion

SUBJECT: Consideration of and Action Approving Modifications to the California Bar Examination, starting with the February 2025 Administration and to Address the California Supreme Court's September 18, 2024 Order (Case No. S286825), Including Vendors for Question Development and Remote/In-Person Test Center Exam Administration

EXECUTIVE SUMMARY

Over the past two years, in the face of skyrocketing exam administration costs and looming admissions fund insolvency, the State Bar has been researching and developing various proposals for exam administration cost savings. The proposal that was the most cost effective—switching to remote and in-person, test center exam delivery—would not be possible while administering the Multistate Bar Examination (MBE) due to restrictions imposed by the National Conference of Bar Examiners. The State Bar has since been pursuing a plan to replace the MBE with multiple-choice questions developed by Kaplan Exam Services, LLC, thus enabling the State Bar to administer the exam in a manner that is not only less expensive, but overwhelmingly preferred by applicants.

Throughout this process staff has heard and considered feedback from a number of stakeholders, many of whom expressed concerns about the timing of the change, the quality and process for validating the questions, and the capability of a new exam administration

Document received by the CA Supreme Court.

vendor to securely and effectively administer the exam remotely and in small test-centers.¹ This item sets forth the comprehensive plan the State Bar has put into place to address these concerns, and seeks the Committee of Bar Examiners' formal approval of the following: (1) to utilize Kaplan-developed multiple-choice questions for the February 2025 bar exam and on future bar exams; (2) to utilize Proctor U, dba Meazure Learning, to provide the bar exam delivery platform, administer the exam either remotely or in-person in the proper format, provide sufficient proctoring and technical support for both remotely administered and test-center administered exams and test centers for the February 2025 bar exam, and on future bar exams; (3) to approve that, beginning with the February 2025 bar exam, and on future bar exams, the multiple-choice portion of the exam will consist of 200 multiple-choice questions covering constitutional law, contracts, criminal law and procedure, civil procedure, evidence, real property, and torts and be delivered remotely and/or in person at vendor-run or State Bar-run test centers; and (4) to direct staff to seek appropriate approval from the Supreme Court to modify its prior order on the bar exam, in accordance with the approved modifications set forth above.

RECOMMENDED ACTION

That the Committee of Bar Examiners (CBE) approve of three components for the administration of the bar exam beginning in February 2025, and direct staff to seek appropriate approval from the Supreme Court in accordance with the approved modifications, as set forth in the resolution (Attachment A) and described in the executive summary above.

DISCUSSION

BACKGROUND

CBE and Supreme Court Authority Over the Bar Exam

Under rule 9.6(a) of the California Rules of Court, the CBE is responsible for determining the bar exam's format, scope, topics, content, questions, and grading process "subject to review and approval by the Supreme Court." Historically, and even prior to the adoption of rule 9.6 of the California Rules of Court, the CBE has provided recommendations to the Supreme Court related to changes to the bar exam.

Most recently, during the COVID-19 pandemic, the Supreme Court issued an order concerning the July 2022 bar exam, which specified that the bar exam would be administered in-person and that the second day of the general bar exam would consist of the Multistate Bar Examination (MBE). (Attachment B.) Because there has been no intervening order that would permit the State Bar to deviate from administering the MBE, a Supreme Court order is necessary to effectuate that change to the bar exam. Additionally, while the Supreme Court issued a series of orders during the COVID-19 pandemic that permitted remote testing for the bar exam, and then returned the bar exam to being administered in-person, to administer the bar exam remotely,

¹ Many of these concerns are articulated in this September 17, 2024, [letter](#) from a number of American Bar Association accredited law schools in California to the Supreme Court.

in-person at test centers, or through a combination of methods, a Supreme Court order is likewise required.

Status of Supreme Court Petition

On September 9, 2024, the State Bar filed a petition with the Supreme Court seeking approval of proposed modifications to the bar exam. The modifications included permitting the State Bar to administer the bar exam in-person, remotely, and/or in designated test centers and removing reference to the MBE, so that the State Bar could utilize multiple-choice questions developed by another vendor. (Attachment C.)

On September 18, 2024, the Supreme Court denied the petition without prejudice. (Attachment D.) The Court indicated that the State Bar could file a new petition seeking those modifications once they were considered and approved by the CBE.

The purpose of this meeting is to give the CBE another opportunity to consider these changes to the bar exam in accordance with the Court's order. .

Cost-Savings Measures Required by Increasing Costs of the Bar Exam

When the bar exam returned to in-person administration in 2022, the State Bar was faced with significant increased costs of administering the exam, including rising facility and proctor expenses, which significantly impacted the Admissions Fund budget.

Thus, in fall 2022, the State Bar explored the possibility of ETS – Educational Testing Services, the original developers of the MBE in the early 1970s– taking over the drafting of the multiple-choice and written questions to allow for remote testing. At the time, due to the anticipated cost and long development timeline, staff determined that proposal was not feasible. In June 2023, State Bar staff advised the CBE that the Admissions Fund was facing insolvency by 2026, and that the budgetary issues were primarily attributable to exam-related expenses, including escalating testing facility and proctor costs, which could not be solved while utilizing the existing examination question provider due to prohibitions on remote testing.

At its [June 28, 2023](#) meeting, the CBE began discussing potential cost-saving measures to reduce the increasing expense of administering the bar exam. Staff presented various models for reducing costs, which included reducing the number of exam sites, and administering the essays and performance test remotely. At that meeting, the [CBE recommended](#) that the Board of Trustees (Board) consider a cost-reduction model whereby the MBE would be administered at a reduced number of test sites, and the essays and performance test portion of the bar exam would be administered remotely. [Staff solicited public comment](#) regarding an in-person exam using four contracted sites and the two State Bar offices.

State Bar staff presented the CBE's recommendation to the Board during its [July 2023 meeting](#), but suggested one change, which was to replace the San Francisco State Bar office with a different testing accommodation site because of the planned sale of the building. [No action was](#)

[taken](#) by the Board at the July 20 meeting. [On August 10, 2023](#), the Board approved a reduced number of testing locations for the February 2024 bar exam.

On [November 3, 2023](#), the State Bar held a stakeholder forum to solicit feedback on how to deliver a secure remote exam for applicants with testing accommodations as part of its efforts to explore the feasibility of a remote and/or hybrid bar exam. Stakeholders commented on live, remote proctoring as a secure option, along with other ideas on exam security.

Soon thereafter, during the Board's [November 2023 meeting](#), staff presented updates to the proposed cost-reduction models and advised that test-center and fully-remote exam models were not feasible for July 2024. As a result, staff recommended that the bar exam be administered at a reduced number of test sites in July 2024 while continuing to explore other options. The Board [did not take any action](#) at that time. During its January 18, 2024, meeting, the [Board approved](#) administering the July 2024 exam at a reduced number of test sites.

In January 2024, State Bar staff posted a Request for Information to identify vendors who could develop multiple-choice, essay, and performance test questions for the bar exam. During the [January 26, 2024](#), CBE meeting, staff provided an update on the July 2024 bar exam and explained that staff was continuing to evaluate options for future exams.

New Vendor to Develop Bar Exam Questions

During its [March 2024](#) meeting, the CBE discussed a proposal to allow the State Bar to contract with a new vendor to develop multiple-choice questions for the bar exam. The State Bar staff report explained that the Admissions Fund would become insolvent by 2026 if structural budget issues were not addressed. The report explained that the largest expenses were bar exam-related costs and that notwithstanding exam application fee increases, the Admissions Fund continued to face insolvency.² As explained in the staff report, the National Committee of Bar Examiners (NCBE), which develops the MBE, requires that the MBE be administered in “jurisdiction-run facilities” and prohibits the MBE from being administered remotely or in vendor-owned test centers. The staff report explained that if the State Bar had its own bank of multiple-choice questions, the State Bar would be able to administer the exam in a more cost-effective manner.

After the March 2024 CBE meeting, staff solicited CBE liaisons to meet periodically with State Bar staff regarding the cost-saving measures needed for the bar exam. The CBE liaisons recommended holding meetings with law school deans and the public, which were subsequently scheduled, and one liaison attended the meetings. The CBE liaisons were kept

² Effective with the February 2024 exam, application fees for non-attorneys increased 26% from \$677 to \$850. Attorney applicants was 52.6% from \$983 to \$1500.

apprised of staff's discussions with potential exam question development vendors, including Kaplan.³.

The State Bar held two separate stakeholder meetings on April 3 and 4 – one with the California-accredited law school and registered law school deans, the other with the American Bar Association law school deans. The law school deans emphasized the need to see the newly developed questions as soon as possible to ensure sufficient time to prepare students for the exam. In response to that concern, the Kaplan contract provides that Kaplan will develop, and the State Bar will provide, a free study guide for applicants and a free faculty guide. Additionally, the State Bar plans to “field test” the Kaplan questions on November 8 and 9..

On [April 16, 2024](#), the State Bar held a public stakeholder input forum to solicit feedback on the proposal to contract with a new vendor to develop exam questions. The [forum materials](#) explained that staff was exploring utilizing questions developed by a new vendor as soon as February 2025. During the course of the stakeholder meetings, [Dr. Chad Buckendahl presented](#) on the anticipated question development process and provided an overview of the psychometric validation process that would be employed to ensure exam and score reliability.

At the [April 19, 2024](#), CBE meeting, the staff report specifically noted that staff was exploring administering the February 2025 bar exam remotely, at in-person test centers, or in a hybrid format. The staff report explained that in order to do so, the State Bar would need to contract with a new vendor to develop questions for the exam. The State Bar's psychometrician, Dr. Buckendahl was also in attendance at the meeting to answer questions about how new multiple-choice questions could be validated. After discussion, the CBE voted to [recommend to the Board](#) that the State Bar retain a new vendor to develop bar exam questions, including multiple-choice questions.

Consistent with the CBE's recommendation, the staff report for the [May 16, 2024](#), Board meeting recommended that the Board contract with Kaplan North America, LLC (Kaplan) to develop new bar exam questions, but the item was withdrawn. As described in the staff report for the CBE's [June 21, 2024](#), meeting, [Kaplan received a letter](#) from the NCBE raising intellectual property and contractual concerns regarding their proposed bar exam question development. The staff report further discussed staff's continued efforts to pursue a solution that would permit Kaplan-developed questions to be utilized beginning in February 2025.

On [July 18, 2024](#), staff reported to the Board that it was continuing to negotiate with Kaplan to reach a contract on exam question development, including multiple-choice questions for the February 2025 bar exam. The [Board authorized and delegated authority](#) to the Board chair and executive director to execute an agreement with Kaplan to develop multiple-choice, essay, and performance test questions for the bar exam. On August 9, 2024, the State Bar entered into a

³ Kaplan provided the multiple-choice questions for the bar exam experiment pilot in October 2023. The deployment and performance of the questions on this pilot was successful.

contract with Kaplan. (Attachment E.) The contract specified that Kaplan would provide multiple-choice questions for the February 2025 bar exam.

The CBE was advised during its [August 16, 2024](#), meeting that the State Bar had entered into a contract with Kaplan to supply multiple-choice questions for future bar exams, beginning with the exam in February 2025. Since entering into the contract, the State Bar, in consultation with its expert psychometricians, has established a plan to ensure that the multiple-choice questions will be properly vetted and prepared before the February 2025 exam and that process will continue through the end of the year. Specifically, under the contract with Kaplan, the State Bar will receive rolling batches of multiple-choice questions in advance of the February 2025 bar exam. Upon receipt of each batch of questions, the State Bar will convene a content validation team comprised of psychometricians, recently admitted attorneys, individuals that supervise recently admitted attorneys, and law school faculty to review each question to ensure that it: (1) tests for minimum competence to practice law; (2) is not biased; (3) is clear; (4) is cohesive in style with other questions; and (5) accurately tests the intended legal issue.⁴ The content validation team will recommend edits, as needed, and return them to Kaplan. Kaplan will then finalize the questions and return them to the State Bar within 10 days. Consistent with Business and Professions Code section 6046.6, the new questions will not require the substantial modification of the training or preparation required for passage of the bar exam.

Finally, as reflected in the resolution (Attachment A), staff seeks approval from the CBE to request the Supreme Court modify its most recent order on the bar exam to remove all references to the MBE and instead order that the General Bar Exam include 200 multiple-choice questions covering constitutional law, contracts, criminal law and procedure, civil procedure, evidence, real property, and torts. As described above, such an order is required pursuant to rule 9.6(a) of the California Rules of Court and will allow the State Bar to utilize Kaplan to supply the multiple-choice questions for the February 2025 and future administrations of the bar exam.

Remote Administration and Vendor-Run Test Centers

With the exception of bar exams administered during the height of the COVID-19 pandemic, the State Bar has consistently contracted with various facilities to administer the bar exam in-person, consistent with the NCBE's requirement that the MBE be delivered only at in-person jurisdiction-run exam sites. In order to achieve cost savings, in 2024, as set forth above, the [Board approved](#) staff's recommended proposal to contract with fewer facilities. However, the cost savings from this change is not enough to address the Admissions Fund deficit.

⁴ On September 9, 2024, the State Bar submitted a petition to the Supreme Court that sought an order that would permit the State Bar to implement a scoring adjustment on the 2025 bar exam administrations. The petition described that the proposed bar exam experiment would also allow the State Bar to field test the Kaplan-developed questions in advance of the February 2025 bar exam.

Now that the State Bar has contracted with Kaplan, if a Supreme Court order is issued authorizing the State Bar to utilize multiple-choice questions without reference to the MBE, the State Bar will have the flexibility to administer the exam remotely or at vendor-run test centers, which may significantly reduce the bar exam related expenditures. To realize the potential savings, State Bar staff has been working to identify vendors that could administer an exam remotely and/or at vendor-run test centers.

On September 19, 2024, at staff's recommendation, the Board of Trustees approved a contract amount of \$4,108,500 for Meazure Learning, subject to negotiation of appropriate contractual terms and action by CBE, to provide a test administration platform, remote and in-person proctoring, and vendor-run test centers for the 2025 bar exam administrations.⁵

Meazure Learning is a leading provider of online proctoring and exam administration services. They have experience administering high-stakes exams for various professional licensing bodies and educational institutions. Some notable exams and organizations that use Meazure Learning include: Association of American Medical Colleges, Canadian Practical Nurses Registration Examination, Law School Admissions Council, American Association of Professional Coders, and the Chartered Accountants of Ireland.

Meazure Learning has demonstrated the capacity and ability to deliver complex exams efficiently. Their platform offers live proctoring instead of recording, which provides real-time supervision and reduces the need for post-exam review of recordings. This approach enhances the integrity of the exam process but will require a stable internet connection for the entirety of the exam.

Regarding in-person locations, small, contracted testing centers, and temporary pop-up centers in the larger geographic areas, will be available in California. Meazure Learning also has test centers across the United States and globally to ensure accessibility for candidates who prefer or require in-person testing.

Once staff identified Meazure Learning as a potential vendor, staff, Board, and CBE representatives tested the exam platform. Although some of the participants identified some desired enhancements with the product or test centers, Meazure Learning has worked with State Bar staff to correct those issues.

Prior to recommending Meazure Learning to the Board, staff considered several other exam administration options. Although the State Bar has utilized Examsoft as the bar exam delivery platform for many years, their business model does not support live, remote proctoring.

Staff also approached Prometric, the vendor State Bar has utilized for the past two years to administer the remote First-Year Law Students Exam. However, Prometric does not have the same capacity to administer the bar exam as Meazure Learning, and using Prometric would

⁵ The contract amount also includes delivery of the legal specialization examinations in the fall of 2025.

require a longer exam testing window. Prometric’s overall pricing was also much higher than Meazure Learning’s proposal. These factors would increase expenses for the State Bar, require a much larger question item bank, and create logistical challenges for examinees.

Staff also met extensively with PearsonVUE, another well-known exam administration vendor. However, PearsonVUE likewise lacked the capacity to accommodate the bar exams in 2025 and eventually did not pursue the opportunity with the State Bar.

Given these considerations, staff believes Meazure Learning is the most suitable vendor for administering the bar exam, offering a balance of experience, technological capability, and cost-effectiveness.

Additional Considerations

Failure to move forward with the proposed changes could significantly impact the State Bar financially and operationally. Without this transition:

- The State Bar will be required to purchase the MBE, which it must elect to do no later than November 1, 2024, at an estimated cost of \$324,000 for February 2025.
- The State Bar will be required to contract with large test sites to administer the exam because remote administration of the MBE is not permitted. Staff anticipates that this cost would be approximately four million dollars (about \$2.4 million above the estimated cost for delivering the exam in February using the Meazure Learning platform).
- It is possible that there will not be a test site available in the San Francisco Bay Area for the February 2025 exam, and applicants would need to travel to sit for the exam.
- It is possible that there will not be a test site available in the San Diego Area for the February 2025 exam, and applicants would need to travel to sit for the exam.
- The State Bar remains contractually obligated to pay Kaplan \$2 million in 2025 for question development.
- Further delays may cause confusion among applicants.

Additionally, availability of a remote exam reflects applicant preference. A post-exam survey conducted after the July 2024 exam revealed that a majority of applicants preferred a remotely proctored or test center-based exam. Additionally, many applicants reported substantial travel and lodging costs associated with in-person testing, with a majority spending over \$500 and nearly one-third spending more than \$1,000 to take the bar exam above and beyond the application fees and test preparation expenses.

For the reasons outlined above, the CBE’s approval of these recommendations is essential for the timely and effective administration of the California Bar Examination in 2025 and beyond.

RECOMMENDATION

Staff recommends that the CBE adopt the resolution (Attachment A) that formally approves three key items to implement changes to the administration of the bar exam beginning in February 2025. These recommendations follow extensive work and prior discussions and actions taken by the CBE and are in alignment with actions taken by the Board to effectuate these changes.

PREVIOUS ACTION

[Action on Cost Reduction Initiatives Related to the Bar Exam, Beginning with the February 2025 Administration](#)

FISCAL/PERSONNEL IMPACT

The budgetary impact of status quo exam administration has been well documented. Delaying the implementation of the new testing modalities in 2025 would require additional costs to procure the MBE questions, at the newly increased rate of \$72 per applicant (approximately \$324,000), along with the facility and proctoring costs that would have to be secured in a short time. The estimates to administer the exam in person as required by the NCBE would be approximately \$4 million for February 2025 – about \$2.4 million more than the cost of administering the exam under the Measure Learning proposal.

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – core business operations

RESOLUTIONS

See attachment A.

ATTACHMENT(S) LIST

- A. Resolution of the Committee of Bar Examiners Approving Modifications to the California Bar Examination
- B. May 19, 2022 Supreme Court Order Concerning the July 2022 California Bar Examination (Administrative Order 2022-05-18)
- C. State Bar Petition: Request that the Supreme Court Approve Proposed Modifications to the California Bar Examination, Case No. S286825
- D. September 18, 2024 Supreme Court Order, Case No. S286825
- E. August 9, 2024 Agreement for the Preparation of Bar Exam Testing Materials and Related Services Between the State Bar of California and Kaplan

Committee of Bar Examiners Meeting September 30, 2024

**RESOLUTION OF THE COMMITTEE OF BAR EXAMINERS APPROVING MODIFICATIONS TO THE
CALIFORNIA BAR EXAMINATION**

WHEREAS, the Committee of Bar Examiners (CBE), pursuant to the authority delegated to it by the Board of Trustees (Board), is responsible for determining the California Bar Examination's format, scope, topics, content, questions, and grading process, subject to review and approval by the Supreme Court, as set forth in rule 9.6(a) of the California Rules of Court;

WHEREAS, the Admissions Fund has had a budget deficit since 2022, but has been able to support its operations with fund reserves, cost cutting measures and recent increases to the admissions fees;

WHEREAS, the Admissions Fund has depleted its reserves, and in the absence of additional modifications to the administration of the bar exam, the Admissions Fund will become insolvent in 2026;

WHEREAS, the developer of the Multistate Bar Examination (MBE), the National Committee of Bar Examiners (NCBE), prohibits the MBE from being delivered remotely or in vendor-run test centers, and the MBE is currently part of the bar exam;

WHEREAS, the NCBE has announced that is transitioning to a new exam and will no longer administer the MBE after July 2027;

WHEREAS, on April 19, 2024, the CBE recommended to the Board that the State Bar retain a new vendor to develop exam questions to allow for cost-effective bar exam administration, including fully remote, designated test centers, or hybrid approaches;

WHEREAS, on July 18, 2024, the Board authorized and delegated authority to the Board chair and executive director to negotiate terms of and, if appropriate, execute an agreement with Kaplan North America, LLC (Kaplan) or its designated subsidiary in an amount not to exceed \$8.25 million for a term of five years for the development of multiple-choice, essay, and performance test questions for the bar exam, and take any necessary actions to effectuate the agreement;

WHEREAS, on August 9, 2024, the State Bar entered into a contract with Kaplan North America, LLC for question development for the bar exam;

WHEREAS, on September 9, 2024, the State Bar filed a petition with the Supreme Court (Case No. S286825) seeking approval of proposed modifications to the bar exam, including permitting the State Bar to administer the bar exam in-person, remotely, and/or in designated

Document received by the CA Supreme Court.

test centers, and removing reference to the MBE, so that the State Bar could utilize multiple-choice questions developed by Kaplan;

WHEREAS, on September 18, 2024, the Supreme Court denied the petition without prejudice to a future petition seeking modifications that have been considered and formally approved by the CBE;

WHEREAS, so that the bar exam is administered securely, the State Bar requires the use of a vendor to deliver bar exam questions to applicants;

WHEREAS, after conducting vendor outreach and evaluating vendors that could securely administer the bar exam in the proper format, either remotely and/or in vendor-owned test centers, and that could provide a sufficient level of proctoring and technical support for both remotely administered and test-center administered examinations, State Bar staff recommended to the Board at its September 19, 2024 meeting to contract with ProctorU dba Meazure Learning (Meazure Learning), beginning with the February 2025 bar exam;

WHEREAS, on September 19, 2024, the Board approved a contract in the amount of \$4,108,500 for Meazure Learning, subject to negotiation of appropriate contractual terms and action by CBE, that will, among other things, enable Meazure Learning to provide a secure exam delivery platform, proctoring services for both remote and test center examinations, and test centers for the February and July 2025 bar exams;

WHEREAS, following the Board's September 19, 2024, approval of the Meazure Learning contract amount, and in preparation for the CBE's September 30, 2024, meeting, State Bar staff has continued discussions with Meazure Learning on, among other things, its software security features, proctoring levels, availability of technical support, and ability to administer all aspects of the exam; and

WHEREAS, on September 30, 2024, the CBE held a meeting for the purpose of considering and taking action approving modifications to the bar exam, starting with the February 2025 administration and to address the California Supreme Court's September 18, 2024 order (Case No. S286825), including vendors for question development and remote/in-person test center exam administration.

NOW, THEREFORE, IN CONSIDERATION OF THE RECITALS HEREIN AND THE INFORMATION PRESENTED IN THE ACCOMPANYING STAFF REPORT AND STAFF PRESENTATION AT THE COMMITTEE OF BAR EXAMINERS' SEPTEMBER 30, 2024, MEETING, THE COMMITTEE OF BAR EXAMINERS RESOLVES AS FOLLOWS:

SECTION 1. The Committee of Bar Examiners approves the use of the Kaplan-developed multiple-choice questions for the February 2025 bar exam and future bar exams, subject to psychometric validation.

SECTION 2. The Committee of Bar Examiners approves Meazure Learning as the vendor to provide a secure examination delivery platform, administer the exam either remotely or in-person in the proper format, provide sufficient proctoring and technical support for both remotely administered and test-center administered examinations, and test centers for the February 2025 bar exam, and future bar exams, subject to negotiation of contract terms.

SECTION 3. The Committee of Bar Examiners approves that, beginning with the February 2025 administration of the bar exam, (a) the multiple-choice portion of the bar exam shall consist of 200 multiple-choice questions covering constitutional law, contracts, criminal law and procedure, civil procedure, evidence, real property, and torts and (b) be delivered remotely and/or in person at vendor-run or State Bar-run test centers.

SECTION 4. The Committee of Bar Examiners directs staff to seek appropriate approval from the Supreme Court to modify its prior order on the bar exam in accordance with Sections 1 through 3 of this resolution.

SUPREME COURT
FILED

MAY 19 2022

ADMINISTRATIVE ORDER 2022-05-18

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA Deputy

EN BANC

ORDER CONCERNING THE JULY 2022
CALIFORNIA BAR EXAMINATION

The court hereby orders the schedule for the July 2022 General Bar Examination as set out below.

The General Bar Examination will be administered in-person over two consecutive days on Tuesday, July 26 and Wednesday, July 27, 2022, subject to any restrictions that may be imposed by any state or local public health order in effect on those dates.

The first day of the General Bar Examination will be comprised of five one-hour essay questions and one 90-minute performance test.

The second day of the General Bar Examination will consist of the Multistate Bar Examination (MBE).

The first day of testing will also constitute the Attorneys' Examination. Qualified attorney applicants are not required to take the MBE but may opt to do so by enrolling for and taking the full General Bar Examination.

The length of each session, the order of testing, and the overall length of the exam may be modified for applicants granted certain testing accommodations.

The answers to the five essays and the Performance Test questions will be graded on the basis of 700 possible raw points — representing up to 100 raw points for each of the five essay questions and up to 200 raw points for the 90-minute Performance Test question.

During the grading process, the written and MBE components will be scaled and weighted equally (50 percent assigned to each). Applicants who take the Attorneys' Examination will have their scores scaled, and the answers to the five essays and the Performance Test questions will be weighted at 100 percent.

The passing score for the General Bar Examination and Attorneys' Examination will be a total scaled score of 1390 or better out of 2000 possible points.

This order supersedes the court's October 20, 2021 order. The court will revise or supersede this order, as necessary, regarding this and future administrations of the General Bar Examination.

CANTIL-SAKAUYE

Chief Justice

Case No. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**REQUEST THAT THE SUPREME COURT APPROVE
PROPOSED MODIFICATIONS TO THE
CALIFORNIA BAR EXAMINATION**



PREPARED BY
THE STATE BAR OF CALIFORNIA

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**IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA**

**REQUEST THAT THE SUPREME COURT APPROVE
PROPOSED MODIFICATIONS TO THE
CALIFORNIA BAR EXAMINATION**

I. INTRODUCTION

As the rising costs of administering the California Bar Examination¹ continue to outpace the revenue the State Bar receives from admissions fees, the State Bar has been exploring alternative methods of administering the examination in a manner that is more cost-effective and convenient for the State Bar and applicants alike.

Through this petition, the State Bar, based on the approval and recommendation of the Committee of Bar Examiners (Committee), seeks an order modifying the May 19, 2022, Order Concerning the July 2022 California Bar Examination. Specifically, the State Bar seeks an order recognizing its intent to replace the National Conference of Bar Examiners' (NCBE)

¹ The California Bar Examination is also known as the General Bar Examination and consists of multiple-choice, essay, and performance test questions. Qualified attorney applicants may opt not to take the multiple-choice portion of the examination but must take the essay and performance test portion. In such instances, the essay and performance test questions constitute what is known as the Attorneys' Examination.

Multistate Bar Examination (MBE) on the California Bar Examination with multiple-choice questions drafted by an alternative vendor that may be administered remotely and in designated test centers beginning with the February 2025 California Bar Examination.

II. AUTHORITY OF THE COURT

Because this request seeks modifications to the requirements for admission to the practice of law and, in particular, the California Bar Examination, it is submitted to this Court for approval pursuant to the Court's inherent authority over attorney admissions and California Rule of Court, rule 9.6(a), under which modifications to the California Bar Examination must be approved by the Court.

The Court has inherent authority to admit persons to the practice of law in California. (Cal. Rules of Court, rule 9.3; *In re Attorney Discipline* (1998) 19 Cal.4th 592, 593; *Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329, 336; *Brotsky v. State Bar* (1962) 57 Cal.2d 287, 300.)

Further, under California Rules of Court, rule 9.6(a), the Committee is responsible for determining the California Bar Examination's format, scope, topics, content, and grading process

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“subject to review and approval by the Supreme Court.” The Committee has approved the requested modification² and the State Bar is hereby seeking this Court’s approval.

III. BACKGROUND

As a result of rising facility and proctor costs, increasing numbers of applicants with testing accommodations, and stagnant examination fees, the State Bar Admissions Fund is facing a solvency crisis. A 2023 projection showed that the Admissions Fund would become insolvent by the beginning of 2026. In response, the State Bar initiated fee increases beginning with the February 2024 California Bar Examination and began to assess how a transition to remote and/or test-center-based exam administration might occur. In-person testing as heretofore administered is estimated to cost \$8.4 million in 2025; hybrid/remote vendor options are forecasted at \$4.4 million. After personnel, expenses related to administering the examination are the second largest budget item in the Admissions Fund.

² (Appendix of Exhibits [“AE”], Ex. 1 [Committee of Bar Examiners Open Session Minutes: April 19, 2024 at pp. 5-6].) Hereafter, all references to exhibits refer to exhibits included in the AE.

Appreciating the fiscal cliff facing the Admissions Fund, the State Bar began asking NCBE to permit remote administration of the MBE as far back as 2022. Despite repeated requests, NCBE has declined. By February 2023, the State Bar began considering the use of alternative vendors to draft multiple-choice examination questions. This consideration evolved into a formal Request for Information, which was issued in January 2024. Kaplan was the sole responsive bidder.

While the leadership of the Committee was consulted regarding the consideration of a transition to a new vendor as early as February 2024, it was not until the March 2024 meeting that State Bar staff began to publicly engage the body as a whole. In April 2024, at the direction of the Committee, State Bar staff held a number of stakeholder sessions, including one with American Bar Association accredited law schools, one with California accredited and registered law schools, and a public stakeholder input forum,³ seeking feedback regarding the possibility of engaging a new question development vendor for

³ (See Stakeholder Input Forum: Bar Exam Question Development with a New Vendor, April 16, 2024, available at <<https://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000032318.pdf>> [as of September 4, 2024].)

the California Bar Examination. During these sessions, staff shared with stakeholders various options for new examination delivery models, including remote, small test-center, or a combination of the two, all of which were previously presented to the Committee at its March 15 ,2024, public meeting. (See, Ex. 2 [Committee of Bar Examiners Staff Report for Agenda Item III.A, dated March 15, 2024, at pp. 12-16]; Ex. 6 [Discussion: Bar Exam Question Development with New Vendor, dated April 2024, at pp. 91-100 [presented to law schools in April 2024].) Consistent with post-examination survey data revealing that more than 75 percent of applicants prefer to take the California Bar Examination remotely or in a small test center setting, applicants participating in the stakeholder sessions were generally supportive of remote and test center examination administrations. Law schools emphasized the need to ensure that applicants would not need to modify their preparation for the California Bar Examination upon the transition to a new vendor and that any new questions should be psychometrically pre-tested and validated.

