

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

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DATE: August 17, 2016

TO: Subcommittee on Educational Standards

FROM: George Leal, Director, Educational Standards

SUBJECT: **Unaccredited Law School 2016 Disclosure Statements**

BACKGROUND

Under both state statute and the *Unaccredited Law School Rules* (Rules), all registered, unaccredited law schools must provide students a set of written disclosures, including, among others, the pass/fail results of their students on the First-Year Law Students' Examination (FYLSX) and their graduates on the California Bar Examination (CBX).

As mandated by California *Business and Professions Code* § 6061:

Any law school that is not accredited by the examining committee of the State Bar shall provide every student with a disclosure statement, subsequent to the payment of any application fee but prior to the payment of any registration fee, containing all of the following information:

...

(c) The number and percentage of students who have taken and who have passed the first-year law students' examination and the final bar examination in the previous five years

Consistent with this independent statutory obligation, Rule 4.241 of the Rules requires:

(A) A registered law school must provide each student, in the format required by the Committee a disclosure statement that includes the following information.

...

(4) In the format required by the Committee, the pass rates of students who have taken the California First-Year Law Students' Examination and the California Bar

Examination. This information must be provided for the past five years or since the establishment of the law school,

Under these identical, but technically independent reporting requirements, all registered unaccredited (registered) law schools prepare and regularly disseminate a written disclosure statement to all newly enrolled students and to all returning students, “prior to the payment of any fee for an academic term,” as required by Rule 2.241(B). Each statement is then signed and a copy is given to each student under Rule 2.241(C). As required by Rule 2.241(D), registered law schools must submit, at least annually, a current and updated version of their respective disclosure statements to the Committee of Bar Examiners (Committee).

To enforce their respective requirements, both *Business and Professions Code* § 6061 and Rule 2.241 provide a potentially-significant, financial penalty is a registered law school fails to comply with its disclosure obligations. Both the statute and Rule 2.241 mandate that a law school must “make a full refund of all fees paid by students” (§ 6061) and “must refund all fees, including tuition, paid by a student” to those who do not receive a compliant disclosure statement. Finally, as provided by Rule 2.241(E), the failure of a registered law school to comply may result in the loss of its registration since such “non-compliance constitutes cause for withdrawal of registration.”

To comply with both § 6061 and Rule 2.241 registered law schools have, for many years, relied on the Committee’s dissemination of the pass/fail statistics generated after each administration of the FYLSX and the CBX. With such verifiable data, registered law schools have been secure in the knowledge that by annually updating their written disclosure statements with the latest pass/failure results of their own students and graduates, they were compliant with their obligations under both § 6061 and Rule 2.241. January 1, 2016, the State Bar of California has been subject to the California Public Records Act (CPRA). The subsection of the Act that impacts the Committee’s authority most directly is found in following statute:

§ 6060.25. Confidentiality of information provided by applicant to the State Bar for admission and license to practice law.

Notwithstanding any other law, any identifying information submitted by an applicant to the State Bar for admission and a license to practice law and all State Bar admission records, including, but not limited to, bar examination scores, law school grade point average (GPA), undergraduate GPA, Law School Admission Test scores, race or ethnicity, and any information contained within the State Bar Admissions database or any file or other data created by the State Bar with information submitted by the applicant that may identify an individual applicant, shall be confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act.

Under the new law, the Committee can no longer share individual applicant information with anyone, which has been interpreted to mean that it cannot provide law schools any information regarding the pass/fail results of their students on the FYLSX, or their

graduates on the CBX. However, if a law school has 11 or more test takers, the passing percentage rates are provided in individual school reports, which are not published on the State Bar's website. In not being able to receive individual pass/fail results, the Deans of several registered law schools have contacted staff to inquire about their law schools' ability and continuing obligation to update and disseminate their disclosure statements and, in the absence of any data regarding the 2016 administrations of both the FYLSX and the CBX, whether the Committee is willing and able to clarify what it considers a compliant disclosure statement under the current circumstances.

DISCUSSION

The enactment of § 6060.25 has put the Committee's registered law schools in an unfortunate and unforeseen dilemma. Each remains required by the Committee and state law to provide both newly-enrolled and all continuing students with current pass/fail data that is difficult, if not impossible, to calculate without verifiable pass/fail data from each examination published by the Committee. While the test results from some of their student and graduates may be obtained through an effort to contact each personally, to confirm whether they actually took an examination and whether they passed or failed, doing so would likely result in an incomplete and inaccurate tally.

Given their current inability to meet each of these mandatory disclosure requirements, registered law schools remain exposed to a claim that they are non-compliant with the Committee's disclosure requirements and their independent, statutory obligation. As noted above, failure to do so exposes a registered law school to both the potential loss of its Committee registration and to civil damages from a disgruntled student asserting a claim to recover potentially thousands of dollars they have paid in both fees and tuition.

Given these potentially adverse outcomes, a simple solution to this conundrum is not, unfortunately, obvious. Unlike what it was able to do during its last meeting, when it suspended the Guideline requirement that all California-accredited law schools (CALs) annually report their cumulative CBX pass rates, the Committee cannot suspend a law school's reporting requirement under state law. Given this legal reality, staff has been informed by at least one registered law school that it intends to report, to the best of its ability to verify from its students, its 2016 pass/fail statistics with an express disclaimer on the statement itself to advise students that the data posted is not subject to independent verification from the Committee and may therefore be inaccurate.

Regardless of what each law school may independently decide to do, until there is statutory relief from the current restrictions, it appears that the Committee should consider at least a partial solution to mitigate a law school's potential exposure in not being able to meet its FYLSX and CBX pass/fail disclosure requirements. That partial solution would be for the Committee to waive, in part, Rule 2.241 to require that registered law schools report their pass/fail statistics only through the July 2015 administration of the CBX and the October 2015 administration of the FYLSX, and to waive the financial penalty set out in Rule 2.241(E), until further notice. Thus, the failure of a registered law school to report its 2016 would not expose it to a claim that it is operating non-compliantly with this specific Committee-required registration standard

Since the results of the 2015 administrations of both the FYLSX and the CBX were posted before the CPRA restriction went into effect in January, the disclosure statement of each registered law school will remain accurate and verifiable through 2015.

As for the 2016 administrations of both examinations, while the Committee cannot offer any such immunity to a registered law school from the potential liability under § 6061, its decision to waive, in part, its own disclosure requirements would, it is hoped, provide at least some credible evidence that the law school is operating compliantly and that its failure to report its most recent FYLSX and CBX statistics is not made either in bad faith or with an intent to offer any intentionally false or inaccurate information to its students.

Advice from Counsel on this matter will be received during the closed session portion of the meeting.

RECOMMENDATION:

Pending

PROPOSED MOTION:

Pending.