Informed by stakeholder feedback, and with the approval of the Committee and the Board of Trustees, the State Bar entered

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into an agreement with Kaplan Exam Services, LLC (Kaplan) on August 9, 2024.⁴ (See Ex. 2]; Ex. 3 at pp.18-50 [Committee of Bar Examiners Staff Report for Agenda Item III.A, dated April 19, 2024; Ex. 4 [Board of Trustees Staff Report for Agenda Item 6.2, dated July 18, 2024, at pp. 52-54]; Ex. 5 [Agreement for the Preparation of Bar Exam Testing Materials and Related Services Between the State Bar Of California and Kaplan] at pp. 56-89.)⁵ The agreement authorizes Kaplan to develop multiple-choice, essay, and performance test questions for the California Bar Examination for a five-year term. As part of the agreement, Kaplan will also provide faculty and student study guides, which the State Bar will distribute at no cost to law school faculty and

⁴ Neither the State Bar nor the Committee received any further public comments from any of the law schools raising concerns about test development or the transition once it was announced on or about May 13, 2024, that the proposed vendor was Kaplan.

⁵ Portions of the agreement have been redacted pursuant to Government Code section 7929.605, which exempts from public disclosure “test questions, scoring keys, and other examination data used to administer a licensing examination,” and Government Code section 7922, which exempts records from public disclosure if “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” Disclosure of this information would reveal confidential information about the development of the California Bar Examination that, if disclosed, would compromise examination integrity and security.

all California Bar Examination takers. Kaplan will also exit the retail bar preparation business specific to the California Bar Examination by October 1, 2024, though it may continue to offer preparation services and products for bar examinations administered by other jurisdictions. (See generally Ex. 5.)

Because the State Bar will no longer need to use the MBE, which can only be administered in person, it may now determine for itself the optimal method of delivering the California Bar Examination. After extensive research on the matter, including stakeholder engagement and applicant surveys, the State Bar plans to retain a vendor to administer the California Bar Examination remotely and in designated test centers. These test administration changes are not only preferred by applicants but will also help the State Bar close a significant gap in its Admissions Fund, which, as noted above, is projected to reach insolvency by the beginning of 2026 absent further efforts to reduce costs. In addition, the ability to test remotely or at globally available test centers removes a current economic barrier for some applicants, since the status quo administration necessitates traveling to California and finding accommodation to take a multiday exam. The State Bar projects that the new

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arrangement will result in annual cost savings of up to \$4 million in California Bar Examination-related expenses—enough to significantly reduce if not eliminate the gap.

IV. PROPOSED ORDER APPROVING MODIFICATIONS TO THE CALIFORNIA BAR EXAMINATION

Through this petition, the State Bar seeks an order from this Court approving modifications to the California Bar Examination. As reflected in the attached proposed order, modeled generally after the Court’s March 16, 2016, Order Approving Modifications to the California Bar Examination, the proposed order omits specific reference to an examination test vendor so that the order may apply to future administrations of the California Bar Examination. The proposed order sets forth the content for both the General Bar Examination and the Attorneys’ Examination.

In the sections that follow, this petition details the State Bar’s plan to transition to a new California Bar Examination and administration method so that the Court can be assured that the integrity, validity, and security of the California Bar Examination will be preserved.

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A. Quality Assurance and Content Validation

In order to validate the content and validity of the questions the State Bar receives from Kaplan in time for the February 2025 administration of the California Bar Examination, the State Bar has developed an ongoing content validation process. Pursuant to the agreement with Kaplan, Kaplan will provide the State Bar with batches of questions on a rolling basis. (See Ex. 5 at p. 58.) Upon receipt of a batch of questions, the State Bar will convene a content validation team comprised of psychometricians, recently barred attorneys, individuals that supervise recently barred attorneys, and law school faculty. The team will review each question to ensure that the item: 1) tests for minimum competence to practice law; 2) is not biased; 3) is clear; 4) is cohesive in style with other questions; and 5) accurately tests the intended legal issue. The validation team will then recommend edits, as needed, to achieve these criteria and return them to Kaplan. Per the agreement, Kaplan will finalize the questions and return them to the State Bar within 10 days. Consistent with Business and Professions Code section 6046.6, the new questions will not require the substantial modification of

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the training or preparation required for passage of the California Bar Examination.

In conducting these validation activities, the State Bar will be relying on its over four decades of experience in developing, vetting, and administering both the California Bar Examination and the First-Year Law Students' Examination (FYLSX). Its Examinations Unit, within the Office of Admissions, manages the comprehensive process of examination development, from soliciting essay questions to overseeing the grading of both examinations. The Examinations Unit has specific expertise in developing questions for the FYLSX, consisting of 100 multiple-choice questions and administered twice per year. Three of the seven subject areas tested on the multiple-choice section of the California Bar Examination are also covered on the FYLSX – Contracts, Criminal Law and Torts. Recently, the unit conducted a comprehensive refresh of the FYLSX multiple-choice questions, utilizing a panel of subject matter experts to ensure that they remain relevant and reflective of current legal standards.

The State Bar's Examination Development and Grading (EDG) Team, composed of experts with a minimum of 10 years' experience, ensures that all questions undergo rigorous editing,

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pretesting, and refinement before administration. With input from expert psychometricians, law professors, practitioners, and experienced graders, both the California Bar Examination and the FYLSX are continuously updated to reflect the latest legal standards and practices. This extensive expertise and attention to detail allow the State Bar to maintain the highest standards in assessing the competencies of both law students and prospective attorneys, ensuring that only qualified candidates advance in the legal profession.

The State Bar also plans to conduct a field test of 49 of the new questions (seven in each of the seven subject matters) in the fall of 2024 and will use the results of the field test to further refine and validate the questions to be administered in the February 2025 California Bar Examination. The details of the field test are the subject of a concurrently filed parallel petition.

B. Examination Administration Methods

The State Bar is currently in discussions with ProctorU, Inc. d/b/a/ Meazure Learning (Meazure), a full-service test administration company and the vendor the NCBE has selected to administer certain portions of the NextGen examinations, to administer the February 2025 California Bar Examination.

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Measure has extensive experience administering over 600,000 high-stakes professional examinations and certifications around the world annually and has the infrastructure and expertise to administer the California Bar Examination. Professional organizations utilizing Measure’s examination administration platform include: the American Medical Certification Association (delivering both paper and computer-based examinations to over 25,000 healthcare professionals globally); the Association of Professional Social Compliance Auditors (certification examination administered to over 3,200 auditors across 93 countries; Chartered Accountants Ireland (25,000 rigorous examinations annually); the Canadian Organization of Paramedic Regulators (entry to practice examinations); the Royal College of Dentists of Canada (Fellowship Examination); and. Measure’s experience administering examinations for such diverse and demanding professions underscores its capability to support the State Bar, ensuring a seamless, secure, and fair testing experience for future attorneys.

If selected as the State Bar’s vendor, Measure will offer two options to applicants for taking the California Bar Examination: in person at small test centers located throughout the state (or

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even outside of California, if needed) or via Meazure’s online remote proctoring platform. Both the test centers and the remote platform will have human proctors reviewing test taker behavior synchronously, ensuring a high level of exam security.

Upon registration, applicants would have the opportunity to select their preferred administration method, and the State Bar would make reasonable efforts to accommodate applicants’ preferences. Meazure’s platform has the capacity to accommodate all test-takers remotely should they so choose; however based on applicant survey responses and the vendor’s experience with other large examinations of this nature, the State Bar anticipates that up to 30 percent of the applicant pool will request to take the California Bar Examination in-person at a test center. Meazure can accommodate up to 30 percent of test takers in its test center locations. The State Bar will continue to accept and process testing accommodation requests and Meazure will implement the approved accommodations for all applicants.

V. CONCLUSION

For the foregoing reasons, the State Bar respectfully requests that the Court issue an order approving the proposed

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modifications to the California Bar Examination, effective for the
February 2025 administration of the examination.

Dated: September 9, 2024

Respectfully submitted,

ELLIN DAVTYAN
JEAN KRASILNIKOFF
ANIK BANERJEE

By: /s/ Anik Banerjee
ANIK BANERJEE

Assistant General Counsel
Office of General Counsel
The State Bar of California

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ADMINISTRATIVE ORDER

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

[PROPOSED] ORDER APPROVING MODIFICATIONS TO THE
CALIFORNIA BAR EXAMINATION

The Court is in receipt of the State Bar of California's Request That the Supreme Court Approve Proposed Modifications to the California Bar Examination, filed on September 9, 2024. The Court, having considered the State Bar's request, approves the modifications below beginning with the February 2025 California Bar Examination.

The General Bar Examination will be administered the last week in February and the last week in July of each calendar year in a manner to be determined by the State Bar. Such manners of administration include, but are not limited to, in-person, remote, and/or administration in designated test centers.

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The first day of the General Bar Examination will be comprised of five one-hour essay questions and one 90-minute Performance Test.

The second day of the General Bar Examination will consist of 200 multiple-choice questions.

The first day of testing will also constitute the Attorneys' Examination. Qualified attorney applicants are not required to take the multiple-choice portion of the exam but may opt to do so by enrolling for and taking the full General Bar Examination

The length of each session, the order of testing, and the overall length of the examination may be modified for applicants granted certain testing accommodations.

The answers to the five essays and the Performance Test questions will be graded on the basis of 700 possible raw points – representing up to 100 raw points for each of the five essay questions and up to 200 raw points for the 90-minute Performance Test question.

During the grading process, the written and multiple-choice components will be scaled and weighted equally (50 percent assigned to each). Applicants who take the Attorney Examination will have their scores scaled, and the answers to the

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five essays and the Performance Test questions will be weighted at 100 percent.

The passing score for the General Bar Examination and Attorneys' Examination will be a total scaled score of 1390 or better out of 2000 points.

This order supersedes the Court's May 19, 2022, order. The Court will revise or supersede this order, as necessary, regarding this and future administrations of the General Bar Examination.

Chief Justice

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SUPREME COURT
FILED

SEP 18 2024

Jorge Navarrete Clerk

S286825

Deputy**IN THE SUPREME COURT OF CALIFORNIA****En Banc**

**REQUEST THAT THE SUPREME COURT APPROVE PROPOSED
MODIFICATIONS TO THE CALIFORNIA BAR EXAMINATION**

The State Bar of California's petition filed on September 9, 2024, to modify the California Bar Examination, beginning with the February 2025 exam administration, is denied without prejudice to a future petition seeking modifications that have been considered and approved by the Committee of Bar Examiners. (See Cal. Rules of Court, rule 9.6(a).) For purposes of opening the application period for the February 2025 California Bar Examination, the October 1 date set forth in rule 4.61(a) of the Rules of the State Bar is hereby suspended, and the State Bar shall open the application period for that exam no later than October 15, 2024.

GUERRERO*Chief Justice*

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**AGREEMENT FOR THE PREPARATION OF
BAR EXAM TESTING MATERIALS AND RELATED SERVICES
BETWEEN
THE STATE BAR OF CALIFORNIA
AND
KAPLAN**

THIS AGREEMENT FOR THE PREPARATION OF BAR EXAM TESTING MATERIALS AND RELATED SERVICES ("Agreement") is made by and between The State Bar of California ("State Bar"), a California public corporation having a principal place of business at 180 Howard Street, San Francisco, CA 94105, and Kaplan Exam Services, LLC ("Contractor"), a Delaware limited liability company having a principal place of business at 1515 W. Cypress Creek Road, Fort Lauderdale, FL 33309. This Agreement sets forth the terms and conditions by which Contractor will perform services for the State Bar. The State Bar and Contractor are sometimes referred to individually as a "Party," and collectively as the "Parties."

RECITALS

WHEREAS, the State Bar is charged with administering the California General Bar Examination ("Bar Exam"), which tests minimum competency for entry-level attorneys and is a prerequisite for admission to the practice of law.

WHEREAS, as currently structured, the Bar Exam is composed of five essay questions, 200 multiple choice questions, and one performance test ("PT").

WHEREAS, the State Bar does not intend to alter the Bar Exam "in a manner that requires the substantial modification of the training or preparation required for passage of the examination, except after giving two years' notice of that change." (Business & Professions Code § 6046.6).

WHEREAS, the State Bar seeks to procure the services of a qualified test question preparer to assist in the preparation of questions for its Bar Exam that do not require substantial modification of the training or preparation required for passage of the examination.

WHEREAS, the State Bar will require additional services to prepare the Bar Exam's essay questions and PTs once the State Bar exhausts its reserves of existing questions.

WHEREAS, the State Bar desires to retain Contractor to prepare the multiple choice, the essay and the PT portions of the Bar Exam, beginning with the administration of the February 2025 Bar Exam ("Testing Services"). The multiple choice questions, essay questions, and PTs prepared by Contractor, as more fully described and specified in this Agreement, are collectively referred to herein as the "Test Materials."

WHEREAS, the State Bar also desires to retain Contractor to prepare (i) a study guide designed for Bar Exam test takers ("Student Guide"); and (i) a study guide designed for law school faculty ("Faculty Guide") and together with the Student Guide, the "Study Guide Services") that provide

basic information about the content of the exam's multiple choice questions and include subject matter outlines of the tested subjects.

WHEREAS, this Agreement sets forth the terms and conditions upon which Contractor will provide the Testing Services and Study Guide Services (collectively, the "Services") to the State Bar.

WHEREAS, Contractor agrees to perform the Services on the terms and conditions set forth herein. Contractor is a subsidiary of Kaplan North America, LLC ("Contractor's Parent"), a Delaware limited liability company, which is a guarantor of Contractor's obligations to State Bar under this Agreement, as provided in Exhibit A.

WHEREAS, in entering into this Agreement, the Parties acknowledge that the State Bar and Contractor are not forming a partnership or other business venture and the purpose of this Agreement is solely intended to support the State Bar's important public mission of administering the Bar Exam with integrity. To that end, Contractor acknowledges that it will not market or advertise its services to the State Bar, except as provided herein.

WHEREAS, in entering into the Agreement, Contractor acknowledges that "protection of the public" is the highest priority for the State Bar of California in exercising its licensing function. (Business & Professions Code § 6001.1).

NOW, THEREFORE, in consideration of covenants and agreements herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1 - SERVICES

1.1 Testing Services. Beginning with the February 2025 Bar Exam administration and concluding with the July 2029 Bar Exam administration, Contractor agrees to perform the Testing Services in accordance to the State Bar's requirements as described below.

1.1.1 February 2025 Bar Exam. To allow sufficient time for the State Bar to conduct content validation, the following services are required in advance of the February 2025 Bar Exam administration:

1.1.1.1 Contractor shall deliver to the State Bar by no later than [REDACTED], a total of [REDACTED] multiple choice questions, inclusive of [REDACTED] questions in each of the seven (7) legal subjects currently tested on the multiple choice portion of the Bar Exam: Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts ("Seven Subjects").

1.1.1.2 Contractor shall deliver [REDACTED] additional separate batches of multiple choice questions: [REDACTED] by [REDACTED] [REDACTED] by [REDACTED] and [REDACTED] by [REDACTED]. Each batch will consist of questions covering the Seven Subjects in approximately equal

numbers. To clarify, Contractor shall have delivered a total of [REDACTED] multiple choice questions to the State Bar by [REDACTED] which are comprised of the Seven Subjects.

1.1.2 July 2025 Bar Exam and Beyond.

1.1.2.1 July 2025 Bar Exam. Contractor shall deliver [REDACTED] separate batches of [REDACTED] multiple choice questions each with [REDACTED] questions in each of the Seven Subjects, to the State Bar no later than the following three dates: [REDACTED]. To clarify, Contractor shall have delivered a total of [REDACTED] multiple choice questions to the State Bar by [REDACTED] for use on the July 2025 bar exam.

1.1.2.2 February 2026 Bar Exam through July 2029 Bar Exam. At least twelve (12) months prior to each Bar Exam administration between February 2026 and July 2029, the State Bar shall notify Contractor in writing of the number of multiple choice questions and, if any, essay questions and PTs for each Bar Exam administration. Contractor shall design and prepare all Test Materials in accordance with the State Bar's requirements. All multiple choice questions and, if any, essay questions and PTs shall be provided to the State Bar at least six (6) months prior to each successive Bar Exam. The State Bar shall provide Contractor with its request for a minimum of [REDACTED] and a maximum of [REDACTED] multiple choice questions for each such Bar Exam administration. For each of the February 2026 and July 2026 Bar Exam administrations, the State Bar will require [REDACTED] essay questions in each of the Thirteen Subjects listed in Section 1.1.4 and [REDACTED] PTs, for a total of [REDACTED] items for the year 2026, in order to build the written item bank. In each subsequent Bar Exam administration, the State Bar will require [REDACTED] essay questions in each of the Thirteen Subjects listed in Section 1.1.4 and [REDACTED] PTs, for a total of [REDACTED] items per year.

1.1.3 Multiple Choice Questions. The multiple choice questions prepared for each Bar Exam shall not result in substantial modification to the training or preparation required for passage of the Bar Exam and shall test the Seven Subjects, shall rely on the legal concepts set forth in subject matter outlines provided by the State Bar, and shall be substantially in the basic form of fact patterns, prompts, and four possible answers. The State Bar will provide Contractor with its library of subject matter outlines, at least [REDACTED] multiple choice questions that previously appeared on the First-Year Law Students' Examination, and prior essay questions and PTs previously appearing on the Bar Exam (collectively, "State Bar Resources"). Contractor may use such materials when drafting the multiple choice questions, along with any other materials it deems appropriate provided such use would not violate any other provision of this Agreement or infringe on a third party's copyright.

1.1.4 Essay Questions and PTs. The essay questions shall not result in substantial modification to the training or preparation required for passage of the Bar Exam and shall test the following thirteen (13) legal subjects: Business Associations, Criminal Law and Procedure, Remedies, Civil Procedure, Evidence, Torts, Community Property, Professional Responsibility,

Trusts, Constitutional Law, Real Property, Wills and Succession, and Contracts ("Thirteen Subjects"). The essay questions and PTs shall test the legal concepts set forth in subject matter outlines provided by the State Bar. The State Bar will provide specific content and style parameters and guidelines to be incorporated into such questions in accordance with the process described below. The State Bar will also provide Contractor with subject matter outlines, sample multiple choice questions that previously appeared on the First-Year Law Students' Examination, and prior essay questions and PTs previously appearing on the Bar Exam. Contractor may use such materials when drafting the essay questions and PTs, along with any other materials it deems appropriate provided such use would not violate any other provision of this Agreement or infringe on a third party's copyright.

1.1.5 Requirements for All Questions. All Test Materials shall comply with the following requirements, standards, and prohibitions:

1.1.5.1 Test Materials must be new, unique, and unexposed to anyone outside of Contractor prior to delivery to the State Bar, including customers and users of any of Contractor's products or services. Test Materials may be generated or reviewed by a subcontractor in accordance with Section 3.4.

1.1.5.2 Test Materials must be original and not duplicates, clones, or variants of existing materials.

1.1.5.3 Contractor shall not pretest Test Materials on any third parties.

1.1.5.4 Contractor shall provide the following information with each question: (1) model answer and reference to the tested legal principle in order for State Bar to verify each answer's accuracy (a citation to case law or statute is not necessary); (2) grading rubric for essay questions and PTs; and (3) the legal subject tested by the question.

1.1.5.5 Contractor shall not use artificial intelligence in a manner that violates the provisions of Article 18.

1.1.5.6 Test Materials must demonstrate content alignment with subject matter outlines provided by the State Bar for question development.

1.1.5.7 Test Materials must conform to State Bar guidelines provided, or as revised from time to time in writing, by the State Bar.

1.1.5.8 Contractor shall adhere to industry practices for preparing multiple choice questions (e.g., the current edition of "Developing and Validating Multiple Choice Items" by Thomas Haladyna).

1.1.5.9 The State Bar will provide Contractor with its library of subject matter outlines, at least [REDACTED] multiple choice questions that previously appeared on the First-Year Law Students' Examination, and prior essay questions and

PTs previously appearing on the California Bar Exam. Contractor may use such materials when drafting the multiple choice, essay and PT questions, along with any other materials it deems appropriate provided such use would not violate any other provision of this Agreement or infringe on a third party's copyright.

1.1.5.10 Contractor shall ensure that personnel (including employees, agents, and subcontractors) involved in any way in the conception, development, drafting, and/or other creation of any Work Product as defined in Article 9 (collectively, the "Creators") will not have access, *i.e.*, a reasonable possibility of viewing, any materials created by the National Conference of Bar Examiners ("NCBE"), a non-profit corporation headquartered in Wisconsin, including but not limited to the NCBE's questions, exams, test blueprints, or subject matter outlines in which NCBE possesses Intellectual Property Rights subject to protection under State or federal law ("NCBE Materials"). Contractor shall take affirmative steps to satisfy this requirement, which shall include but are not limited to issuing protocols and monitoring compliance to ensure that: (1) no Creators have access to any NCBE Materials at any time during the Term of this Agreement; (2) any person who has access to any NCBE Materials, such as one acting in a supervisory role, shall not be a Creator; (3) Creators do not review, refer to, copy, or otherwise use any NCBE Materials; and (4) Creators contemporaneously document and maintain records of their independent creation of all Work Product.

1.1.5.11 Contractor shall deliver the Test Materials to the State Bar in an electronic format and secure delivery method as specifically requested by the State Bar.

1.1.6 State Bar Evaluation of Test Materials. State Bar shall review all Test Materials in accordance with the industry standard practice of content validation, upon delivery and promptly return comments to Contractor. Contractor shall address any comments identified by the State Bar and return a corrected version of the Test Materials that addresses such comments to the State Bar within thirty (30) calendar days of receipt of the State Bar's comments, except for the February 2025 cadence described in 1.1.1.2 whereby the accelerated schedule will require the revisions back within ten (10) calendar days of receipt. If necessary, the same comment resolution process shall be repeated until the State Bar is satisfied with the Test Materials.

1.2 Study Guide Services. In addition to the Testing Services, Contractor shall deliver two study guides in electronic form to the State Bar in accordance with the requirements of this section: (i) the Student Guide designed for Bar Exam test takers; and (ii) the Faculty Guide designed for law school faculty.

1.2.1 Student Guide. Contractor shall prepare and deliver to the State Bar an official Student Guide on the first, third and fifth years for that respective calendar year's two Bar Exam administrations during the Term. The State Bar shall distribute the Student Guide to all Bar Exam test takers. The Student Guide's content shall consist of a total of twenty-five (25) multiple choice questions covering the Seven Subjects. The Student Guide shall bear the name of the State Bar and shall not include Contractor's name or logo on any portion of the document, except that Contractor may acknowledge its preparation of the Student Guide in the manner described in

Article 11. The questions in the Student Guide shall comply with the provisions of Section 1.1.5. above and shall be substantially different than the questions in the Test Materials for each Bar Exam, meaning that the fact patterns and prompts must be substantially different even if the legal concepts and principles are the same. Contractor shall deliver a draft of the Student Guide to the State Bar for review and approval no later than November 1 for the February Bar Exam administration and the July Bar Exam administration, on the first, third and fifth years and shall address any comments identified by the State Bar. Contractor shall return a corrected version of the Student Guide to the State Bar within thirty (30) days of receipt of the State Bar's comments. If necessary, the comment resolution process shall be repeated until the State Bar is satisfied with the Student Guide.

1.2.2 Faculty Guide. Contractor shall prepare and deliver to the State Bar the Faculty Guide for use by law faculty beginning with the fall semester, 2024. Thus, this guide must be delivered no later than September 30, 2024. The Faculty Guide shall be substantially similar in form and content to the Student Guide, except that the multiple choice questions shall be substantially different from the Student Guide's multiple choice questions. Contractor shall update the Faculty Guide at least once during the Term, but may choose to do so more frequently at its discretion.

1.2.3 Form of Study Guides. Contractor shall deliver the Student Guide and Faculty Guide in the manner and times set forth in this section and in a form provided by the State Bar to Contractor in writing. Such forms may include PDF or Microsoft Word.

1.3 Standard of Performance. Contractor shall perform the Services in accordance with the generally accepted professional standards of practice and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently performing similar Services under similar conditions.

1.4 Change Orders. Either Party may request reasonable changes to the scope of Testing Services and Study Guide Services, project schedule or timeline, or any other Contractor obligations under this Agreement after the Effective Date by submitting a written request ("Change Order Proposal"). Any acceptance of the Change Order Proposal must be in writing and executed by the Parties, and such written and executed instrument ("Change Order Amendment") will state the Parties' agreement to enter into such Change Order Amendment to this Agreement. Contractor shall not proceed with any changes to its obligations unless first documented in a Change Order Amendment executed by both Parties.

ARTICLE 2 - TERM OF AGREEMENT

2.1 Term. The term of this Agreement shall commence on August 9, 2024, provided the Board of Trustees of the State Bar has approved this Agreement by that date, or on such later date that the Board of Trustees has approved this Agreement and it has been executed by the State Bar ("Effective Date"), and shall continue in full force and effect until 11:59:59 pm Pacific Time on December 31, 2029 ("Expiration Date", together with the Effective Date, the "Term") unless terminated earlier in accordance under Article 10.

2.2 Extension of Term. Any extensions or renewal of the Term, inclusive of Contractor's preparation of Test Materials and Study Guides for Bar Exam administrations beyond July 2029, shall be subject to a written agreement between Contractor and the State Bar. If the Parties renew the Term, the terms and conditions during such extension or renewal term shall be the same as the terms and conditions in effect immediately prior to such renewal or extension, unless otherwise agreed to in writing by the Parties. If the Parties fail to renew or extend this Agreement, then, unless sooner terminated in accordance with its terms, this Agreement shall terminate on the Expiration Date.

2.3 Time of the Essence. The Parties agree that time is of the essence with respect to performance of each term and deadline under this Agreement.

ARTICLE 3 - RELATIONSHIP OF THE PARTIES

3.1 Independent Contractor. The Parties agree that Contractor is an independent contractor and not an associate, employee, agent, joint-venturer, or partner of the State Bar. Nothing in this Agreement will be interpreted or construed as creating or establishing the relationship of employer and employee between the State Bar and Contractor or Contractor's assistant, employee, or agent of Contractor. Neither Contractor nor its employees or agents shall perform any acts that might lead others to believe that they are representatives of the State Bar, except as to the performance of the Services. Contractor has no authority (and shall not hold itself out as having authority) to bind the State Bar and Contractor shall not make any agreements or representations on the State Bar's behalf without its prior written consent. Neither Party shall control or direct the manner or means by which the Party, or its employees, agents or subcontractors ("Representatives"), will perform the obligations of this Agreement. The Parties agree that the Services performed are outside the usual course of the State Bar's business.

3.2 Contractor Capabilities. Contractor represents that its parent company, which has organized Contractor for the purpose of performing this Agreement, is or through its affiliated companies customarily engaged in an independently established trade, occupation, or business of the same nature as the Services performed hereunder.

3.3 Furnish Labor and Equipment. Unless otherwise provided in this Agreement, Contractor shall furnish, at its own expense, all labor, tools, equipment, and materials necessary to perform the Services. Contractor may, at Contractor's own expense, retain or employ such assistants, employees, or personnel as Contractor deems necessary to perform the Services and such individuals will be Contractor's employees. Contractor assumes full and sole responsibility for the payment of all compensation and expenses of these assistants, employees, or personnel, including workers' compensation coverage as required, all federal, state, and local income taxes, unemployment and disability insurance, Social Security, or other applicable withholdings.

3.4 Subcontractors. State Bar may advise Contractor as to preferences or guidelines for Contractor's subcontractors, but does not have a right to review, refuse or replace Contractor's staff or subcontractors, except that if cause for concern or disqualification is

presented by State Bar, Contractor must review State Bar's objection in good faith and may take appropriate action in Contractor's discretion.

3.5 State Bar Benefits and Tax Withholdings. Contractor is not eligible to participate in any vacation benefits, group medical or life insurance, disability benefits, retirement benefits, or any other fringe benefits or benefit plans offered by the State Bar to its employees. The State Bar will not be responsible for withholding or paying any income, payroll, Social Security, or other federal, state, or local taxes. The State Bar will not be responsible for making any insurance contributions, including for unemployment, disability, or workers' compensation insurance on Contractor's behalf.

ARTICLE 4 - COMPENSATION

4.1 Annual Fee. Except as provided in Article 10, during the Term, for the Services satisfactorily rendered pursuant to this Agreement, the State Bar will pay Contractor an annual fee ("Annual Fee") according to the following schedule.

Year	Annual Fee
Year 1	One Million Nine Hundred Fifty Thousand U.S. Dollars (\$1,950,000)
Year 2	One Million Eight Hundred Thousand U.S. Dollars (\$1,800,000)
Year 3	One Million Six Hundred Fifty Thousand U.S. Dollars (\$1,650,000)
Year 4	One Million Five Hundred Thousand U.S. Dollars (\$1,500,000)
Year 5	One Million Three Hundred Fifty Thousand U.S. Dollars (\$1,350,000)

4.2 Invoices; Schedule. Contractor will prepare and send to the State Bar invoices for the Annual Fee according to the following schedule:

Delivery Year	Examination Period	Invoice	Percentage of Annual Fee
Year 1	Feb & July 2025	12/1/2024	50%
Year 1	Feb & July 2025	3/2/2025	50%
Year 2	Feb 2026	8/15/2025	25%
Year 2	Feb 2026	10/15/2025	25%
Year 2	July 2026	1/15/2026	25%
Year 2	July 2026	3/15/2026	25%
Year 3	Feb 2027	8/15/2026	25%
Year 3	Feb 2027	10/15/2026	25%

Year 3	July 2027	1/15/2027	25%
Year 3	July 2027	3/15/2027	25%
Year 4	Feb 2028	8/15/2027	25%
Year 4	Feb 2028	10/15/2027	25%
Year 4	July 2028	1/15/2028	25%
Year 4	July 2028	3/15/2028	25%
Year 5	Feb 2029	8/15/2028	25%
Year 5	Feb 2029	10/15/2028	25%
Year 5	July 2029	1/15/2029	25%
Year 5	July 2029	3/15/2029	25%

4.3 The State Bar will pay all undisputed payments within thirty (30) calendar days after the State Bar's receipt of Contractor's invoice. Invoices shall include at least the following information: (i) the date(s) upon which the Services were performed or completed, as applicable; and (ii) a summary description of the Services performed. Each invoice submitted will reference the appropriate State Bar purchase order number SBC240389. Notwithstanding the above, if this Agreement terminates prior to expiration of the Term pursuant to Article 10, all outstanding invoices shall become immediately due.

4.4 Total Compensation. The total compensation for all the Services performed shall not exceed Eight Million Two Hundred Fifty Thousand U.S. Dollars (\$8,250,000) for the Term.

ARTICLE 5 - WARRANTIES AND REPRESENTATIONS

5.1 Qualifications. Contractor warrants that Contractor and its personnel, employees, and subcontractors have the education, qualifications, expertise, experience, and ability necessary to perform the Services in a diligent, timely, professional, and workmanlike manner consistent with the highest industry standards for similar services.

5.2 Legal Compliance. Each Party warrants and represents that it has, or it will obtain in a timely manner before the commencement of the performance of the Agreement, all permits, licenses, registrations, or approvals necessary or applicable to delivery of its obligations.

5.3 Title to Work. Contractor warrants that the State Bar will receive good and valid title to all Work Product, as defined in Article 9, free and clear of all encumbrances and liens of any kind.

5.4 Good Standing. Contractor represents and warrants that it has been duly organized, is validly existing and in good standing under the laws of the jurisdiction of its

organization, and is duly qualified to do business in and is in good standing in the State of California.

5.5 Qualifications. State Bar warrants that its personnel, employees, and subcontractors involved in the Services have the education, qualifications, expertise, experience, and ability necessary to administer the bar exam Work Product provided by Contractor in a diligent, timely, professional, and workmanlike manner, and grade bar exams thereof, consistent with applicable law.

ARTICLE 6 - INDEMNITY

6.1 Indemnification Obligation.

6.1.1 Indemnification. An indemnifying Party (the "Indemnifying Party") shall indemnify, defend, and hold harmless the indemnified Party, including its parent companies, Board or Board of Trustees, commissions, committees and subentities, officers, directors, agents, attorneys, employees, successors, licensees, members, volunteers, and assigns and their respective boards, officers, directors, agents, attorneys, employees, and partners (as the same may be constituted from time to time, hereinafter referred to as the "Indemnified Party") from and against any and all third party claims, demands, damages, debts, liabilities, losses, obligations, costs, expenses, liens, judgments, awards, penalties, fines, actions, or causes of action (including but not limited to reasonable attorneys' fees, costs, and expenses), whether or not litigation is actually commenced (collectively, "Losses"), arising out of or in connection with any: (i) breach by the Indemnifying Party of this Agreement, including any warranty or representation; (ii) breach or potential breach of data security or privacy; (iii) gross negligence or willful act by the Indemnifying Party or its employees, agents, or subcontractors related to the performance of this Agreement, or (iv) claims of alleged defects of administration, grading or bias of the bar exam by exam takers for which State Bar shall be the Indemnifying Party. The foregoing indemnification and hold harmless obligation of an Indemnifying Party shall not apply to the extent that any such Losses arise out of the sole actions or omissions or willful misconduct of the Indemnified Party as established by final court decision or agreement of the Parties. Consistent with Article 17, it is the express agreement of the Parties not to provide indemnification for actual or alleged intellectual property infringement.

6.1.2 Costs and Expenses. Each Party shall be liable to the other for all costs (including but not limited to reasonable attorneys' fees, costs and expenses) incurred by such Party for the purposes of enforcing this indemnity provision.

6.1.3 Legal Counsel. The State Bar may, at its option, designate its Office of General Counsel as an equal participating counsel in any litigation wherein the State Bar is defended by Contractor. Contractor may, at its option, designate its in-house counsel as an equal participating counsel in any litigation wherein the Contractor is defended by State Bar.

6.1.4 Indemnification Cap. Each Party's maximum liability under this Article 6 shall not exceed a total of One-Million Six-Hundred Fifty-Thousand Dollars (\$1,650,000).

6.2 Indemnification Procedures.

6.2.1 Notice of Claims and Lawsuits. If any third-party claim is commenced against any Party entitled to indemnification under this Article, the Party against whom the claim is made ("Indemnified Party") will promptly give written notice thereof to the other Party ("Indemnifying Party"), and the Indemnifying Party shall immediately assume the defense of such claim with counsel mutually acceptable to both Parties. The failure of the Indemnified Party to provide notice to the Indemnifying Party under this section does not relieve the Indemnifying Party of any liability that the Indemnifying Party may have to the Indemnified Party. The Indemnified Party shall cooperate, at the sole cost of the Indemnifying Party, in all reasonable respects with the Indemnifying Party and its attorneys in the investigation, trial, and defense of such claim, and in any appeal arising therefrom; provided, however, that the Indemnified Party may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial, and defense of such claim, and any appeal arising therefrom. The Indemnifying Party shall coordinate the defense of any third-party claim with the Indemnified Party, including any investigation and trial, and any appeal therefrom. The Indemnifying Party shall not enter into a settlement of any claim that involves a remedy other than the payment of money by the Indemnifying Party without the prior written consent of the Indemnified Party. If the Indemnifying Party does not assume an immediate defense of a claim that the Indemnifying Party is obligated to defend, the Indemnified Party will have the right to defend the claim in such manner as it may deem appropriate, at the sole cost and expense of the Indemnifying Party.

6.2.1.1 Selection of Counsel. Notwithstanding anything to the contrary in this Article, an Indemnified Party may select its own legal counsel to represent its interests in any matter arising under this Agreement. The Indemnifying Party shall:

6.2.1.2 Reimburse the Indemnified Party for its reasonable costs and attorneys' fees as they are incurred, upon presentation of an itemized statement of such costs and fees; and

6.2.1.3 Remain responsible to the Indemnified Party for any Losses indemnified under Section 6.1.1, in accordance with the terms of this Agreement.

ARTICLE 7 - INSURANCE

7.1 Type and Limits of Insurance. During the Term of this Agreement, Contractor shall maintain and keep in full force and effect at Contractor's own cost and expense, the following insurance policies from insurer(s) authorized to provide insurance in the State of California, for the joint benefit of Contractor and the State Bar:

7.1.1 Professional Liability Insurance coverage with a minimum limit of Eight Million Dollars (\$8,000,000). Such professional liability insurance coverage will be with an insurance carrier with an A.M. Best rating of not less than A-VII. The policy shall include the duty to defend. If a "claims made" policy is used, it shall be endorsed to provide an extended reporting period of not less than three (3) years. The effective date of the policy shall not be later than the

Effective Date herein. The policy shall be applicable to all rights granted to the State Bar pursuant to this Agreement, all Work Product provided to the State Bar, and all uses made thereof by Contractor and/or the State Bar pursuant to this Agreement, insuring against liabilities relating to this Agreement.

7.1.2 Commercial General Liability Insurance coverage having a combined single limit of not less than Two Million Dollars (\$2,000,000) for bodily injury and property damage liability, Four Million Dollars (\$4,000,000) annual aggregate, and Two Million Dollars (\$2,000,000) for products/completed operations. Such commercial general liability insurance coverage will be with an insurance carrier with an A.M. Best rating of not less than A:X.

7.1.3 Workers' Compensation Insurance coverage if Contractor has one (1) or more employees as defined by the State of California, coverage as required by applicable California state law and federal statutes covering liability for injuries to all persons employed by the insured in the conduct of its operations, together with employer's liability insurance in the amount of One Million Dollars (\$1,000,000) for each accident and One Million Dollars (\$1,000,000) policy limit for bodily injury by disease. Such workers' compensation insurance coverage will be with an insurance carrier with an A.M. Best rating of not less than A:X.

7.1.4 Privacy Security Liability/Cyber Insurance coverage for a minimum limit of Eight Million Dollars (\$8,000,000) per claim and annual aggregate. Such privacy security liability/cyber insurance will be with an insurance carrier with an A.M. Best rating of not less than A:X.

7.1.5 Umbrella Liability Insurance. coverage with a general aggregate limit of Five Million Dollars (\$5,000,000.00) and a per occurrence limit of at least Five Million Dollars (\$5,000,000.00). Such umbrella liability insurance coverage will be with an insurance carrier with an A.M. Best rating of not less than A:X.

7.2 Certificates and Endorsements. Within fifteen (15) calendar days of the Effective Date, Contractor shall deliver to the State Bar offices at 845 S. Figueroa St., Los Angeles, CA 90017 Attn: Procurement, certificates of insurance, together with original endorsements, evidencing compliance with the requirements in this Article. Contractor shall provide prompt written notice to the State Bar if there are any cancellations or lapses, reductions in coverage or coverage limit, or other material changes to the insurance policies. If Contractor fails to secure and maintain the required insurance policies as set forth in this Article, the State Bar may, in its sole discretion, purchase the required insurance coverage and Contractor shall reimburse the State Bar for all the associated costs, including any administrative costs incurred in securing such coverage.

7.3 Waiver of Subrogation. Contractor waives and releases all claims and all rights of recovery against the State Bar for any loss, injury, or damage arising from any claim that: (i) is of the type that is required to be insured against under the terms of this Agreement, regardless of whether such insurance coverage actually exists; or (ii) is actually insured against under any insurance policy carried by Contractor, regardless of whether such insurance is required hereunder. To the extent permitted by law, Contractor's waiver and release will apply

irrespective of the cause or origin of the claim, including the negligence or intentional misconduct of the State Bar, or of any person acting at the direction or under the control of the State Bar. Contractor agrees that the foregoing waiver will be binding upon its respective insurance carriers, and (except for any insurance policy that provides that the insured thereunder may effectively waive subrogation without further action on the part of the insured) Contractor shall obtain endorsements or take such other action as may be required to effect such insurer's waiver of subrogation under each such policy.

7.4 Waiver of Coverage. The State Bar agrees to waive any Automobile Liability Insurance requirements since Contractor represents that it will not use any vehicle or mobile equipment to perform the Services under this Agreement.

ARTICLE 8 - CONFIDENTIALITY

8.1 Confidential Information. "Confidential Information" of either Party means any information, technical data, trade secrets or know-how (whether disclosed before or after the Effective Date of this Agreement), including, but not limited to information relating to records, documents, data, notes, analyses, compilations, studies, processes, plans or other information provided by the disclosing Party, which may include but is not limited to business practices, products, services, projections, forecasts, providers, employees, personnel, board members, volunteers, contractors, customer lists, human resources, personal information, technical data, computer object or source code, research, inventions, processes, designs, drawings, engineering, marketing, finance, operations, policies, procedures, board members, leadership, management, legal and regulatory affairs, licensees (former and current), applicants, and relationships with third-parties or other information of a confidential or proprietary nature which information would, under the circumstances, appear to a reasonable person to be confidential or proprietary. Confidential Information does not include information that: (a) is or becomes a part of the public domain through no act or omission of its owner or owner's Representatives; (b) is lawfully disclosed to recipient or recipient's Representatives by a third-party without restrictions on disclosure; (c) was in a Party or Party's Representatives' lawful possession, as established by documentary evidence, prior to the disclosure by the disclosing Party or (d) is a public record, not exempt from disclosure pursuant to the California Public Records Act, Government Code Section 7920.000 et seq. To clarify, State Bar's Confidential Information shall include all Test Materials and Study Guides, including preliminary notes, memoranda, and other Work Product as defined below. Each Party and its Representatives shall have access to the other Party's Confidential Information on a need-to-know basis.

8.2 Obligation to Maintain Confidentiality. Excluding licenses of Exposed Materials granted to Contractor in Article 9 and the State Bar's provision of the Test Materials and Study Guides to their intended audiences (e.g., test takers, law students, law professors, etc.) and to persons authorized by the State Bar to review or evaluate the Test Materials and Study Guides (including the State Bar's psychometricians) and administer the Bar Exam, each Party agrees to maintain in strictest confidence Confidential Information of the other Party, whether provided orally, in writing, electronically or in any other form or medium, or that the Party or Party's

Representatives may otherwise receive access thereby. Contractor shall be responsible for compliance with all confidentiality obligations herein by its subcontractors, agents, and any other person or entity providing services or support to Contractor in connection with this Agreement.

8.3 Safeguarding Confidential Information. Excluding licenses of Exposed Materials granted in Article 9, each Party shall safeguard and shall take all necessary steps to protect Confidential Information. Each Party shall only use and disclose Confidential Information to its Representatives necessary to perform or receive the Services pursuant to this Agreement. A Party shall notify the other Party immediately of any unauthorized use, access, or disclosure of Confidential Information and take all commercially reasonable steps to prevent further use, access, or disclosure.

8.4 Unauthorized Disclosure. Excluding licenses of Exposed Materials granted in Article 9, each Party shall not disclose Confidential Information or permit it to be disclosed, in whole or part, to any third-party without the prior written consent of the owner. If any person or entity requests by a subpoena or court order any information or materials relating to this Agreement which is within the possession, custody, or control of a Party or Party's Representatives, that Party shall promptly inform the other Party of such request and cooperate to the extent the owner objects or moves to quash such request or subpoena. Notwithstanding any contrary provision contained herein, either Party may disclose Confidential Information to the extent that such disclosure is required by law or regulation, or is pursuant to a valid order of a court of competent jurisdiction or an authorized governmental authority; provided that the disclosing Party: (a) immediately notifies the owner in writing of the disclosure request and to the extent not prevented from doing so by an applicable government authority, provides the owner a copy of the order by the applicable court or governmental authority so the owner may seek a protective order or another appropriate remedy; (b) cooperates with the owner if it seeks a protective order or other appropriate remedy preventing or limiting disclosure; and (c) seeks confidential treatment of any Confidential Information required to be disclosed before disclosure, and attorney's eyes only treatment for highly sensitive information for which the owner believes attorneys' eyes only treatment is appropriate. If the owner cannot obtain a protective order, another appropriate remedy, or otherwise fails to quash the legal process requiring disclosure, the disclosing Party will work with the owner to disclose the requested Confidential Information only to the extent required by such law, regulation, or order.

8.5 Additional Remedies for Unauthorized Disclosure. Each Party acknowledges that irreparable harm can result to the Parties and to third-parties by disclosure or threatened disclosure of Confidential Information that cannot be adequately relieved by monetary damages alone. Accordingly, a Party may seek equitable remedies including a temporary or permanent injunction or other equitable relief from any court of competent jurisdiction, without the necessity of showing actual damages and without the necessity of posting any bond or other security. The equitable relief will be in addition to, not in lieu of, legal remedies, monetary damages, or other available forms of relief. If the Party incurs any loss or liability arising out of disclosure or use of any Work Product or Confidential Information by any one or more of either Party or its agents or representatives other than as authorized herein, that disclosure or use will

be deemed to have been by the Party for purposes of determining whether the Party breached any of its obligations under the Agreement.

ARTICLE 9 - INTELLECTUAL PROPERTY RIGHTS

9.1 **Intellectual Property Rights Defined.** For purposes of this Agreement, the term “**Intellectual Property Rights**” means know-how, inventions, patents, patent rights, and registrations and applications, renewals, continuations and extensions thereof, works of authorship and art, copyrightable materials and copyrights (including, but not limited to, titles, computer code, designs, themes, concepts, artwork, graphics and visual elements, and methods of operation, and any related documentation), copyright registrations and applications, renewals and extensions thereof, mask works, industrial rights, trademarks, service marks, trade names, logos, trademark registrations and applications, renewals and extensions thereof, derivative works, trade secrets, rights in trade dress and packaging, publicity, personality and privacy rights, rights of attribution, authorship, integrity and other similarly afforded “moral” rights, and all other forms of intellectual property and proprietary rights recognized by the U.S. laws, and other applicable foreign and international laws, treaties and conventions.

9.2 **Work Product.** Contractor recognizes and agrees that all rights, titles, and interests, including all Intellectual Property Rights, which may be prepared, procured, or produced in whole or in part in, or resulting from, the Services rendered by Contractor pursuant to this Agreement, including, without limitation, any and all deliverables, research, proposals, materials, reports, plans, other writings, and other work product (collectively referred to as “**Work Product**”), including all Intellectual Property Rights, are “works made for hire” for the benefit of the State Bar. Accordingly, all rights, titles, and interests shall vest in the State Bar as the author and as the sole and exclusive copyright owner of the Work Product. To the extent that any Work Product may not, by operation of law, vest in the State Bar or any Work Product may not be considered “works made for hire,” in consideration of the mutual promises contained in this Agreement, Contractor hereby irrevocably assigns and transfers (by way of future assignment and transfer when necessary), in perpetuity, without separate compensation, to the State Bar all of the rights, titles, and interests in the Work Product that Contractor or its Representatives may have or may hereafter acquire in the Work Product, in the United States of America and throughout the world, in all mediums now known or hereafter invented, free of any encumbrances or liens, and hereby assigns any and all such rights, including renewals and extensions of each such copyright(s) that may be secured under the laws now or hereafter. All rights granted or agreed to be granted to the State Bar hereunder shall vest in the State Bar immediately and shall remain so vested whether this Agreement expires or is terminated for any or no cause or reason. At the State Bar’s request and expense, Contractor will execute, during and after the Term, all further actions including execution and delivery of documents reasonably required to perfect the foregoing rights in the State Bar. In the event Contractor fails to execute any documents within thirty (30) days of the State Bar’s written request, Contractor appoints the State Bar as its attorney-in-fact to execute such documents on Contractor’s behalf. Contractor hereby waives or transfers any and all moral rights, including without limitation any right to attribution, identification, integrity, disclosure, authorship or any other rights that may be known

as “moral rights,” or limitation on a subsequent modification that Contractor or its Representatives has or may have in the Work Product or any part thereof. Following delivery of the Work Product to State Bar, all subsequent actions taken with respect to the Work Product, such as duplication, publication or otherwise, are actions taken by the State Bar.

9.3 Contractor’s Employees, Agents, and Subcontractors. At all times throughout the Term, Contractor will ensure that it has and will maintain appropriate agreements in place (and Contractor will provide the form of said agreements to the State Bar upon request) with all of its Creators which: (i) provides transfer of Creator’s Intellectual Property Rights to Contractor; (ii) is consistent with the rights being granted by Contractor to the State Bar under this Agreement; and (iii) contains a waiver by the Creator of any claim against Contractor in respect of any moral rights owned by each such person to all and any Work Product created by them and provided to Contractor.

9.4 Limited License to Nevada. The State of Nevada’s Board of Bar Examiners (“Nevada”) has expressed interest in using the Test Materials for the 2025 Nevada bar exam. State Bar reserves the right to license the Test Materials to Nevada for use in the February and July 2025 Nevada bar exams. If said license is provided to Nevada by State Bar, then Contractor shall be entitled to market such license in accordance with the terms of Section 11.4. For clarity, this section and Agreement shall not be construed to require Contractor to restrict its test prep or bar exam prep business in the State of Nevada. Any and all communications or data transmissions with Nevada regarding such a prospective limited license shall be handled by State Bar and Contractor shall have no obligations to communicate nor transmit materials directly with Nevada. State Bar further assumes all security obligations, risks and damages that may be incurred in licensing and sharing any Test Materials or Work Product with Nevada.

9.5 Prohibition of Licenses to Other States. The Parties acknowledge the State Bar’s ownership of the Test Materials, in addition to the limited license to Nevada described above; however, the Parties further contractually agree that the State Bar shall not license the Test Materials to any other third party (other than Nevada in the February and July 2025 bar exams) during the Term of the Agreement.

9.6 Licenses of Test Materials; Covenant Not to Sue.

9.6.1 Exposed Materials. Following each Bar Exam administration, State Bar shall designate certain of the Test Materials that have been used on a Bar Exam as “Exposed Materials,” with the number and specific questions to be designated by the State Bar at its sole discretion. Contractor agrees it cannot itself or authorize others to use or otherwise exploit any Work Product or Test Materials, except in the limited circumstances provided in the following sections. Once certain Test Materials have been designated by State Bar as Exposed Materials, they shall remain Exposed Materials.

9.6.2 License to Use Exposed Materials in Guides. State Bar herein provides Contractor a no-cost, perpetual, non-exclusive, and irrevocable license to use Exposed Materials for preparation of and use in Student Guide(s) and Faculty Guide(s) during the Term.

9.6.3 Sublicense of Exposed Materials to Contractor's Parent. Following the Term of this Agreement, State Bar herein provides to Contractor a no-cost, perpetual, non-exclusive, and irrevocable license, that can be transferred or otherwise sublicensed to Contractor's Parent only and no other third parties, for Contractor's Parent to reproduce, distribute, publicly display or create derivative works from the Exposed Materials on bar exam preparation products and materials prepared by and/or distributed by Contractor's Parent. To clarify, said sublicense to Contractor's Parent does not authorize Contractor's Parent to further sublicense the Exposed Materials to any other third parties, nor further reproduce, distribute, publicly display, create derivative works from, or otherwise exploit any non-exposed Work Product nor non-exposed Test Materials. The terms of this section, namely the Sublicense to Contractor's Parent, shall survive any termination of this Agreement.

9.6.4 Covenant Not To Sue; License To Cross-Check Test Materials. Since Contractor is the creator of Test Materials as works made for hire owned by State Bar with the prospect of copyright registration, the Parties seek to prevent circumstances where Contractor, in the process of providing similar bar exam preparation services for other bar exam jurisdictions, could be in the position of alleged infringement of State Bar's Testing Materials through the creation of test materials for other states ("Other States' Test Materials"), being that the Other States' Test Materials necessarily would be created through the same legal entity, with the same personnel, using the same Contractor resources (of course, excluding State Bar Resources). Therefore, provided: (a) that Contractor does not refer to, review, copy or otherwise utilize any of State Bar Resources in the creation of Other State's Test Materials, except as authorized by the QA License (as defined below), and (b) that Contractor does not "literally infringe" (that is, copy verbatim or create an exact duplication of) any of State Bar's Test Materials, then State Bar herein agrees and covenants not to sue, or otherwise initiate copyright infringement claims against Contractor for Other State's Test Materials ("Covenant Not To Sue"). To further reduce the possibility of literal infringement occurring by coincidence, State Bar herein provides Contractor a no-cost, perpetual, non-exclusive, and irrevocable license ("QA License") solely to maintain an internal-only database of historical Test Materials as a means to cross-check and prevent any identical work product as between Test Materials and Other States' Test Materials. Said QA License cannot be transferred, transmitted nor otherwise provided in any form to Contractor's Parent, nor any other third party. The terms of this section, namely the Covenant Not To Sue and the QA License, shall survive any termination of this Agreement.

9.7 No Transfer of Title in and to Contractor's Pre-Existing IP. Notwithstanding the foregoing, the State Bar acknowledges that independent of this Agreement, Contractor has created, acquired, or otherwise has rights in and may, in connection with the performance of this Agreement, employ certain intellectual property, including, without limitation, various concepts, ideas, methods, methodologies, procedures, processes, know-how, or techniques (collectively, "Pre-Existing IP"). The State Bar and Contractor intend that Contractor's interests in or title to such Pre-Existing IP will remain vested in Contractor. Contractor represents that none of the Work Product delivered to the State Bar will contain Pre-Existing IP.

9.8 No Transfer of Title in and to State Bar's Pre-Existing IP. As between Contractor and the State Bar, the State Bar is, and will remain, the sole and exclusive owner of all rights, titles, and interests in and to any documents, specifications, data, know-how, methodologies, software, Confidential Information and other materials provided or made accessible to Contractor by the State Bar ("State Bar Materials"), including all Intellectual Property Rights therein. Contractor has no right or license to reproduce or use any State Bar Materials except solely during the Term to the extent necessary to perform Contractor's obligations under this Agreement. All other rights in and to the State Bar Materials are expressly reserved by the State Bar. Contractor has no right or license to use the State Bar's trademarks, service marks, trade names, logos, symbols, or brand names, other than those authorized under Section 11.5.

ARTICLE 10 - TERMINATION OF AGREEMENT

10.1 Termination for Cause. The State Bar may terminate this Agreement with cause based upon Contractor's breach of any terms of this Agreement, including Contractor's uncured material failure to comply with the standards of performance and all requirements pertaining to the preparation of Test Materials as set forth in Section 1.1.5, upon thirty (30) calendar days' written notice to Contractor, or based upon the assertion or filing of claims against Contractor or the State Bar relating to this Agreement. Contractor's sole compensation will be for that portion of the Services satisfactorily performed by Contractor to the date of termination then due pursuant to the Agreement; provided, however, the State Bar will withhold an amount reasonably expected to address the State Bar's costs and expenses arising out of the breach of this Agreement. Contractor will not be paid for any services associated with any work or service which was not authorized by the State Bar pursuant to this Agreement.

10.2 Termination without Cause. The State Bar may terminate this Agreement and avoid accrual of an Annual Fee for the fourth and/or fifth years of the Term, in its sole discretion, with or without cause and for any reason, provided that sufficient written notice is provided to Contractor. Sufficient written notice to avoid accrual of Annual Fees for both the fourth and fifth years during the Term must be received by Contractor prior to 11:59:59 pm Pacific Time on February 28, 2027; and, such early termination shall incur an early termination fee payable to Contractor of Seven Hundred Twelve Thousand Five Hundred U.S. Dollars (\$712,500) in lieu of the Annual Fees representing the fourth and fifth years (i.e., \$2,850,000) that would otherwise become due. Alternatively, sufficient written notice to avoid accrual of the Annual Fee for the fifth year only during the Term must be received by Contractor prior to 11:59:59 pm Pacific Time on February 28, 2028; and, such early termination shall incur an early termination fee payable to Contractor of Three Hundred Thirty Seven Thousand Five Hundred U.S. Dollars (\$337,500) in lieu of the Annual Fee of the fifth year (i.e., \$1,350,000) that would otherwise become due.

10.3 Termination for Bankruptcy. This Agreement will terminate automatically in the event of the bankruptcy or insolvency ("Bankruptcy") of either Party. In the event of Contractor's Bankruptcy, Contractor's sole compensation will be for that portion of the Services satisfactorily performed by Contractor to the date of termination then due pursuant to the Agreement.

10.4 Force Majeure. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any terms of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, other specific potential disasters or catastrophes, such as epidemics, pandemics, or quarantines, or explosions; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national, regional, or local emergency; (h) strikes, labor stoppages or slowdowns, or other industrial disturbances; or (i) shortage of adequate power or transportation facilities. The Impacted Party shall give notice within seven (7) days of the Force Majeure Event to the other Party, stating the period of time the Force Majeure Event is expected to continue, and describing the impact on performance of the Services and other obligations under the Agreement. Notwithstanding the preceding sentence, if either Party's performance is affected by any Force Majeure Event, either Party may terminate this Agreement by written notice to the other Party, without any penalty, liability, or any other costs or damages, whatsoever.

10.5 Obligations of Contractor Upon Expiration, Cancellation, Termination or Request. Upon expiration, cancellation, or termination of this Agreement, or at any other time upon the State Bar's written request, Contractor shall, within twenty-one (21) calendar days after such expiration, cancellation, termination, or written request:

10.5.1 deliver to the State Bar and, to the extent not otherwise assigned herein, assign all rights of ownership, including Intellectual Property Rights, in and to all Test Materials and Study Guide Materials (whether complete or incomplete) and Work Product and all materials, equipment, and other property provided for Contractor's use by the State Bar;

10.5.2 deliver to the State Bar all tangible documents and other physical media received from the State Bar, including any copies, containing, reflecting, incorporating, or based on the Confidential Information; and

10.5.3 upon request, certify in writing within one month to State Bar that Contractor has complied with the requirements of this section.

10.6 Obligations of Contractor Upon Expiration, Cancellation or Termination. Upon expiration, cancellation, or termination of this Agreement, Contractor shall, within twenty-one (21) calendar days after such expiration, cancellation or termination:

10.6.1 permanently erase all the Confidential Information from Contractor's computer and phone systems in accordance with Section 15.12; and

10.6.2 upon request, certify in writing within one month to the State Bar that Contractor has complied with the requirements of this section.

10.7 Obligations of State Bar Upon Expiration, Cancellation or Termination or Request. Upon expiration, cancellation, termination of this Agreement, or at any other time upon the Contractor's written request, State Bar shall, within twenty-one (21) calendar days after such expiration, cancellation, termination or written request:

10.7.1 deliver to the Contractor and, to the extent not otherwise licensed herein, all rights to the exposed Test Materials and Study Guide Materials in accordance with this Agreement; and

10.7.2 upon request, certify in writing within one month to Contractor that State Bar has complied with the requirements of this section.

ARTICLE 11 - CONFLICT OF INTEREST, ETHICS, AND BUSINESS LIMITATIONS

11.1 Conflicts of Interest. Each Party represents that it is not currently aware of any facts that create a potential or actual conflict of interest, including offering or providing any incentive, directly or indirectly, to any member of the other Party's Board or Board of Trustees, officers, directors, and employees or consultants involved in the making of this Agreement in order to secure or influence the performance of this Agreement. Each Party agrees to promptly disclose to the other any situation that may arise during the term of this Agreement that is reasonably likely to result in a conflict of interest.

11.2 Additional Conflicts of Interest Requirements. Contractor understands and acknowledges that the State Bar is a public corporation, and as such, the organization and its Board of Trustees, officers, directors and employees are subject to various rules, laws and regulations relating to conflict of interests, gifts, honoraria and travel or other payments. Accordingly, Contractor acknowledges and agrees that Contractor shall, and ensure that any Contractor personnel assigned to provide the Services under this Agreement, comply with the following additional requirements:

11.2.1 Contractor and Contractor's personnel must comply with all applicable federal, state, and local laws and regulations pertaining to conflicts of interest laws, including without limitation State Bar's Conflict of Interest Code available <https://www.calbar.ca.gov/Portals/0/documents/Conflict-of-Interest-Code-State-Bar.pdf>, filing of Statement of Economic Interests (Form 700) (if applicable), the California Political Reform Act (Government Code Section 81000 et seq.), Government Code Section 1090 et seq. and/or common law conflict of interest laws (collectively, the "Conflicts of Interest Laws").

11.2.2 During the term of this Agreement, Contractor shall not perform any work for State Bar or any another person, entity or business, which would: (i) result in an actual or potential conflict of interest under the Conflict of Interest Laws; (ii) require Contractor to abstain from any decision under this Agreement or prospective services of the Vendor its affiliate companies pursuant to the Conflict of Interest Laws and/or (iii) violate the Conflict of Interests Laws. Contractor represents that it is not now aware of any facts, which violate any of these provisions and the Conflict of Interest Laws.

11.2.3 Contractor understands that, if this Agreement is made in violation of Government Code Section 1090 et seq., the entire Agreement is voidable and Contractor will not be entitled to any compensation for Services performed pursuant to this Agreement and Contractor will be required to reimburse State Bar any sums paid to Contractor. Contractor further understands that, in addition to the foregoing, Vendor may be subject to criminal prosecution for a violation of Government Code Section 1090.

11.3 Disclosure of Conflicts of Interest. If Contractor hereafter becomes aware of any facts that might reasonably be expected to either create a conflict of interest under the Conflict of Interest Laws or violate the provisions of this Article 11, Contractor shall immediately make full written disclosure of such facts to State Bar. Full written disclosure shall include, without limitation, identification of all persons, entities and businesses implicated and a complete description of all relevant circumstances. Vendor shall submit any disclosures required by this Article 11 to the address in Article 13 (Notices), with a copy to the attention of the General Counsel.

11.4 Prohibition on California Bar Exam Preparation Business.

11.4.1 Contractor, any of its subsidiaries, Contractor's Parent, its subsidiaries, and its parent companies and their subsidiaries, must cease offering or advertising test preparation materials and courses specific to the California Bar Exam or offer courses advertised as preparation for the California bar exam by October 1, 2024 and throughout the Term, subject to 11.4.2 below. This means that such entities may only offer or advertise test preparation materials and courses specific to other states' bar exams.

11.4.2 Contractor's Parent and its subsidiaries (other than Contractor) may continue to provide test preparation materials and courses for other nationwide or state bar exams, provided that the questions in the Test Materials, Student Guide and Faculty Guide for any California Bar Exam are not included in out-of-state test preparation materials and courses or used elsewhere. Contractor's Parent may also continue to provide nationwide test preparation materials and courses as part of Contractor Parent's "PMBR" program, provided that Contractor's Parent does not market PMBR directly to California law schools. Contractor's Parent shall display a prominent disclaimer on the front page of its PMBR website notifying potential consumers that PMBR is not intended as a resource to prepare for the California Bar Exam. Moreover, throughout the term of the Agreement, Contractor agrees to the following prohibitions: (i) no personnel assigned to prepare the Test Materials shall be assigned to prepare or teach PMBR course materials or have access to PMBR course materials; (ii) no personnel assigned to prepare or teach PMBR course materials shall be assigned to prepare the Test Materials; and (iii) Contractor shall not provide any Work Product nor Testing Materials, directly or indirectly, to personnel assigned to prepare or teach the PMBR course materials. The Confidentiality provisions in this Agreement shall be applicable to, and enforced against, any separate entity that exerts control over and/or operates PMBR.

11.5 Marketing and Advertising. The State Bar seeks to avoid any perception that test takers will obtain an unfair advantage in the Bar Exam by obtaining other products and services from Contractor that will provide inside information about test or essay questions.

11.5.1 In recognition of this important interest, when marketing, advertising or making public statements, Contractor shall not: (i) represent in any manner that its relationship with the State Bar constitutes a "partnership," "exclusive partnership," or any other business relationship outside the scope of this Agreement; (ii) represent in any manner that the State Bar has endorsed, sponsored, approved, or otherwise supported products or services provided by Contractor, its subsidiaries, or any of its parent companies and their subsidiaries; or (iii) use the State Bar logo for any purpose, except as authorized herein.

11.5.2 Notwithstanding the foregoing, the State Bar and Contractor from time to time may come to mutual understanding of pre-approved marketing, advertising or public statements that fulfill the conditions of Section 11.5.1.

11.5.3 Notwithstanding the foregoing, the State Bar consents to Contractor disclosing any disclosures required by law such as a public company's SEC filings.

11.6 Restrictions During Term Only. This Article 11 shall be effective only through the Term of this Agreement. If/when this Agreement expires, cancels or otherwise terminates, all such limitations and restrictions recited in this Article 11 shall become null or otherwise unenforceable.

ARTICLE 12 - COMPLIANCE WITH LAWS

Contractor, and its personnel, employees, and subcontractors shall comply with all applicable laws, ordinances, and regulations adopted or established by federal, state, or local governmental bodies or agencies, including but not limited to the provisions of the Fair Employment and Housing Act (California Government Code, section 12900 et seq.) and any applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285.0 et seq.), ADA/ADAAA, and section 508 of the Rehabilitation Act. Contractor shall include the non-discrimination and compliance provisions of this Article in all subcontracts for the performance of work under the Agreement.

ARTICLE 13 - NOTICES

Unless otherwise specifically stated in this Agreement, any notices to be given by either Party to the other must be in writing and delivered either personally, by express mail, or electronic transmission, with a copy sent by regular mail to the address set forth below. If notice is given by personal delivery or express mail, a courtesy copy shall also be provided by electronic mail.

THE STATE BAR OF CALIFORNIA	KAPLAN EXAM SERVICES, LLC
Attn: Procurement 845 S. Figueroa St. Los Angeles, CA 90017	Attn: Chief Financial Officer 1515 W. Cypress Creek Road Fort Lauderdale, FL 33309
WITH COPIES TO	WITH COPIES TO
General Counsel: gc@calbar.ca.gov	CFO: jdervin@kaplan.edu
Executive Director: executivedirector@calbar.ca.gov	Legal Department: knalegal@kaplan.com

Each Party may change the notice address appearing above by giving the other Party written notice in accordance with this Article.

ARTICLE 14 - AUDIT

The State Bar reserves the right to have an independent audit conducted of Contractor's compliance with the terms of this Agreement, if the State Bar reasonably believes such audit is necessary to ensure confidentiality, or financial or program accountability or integrity. Contractor shall retain all records associated with the Services performed for a period of four (4) years from the expiration, cancellation, or termination of this Agreement.

ARTICLE 15 - DATA SECURITY

15.1 Network Security. Contractor agrees at all times to maintain network security that, at a minimum, includes network firewall provisioning, intrusion detection, and regular (annual) third party vulnerability assessments. State Bar reserves the right, upon fifteen (15) business days' notice to Contractor, to have a third-party perform a vulnerability assessment at its own expense. Contractor agrees to maintain network security that conforms to generally recognized industry standards and best practices.

15.2 Application Security. Contractor agrees at all times to provide, maintain and support its Software and subsequent updates, upgrades, and bug fixes such that the Software is, and remains secure from those vulnerabilities.

15.3 Data Security. Contractor agrees to protect and maintain the security of Test Materials, Confidential Information, Work Product, and any and all other information or data exchanged between the parties, or otherwise made accessible to Contractor by the State Bar (collectively "Data" in this Section 15) with protection security measures that include maintaining secure environments that are patched and up to date with all appropriate security updates as designated by a relevant authority (e.g., Microsoft notifications, etc.). Unless otherwise agreed to in writing by the State Bar or as provided herein, Contractor shall be responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that comply with or are substantially

similar to the security controls identified in the current version of NIST Special Publication 800-53, and that is designed to: (a) ensure the security and confidentiality of the Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Data; (c) protect against unauthorized disclosure, access to, or use of the Data; (d) ensure the proper disposal of the Data; and, (e) ensure that all employees, agents, and subcontractors of Contractor comply with all of the foregoing.

15.4 Data Storage and Backup. All servers, storage, backups, and network paths utilized in the delivery of the service shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by an agent of the State Bar with designated Data, security, or signature authority. Contractor agrees to store all State Bar backup Data stored as part of its backup and recovery processes in encrypted form, using no less than 128 bit key. Any and all cloud based storage of Data shall comply with ISO/IEC 27001, or successor provision(s).

15.5 Encryption. All State Bar Data must be rendered unusable, unreadable, or indecipherable to unauthorized individuals. Without limiting the generality of the foregoing, Contractor shall encrypt all workstations, portable devices (such as mobile, wearables, tablets,) and removable media (such as portable or removable hard disks, floppy disks, USB memory drives, CDs, DVDs, magnetic tape, and all other removable storage media) that store State Bar Data in accordance with Federal Information Processing Standard (FIPS) 140-3. All mobile devices storing State Bar Data must be managed by a Mobile Device Management system. All workstations/Personal Computers (including laptops, 2-in-1s, and tablets) will maintain the latest operating system security patches, and the latest virus definitions. Virus scans must be performed at least monthly.

15.6 Data Transmission. Contractor agrees that any and all transmission or exchange of system application and/or other Data with the State Bar and other parties shall take place via secure means, e.g., HTTPS, FTPS, SFTP, or equivalent means. Contractor shall encrypt, end-to-end, State Bar Information transmitted on networks outside of Contractor's control with Transport Layer Security (TLS) or Internet Protocol Security (IPSec) at a minimum cipher strength of 128 bit or an equivalent secure transmission protocol. All Data, Work Product, Test Materials, Confidential Information, and all other deliverables hereunder shall be comprised by Contractor as structured data for transmission purposes, using a standardized format acceptable to the State Bar.

15.7 Data Re-Use. Contractor agrees that any and all Data exchanged shall be used expressly and solely for the purposes enumerated in this Agreement. State Bar Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor further agrees that no Data of any kind shall be revealed, transmitted, exchanged or otherwise passed to other persons or interested parties except on a case-by-case basis as specifically agreed to in writing by a State Bar officer with designated data, security, or signature authority.

15.8 Data Encryption. Contractor agrees to store all State Bar backup Data, as applicable, as part of its designated backup and recovery processes in encrypted form, using a commercially supported encryption solution. Contractor further agrees that any and all Data defined as personally identifiable information under current legislation or regulations stored on any portable or laptop computing device or any portable storage medium is likewise encrypted.

15.9 Intrusion Detection. All systems involved in accessing, holding, transporting, and protecting State Bar Data that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

15.10 Notification of Breach. In addition to Contractor's responsibilities under the law, Contractor shall immediately upon discovery, but in no case more than twenty-four (24) hours after discovery, report to the State Bar of California in writing (i) any Breach of Security involving the State Bar Data, or (ii) any use or disclosure of State Bar Data other than the Permitted Uses (each, a "Report"). Contractor shall fully cooperate with the State Bar with respect thereto. Each Report shall include, at a minimum: (i) the nature of the unauthorized use or disclosure, (ii) the State Bar Data used or disclosed, (iii) who made the unauthorized use and received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure; and, (vi) any other information, including a written report, as reasonably requested by the State Bar of California.

15.11 Incident Response Plan. Contractor shall have a written incident response plan, to include prompt notification to the State Bar of California in the event of a security or privacy incident, as well as best practices for responding to a breach of the State Bar Protected Information and Data. Provider agrees to share its incident response plan upon request. Upon the occurrence of any actual or suspected unauthorized use or disclosure of State Bar Protected Information and Data. Contractor shall take reasonable steps to minimize or mitigate the risk of harmful or potentially harmful effects resulting from said actual or suspected unauthorized use or disclosure.

15.12 Contractor Obligations for Subcontractors. Contractor shall be responsible for compliance with all data security obligations herein by its subcontractors, agents, and any other person or entity providing services or support to Contractor in connection with this Agreement.

ARTICLE 16 - ASSIGNMENT

16.1 Prohibition on Assignments. Contractor shall not assign or otherwise transfer this Agreement to any third-party without the prior written consent of the State Bar.

ARTICLE 17 - COST SHARING OF ANY COPYRIGHT INFRINGEMENT LITIGATION

17.1 Cost Sharing Commitment and Conditions. If the NCBE initiates one or more claims for copyright infringement (the "Covered Claims") regarding Work Product or Test Materials created within the scope of this Agreement, against one Party or both Parties in a court of

competent jurisdiction, the Parties shall equally share ("Cost Sharing"), that is pay fifty percent (50%) of, the combined total of: (a) reasonable defense costs solely relating to the Covered Claims and (b) any damages awarded by the court solely relating to the Covered Claims, up to the amount set forth in Section 17.1.4.

17.1.1 Each Party shall have a right to choose and engage its own counsel at its own expense until reimbursement is requested pursuant to Section 17.4.

17.1.2 Claims other than NCBE copyright infringement (e.g. breach of any licensing agreement between Contractor's Parent and NCBE, third-party claims regarding administration or grading of the bar exam, non-NCBE copyright infringement, etc.) shall not be considered part of the Covered Claims and are not subject to such cost sharing.

17.1.3 No final judgment nor finding by the court is required for such Cost Sharing.

17.2 Cost Sharing If Covered Claims are Settled. If Covered Claims are resolved pursuant to a settlement agreement between one or more Parties and NCBE, then the Parties agree to Cost Sharing of reasonable defense costs and settlement costs incurred to defend and settle the Covered Claims.

17.2.1 Named parties in Covered Claims shall not be required to have consent from non-parties to the Covered Claims.

17.3 For a Party to benefit from such Cost Sharing with the other Party, whether through a lawsuit or through settlement, there must not be any judgment or finding by the court that its conduct violated any term of this Agreement with respect to such conduct contributing to the alleged copyright infringement. This means a Party shall not be entitled to Cost Sharing if there is any judgment or finding by a court that the Party engaged in any willful infringement.

17.4 Timing of Invoice for Shared Costs. If all conditions in Section 17.1 or Section 17.2, and Section 17.3 are satisfied, a Party shall be entitled to Cost Sharing reimbursement from the other Party within sixty (60) days of such a request in writing to the other Party and presentation of an itemized statement of such costs and fees. If both Parties have been named in Covered Claims and both have respectfully expended defense costs or incurred damages or settlement costs respectively, such reimbursements may be offset by amounts owed to the other Party.

17.5 Reasonable Defense Costs and Damages Defined. For purposes of this Article 17, "reasonable defense costs" means reasonable attorneys' fees, expert witnesses retained by such attorney(s), and documented court costs reasonably incurred by the Party in the defense of the Covered Claims. "Reasonable defense costs" do not include time or expenses associated with the Party's own employees, including their labor or services. For purposes of this Article 17, the term "damages" means actual, statutory or other damages (e.g. lost profits), including attorneys fees or costs of prevailing party that may be awarded to the NCBE, but does not include punitive, treble or increased damages that may be imposed on a finding of willfulness.

17.6 Cost Sharing Cap. Neither Party's maximum liability for Cost Sharing in this Article 17 shall not exceed a total of Six-Million, Seven-Hundred Fifty-Thousand Dollars (\$6,750,000).

17.7 Reservation of Rights. Notwithstanding anything in this Article 17, each Party reserves all of its rights to enforce its rights under this Agreement, including the representations and warranties under Article 5 and indemnification under Article 6, and any and all other rights provided by law.

ARTICLE 18 - USE OF ARTIFICIAL INTELLIGENCE

18.1 Contractor warrants and represents that it (including its Representatives) shall not use artificial intelligence ("AI") in a manner that causes or may cause a dilution of Intellectual Property Rights for, or in any way preclude the copyrightability or State Bar copyright ownership of, any Work Product, Test Materials, or individual test item, including any stimulus, stem, and response options. Without limiting the generality of the foregoing, Contractor warrants and represents that (a) it shall not use AI in a manner that does not conform to the US Copyright Office Guidance (https://copyright.gov/ai/ai_policy_guidance.pdf) (or any update, amendment, or new guidance) regarding the requirements for copyrightability and ownership; (b) the elements of authorship in any Work Product, Test Materials, and individual test item (the literary expression and any elements of selection, arrangement, etc.) shall be conceived, executed, and actually formed by humans, not the AI; (c) any use of AI tools shall be solely to enhance limited elements of existing human-created Work Product, and any AI contributions shall be the result of human original mental conception; (d) any AI-generated content shall be de minimis; and (e) any use of AI shall not require the State Bar to exclude or disclaim any content from any copyright registration application for any Work Product.

18.2 Contractor further warrants and represents that it shall ensure that any AI tools or systems that it (including its Representatives) may use, are closed to any third party, and that it shall not use or authorize any third party to use any Work Product or drafts thereof for purposes of AI training or development of machine learning language models (LLMs), or to reproduce or otherwise exploit any Work Product.

18.3 Contractor shall (i) bear all risk and responsibility should any Work Product be deemed ineligible for copyright protection due to use or incorporation; and (ii) indemnify, defend, and hold harmless the State Bar from and against any and all third party claims, defenses, demands, damages, debts, liabilities, losses, obligations, costs, expenses, liens, judgments, awards, penalties, fines, actions, or causes of action (including but not limited to reasonable attorneys' fees, costs, and expenses), whether or not litigation is actually commenced, arising out of or in connection with any claim that the Work Product is not the intellectual property of the State Bar due to use or incorporation of AI or with any alleged breach of these warranties and representations.

18.4 Contractor shall disclose the extent and nature of its use of AI in connection with the creation of any Work Product, in writing prior to delivery of any affected Work Product. Contractor shall maintain records documenting Contractor's use of AI in connection with the

creation of the Work Product, for not less than four (4) years following termination or expiration of this Agreement, and shall provide such records to the State Bar upon its request.

ARTICLE 19 - GENERAL PROVISIONS

19.1 **Entire Agreement.** This Agreement, together with any attachments or appendices attached hereto, supersedes any and all other agreements, either oral or written, which may exist between the Parties with respect to the subject matter hereof, and contains all of the covenants and agreements between the Parties as of the Effective Date of this Agreement. By signing below, each Party acknowledges that no agreements, statements, or promises outside of those expressly set forth in this Agreement will be binding on the Parties.

19.2 **Governing Law/Jurisdiction/Venue.** This Agreement is deemed to have been made and entered into by the Parties at San Francisco, California, and will be governed and construed according to the laws of the State of California, without giving effect to any conflict of laws principles that would cause the laws of any other jurisdiction to apply. Contractor agrees to bring any action or proceeding to enforce this Agreement only in the appropriate state court located in the City and County of San Francisco, California or the County of Los Angeles, California. Contractor irrevocably submits to the exclusive jurisdiction of these courts and waives the defense of inconvenient forum to the maintenance of any action or proceeding in such venue. Nothing contained in this Agreement, including, but not limited to, Article 17 or Article 8, constitutes a waiver of the State Bar's sovereign immunity or any individual's good faith, official, or otherwise applicable immunities.

19.3 **Waiver.** No waiver of a breach, failure of any condition, right, or remedy contained in or granted by the provisions of the Agreement will be effective unless and until it is in writing and signed by the Party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless the writing so specifies.

19.4 **Modifications.** No amendment, alteration, or variation of the terms of this Agreement will be valid unless made in writing and signed by both Parties.

19.5 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which, will constitute but one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile, email, or any other reliable means will be effective for all purposes as the delivery of a manually executed original counterpart. Either Party may maintain a copy of this Agreement in an electronic form. The Parties further agree that a copy produced from the delivered counterpart or electronic form by any reliable means (for example, photocopy, facsimile, or printed image) will be considered an original in all respects.

19.6 **Electronic Signature.** The Parties acknowledge and agree that this Agreement may be executed by an electronic signature (digital, encrypted, or any other form), which will be

considered an original and manual signature for all purposes and will have the same force and effect as an original and manual signature. Without limitation, an “electronic signature” will include faxed versions of an original signature, electronically scanned, and transmitted versions (e.g., via pdf) of an original signature, or transmittal via any other electronic means, and will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

19.7 Titles. The titles used are not a part of this Agreement and are included solely for convenience and have no bearing upon and do not in any way limit the application of the terms and conditions of this Agreement.

19.8 Severability. If any phrase, sentence, clause, or provision in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being affected, impaired, or invalidated in any way.

19.9 Survival. The provisions of Articles 5, 6, 8, 9, 10.5-10.7, 14, 15, 17, 18, and 19 (Warranties and Representations, Indemnity, Confidentiality, Intellectual Property Rights, Termination of Agreement, Conflict of Interest, Audit, Data Security, Cost Sharing of any Copyright Infringement Litigation, Use of Artificial Intelligence, and General Provisions) will survive the cancellation, termination, or expiration of this Agreement.

19.10 Disputes. In the event of a dispute, each Party will continue with its responsibilities under this Agreement, including but not limited to, continuing to provide the Services, unless and until the other Party instructs otherwise in writing.

19.11 Authority to Contract. Each Party represents and warrants that it has full power to enter into and perform its respective obligations under this Agreement and that the person signing this Agreement has been properly authorized and empowered to enter into this Agreement. Each Party acknowledges that it has read and understands this Agreement and will be bound by it.

19.12 Attorneys’ Fees. The prevailing party in any legal action brought for breach or to enforce any provision of this Agreement, shall be entitled to receive reasonable attorneys’ fees, experts’ costs, and all costs of suit.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

<p>THE STATE BAR OF CALIFORNIA, a public corporation</p> <p>DocuSigned by: By: <u>Leah Wilson</u> 5C1D881F4D3F436...</p> <p>Print: <u>Leah Wilson</u></p> <p>Title: <u>Executive Director</u></p> <p>Date: <u>8/9/2024 2:54 PM PDT</u></p> <p>Signed by: By: <u>Brandon Stallings</u> 41045772D71F4B9...</p> <p>Print: <u>Brandon Stallings</u></p> <p>Title: <u>Chair, Board of Trustees</u></p> <p>Date: <u>8/9/2024 2:57 PM PDT</u></p>	<p>KAPLAN EXAM SERVICES, LLC a Delaware limited liability company</p> <p>DocuSigned by: By: <u>Greg Marino</u> 77DD02B4F16947C...</p> <p>Print: <u>Greg Marino</u></p> <p>Title: <u>Chief Executive Officer</u></p> <p>Date: <u>8/9/2024 4:51 PM PDT</u></p>
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Document received by the CA Supreme Court.

EXHIBIT A – GUARANTOR AGREEMENT

**GUARANTOR AGREEMENT
BETWEEN
KAPLAN NORTH AMERICA, LLC
AND
KAPLAN EXAM SERVICES, LLC**

This guarantor agreement ("Guarantor Agreement") is executed by Kaplan North America, LLC ("Guarantor"), a Delaware limited liability company having a principal place of business at 1515 W. Cypress Creek Road, Fort Lauderdale, FL 33309, in favor of The State Bar of California ("State Bar"), a California public corporation having a principal place of business at 180 Howard Street, San Francisco, CA 94105 with respect to the obligations of Kaplan Exam Services, LLC ("Contractor"), a Delaware limited liability company having a principal place of business at 1515 W. Cypress Creek Road, Fort Lauderdale, FL 33309, under that certain bar exam test materials preparation services agreement (as may be modified, "Agreement") executed between Contractor and the State Bar.

RECITALS

WHEREAS, Guarantor wholly owns Contractor, which is a newly formed subsidiary of Guarantor.

WHEREAS, State Bar requires reassurance and a guarantee from Guarantor that Contractor, as a new company, can and shall financially and otherwise fulfill all its obligations of the Agreement.

WHEREAS, it is in the interest of Contractor that said guarantee be provided by Guarantor.

WHEREAS, State Bar would not enter into the Agreement without this Guarantor Agreement from Guarantor, and Guarantor as owner of the Contractor, will materially benefit from the Agreement; consequently, by its execution and delivery of this Agreement, Guarantor desires to induce State Bar to execute the Agreement and State Bar is relying on this Guarantor Agreement in executing the Agreement.

NOW, THEREFORE, in consideration of covenants and agreements herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

Guarantor hereby unconditionally guarantees to State Bar the full and prompt performance of Contractor's financial and other obligations (the "Obligations") under the Agreement and agrees to provide funds to Contractor sufficient to enable Contractor to perform the Obligations.

Guarantor's obligations under this Guarantor Agreement are absolute and unconditional, and should Contractor not be capable of fulfilling any financial or other obligation of the Agreement, Guarantor shall provide all unfulfilled financial and other Obligations to the Contractor, such that Contractor can and shall fulfill its Obligations to State Bar, without any defense or offset.

Upon the occurrence of any default, breach of performance or unfulfilled financial or other obligation by Contractor under the Agreement, Guarantor shall provide cure, financial support or other support to fulfill the Obligation and assure Contractor is in good standing with State Bar.

Any act of State Bar, or its successors or assigns, consisting of a waiver of any of the terms, covenants or conditions of the Agreement, or the giving of any consent to any manner or thing relating to the Agreement, or the granting of any indulgences or extensions of time to Contractor, may be done without notice to Guarantor and without releasing Guarantor from any of its obligations hereunder. No delay on the part of State Bar in exercising any right hereunder or under the Agreement shall operate as a waiver of such right or of any other right of State Bar, nor shall any delay, omission or waiver on any one occasion be deemed to be a bar to or a waiver of the same or any other right on any further occasion.

The obligations of Guarantor hereunder shall not be released by State Bar's receipt, application or release of any security given for the payment, performance or observance of any term, covenant or condition in the Agreement contained on Contractor's part to be paid, performed or observed, nor by any modification of the Agreement, regardless of whether Guarantor consents thereto or receives notice thereof. The liability of Guarantor hereunder shall in no way be affected by, and Guarantor hereby waives any defense arising by reason of: (a) the release or discharge of Contractor in any creditor's receivership, bankruptcy or other proceeding; (b) the impairment, limitation or modification of (i) the liability of Contractor or the estate of Contractor in bankruptcy or (ii) any remedy for the enforcement of Contractor's liability under the Agreement resulting from the operation of any present or future provision of the Bankruptcy Code or other statute or from the decision of any court; (c) the rejection or disaffirmance of the Agreement in any such proceedings; (d) the assignment or transfer of the Agreement by Contractor; (e) any disability or other defense of Contractor; (f) the cessation from any cause whatsoever of the liability of Contractor under the Agreement; (g) the exercise by State Bar of any of its rights or remedies reserved under the Agreement or applicable law; or (h) any amendment, modification, renewal, extension, termination or any other change in the terms of the Agreement.

Guarantor may be joined in any action against Contractor in connection with said Obligations of Contractor and recovery may be had against Guarantor hereunder without first taking any action whatsoever against Contractor or its successors and assigns, pursuing any other remedy or applying any security State Bar may hold, and Guarantor hereby waives all right to assert or plead at any time any statute of limitations as relating to the Agreement or the obligations of Guarantor hereunder and waives any and all surety or other defenses in the nature thereof including, without limitation, any provision of law requiring State Bar to proceed first against Contractor. Guarantor further waives any defense arising by reason of: (a) any act or omission of Contractor or others which directly or indirectly results in or aids the discharge of any of the Obligations guaranteed hereunder by operation of law or otherwise; (b) the forbearance by State Bar from the strict and timely enforcement of any of its rights under the Agreement; or (c) any defense to liability under this Guarantor Agreement based upon Guarantor's inability to exercise any right of subrogation to the rights of State Bar against Contractor. Guarantor waives any right to enforce

any remedy that Contractor now has or may hereafter have against any person, and waives any benefit of, and any right to participate in, any security, now or hereafter held by Contractor or State Bar. Guarantor's obligations hereunder shall not be affected by any right of setoff or any counterclaim, and Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guarantor Agreement and of the existence, creation, or incurring of new or additional Obligations, and all other notices and demands of any kind and description now or hereafter provided for by any statute or rule of law. Guarantor specifically agrees that Guarantor shall not be released from liability hereunder by any action taken by Contractor or State Bar. Guarantor further expressly waives all rights and benefits which might otherwise be available to Guarantor under California Civil Code Sections 2787 to 2855, or any other applicable laws, including any provisions which would require State Bar to proceed first against Contractor or any assignee or subcontractor of Contractor prior to enforcement of Guarantor's obligations under this Guarantor Agreement.

Until all the terms, covenants and conditions in the Agreement on Contractor's part to be paid, performed and observed, are fully paid, performed and observed, Guarantor (a) shall have no right of subrogation against Contractor by reason of any payments or acts of performance by Guarantor hereunder; and (b) subordinates any liability or indebtedness of Contractor now or hereafter held by Guarantor to Contractor's Obligations to State Bar under the Agreement.

Guarantor hereby agrees to deliver to State Bar such financial statements of Guarantor as may be reasonably requested by State Bar.

This Guarantor Agreement shall apply to the Agreement and any extension, renewal, modification or amendment thereof. In the event this Guarantor Agreement shall be held ineffective or unenforceable by any court of competent jurisdiction or in the event of any limitation of Guarantor's liability hereunder, other than as expressly provided herein, then Guarantor shall be deemed to be the Contractor under the Agreement with the same force and effect as if Guarantor were expressly named as a joint and several party thereto with respect to the Obligations of Contractor thereunder hereby guaranteed.

This Guarantor Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action to declare or enforce any rights or obligations under this Guarantor Agreement may be commenced by State Bar in a state court of general jurisdiction of the City and County of San Francisco or the County of Los Angeles in the State of California. Guarantor hereby consents to the jurisdiction of such Court for such purposes, and agrees that any notice, complaint or legal process so delivered shall constitute adequate notice and service of process for all purposes and shall subject Guarantor to the jurisdiction of such court for purposes of adjudicating any matter related to this Guarantor Agreement.

Guarantor shall pay to State Bar, without demand, any and all costs and/or expenses, including, without limitation, attorneys' fees and costs and court costs that State Bar expends or incurs in collecting or compromising the Obligations guaranteed hereunder or in enforcing this Guarantor Agreement against Guarantor, whether or not suit is filed, expressly including, without limitation,

all court costs and attorneys' fees incurred by State Bar in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceedings involving the Guarantor as the insolvent or bankrupt party which in any way affects the exercise by State Bar of any of its rights or remedies hereunder.

Notices to Guarantor shall be addressed to the address for Guarantor set forth in the first paragraph above, or to such other address designated by Guarantor to State Bar in writing. Under no circumstances shall State Bar be obligated to give Guarantor any notice not specifically required to be given by State Bar pursuant to this Guarantor Agreement.

Guarantor represents and warrants to State Bar that (a) the Agreement indirectly confers substantial and material benefits to Guarantor; (b) there are no actions, suits or proceedings pending, or to the knowledge of Guarantor threatened, against or affecting the Guarantor which could have a material adverse effect on the ability of the Guarantor to honor the Obligations guaranteed hereunder, or involving the validity or enforceability of this Guarantor Agreement, at law or in equity, and Guarantor, to the best of its knowledge after due investigation, is not in default or in violation with respect to, or operating under or subject to, any order, writ, injunction, decree or demand of any court or any governmental authority; (c) Guarantor is not insolvent (as such term is defined in the Bankruptcy Code of 1978, 11 U.S.C. Section 101, et seq., as amended) and will not be rendered insolvent by execution of this Guarantor Agreement or the consummation of the transactions contemplated hereby; and (d) Guarantor has no counterclaims, offsets or defenses with respect to this Guarantor Agreement.

Guarantor warrants and agrees that each of the waivers set forth in this Guarantor Agreement is made with Guarantor's full knowledge of its significance and consequences, and that under the circumstances, the waivers are reasonable and not contrary to public policy or law.

Nothing contained in this Guarantor Agreement constitutes a waiver of the State Bar's sovereign immunity or any individual's good faith, official, or otherwise applicable immunities.

This Guarantor Agreement shall constitute the entire agreement of Guarantor with State Bar with respect to the subject matter hereof.

IN WITNESS WHEREOF, Guarantor has executed this Guarantor Agreement concurrently with the execution and delivery of the Agreement.

KAPLAN NORTH AMERICA, LLC a Delaware limited liability company	
By:  770DD2B4E16947C	Date: 8/9/2024 4:51 PM PDT
Greg Marino, Chief Executive Officer	

EXHIBIT 3

Document received by the CA Supreme Court.

S287231

OCT 22 2024

ADMINISTRATIVE ORDER 2024-10-21-01

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA Deputy

En Banc

**ORDER APPROVING MODIFICATIONS TO THE CALIFORNIA BAR
EXAMINATION**

The Court is in receipt of the State Bar of California's Renewed Request That the Supreme Court Approve Proposed Modifications to the California Bar Examination, filed on October 4, 2024. The Court, having considered the State Bar's request, approves the modifications below beginning with the February 2025 General Bar Examination.

The General Bar Examination will be administered commencing on the last Tuesday in February and the last Tuesday in July of each calendar year remotely and/or in-person at vendor-run or State-Bar run test centers.

The first day of the General Bar Examination will constitute the written portion of the examination and will be comprised of five one-hour essay questions and one 90-minute Performance Test.

The second day of the General Bar Examination will constitute the multiple-choice portion of the examination and will consist of 200 multiple-choice questions administered over four 90-minute sessions.

The first day of testing will also constitute the Attorneys' Examination. Qualified attorney applicants are not required to take the multiple-choice portion of the exam but may opt to do so by enrolling for and taking the full General Bar Examination.

The length of each session, the order of testing, and the overall length of the examination may be modified for applicants granted certain testing accommodations.

The answers to the written portion will be graded on the basis of 700 possible raw points – representing up to 100 raw points for each of the five essay questions and up to 200 raw points for the 90-minute Performance Test question.

During the grading process, the written and multiple-choice portions will be scaled and weighted equally (50 percent assigned to each). Applicants who take the Attorney Examination will have their scores scaled, and the answers to the five essays and the Performance Test questions will be weighted at 100 percent.

The passing score for the General Bar Examination and Attorneys' Examination will be a total scaled score of 1390 or better out of 2000 points.

This order supersedes the Court's March 16, 2016 and May 19, 2022 orders. The Court will revise or supersede this order, as necessary, regarding this and future administrations of the General Bar Examination.

GUERRERO

Chief Justice

CORRIGAN

Associate Justice

LIU

Associate Justice

KRUGER

Associate Justice

GROBAN

Associate Justice

JENKINS

Associate Justice

EVANS

Associate Justice

Document received by the CA Supreme Court.

EXHIBIT 4

Document received by the CA Supreme Court.

February 2025 GBX Item Analysis Summary

The statistics in the tables below are based on multiple-choice question (MCQ) performance. For the 2025 GBX, 200 multiple-choice questions were initially administered with an intended blueprint of 175 scored questions and 25 unscored questions. Following post-exam analysis to remove poor performing items, verify correct responses, and meet content specifications, 171 questions were selected for the final scoring set. The internal consistency reliability estimate for scored items on the multiple-choice section of the exam yielded a coefficient alpha of 0.89 on a scale from 0.00 to 1.00 where values higher than 0.80 are desired.

The following tables show summary results from item analysis conducted for the February 2025 GBX. Item difficulty is defined as the proportion of applicants that answered a given question correctly. Item discrimination is defined as the correlation between the score of an individual items on the exam with the total score.

Summary of multiple-choice question (MCQ) performance of the 200 items that were administered by subject area

	Target	Civil. Procedure	Constitutional. Law	Contracts	Criminal.Law. and.Procedure	Evidence	Real. Property	Torts	Total
Average Difficulty	0.30 to 0.80	0.60	0.64	0.64	0.59	0.68	0.60	0.63	0.63
Average Discrimination	0.10+	0.19	0.22	0.19	0.13	0.20	0.18	0.13	0.18
Performance Flags*	< 6 per subject area	3	5	4	9	2	6	11	49

*Items were flagged for performance if they had item difficulty values outside the target range, average item discrimination below the target value, and/or fewer than three functioning response options defined as having at least 5% of applicants respond to the option (i.e., A, B, C, or D).

Distribution of items that were initially administered (n=200) by subject area and drafter

	Civil. Procedure	Constitutional. Law	Contracts	Criminal.Law. and.Procedure	Evidence	Real. Property	Torts	Total
ACS	2		2	14	2	2	7	29
Kaplan	24	29	3	4	26	28	3	117
State.Bar-FY			25	11			18	54
Total	26	29	30	29	28	30	28	200

Distribution of items that were selected for scoring (n=171) by subject area and drafter

	Civil. Procedure	Constitutional. Law	Contracts	Criminal.Law. and.Procedure	Evidence	Real. Property	Torts	Total
ACS	2		1	10	2	2	6	23
Kaplan	22	25	2	3	23	23	2	100
State.Bar-FY			22	10			16	48
Total	24	25	25	23	25	25	24	171

Percentage of total items that were selected for scoring by subject area and drafter

	Target	Civil. Procedure	Constitutional. Law	Contracts	Criminal.Law. and.Procedure	Evidence	Real. Property	Torts	Total
ACS	80%	100%		50%	71%	100%	100%	86%	79%
Kaplan		92%	86%	67%	75%	88%	82%	67%	85%
State.Bar-FY				88%	91%			89%	89%
Total		92%	86%	83%	79%	89%	83%	86%	86%

Items with performance issues for item difficulty, item discrimination, and distribution of response options were flagged for review. Some items with performance issues were used as scored items. For example, an item may have been flagged for being too easy, but its item discrimination value was acceptable was retained for content representation purposes. This also occurred if items were too difficult. The following tables show the counts of items with at least one performance issue (e.g., too difficult, too easy, low point biserial correlation).

Distribution of items that were administered with performance issues by subject area and drafter.

	Civil. Procedure	Constitutional. Law	Contracts	Criminal.Law. and.Procedure	Evidence	Real. Property	Torts	Total
ACS	0		1	8	0	0	4	13
Kaplan	3	5	0	0	2	6	3	19
State.Bar-FY			3	1			4	8
Total	3	5	4	9	2	6	11	40

Percentage of all items (n=200) that were administered with one or more performance issues by subject area and drafter.

	Civil. Procedure	Constitutional. Law	Contracts	Criminal.Law. and.Procedure	Evidence	Real. Property	Torts	Total
ACS	0%		50%	57%	0%	0%	57%	45%
Kaplan	13%	17%	0%	0%	8%	21%	100%	16%
State.Bar-FY			12%	9%			22%	15%
Total	12%	17%	13%	31%	7%	20%	39%	20%

Distribution of items with performance issues* that were selected for scoring by subject area and drafter.

	Civil. Procedure	Constitutional. Law	Contracts	Criminal.Law. and Procedure	Evidence	Real. Property	Torts	Total
ACS				4	0		3	7
Kaplan	2	2			0	2	2	8
State.Bar-FY			1	1			2	4
Total	2	2	1	5	0	2	7	19

*Flags for performance issues include items that may be too easy, too difficult, or that have a non-negative item discrimination less than 0.10.

Percentage of items with performance issues that were selected for scoring by subject area and drafter.

	Civil. Procedure	Constitutional. Law	Contracts	Criminal.Law. and.Procedure	Evidence	Real. Property	Torts	Total
ACS	0%		0%	40%	0%	0%	50%	30%
Kaplan	9%	8%	0%	0%	0%	9%	100%	8%
State.Bar-FY			5%	10%			13%	8%
Total	8%	8%	4%	22%	0%	8%	29%	11%

Average item difficulty for items that were administered by subject area and drafter

	Target	Civil. Procedure	Constitutional. Law	Contracts	Criminal. Law.and. Procedure	Evidence	Real. Property	Torts	Total
ACS	0.30 to 0.80	0.49		0.52	0.59	0.83	0.76	0.77	0.65
Kaplan		0.61	0.64	0.70	0.67	0.66	0.59	0.61	0.63
State.Bar-FY				0.64	0.57			0.58	0.60
Total		0.60	0.64	0.64	0.59	0.68	0.60	0.63	0.63

Average item difficulty for items that were selected for scoring by subject area and drafter

	Target	Civil. Procedure	Constitutional. Law	Contracts	Criminal.Law. and.Procedure	Evidence	Real. Property	Torts	Total
ACS	0.30 to 0.80	0.49		0.55	0.67	0.83	0.76	0.79	0.7
Kaplan		0.62	0.69	0.74	0.60	0.71	0.61	0.71	0.6
State.Bar-FY				0.66	0.60			0.62	0.6
Total		0.61	0.69	0.66	0.63	0.72	0.62	0.67	0.6

Average item discrimination for items that were selected for scoring by subject area and drafter

	Target	Civil. Procedure	Constitutional. Law	Contracts	Criminal.Law. and.Procedure	Evidence	Real. Property	Torts	Total
ACS	0.10+	0.12		0.04	0.10	0.24	0.30	0.13	0.13
Kaplan		0.20	0.22	0.13	0.16	0.19	0.17	0.04	0.19
State.Bar-FY				0.21	0.16			0.15	0.18
Total		0.19	0.22	0.19	0.13	0.20	0.18	0.13	0.18

Average item discrimination for items that were selected for scoring by subject area and drafter.

	Target	Civil. Procedure	Constitutional. Law	Contracts	Criminal.Law. and.Procedure	Evidence	Real. Property	Torts	Total
ACS	0.10+	0.12		0.20	0.18	0.24	0.30	0.15	0.18
Kaplan		0.22	0.26	0.14	0.15	0.22	0.18	0.09	0.21
State.Bar-FY				0.22	0.17			0.16	0.19
Total		0.21	0.26	0.22	0.17	0.22	0.19	0.15	0.20

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EXHIBIT 5

Document received by the CA Supreme Court.



The State Bar of California

Analytical Work to Support February 2025 Bar Exam Scoring

Mission Advancement & Accountability Division

Confidential — Closed Session

Committee of Bar Examiners, April 18-19, 2025

Overview of Analytical Projects

> Analyze Exam Content (1) Review essay/performance test content for a representative sample of applicants (2) Identify the number/percent of all test takers who did not experience at least one test disruption	Purpose Confirm the gradable content was captured by Measure Learning platform; identify percent of sample that experienced at test disruption using various indicators Support scoring adjustment and remediation considerations
> Explore Applicant Self-Reported Exam Experiences (1) Analyze post-February 2025 bar exam survey	Purpose Learn how test takers experienced the exam with a focus on problems related to technology, exam administration, or proctors
> Analyze Pass Rates (1) Analyze 10 years of February pass rates for different groups of test takers (1 st time, repeaters, US barred attorneys – further disaggregated by which test they took foreign barred attorneys) (2) Analyze first-time takers' law-school GPAs vs. exam performance	Purpose Support scoring adjustment work Support scoring adjustment work



Analyses of Exam Content



The State Bar of California

Project: Analyze Essays/Performance Test Content for 351 Test Takers

Objective

According to Measure Learning (ML), the exam platform successfully captured content for all five essays and the performance test (PT) in either the essay/PT submission box or corresponding “notes” boxes for 4,009 applicants (98% of all test takers, hereafter TTs).

The purpose of this analysis was to explore captured essay content more deeply for a representative sample (351) of the 4,009 applicants to estimate the percent of TTs that may have experienced a test disruption.

Results

- ✓ The vast majority (93%) of the sample appears to have experienced at least one disruption during essay/PT portion of the exam.
- ✓ Remote and in-person TTs appear to have experienced differences on a few measures test disruption.



The State Bar of California

Indicators of Test Disruption

Type of Measure	Indicator of Test Disruption	Data source	Notes
Staff review of essay/PT submissions	At least one essay or the PT was not gradable	Essays/PT submissions	Here staff skimmed content to confirm content was relevant (and not, for example, a paste-in of the essay/PT prompt)
	At least one essay or the PT was shorter than the rest of their written submissions.	Essays/PT submissions	Staff skimmed across all essays and PT to get a sense if any were significantly shorter.
	At least one essay or the PT contained a message from the applicant about technical problem faced during the exam.	Essays/PT submissions	In most cases, this was a short message.
	At least one essay or the PT remained in notes and was not pasted into question submission box	Essays/PT submissions	This is an indicator that the cut and paste function did not work.
	At least one essay or the PT had a cut-off sentence	Essays/PT submissions	At least one essay or the PT had a cut-off sentence
Administrative Data	Failed to submit least one submission (essay or PT) within 95th–100th percentile of allotted time	ML data file that reports time spent on each essay and the PT for each applicant	Example of criteria: For non-accommodated applicants: essays submitted in less than 55 minutes or more than 60 minutes; PT was submitted less than 80 minutes or more than 90 minutes.
	Contacted ML on Day 1 re: technical problem	ML data file that captured all requests for technical assistance during the exam.	
Applicant self-reported	Filled out post-exam survey and reported experiencing a technology, administrative, or proctor issue during the essay or PT portion of the exam	Feb 25 Post-exam Survey	
	Contacted State Bar regarding a technology issue experienced during essay/PT portion of exam	Messages sent through AIMS portal; emails sent to State Bar	



Detailed Results (sorted from high to low for total test takers' results)

		Total TTs		Remote		In-Person	
Type of Measure	Indicator of Test Disruption	N=351	Percent	N=240	Percent	N=111	Percent
Applicant self-reported	Filled out post-exam survey and reported experiencing a technology, administrative, or proctor issue during the essay or PT portion of the exam	222	63%	148	62%	74	67%
Administrative	Failed to submit least one submission (essay or PT) within 95th–100th percentile of allotted time	189	54%	137	57%	52	47%
Self-reported	Contacted State Bar regarding a technology issue experienced during essay/PT portion of exam	122	35%	85	35%	37	33%
Staff review of essay submissions	At least one essay or the PT had a cut-off sentence	101	29%	61	25%	40	36%
Administrative	Contacted ML on Day 1 re: technical problem	85	24%	85	35%	n/a	n/a
Staff review of essay/PT submissions	At least one essay or the PT was shorter than the rest of their written submissions.	8	2%	5	2%	3	3%
Staff review of essay/PT submissions	At least one essay or the PT contained a message from the applicant about technical problem faced during the exam.	7	2%	4	2%	3	3%
Staff review of essay/PT submissions	At least one essay or the PT remained in notes and was not pasted into question submission box	5	1%	5	2%	0	0%
Staff review of essay/PT submissions	At least one essay or the PT was not gradable	0	0%	0	0%	0	0%
	Total TTs who experienced at least one of the above	328	93%	227	95%	101	91%



The State Bar of California

No-Disruption Group Analysis

Objective

To identify test takers who experienced no exams disruptions, thereby providing a baseline for exam performance comparison.

Results

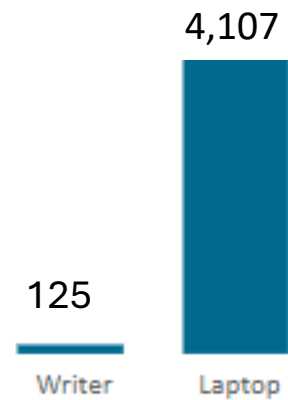
We analyzed “non-disruption” two ways—first by using disruption reports with exam metrics, and second by using exam metrics alone.

	No-Disruption Criteria	Number of TT's	Percent
Initial Analysis: Exam metrics + Disruption reports	<ul style="list-style-type: none">• No disruption reported (by TT's via survey or to SB, or by Measure)• Time-on-task for every essay within the normal band• All essays submitted & in the expected length range• At least 171 MCQs answered	319	8%
Follow-up Analysis: Exam metrics only	<ul style="list-style-type: none">• All essays submitted• At least 171 MCQs answered• Each essay within the expected word-count range• Time-on-task for every essay within the normal band• Total Day 1 + Day 2 testing time within the normal range	1,523	37%

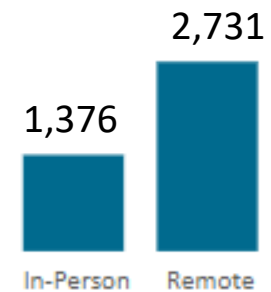


FEBRUARY 2025 CBX OVERVIEW

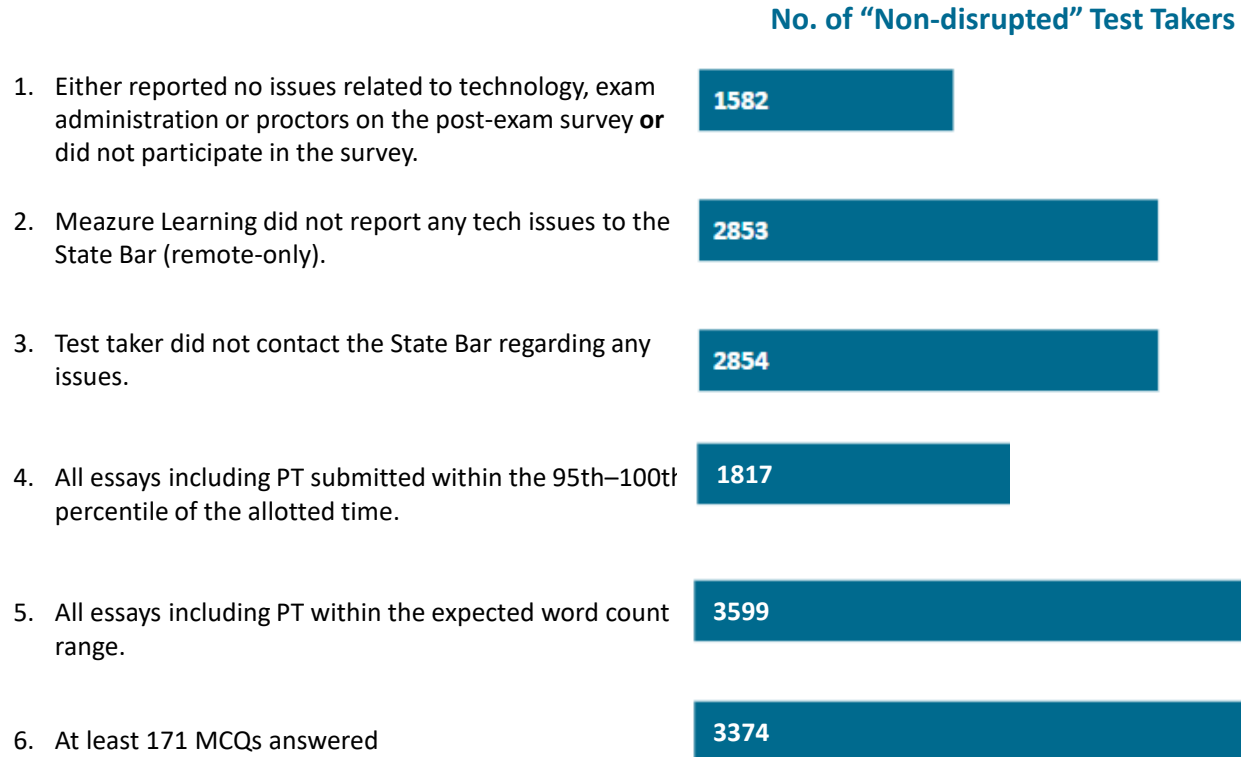
4,232 TEST TAKERS ATTENDED
THE EXAM



4,107 LAPTOP TEST TAKERS
INCLUDED IN THIS ANALYSIS



No-Disruption: Exam metrics + Disruption reports



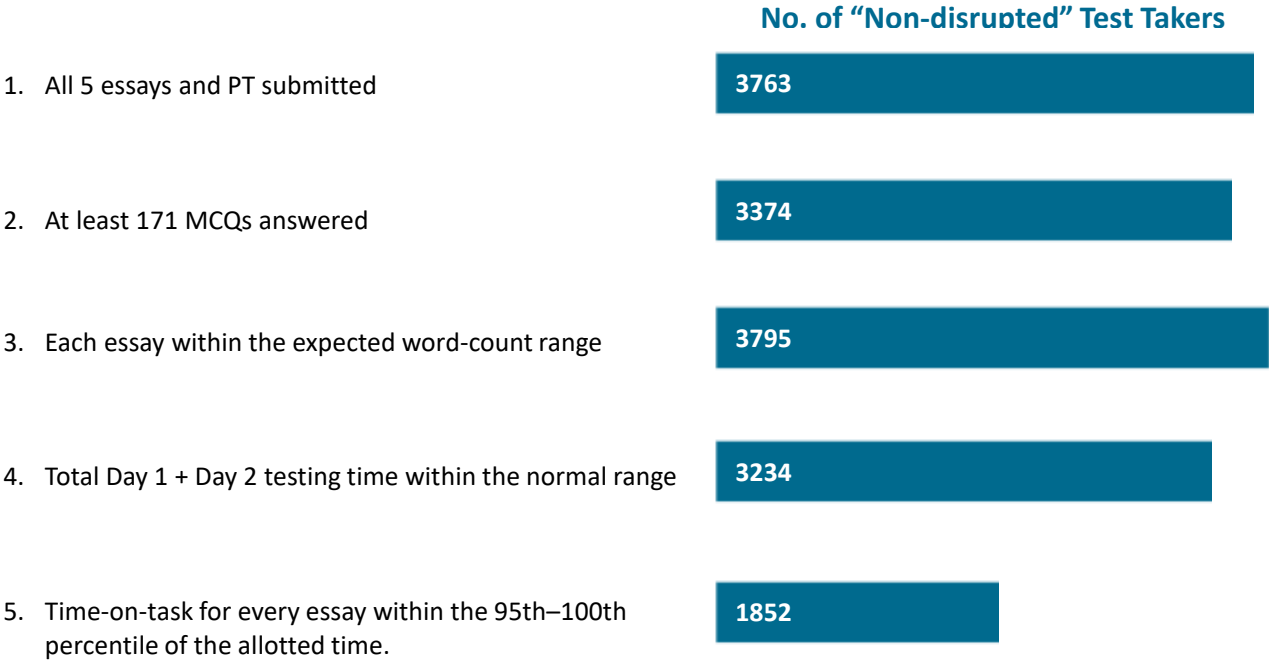
The “Non-Disrupted”

Group: A total of **319 (8%)** test takers met all 6 criteria. They reported no issues (via survey or email/AIMS), had no technical problems flagged by Measure Learning, submitted all essays within normal time and length ranges, and responded to at least 171 MCQ’s.



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No-Disruption: Exam metrics



The “Non-Disrupted” Group: A total of **1,523 (37%)** test takers met all 5 criteria. They submitted all essays, answered at least 171 MCQ’s, submitted all essays within normal time and length ranges, and completed Day 1 plus Day 2 within the normal total testing time.



February 2025 Post-Bar Exam Survey Preliminary Results



The State Bar of California

Key findings

Response Rate: 2,811 out of 4,218 applicants (**66%**) participated in the survey.

Widespread issues:

- **Over 80%** of respondents reported encountering at least one issue related to technology, administration, or proctoring during the exam.
- **79%** experienced typing delays and **75%** reported problems with the cut and paste function during the essay/performance test
- **Over 50%** reported that the exam platform crashed or froze during the Multiple-Choice Question portion of the exam.

Impact on performance:

- A majority of respondents (**61%**) reported that technology issues “significantly” interfered with their ability to perform their best on the exam.

Overall dissatisfaction:

- **62%** percent of respondents reported being “very dissatisfied” with their exam experience.

Exam format preference:

- When asked about future exam formats, **51%** reported that they preferred in-person testing, while **49%** favored a remote format.

Comparison with Past Post-Exam Surveys

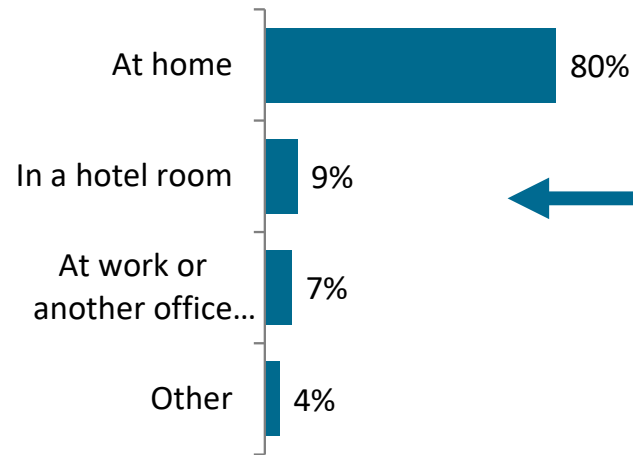
- Problems with technology and overall dissatisfaction **were higher** in the February 2025 exam compared with post-exam surveys for February and July 2024 exams.



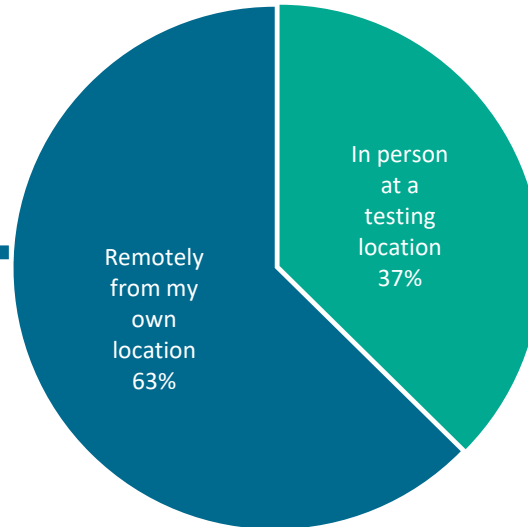
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General Information

- 80% of respondents who took the exam remotely did so from their homes.

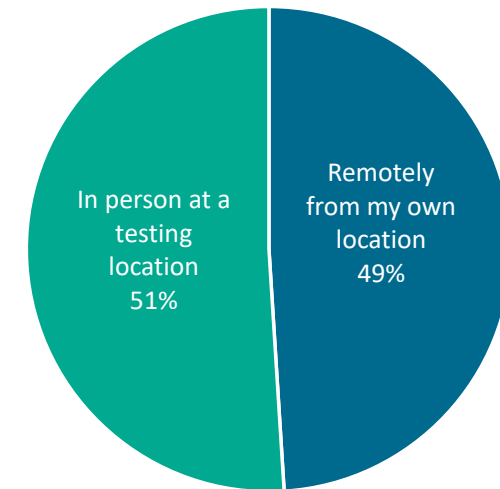


- The share of respondents who took the exam remotely (63%) was similar to overall test takers (65%).



Question: Where did you take the February 2025 bar exam?

- Based on their experience nearly half of all respondents (49%) would prefer to take the exam remotely in the future.



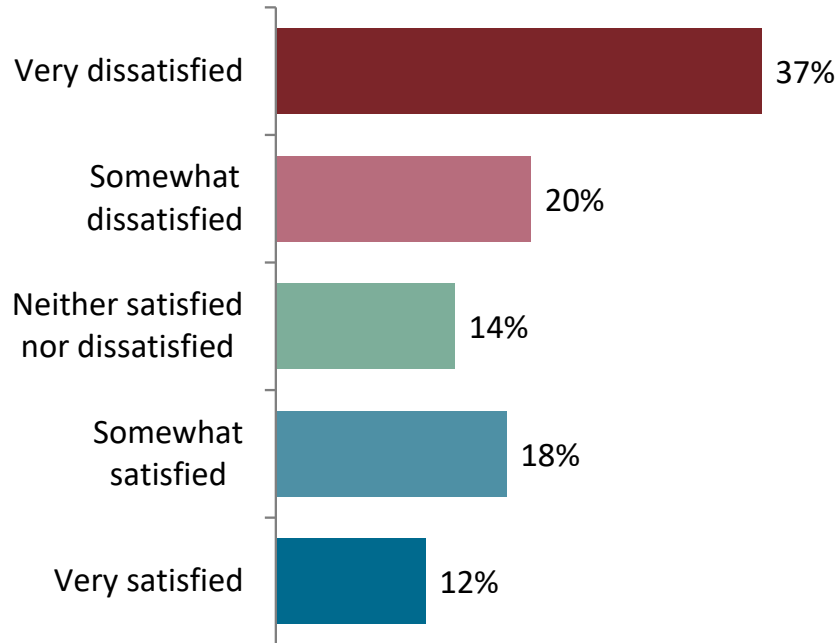
Question: Based on your experience, how would you prefer to take the exam if you were to site for it again in the future?



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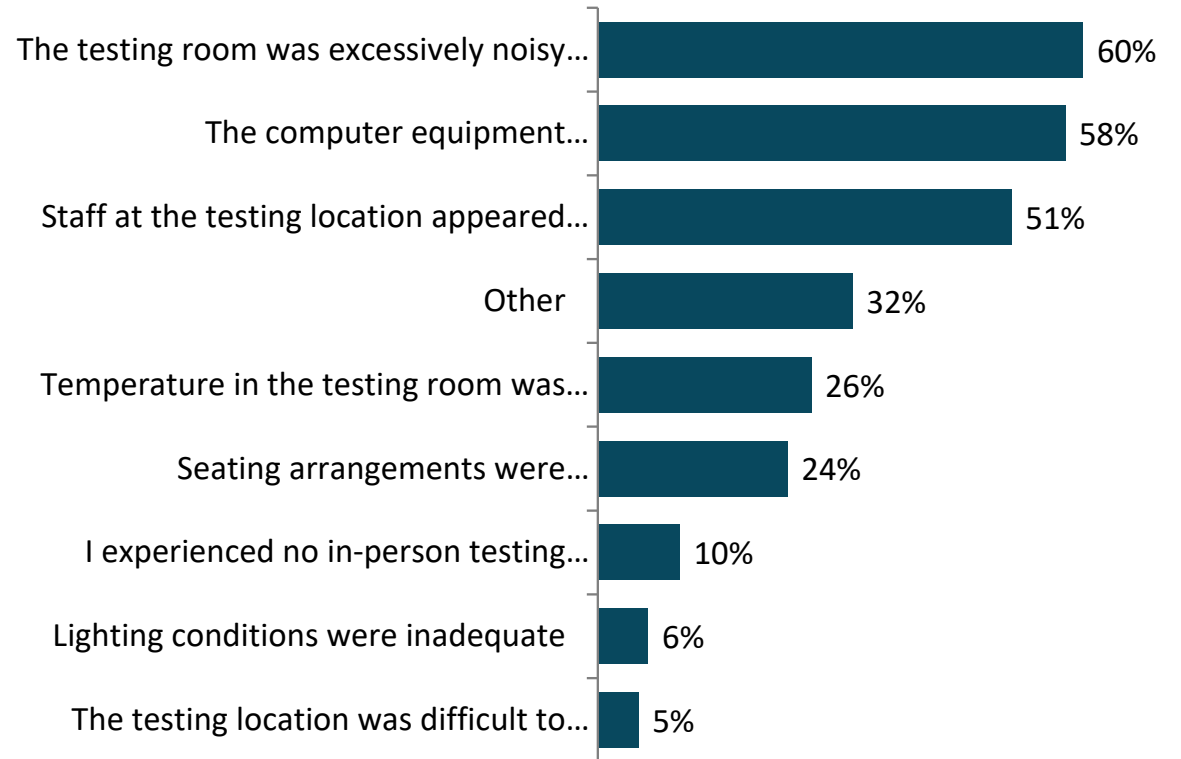
In-Person Testing Experience

- The majority of respondents (57%) who took the exam in-person were dissatisfied with their testing location and 30% were satisfied.



Question: How would you describe your level of satisfaction with the in-person testing location?

- The three most common issues experienced at in-person testing centers were related to noise/distractions, computer problems, and staffing.



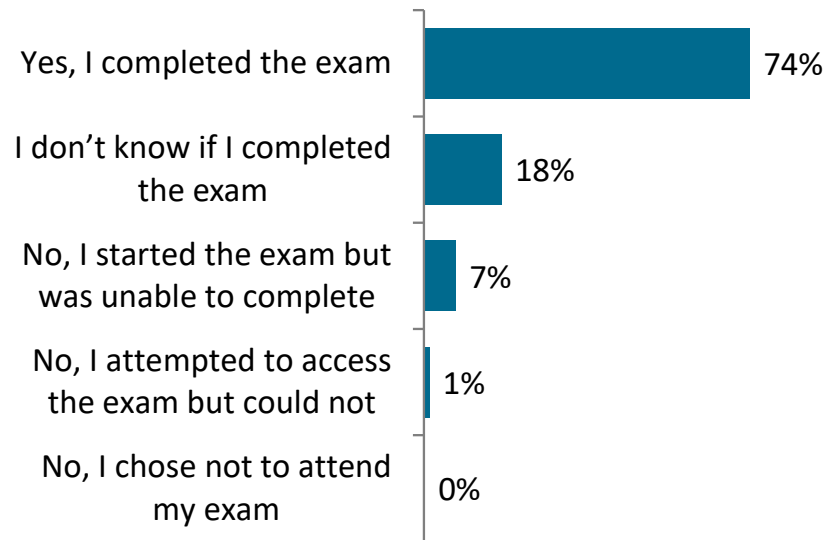
Question: Did you experience any of the following issues at the in-person testing location? (Check all that apply)



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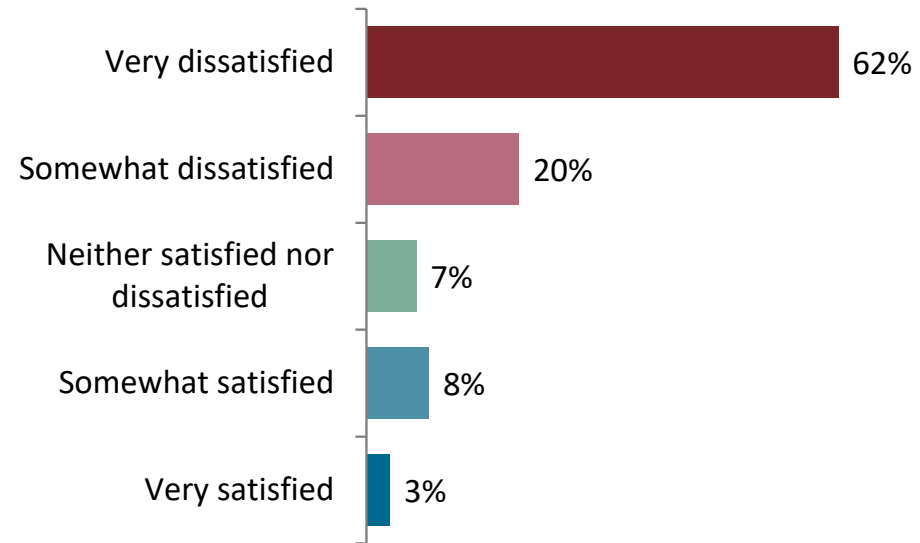
Exam Completion, Satisfaction, Future Preference

- The majority of respondents (74%) reported that they completed the entire exam. Nearly one in five reported that they did not know if they completed it.



Question: Were you able to complete the entire exam?

- The majority of respondents (82%) were either very or somewhat dissatisfied with their exam experience.



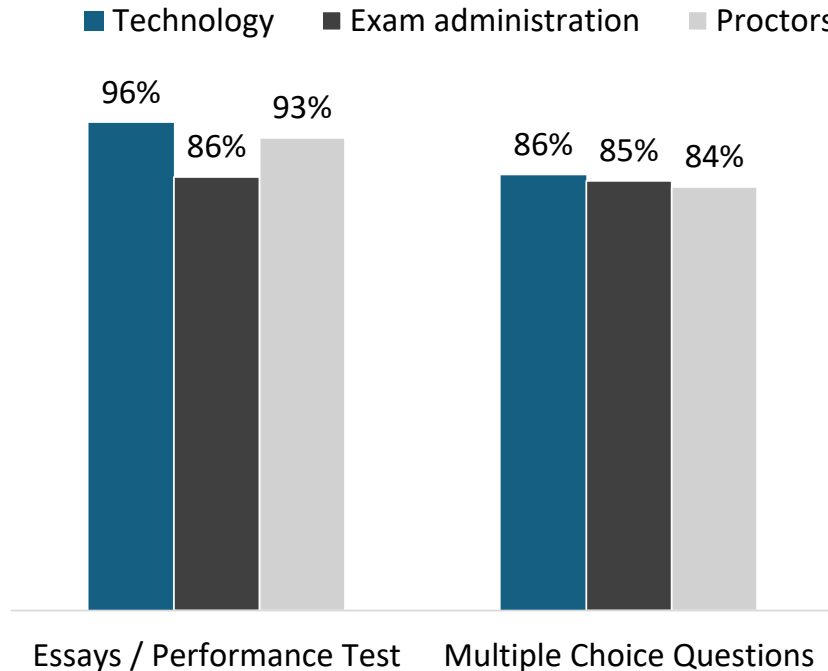
Question: Overall, how satisfied were you with your exam experience?



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Issues Experienced During Exam

Percent of respondents that experienced at least one issue related to technology, exam administration, or proctors



Results based on responses to questions regarding experiencing issues related to technology, exam administration, and proctors during the exam. See following slides for more details.

- The vast majority of respondents reported experiencing at least one issue related to technology, exam administration, or proctors during the exam.
- Over 90% reported experiencing at least one issue related to technology or proctors during the essays/performance test portion of the exam.
- More respondents reported experiencing issues with technology and proctors during the essays/performance test portion of the exam versus during the multiple-choice questions portion of the exam.

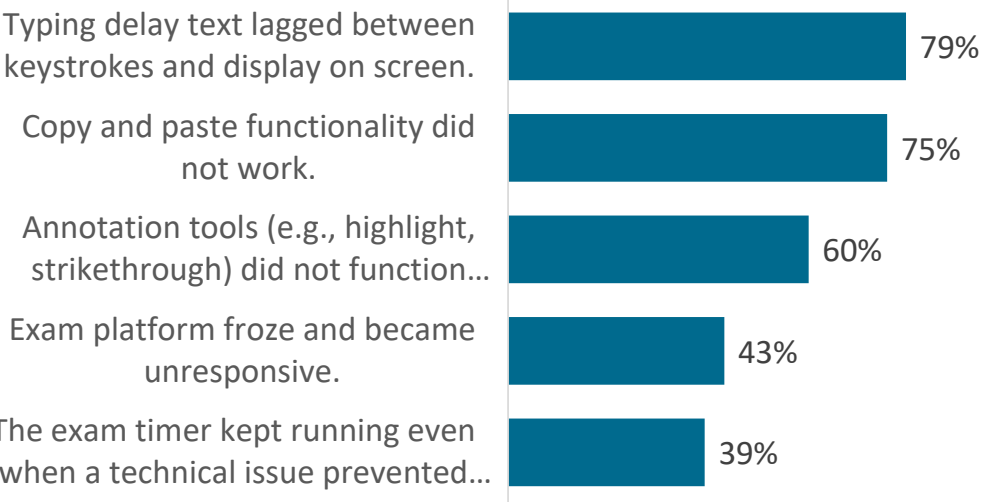


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Technology: Top 5 Issues Experienced

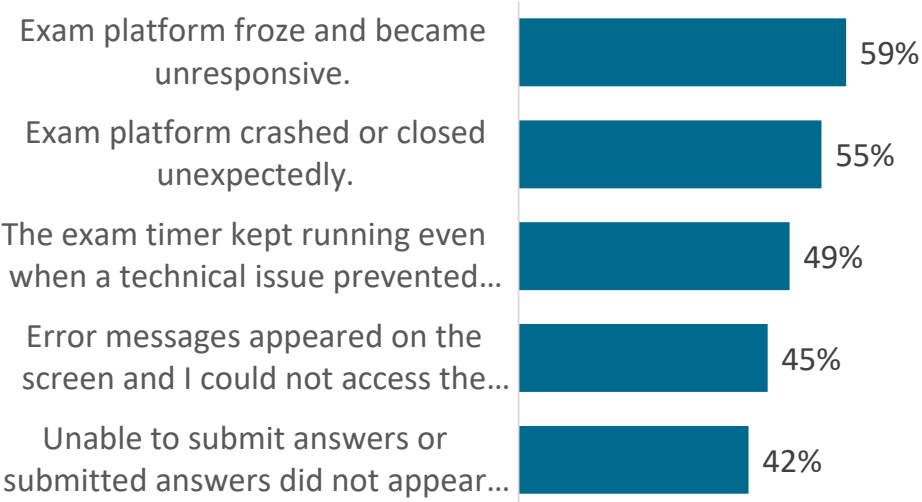
Essays / Performance Test

➤ Nearly 80% reported experiencing issues related to typing delays during the essay/performance test and 75% reported that the copy and past function did not work.



Multiple Choice Questions

➤ Over half of all respondents experienced the exam platform freezing/becoming unresponsive or crashing/closing unexpectedly during the multiple-choice question portion of the exam.



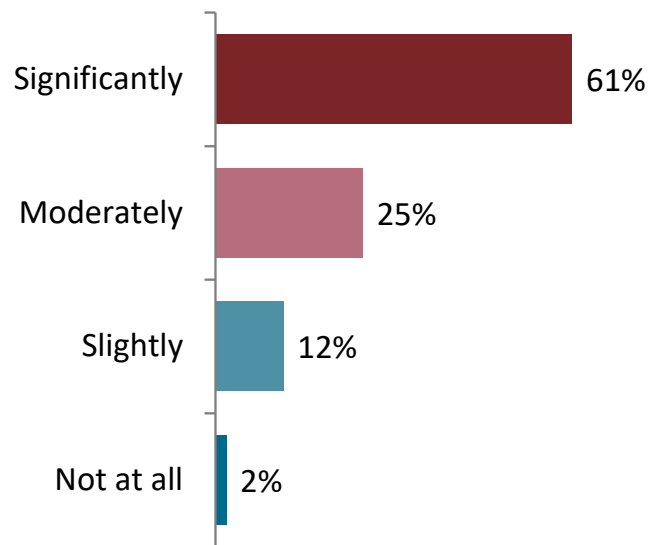
Question: Did you experience any of the following technology issues during the exam? (Check all that apply for each component of the exam)



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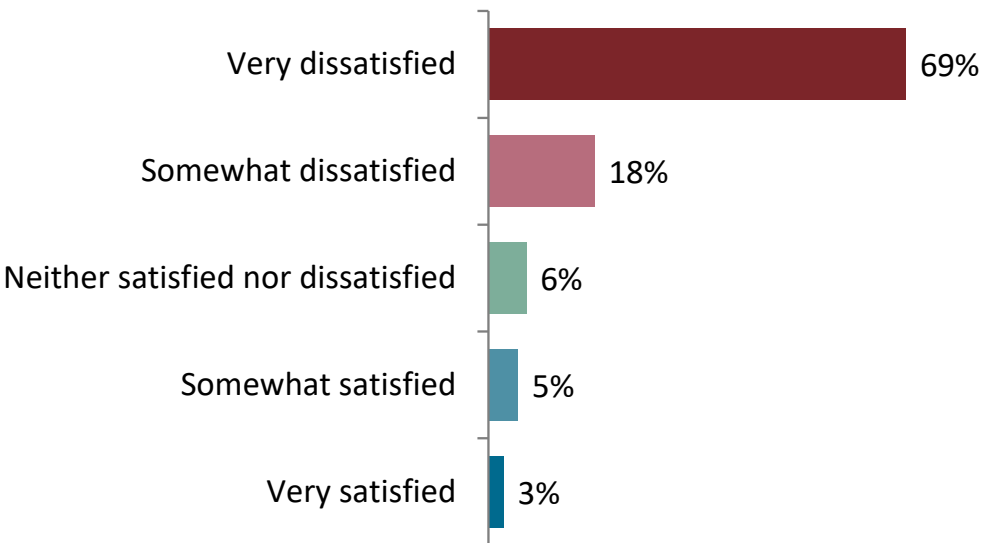
Technology: Impact and Satisfaction with Online Platform

➤ The majority of respondents (86%) thought the technology issues significantly interfered with their ability to perform their best on the exam.



Question: To what extent do you think the technology issues you experienced interfered with your ability to perform your best on the exam?

➤ The majority of respondents (87%) were either very or somewhat dissatisfied with Meazure Learning's online exam platform.



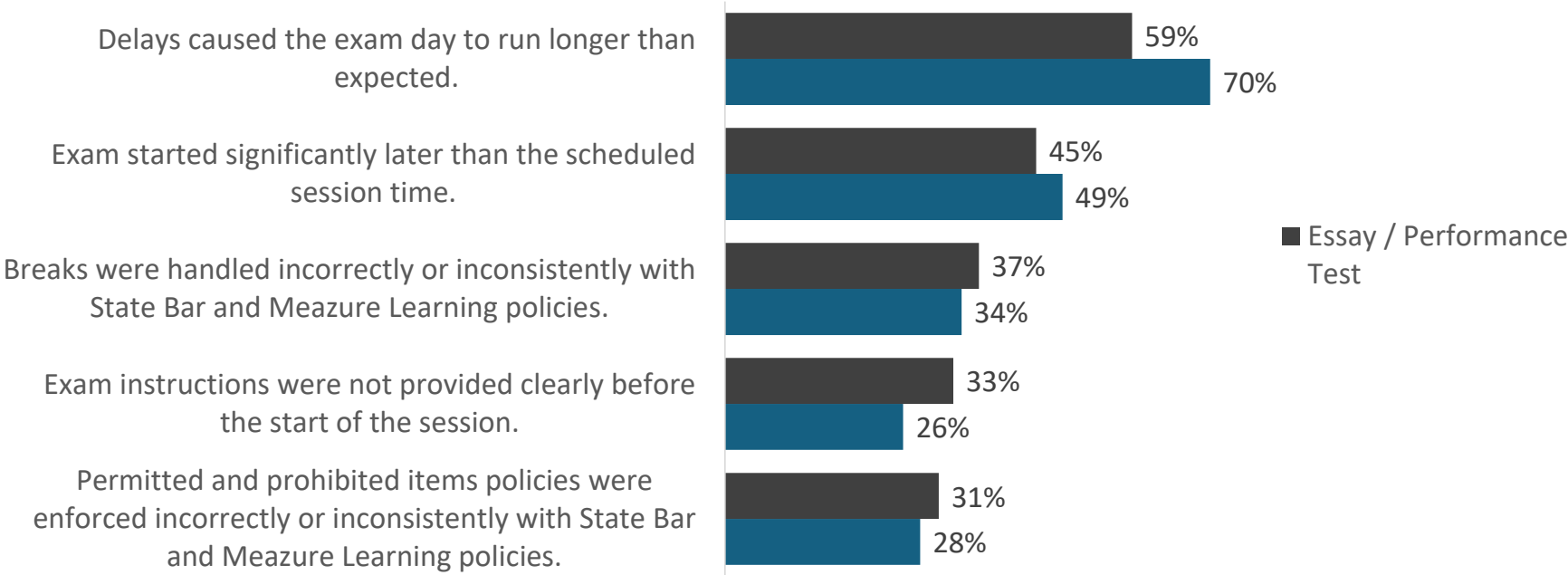
Question: How would you describe your level of satisfaction with Meazure Learning's online exam platform?



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Exam Administration: Top 5 Issues Experienced

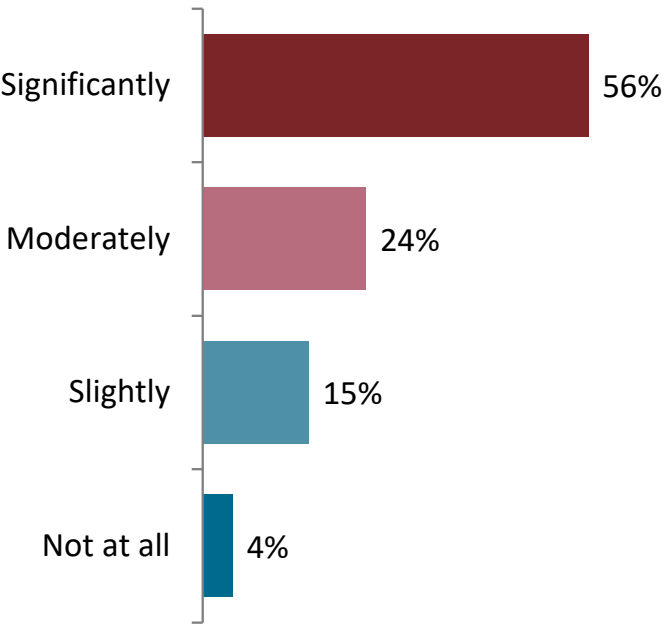
- Respondents identified the same top 5 exam administration issues for both portions of the exam.
- The top reported exam administration issue: delays that cause the exam day to run longer than expected.



Question: Did you experience any of the following exam administration issues during the exam? (Check all that apply for each component of the exam)

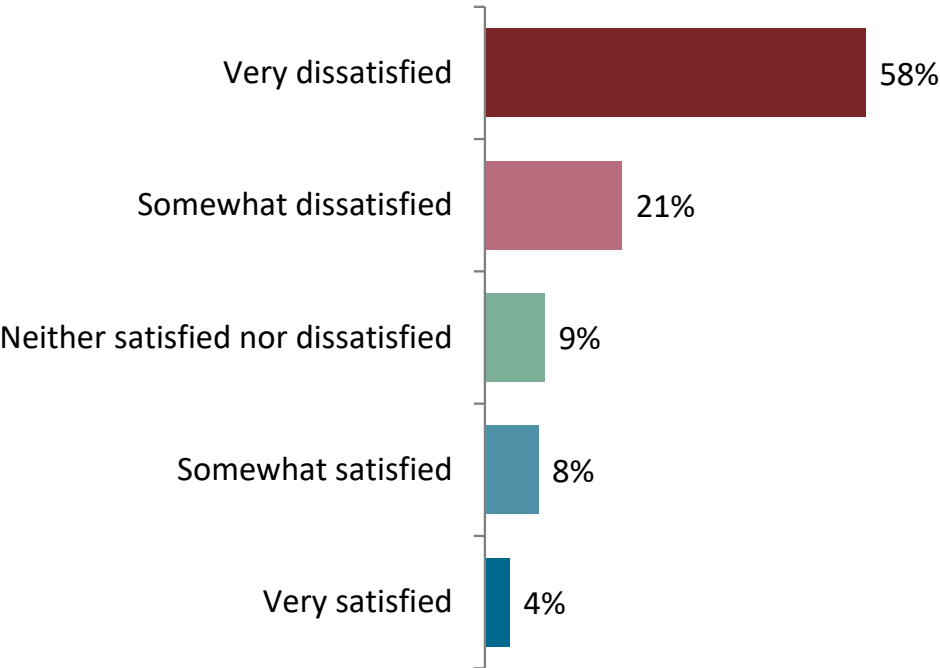
Exam Administration: Impact and Satisfaction

➤ Over half of respondents (56%) thought the exam administration issues significantly interfered with their ability to perform their best on the exam.



Question: To what extent do you think the technology issues you experienced interfered with your ability to perform your best on the exam?

➤ The majority of respondents (79%) were either very or somewhat dissatisfied with the administration of the exam.



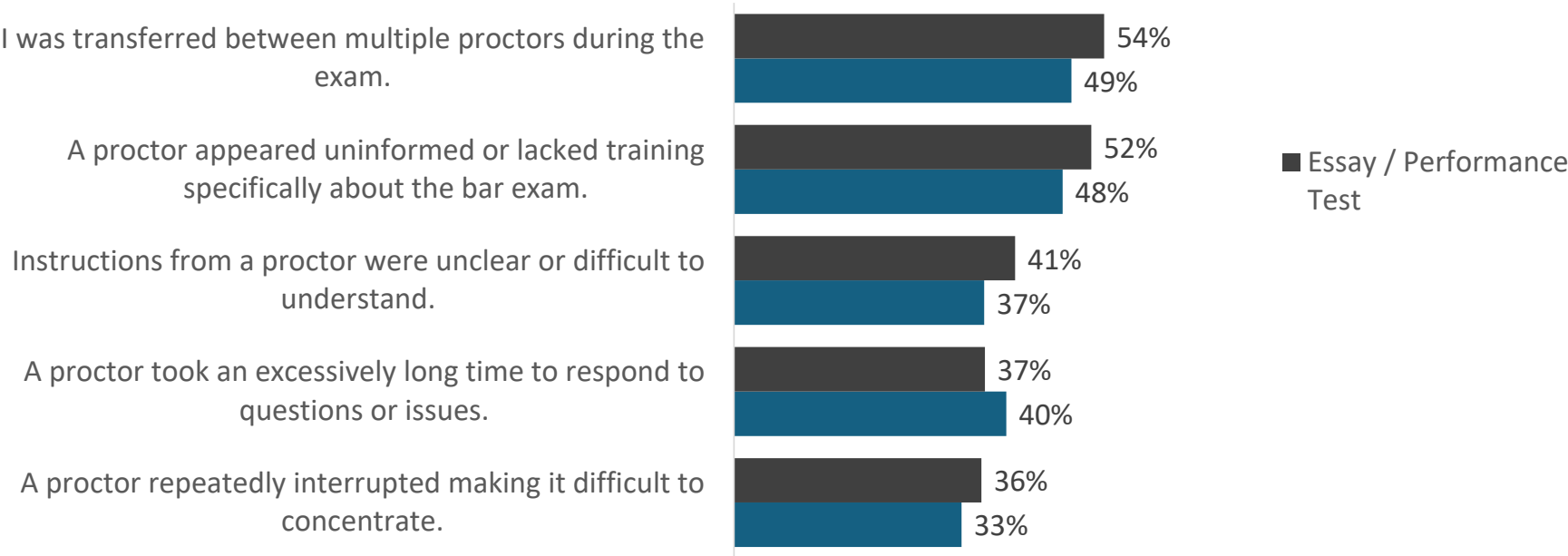
Question: How would you describe your level of satisfaction with the administration of the exam?



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Proctors: Top 5 Issues Experienced

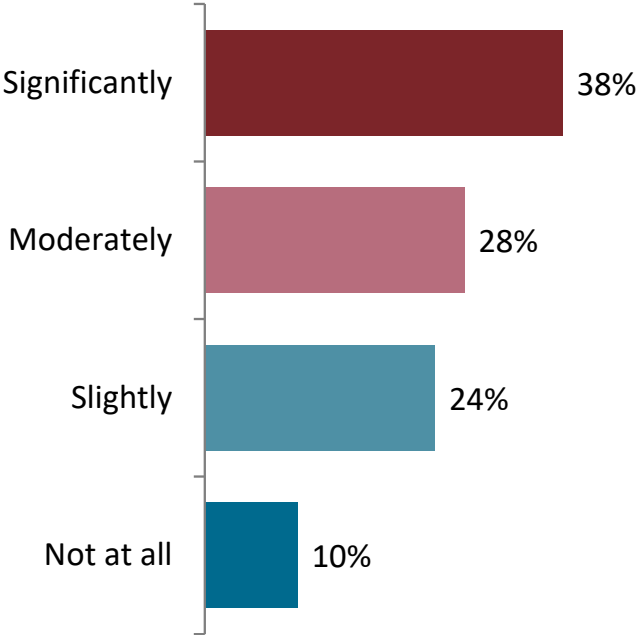
- Respondents identified the same top 5 issues related to proctors for both portions of the exam.
- The top reported proctor issue was being transferred between multiple proctors during the exam. The next most frequent issue experienced was proctors appearing uninformed and lacking training about the bar exam



Question: Did you experience any of the following issues with a proctor during the exam? (Check all that apply for each component of the exam)

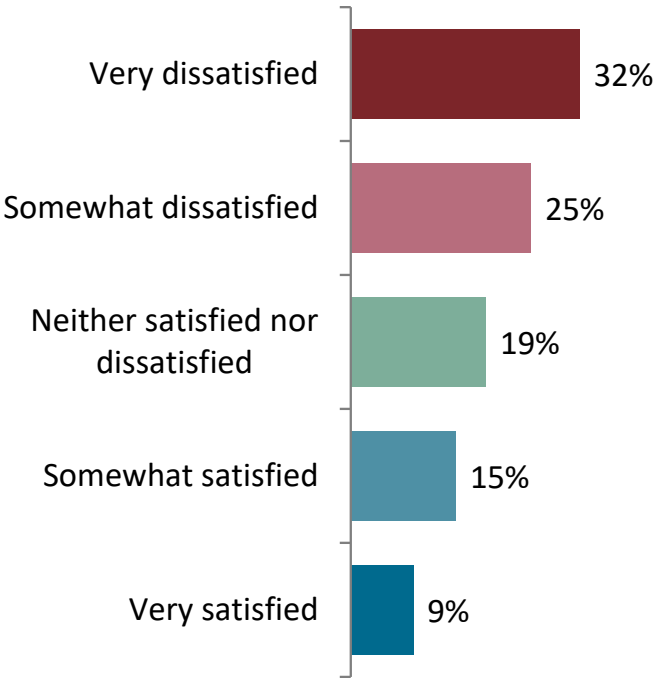
Proctors: Impact and Satisfaction

➤ Nearly 4 in 10 respondents thought the proctor issues they experienced significantly interfered with their ability to perform their best on the exam.



Question: To what extent do you think the proctor issues you experienced interfered with your ability to perform your best on the exam?

➤ Over half of respondents (57%) were either very or somewhat dissatisfied with the proctors.



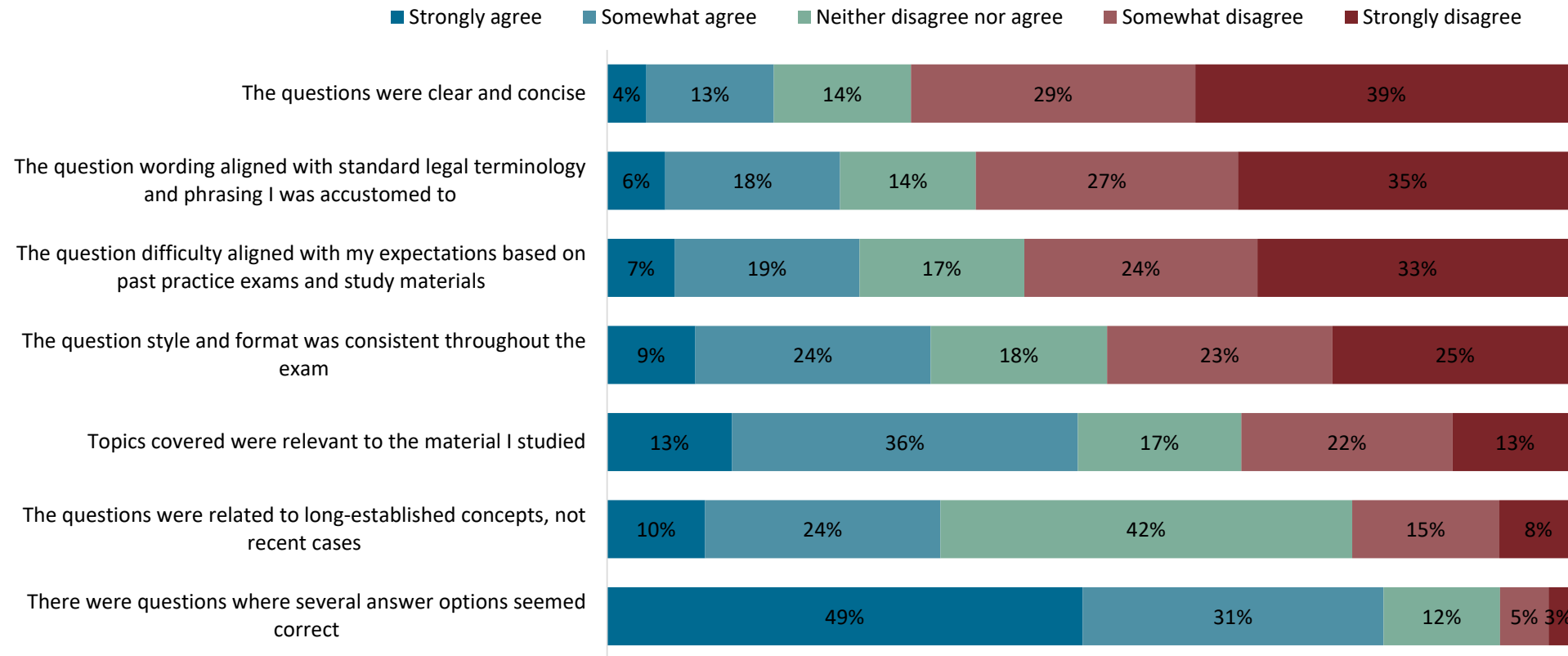
Question: How would you describe your level of satisfaction with the proctors?



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Multiple-Choice Questions

- Nearly 70% of respondents disagreed with the statement: “The questions were clear and concise.”
- Over 60% disagreed with the statement “Question wording was aligned with standard legal terminology and phrasing I was accustomed to.”



Question: Please rate your agreement with the following statements about the multiple-choice questions.

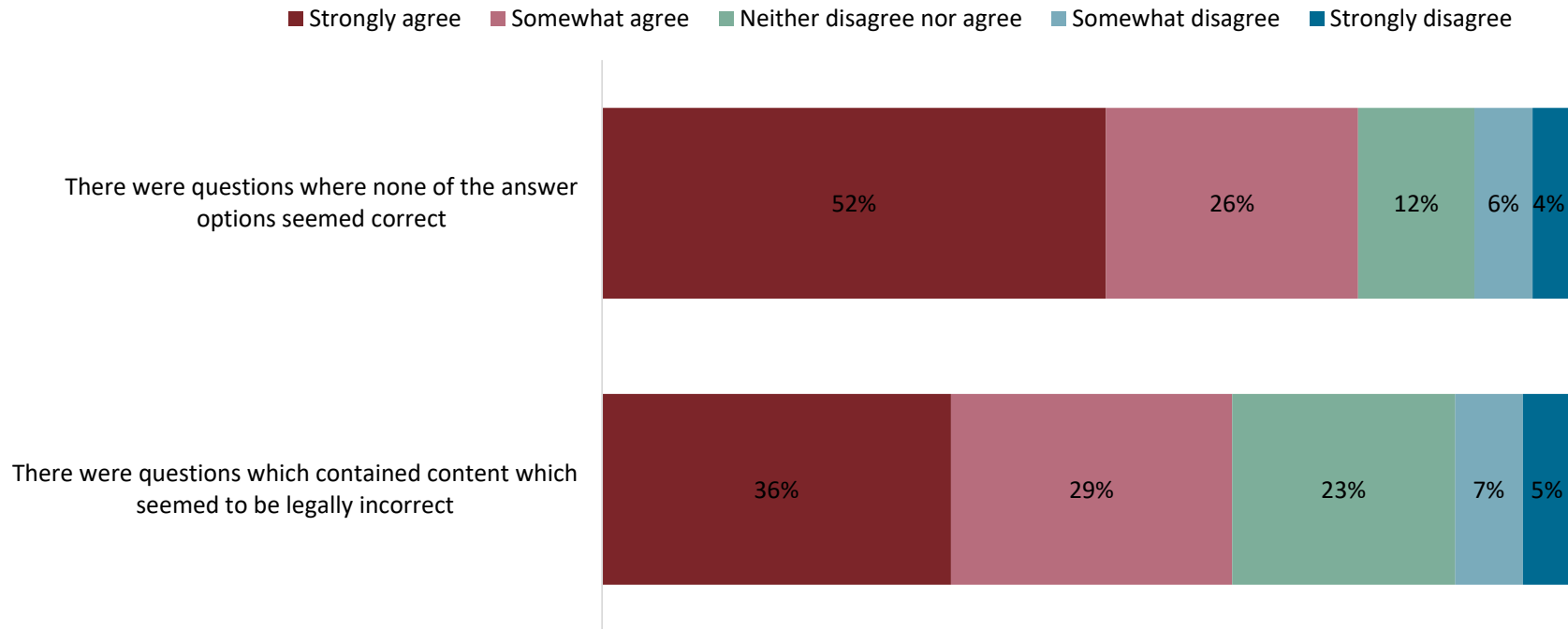


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Multiple-Choice Questions

Note: “strongly” and “somewhat agree” are negative sentiments for the statements below; as such, they are shaded in red.

- Nearly 80% strongly or somewhat agreed with the statement: “There were questions where none of the answer options seemed correct.”
- 65% strongly or somewhat agreed with the statement: “There were questions which contained content which seemed to be legal incorrect.”



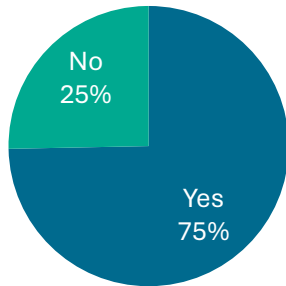
Question: Please rate your agreement with the following statements about the multiple-choice questions



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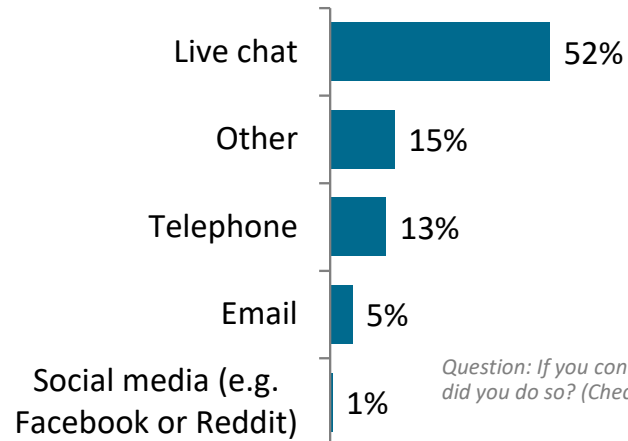
Meazure Learning Technical Support

- Three out of four respondents encountered issues during the exam that required them seek technical support.



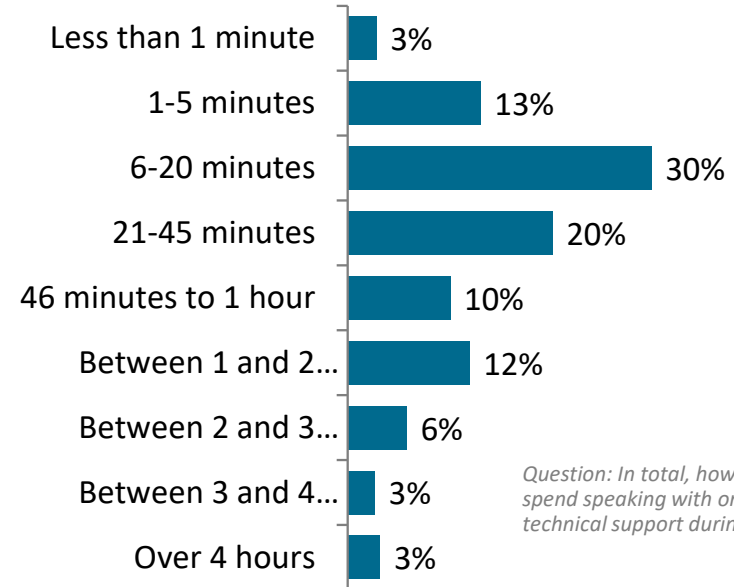
Question: During the exam, did you encounter any issues that required you to contact Meazure Learning technical support, required your proctor to attempt to fix a technology related-issue, or required your proctor to transfer you to a technical support agent?

- Over half of respondents (52%) reported contacting Meazure Learning directly via live chat.



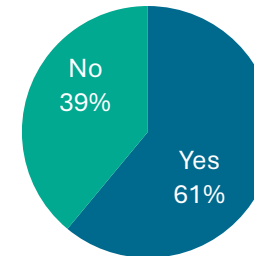
Question: If you contacted Meazure Learning directly, how did you do so? (Check all that apply)

- Nearly one quarter of respondents who sought technical support spent over one hour speaking with or waiting for technical report.



Question: In total, how much time did you spend speaking with or waiting for technical support during the exam?

- Nearly 40 percent reported that the support they received did not resolve the issues that required technical support.



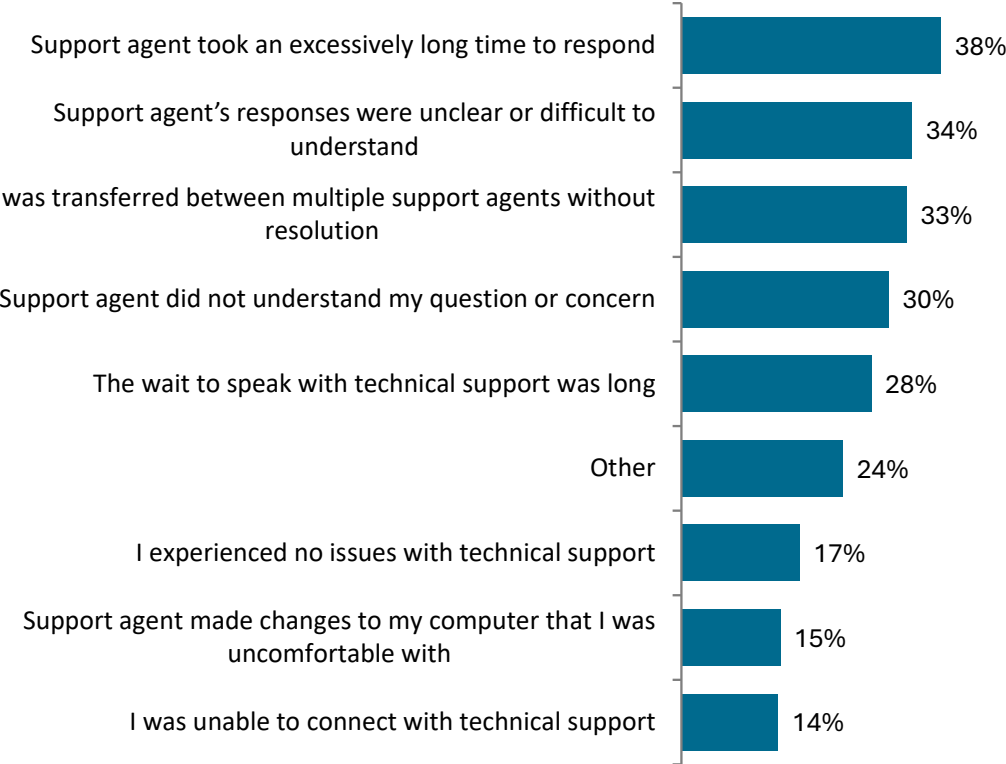
Question: Did the support you received resolve your issue?



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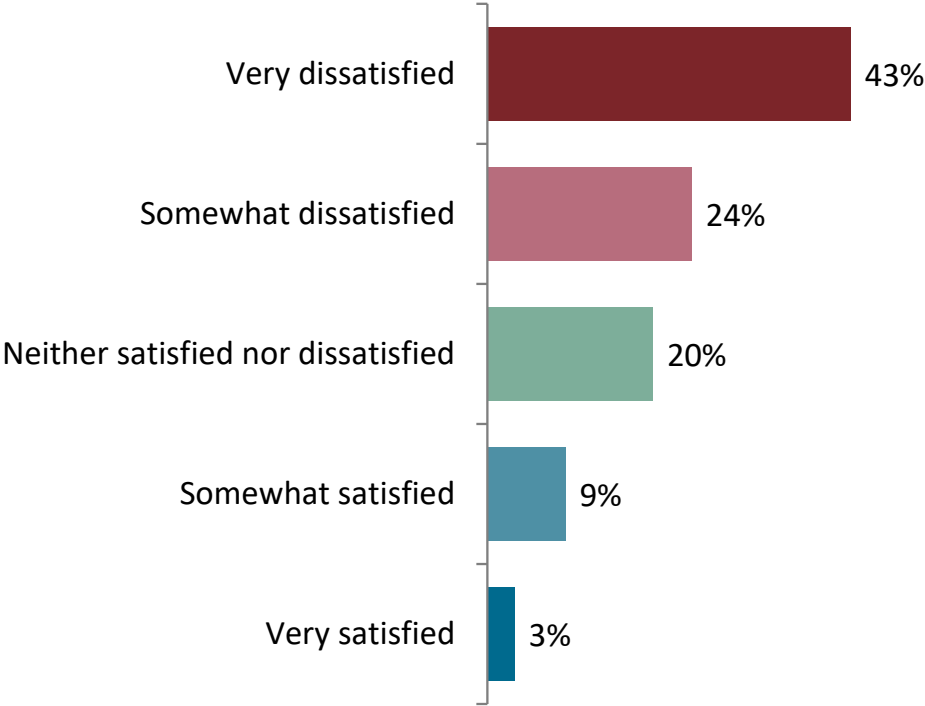
Issues and Satisfaction with Technical Support

- Over one in three respondents reported that:
- * the support agent took an excessively long time to respond
 - * the support agent's responses were unclear or difficult to understand
 - * they were transferred between multiple support agents without resolution.



Question: During the exam, did you experience any of the following issues when interacting with technical support? (Check all that apply)

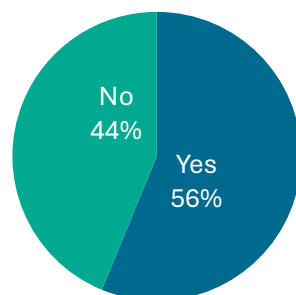
- Nearly 70 percent of respondents were either very or somewhat dissatisfied with the level of technical support during the exam.



Question: How would you describe your level of satisfaction with technical support during the exam?

Contact with the State Bar

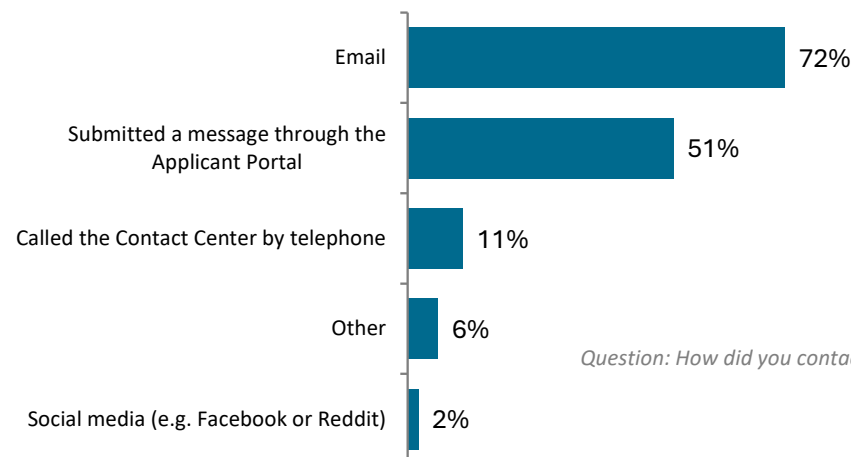
➤ Over half (56%) have contacted the State Bar regarding issues they faced related to the exam.



Question: Have you contacted the State Bar regarding issues you faced related to the exam?

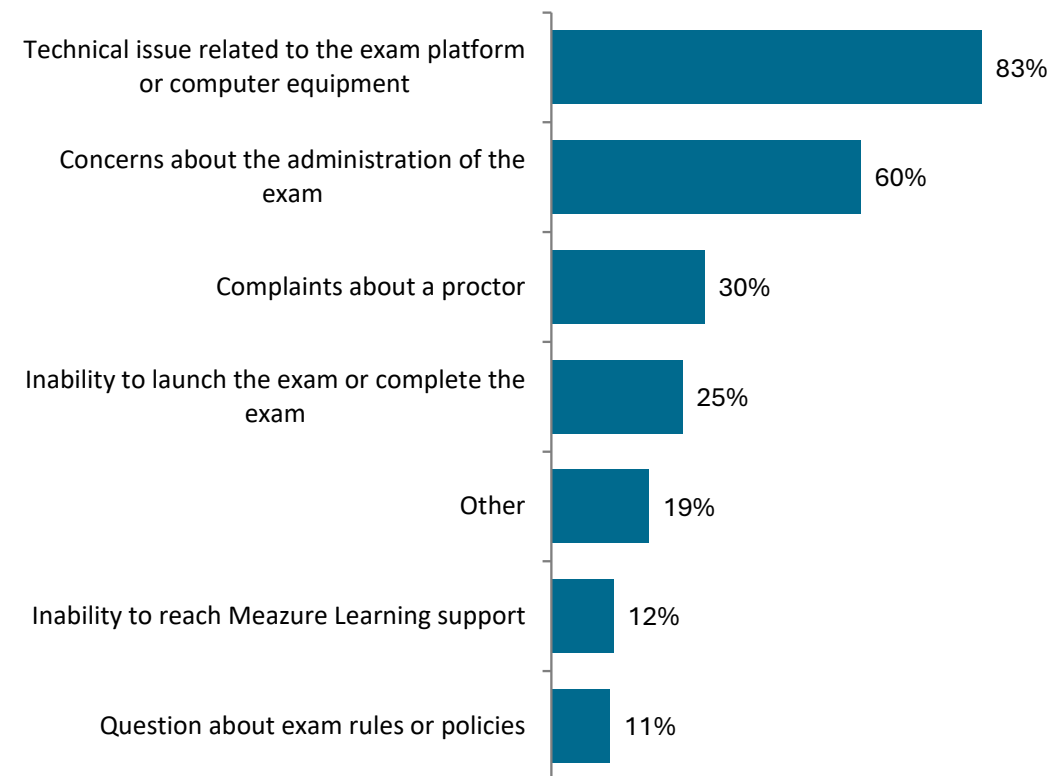


72% contacted the State Bar via email.



Question: How did you contact the State Bar?

➤ Over 80% contacted the State Bar regarding a technical issue related to the exam platform or computer equipment while 60% contacted the State Bar regarding concerns about exam administration.



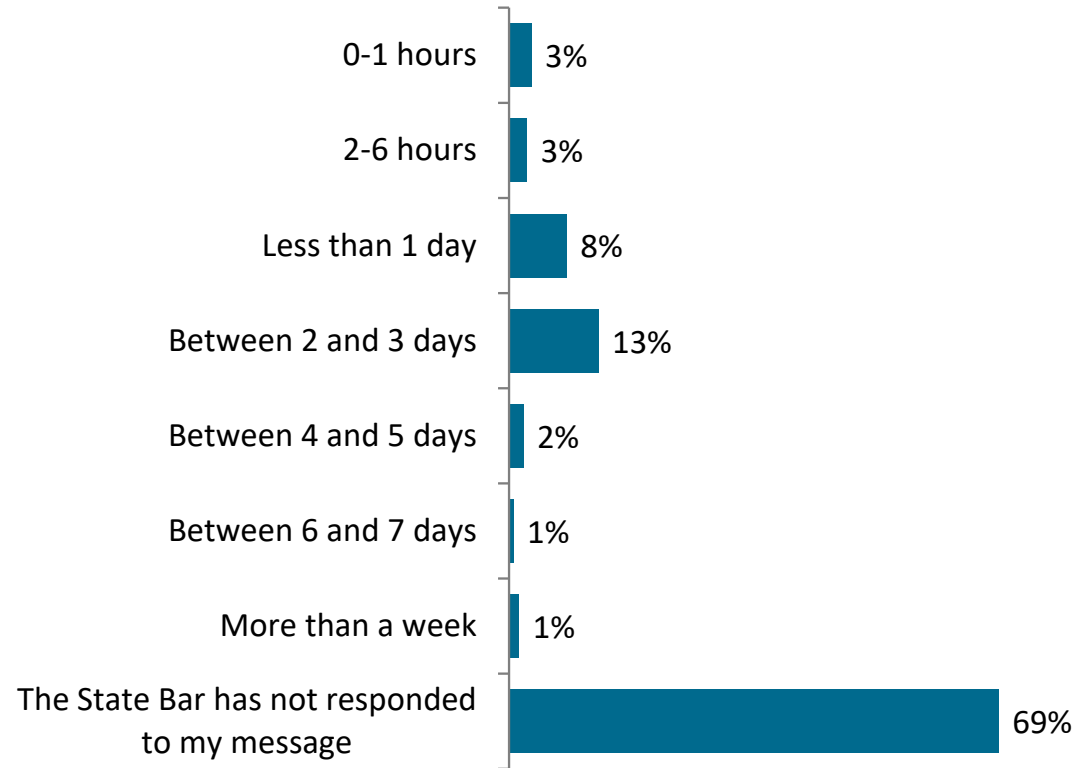
Question: What type of issue did you contact the State Bar about? Check all that apply



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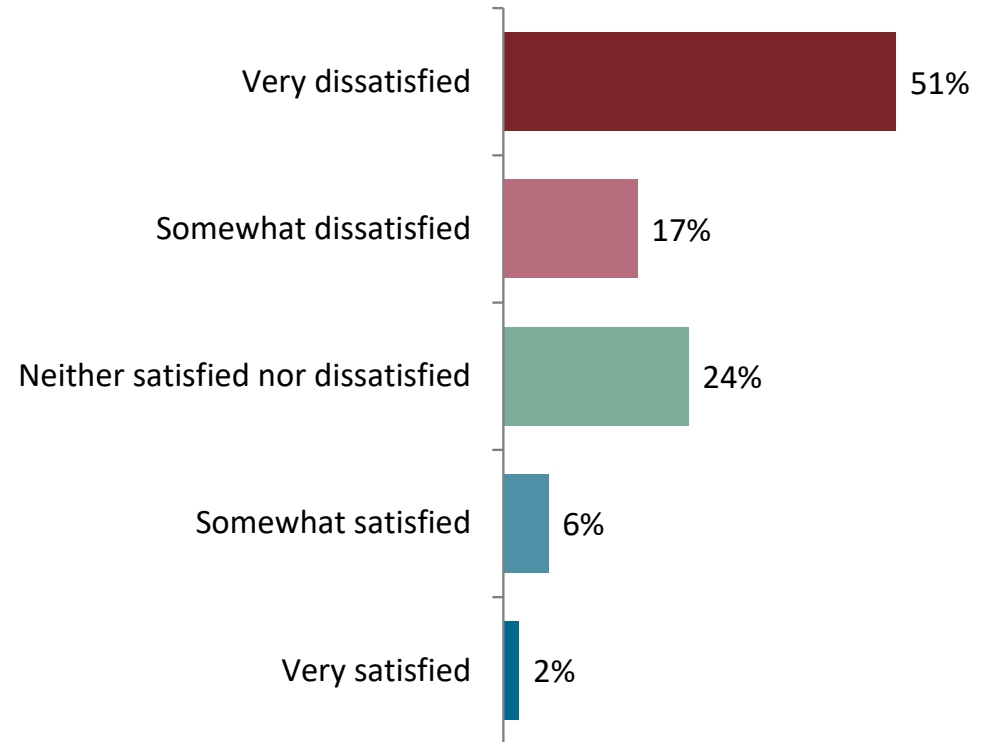
State Bar Response Time and Satisfaction

➤ Nearly 70% report that the State Bar has not responded to their message.



Question: On average, how quickly did the State Bar respond to you?

➤ Nearly 70% of respondents who contacted the State Bar were either very or somewhat dissatisfied with the State Bar's response to them.



Question: How would you describe your level of satisfaction with the State Bar's response to you?

Previous Post-Exam Survey Results

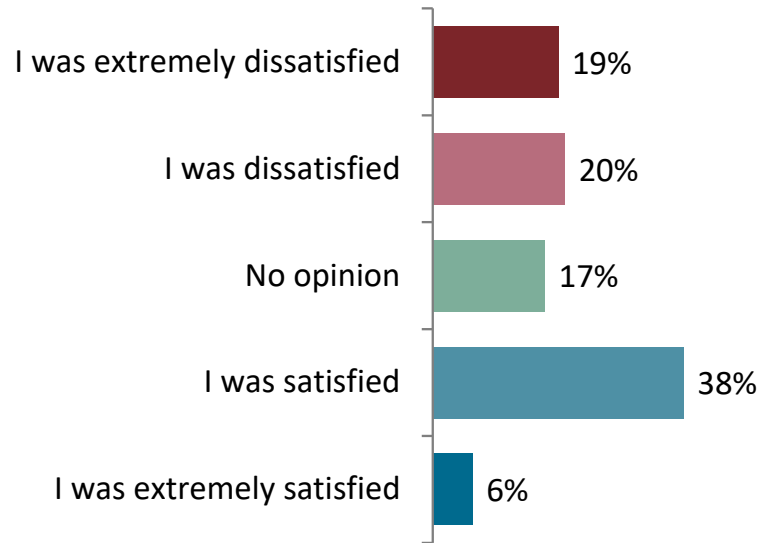


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Exam Satisfaction

February 2024 Exam

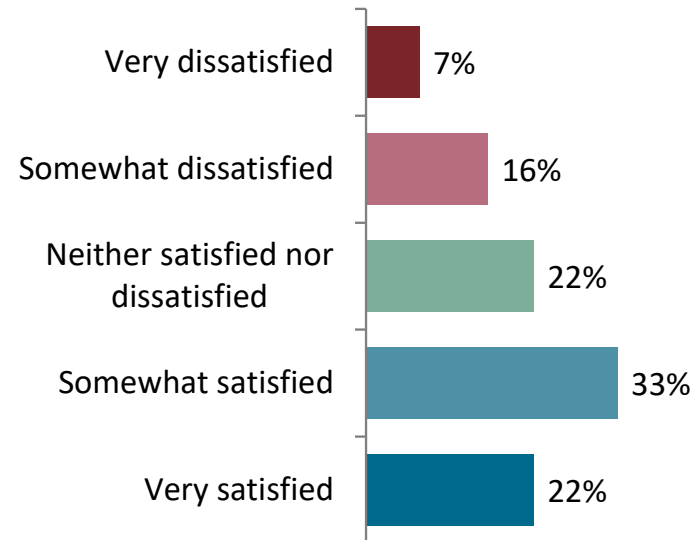
➤ 39% were either extremely dissatisfied or dissatisfied with their exam experience.



Question: Overall, how would you describe your in-person testing experience?

July 2024 Exam

➤ 23% were either extremely dissatisfied or dissatisfied with their exam day experience.



Question: Overall, how satisfied were you with your exam day experience?

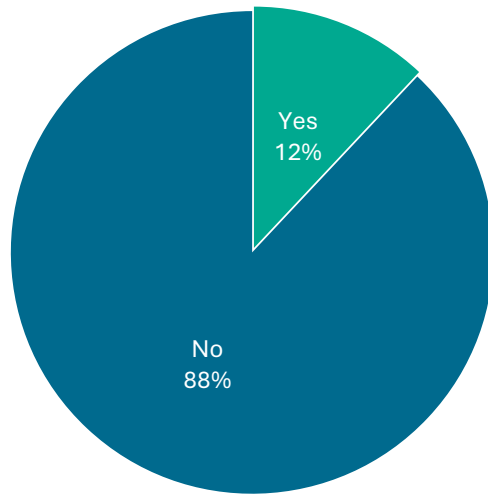


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Technology Issues

February 2024 Exam

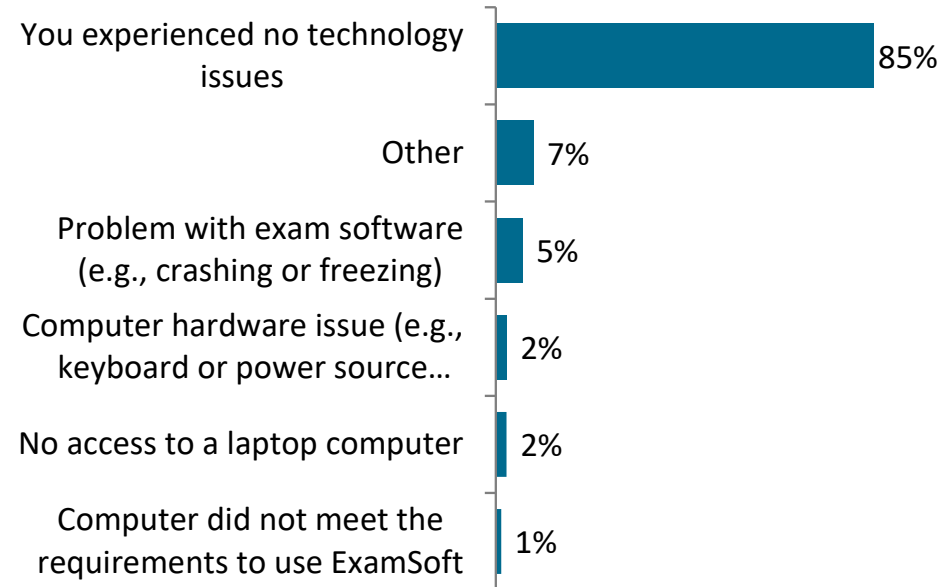
➤ 12% reported issues with ExamSoft.



Question: On bar exam day, did you experience any issues with ExamSoft?

July 2024 Exam

➤ 15% reported experiencing technology issues.



Question: Did you face any of the following technology issues during the exam? (Check all that apply)

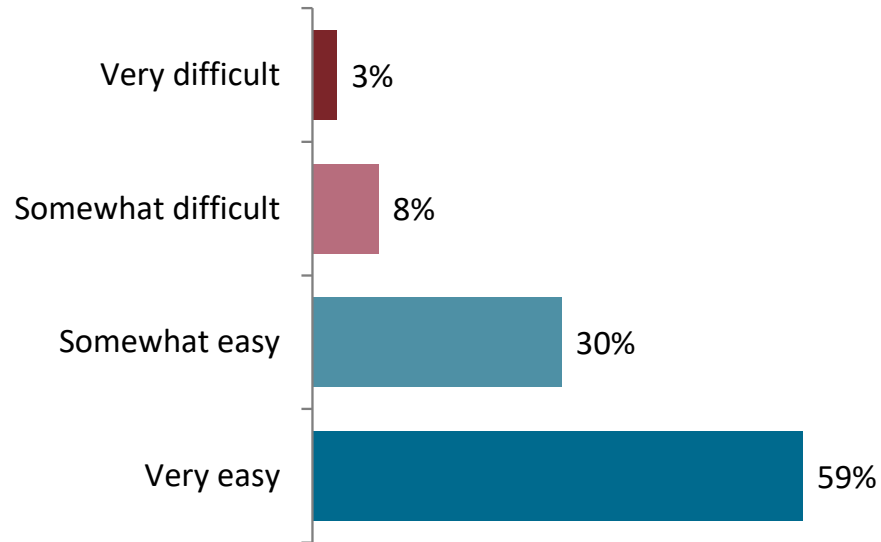


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Uploading Exam Answer Files

February 2024 Exam

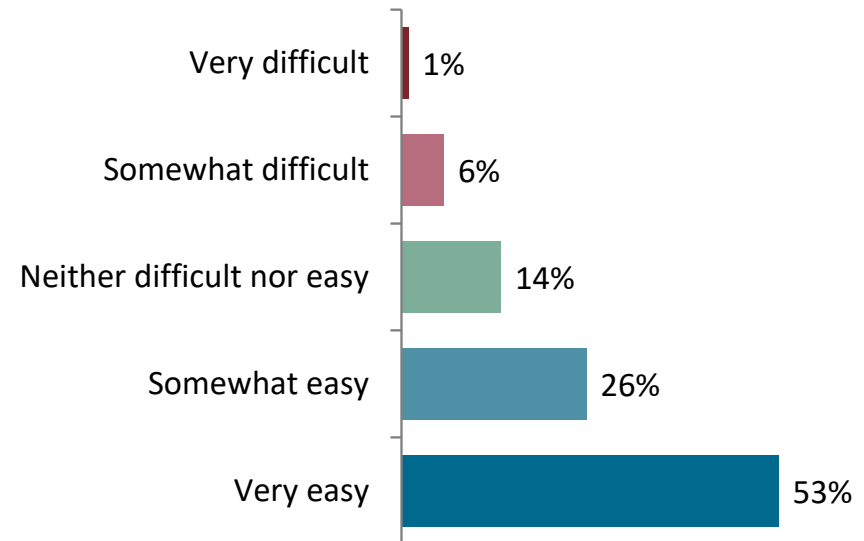
➤ 11% reported that the automatic uploading of their exam answer files was very or somewhat difficult.



Question: How would you describe your experience with the automatic uploading of your exam answer files after testing was completed?

July 2024 Exam

➤ 7% reported that the uploading of their exam answer files was very or somewhat difficult.



Question: How would you describe your experience with the uploading of your exam answer files after testing was completed?

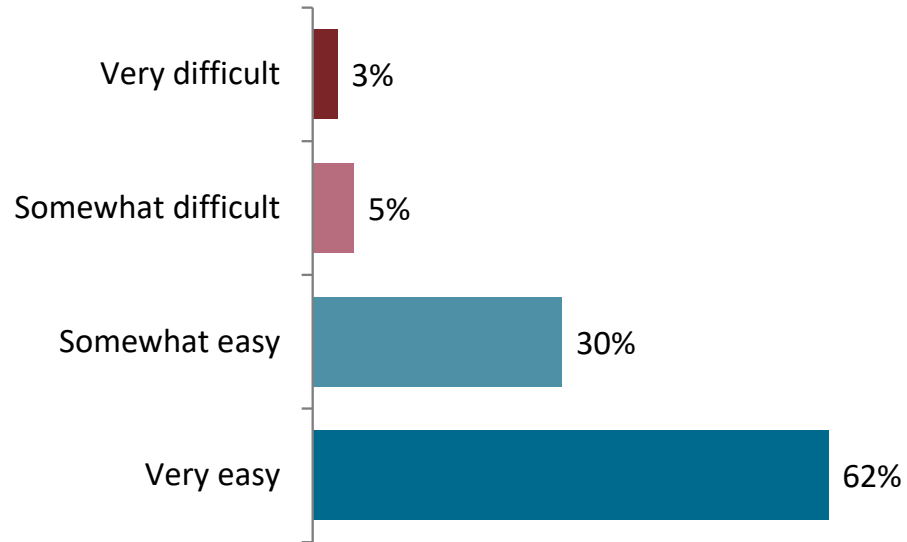


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Platform Navigation

February 2024 Exam

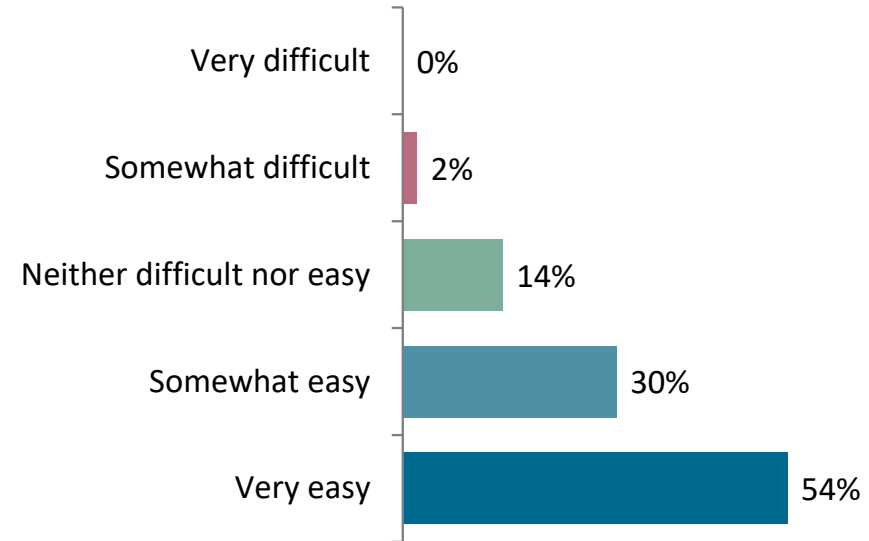
➤ 8% reported that navigating the platform during the exam very or somewhat difficult.



Question: How would you describe your ability to navigate within Exemplify (e.g., move from question to question)?

July 2024 Exam

➤ 2% reported navigating the platform during the exam very or somewhat difficult.



Question: How would you describe your ability to navigate within the ExamSoft platform (e.g., moving from question to question)?

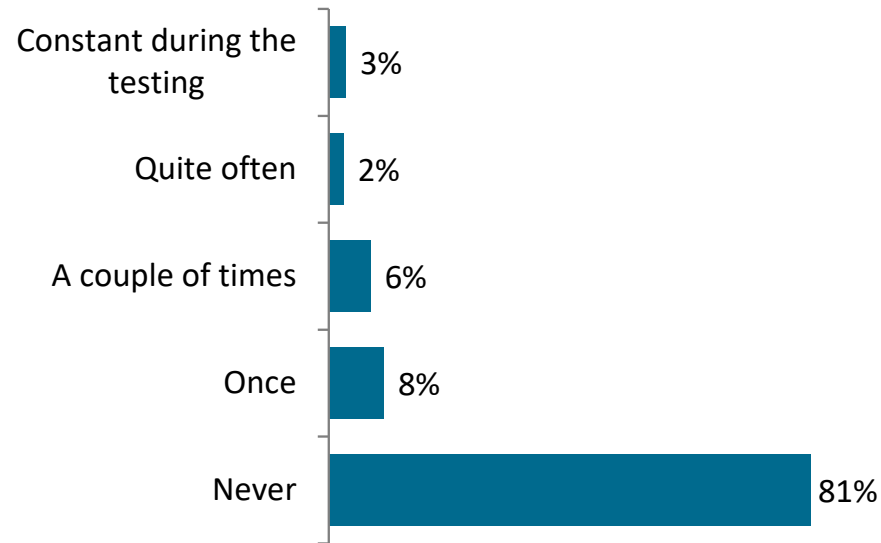


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Computer Issues

February 2024 Exam

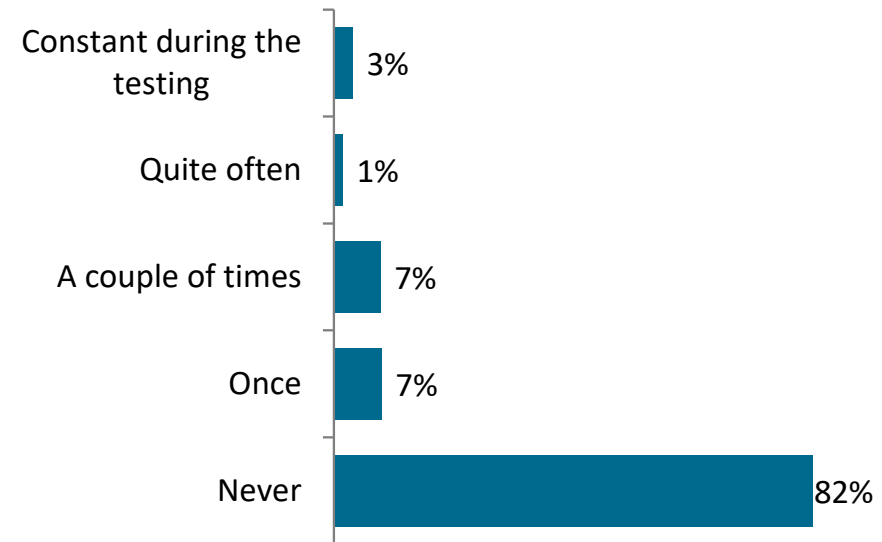
- 19% reported their computer experienced incidents that slowed their progress or inhibited their performance during the exam.



Question: Indicate the number of times the following incidents occurred: Issues with your computer that slowed your progress or inhibited your performance

July 2024 Exam

- 18% reported their computer experienced incidents that slowed their progress or inhibited their performance during the exam.



Question: Indicate the number of times the following incidents interfered with your concentration, slowed your progress, or otherwise affected your performance: Issues with your computer that slowed your progress or inhibited your performance

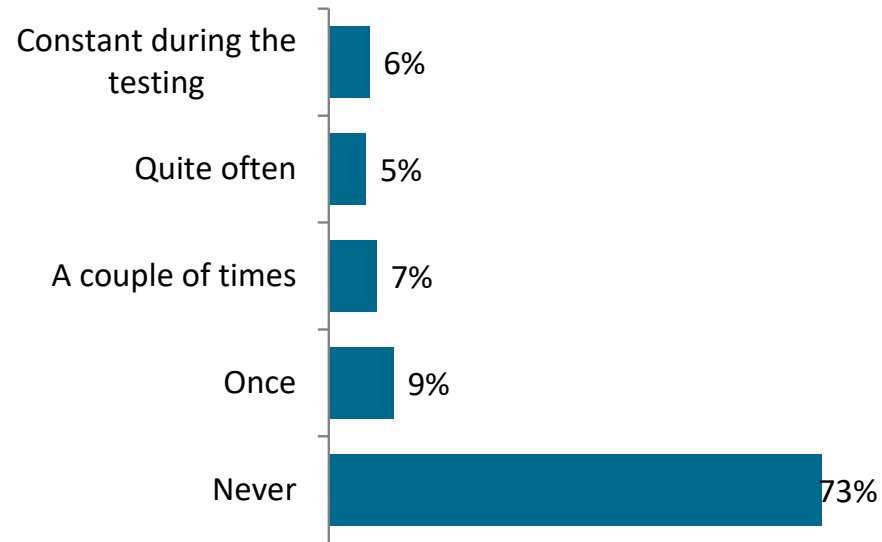


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Software Issues

February 2024 Exam

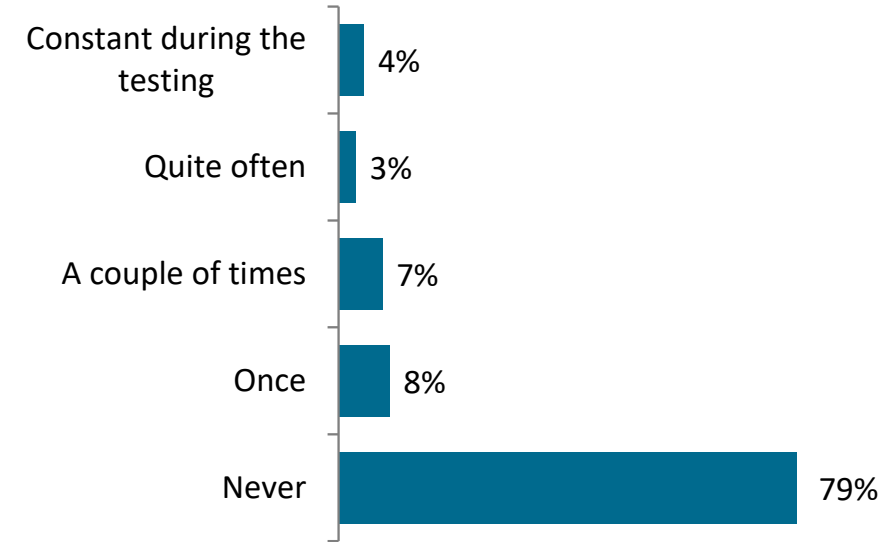
➤ **27% reported at least one issue with exam software that slowed their progress or inhibited their performance during the exam.**



Question: Indicate the number of times the following incidents occurred: Problems with ExamSoft that slowed your progress or inhibited your performance

July 2024 Exam

➤ **22% reported at least one issue with exam software that slowed their progress or inhibited their performance during the exam.**



Question: Indicate the number of times the following incidents interfered with your concentration, slowed your progress, or otherwise affected your performance: Problems with ExamSoft that slowed your progress or inhibited your performance

Note: does not add to 100% due to rounding.



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EXHIBIT 6

Document received by the CA Supreme Court.



California Bar Exam

February 2025 – Exam Disruption
April 18, 2025



www.acsventures.com



Responding to Exam Disruption

AOE 155

Discussion of Options



- Impute for missing data (Recommended)
- Establish raw passing score (Recommended)
- *Regrade process (Standard Operating Procedure)*
- Adjust scores for performance on November experiment (Recommended)
- Adjust scores for applicants based on type or severity of potential disruption (Not Recommended)

Impute for Missing Data (Recommended) ACS

- Item Response Theory (IRT) methods were used to impute missing MCQ and Written responses.
- The Rasch model was used for the MCQ scores.
 - Estimate the likelihood that an applicant would answer a question correctly based on (a) the difficulty of the question and (b) the performance of the applicant on answered questions.
 - These estimates were used in place of missing scores for applicants who responded to at least 66% of the questions.
- The one parameter Rasch partial credit model was used for the multi-point written scores.
 - Estimate the likely essay score an applicant would earn for a constructed response question based on (a) the difficulty of the question and (b) the performance of the applicant on answered questions.
 - These estimates were used in place of missing scores for applicants who responded to at least 4 essay questions.

Imputation Results



- Multiple Choice Questions
 - 3,733 applicants answered all 171 scored questions
 - 367 applicants had imputed values
 - 86% of these applicants had 1-4 missing values imputed
 - 14% had 5 or more imputed values with a maximum of 47
- Written Questions
 - Approximately 80% of Essay/PT graded
 - 3,262 applicants had at least 4 written responses
 - 201 applicants were missing 1 written response
 - 43 applicants were missing 2 written responses
- Limitation: all missing responses were imputed

Establish Raw Passing Score (Recommended)



- Raw scores for MCQ and Written Components will be scaled to 1390 as passing
- Standard validation committees to evaluate current passing standard applied to new questions
- Pass rates from February 2023 and 2024 informed recommended range for the committee
- MCQ range of 110-124 was provided to the committee as guidance

Results – MCQ component



- First-time applicants
 - Baseline – 122 of 171 scored items (~45% pass rate)
 - -1 SEM – 119 of 171 scored items (~51% pass rate)
- Repeat applicants
 - Baseline – 120 of 171 scored items (~29% pass rate)
 - -1 SEM – 117 of 171 scored items (~38% pass rate)
- Total applicants
 - Baseline – 120 of 171 scored items (~34% pass rate)
 - -1 SEM – 117 of 171 scored items (~43% pass rate)

Results for Written Component



- Linking to MCQ for comparable expectation of performance
- First-time applicants
 - Baseline – 445 of 700 points (average of 64/question; ~45% pass rate)
 - -1 SEM – 435 of 700 points (average of 62/question; ~51% pass rate)
- Repeat applicants
 - Baseline – 440 of 700 points (average of 63/question; ~29% pass rate)
 - -1 SEM – 430 of 700 points (average of 61/question; ~39% pass rate)
- Total applicants
 - Baseline – 440 of 700 points (average of 63/question; ~34% pass rate)
 - MCQ – 430 of 700 points (average of 61/question; ~44% pass rate)
- Overall estimates of passing are contingent on all graded essays and PT questions

Adjust for November Experiment (Recommended)



- Passing expectations align with historical performance from the February 2023 and 2024 exams
- Apply to multiple choice section following regrade process
- Up to 40 scale score points
 - Effectively a 20-scale score point (0.5 SEM) adjustment because the MCQ section is 50% of the overall scale score
- November Experiment Participants
 - Baseline – 29 of 49 questions (~39% eligible for adjustment)
 - -1 SEM – 28 of 49 questions (~49% eligible for adjustment)

Differential Adjustment (Not Recommended)



- Data were insufficiently reliable to recommend differential adjustments for potential severity of disruption for applicant groupings
- Multiple sources of data were identified
 - Applicant generated – calls/emails to State Bar, post-exam survey responses
 - Limitations: self-report data, lack of convergence with other sources
 - Measure Learning generated – testing time, log files, reports of technology disruption
 - Limitations: tech escalation data were not comprehensive for applicants
 - State Bar generated – onsite observations, word counts on prior essays and performance tests
- Several analyses were conducted to attempt to classify applicants based on the type and severity of disruption

Summary of Recommendations



- Impute for missing applicant response data
- Establish raw passing score considering collective effects of disruption
- *Regrade process*
- Adjust scores based on performance on November experiment



California Bar Exam – February 2025

AOE 165

Written Portion



- The written portion of the exam is composed of five essays and one performance task
- Unless accommodated, applicants have 60 minutes to complete each essay and 90 minutes to complete the performance task
- Some applicants have their written exam regraded
- Essays are administered on the first day
- Total raw score = $EE1 + EE2 + EE3 + EE4 + EE5 + 2 \times PT$

Written Performance



	Average EE1	Average EE2	Average EE3	Average EE4	Average EE5	Average PT	Average Total Raw Written Score
2023	58	57	58	60	59	61	413
2024	60	55	60	57	58	61	411
2025*	60	62	61	63	62	57	423

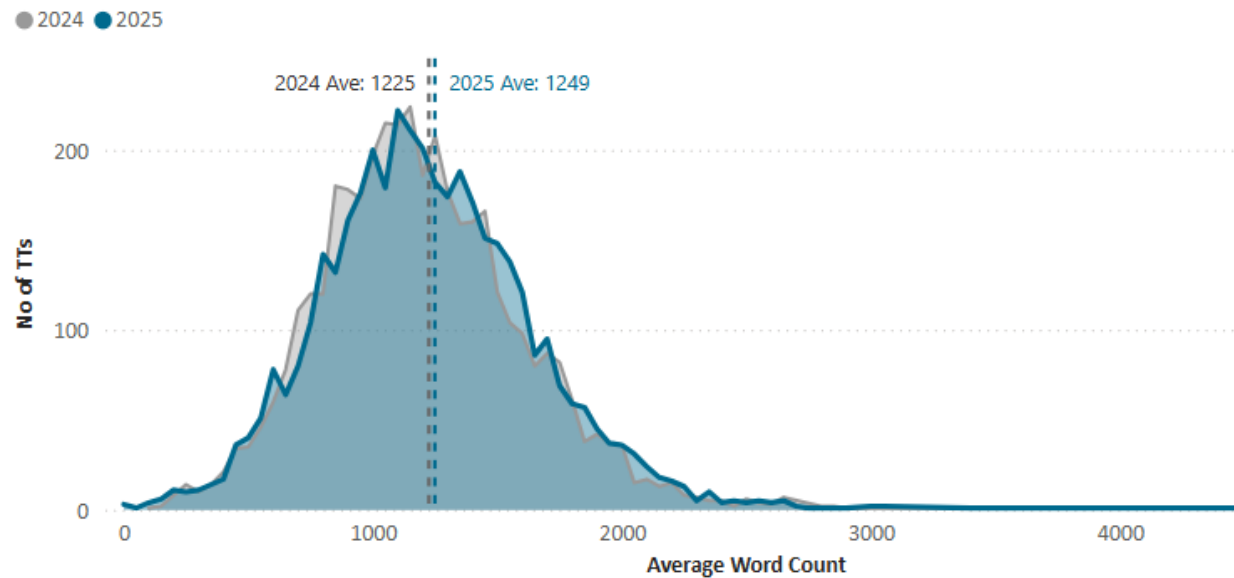
* Includes about 80% of applicant records

- All scores displayed represent first read February scores
- Due to the availability of scores, not all 2025 written score are included

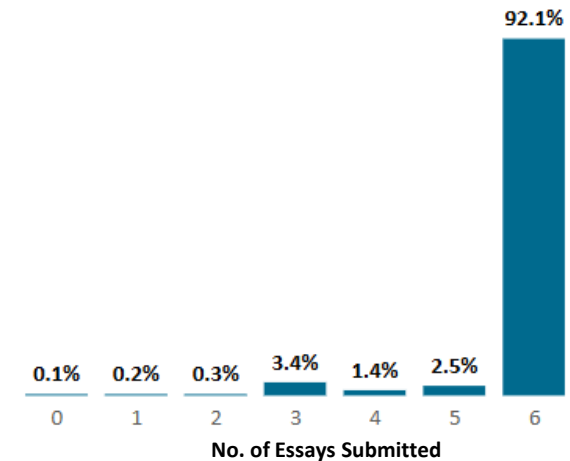
Word Count Analysis – Feb 2024 vs. Feb 2025

Overall, Feb. 2025 is similar to Feb. 2024 in terms of essay length; 2 distributions overlap substantially. The differences appear at the extremes, where 2025 saw more zero-word submissions and higher word-count outliers. In Feb. 2025 121 test takers submitted zero-word essays (vs. 29 in Feb. 2024), and only 92% submitted all 6 essays (vs. 99% in Feb. 2024).

AVERAGE WORD COUNT: FEB 2024 VS FEB 2025



NUMBER OF ESSAYS SUBMITTED: FEB 2025

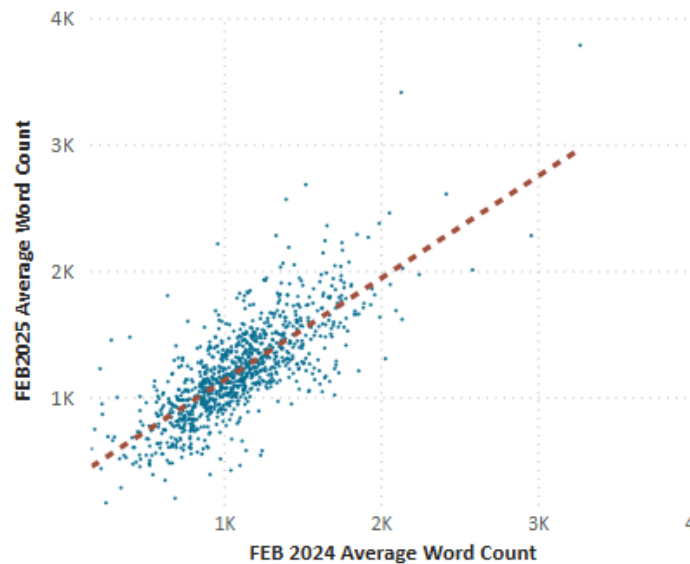


The State Bar of California

Word Count Analysis – Repeaters

Repeater analysis shows a strong correlation—those who wrote more in 2024 also tended to write more in 2025. Comparing February 2025 repeaters with both February 2024 and July 2024 cohorts suggests that essay lengths remained consistent across attempts.

REPEATERS: FEB 2024 VS FEB 2025



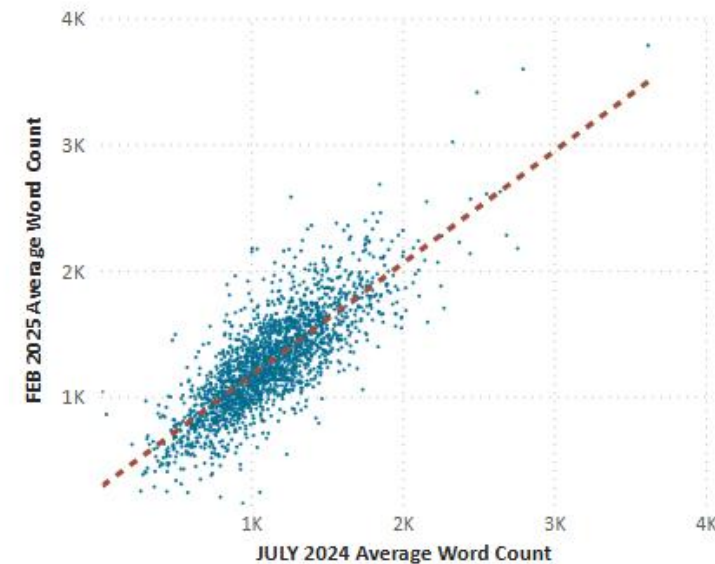
Feb. 2025- Ave. Word Count:

1210

Feb. 2024- Ave. Word Count:

1095

REPEATERS: JULY 2024 VS FEB 2025



Feb. 2025- Ave. Word Count:

1276

July 2024- Ave. Word Count:

1122



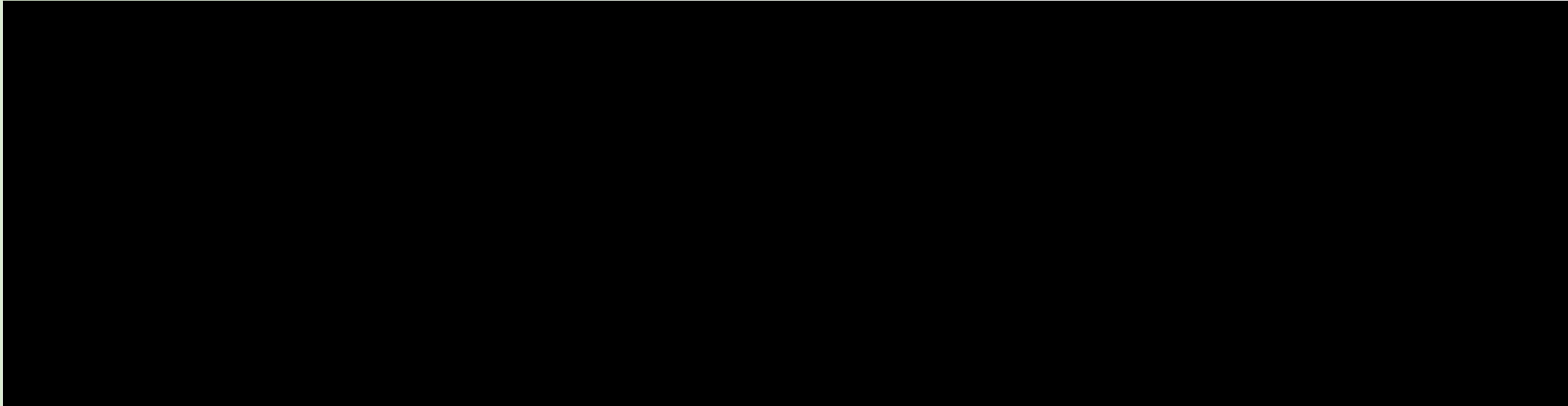
The State Bar of California

Multiple Choice Questions (MCQ)



- MCQs were administered on the second day
- 200 multiple choice questions were administered
- Questions with favorable statistical properties were selected to count in applicants' scores
- Statistical properties include:
 - Item difficulty – the proportion of applicants who answered the question correctly
 - Item discrimination – the relationship between getting the question correct and the total score
 - Response option selection – the frequencies associated with each response option

MCQ Performance – Confidential



MCQ Performance – 200 Questions



	Target Goal	Civil Procedure	Constitutional Law	Contracts	Criminal Law and Procedure	Evidence	Real Property	Torts	Total
Average Difficulty	0.30 – 0.80	0.60	0.64	0.64	0.59	0.68	0.60	0.63	0.63
Average Discrimination	0.10+	0.19	0.22	0.19	0.13	0.20	0.18	0.13	0.18
Performance Flags	< 6	3	5	4	9	2	6	11	40

MCQ Development



- Exam questions were drafted by three sources:
 - ACS Ventures
 - Kaplan
 - State Bar
- Draft questions were reviewed by subject matter experts and editors; and were revised as needed

MCQ Development – Scored Items



- 171 questions were selected for scoring

	Civil Procedure	Constitutional Law	Contracts	Criminal Law and Procedure	Evidence	Real Property	Torts	Total
ACS	2		1	10	2	2	6	23
Kaplan	22	25	2	3	23	23	2	100
State Bar/FY			22	10			16	48
Total	24	25	25	23	25	25	24	171

MCQ Performance – Scored Items



Difficulty	Target Goal	Civil Procedure	Constitutional Law	Contracts	Criminal Law and Procedure	Evidence	Real Property	Torts	Total
ACS	0.30 – 0.80	0.49		0.55	0.67	0.83	0.76	0.79	0.70
Kaplan		0.62	0.69	0.74	0.60	0.71	0.61	0.71	0.66
State Bar/FY				0.66	0.60			0.62	0.63
Total		0.61	0.69	0.66	0.63	0.72	0.62	0.67	0.66

Discrimination	Target Goal	Civil Procedure	Constitutional Law	Contracts	Criminal Law and Procedure	Evidence	Real Property	Torts	Total
ACS	0.10+	0.12		0.04	0.10	0.24	0.30	0.13	0.13
Kaplan		0.20	0.22	0.13	0.16	0.19	0.17	0.04	0.19
State Bar/FY				0.21	0.16			0.15	0.18
Total		0.19	0.22	0.19	0.13	0.20	0.18	0.13	0.18

EXHIBIT 7

Document received by the CA Supreme Court.

RESOLUTION ADOPTED BY THE COMMITTEE OF BAR EXAMINERS

RESOLUTION OF THE COMMITTEE OF BAR EXAMINERS RECOMMENDING RAW PASSING SCORE AND SCORING ADJUSTMENTS FOR THE FEBRUARY 2025 CALIFORNIA BAR EXAMINATION

WHEREAS, the Committee of Bar Examiners, pursuant to the authority delegated to it by the Board of Trustees (Board), is responsible for determining the California Bar Examination's format, scope, topics, content, questions, and grading process, subject to review and approval by the Supreme Court, as set forth in rule 9.6(a) of the California Rules of Court;

WHEREAS, on September 30, 2024, the Committee of Bar Examiners approved modifications to the California Bar Examination, including replacing the National Conference of Bar Examiners' Multistate Bar Examination (MBE) with Kaplan-developed multiple-choice questions for future Bar Examinations, subject to psychometric validation, and allowing for both remote and in-person testing beginning with the February 2025 bar examination;

WHEREAS, on October 22, 2024, the Supreme Court issued an order approving modifications to the California Bar Examination, including removing references to the MBE, and allowing for both remote or in-person testing beginning with the February 2025 Bar Exam;

WHEREAS, the February 2025, California Bar Examination was administered beginning on February 25, 2025;

WHEREAS, during the course of the February 2025 California Bar Examination and thereafter there were widespread reports from examinees of technological, environmental, proctoring, and other concerns that created examination disruptions;

WHEREAS, these reports from examinees about their experience have been and continue to be thoroughly considered by the Committee of Bar Examiners to develop fair and appropriate remedies, while ensuring that the requirements for admission to the legal practice are also safeguarded;

WHEREAS, following the administration of the February 2025, California Bar Examination, the State Bar, in consultation with a psychometrician, conducted a standard validation study for both the multiple-choice and written portions of the examination, to establish recommendations for a raw passing score for the February 2025, California Bar Examination;

WHEREAS, the standard validation study for the multiple-choice portion of the exam resulted in a recommendation of a raw passing score of 129, but based on historical performance and psychometric analysis the psychometric recommendation was to reduce the raw passing score by two standard errors of measurement to 120;

WHEREAS, the standard validation study for the written portion of the exam resulted in a recommendation of a raw passing score of 514, but based on historical performance, linking to the multiple-choice section, and psychometric analysis, the psychometric recommendation was to reduce the raw passing score to 440;

WHEREAS, the independent psychometrician, Chad Buckendahl, Ph.D of ACS Ventures, conducted an analysis of whether and to what extent applicants were adversely impacted by the aforementioned issues to determine whether grading adjustments were appropriate to account for any such impacts;

WHEREAS, taking into consideration the reported experience of examinees at the February 2025 Bar Examination, examinee performance data on the February 2025 exam, and the challenges associated with fairly and accurately categorizing the level of disruption experienced by individual examinees, the Committee of Bar Examiners resolves as follows:

SECTION 1. The Committee of Bar Examiners recommends that the raw passing score for the February 2025 California Bar Examination be set at 534 points, which reflects two standard errors of measurement lower than the psychometrician-recommended raw score of 560, subject to Supreme Court approval;

SECTION 2. As a further remedial measure , the Committee of Bar Examiners recommends that, a score be psychometrically imputed to account for all occurrences of missing answers as follows:

- For missing multiple-choice answers, where the test taker has answered at least 114 of the 171 scored multiple-choice questions
- For missing essays or performance tests, where the test taker has answered at least 4 of 6 written sections of the exam.

SECTION 3. The Committee of Bar Examiners directs staff to petition the Supreme Court for approval of the recommendations set forth in Sections 1 and 2 of this resolution immediately, and to request that the Supreme Court render a decision no later than April 28, 2025, to ensure the results of the February 2025 California Bar Examination may be released on May 2, 2025.

I hereby certify that the foregoing is full, true and correct copy of the resolution adopted by the Committee of Bar Examiners at its teleconference meeting held on April 18, 2025.

Devan McFarland

Devan McFarland, Committee Coordinator

Document received by the CA Supreme Court.

VOTE

Moved by Mesiwala, seconded by Cao

Ayes – (10) Bolton, Cao, Chan, Gongora, Lawrence, Mesiwala, Silva-Guzman, Reyna, Reyes,
Yochelson

Noes – (1) Kramer

Abstain – (0)

Recuse- (0)

Absent – (3) Kaplan, Lin, Peak

Motion carried.

EXHIBIT 8

Document received by the CA Supreme Court.



**SCORING ADJUSTMENTS FOR APPLICANTS NEGATIVELY AFFECTED
DURING THE JULY 2021 CALIFORNIA BAR EXAM**

During the July 2021 Bar Exam, applicants nationwide encountered technological issues that vendor ExamSoft reported were caused by high-memory utilization between ExamMonitor (the video proctoring arm of the software) and the main software that generates digital images.

After the State Bar of California investigated the scope of impact of these issues on California examinees, the agency worked with its psychometrician to develop a grading adjustment for those who were negatively impacted. A negative impact was defined as follows:

- Examinee reported encountering a black or blue screen that required a laptop reboot, whether the examinee lost time or not.
- Examinee experienced a black or blue screen that required more than a laptop reboot in order to continue testing. Typically, the applicant was directed by ExamSoft to redownload the exam question to restart that exam session and continue testing.
- Examinee was not provided access to redownload the exam question and thus was unable to fully complete that exam session.

State Bar Admissions staff verified each reported incidence through a variety of sources, including review of proctoring videos, ExamSoft call logs and reports, reports submitted in the Applicant Portal, and emails received by the State Bar. The State Bar concluded that 2,429 examinees experienced negative impacts. Applicants who reported incidents that were not substantiated have been informed that they did not receive a grading adjustment.

For applicants who were negatively impacted by these ExamSoft issues during the written sections of the exam (essay questions and Performance Test), the State Bar applied a pro rata grading adjustment for each affected question, which utilized data from the unaffected population of examinees, as well as the affected individual's scores on questions where there were no recorded problems. The adjustment consisted of two components:

1. The first component accounted for the relative difficulty of each question. This component was calculated by first obtaining the average score on each question among examinees who had no memory utilization issues on any written question and the overall average of all scores in that group. The difference of the averages on each question and the overall average was used to represent the relative difficulty of each question. For example, if the overall average across all questions was 78, and the average on the first question was 76, that question was considered more difficult than the average question by 2 points. The 2-point difference was considered

the “adjustment factor” for that question. Each question was given an “adjustment factor.”

2. The second component was based on the scores of each individual who experienced an ExamSoft memory utilization issue. First, an average was calculated for the examinee’s scores on which no issue was encountered. That average was considered to be the best estimate of that individual’s ability. For each question on which there was some technological issue of the type described above, the average score from the unimpacted sessions was adjusted by the “adjustment factor” to arrive at an “Expected Score.” The “Expected Score” was then compared to the examinee’s actual score on the question. If the actual score was less than the “Expected Score,” an adjustment was made, and the final score on the question was the “Expected Score.” If the actual score was greater than the “Expected Score,” the score was not changed.

For examinees negatively impacted during any session of the Multistate Bar Exam (MBE), the National Conference of Bar Examiners (NCBE) provided an adjusted score for the State Bar’s use that also uses the pro rata method. Similar to the adjustment method for the written section, if the adjusted score calculated by the NCBE was lower than the original MBE score, then no adjustment was made.

For statistical reasons, the pro rata grading adjustment could not be applied to applicants who either experienced more than three negatively impacted written sessions, or more than two negatively impacted MBE sessions. For the very small number of applicants who met this criteria (less than 2 percent of those who were negatively impacted), the State Bar employed a regression model that takes into consideration MBE scores to adjust the written session, or for those missing three or four MBE sessions, considers their written essay scores in adjusting the MBE score.

Examinees who experienced these technological issues and were unsuccessful on the exam will have the option to request that their July 2021 bar exam fees be applied as a credit to take the February 2022 or July 2022 California bar exam. Applicants who do not plan to sit for those exams will be able to request a full refund of their fees. Applicants will receive instructions with their results letter on how to take advantage of these options.