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July 8, 2020

Via Email at [REDACTED]
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RE: Your Letters and July 2020 Bar Examination

Dear [REDACTED]

Your letter to the Board of Law Examiners, dated July 6, 2020, has been forwarded to me for response. I am counsel to the North Carolina Board of Law Examiners. The Board also received a copy of your letter to Governor Cooper on the same date, as well as a copy of your letter directed to the Justices of the North Carolina Supreme Court. The Board shares your concern, and that of other applicants for the health of the applicants, proctors, staff, families and all who might be affected by the administration of the Bar Exam. The current coronavirus pandemic has disrupted the lives of many citizens of this State and around the world, and the disruption and attendant risks seem likely to continue beyond the foreseeable future.

The Board of Law Examiners has worked very hard preparing for the administration of the examination, including the seating assignments, arranging the exam site facilities, addressing the precautions to be taken and assuring disclosures to the applicants. It is not surprising there is a range of opinions as to the decisions made by the Board in carrying out its responsibility to the public, the Bar and to the current group of applicants. The Board has carefully exercised its judgment and discretion in a fluid situation, making the decisions considered most appropriate at each decision point since the outbreak of the pandemic. Others might have made different decisions; however, the Board has exercised its discretion in a responsible, considerate, deliberate and reasonable manner.

We note you also corresponded with the Office of the Governor and the Supreme Court the same day as your letter to the Board of Law Examiners. Please understand that as part of our careful approach to the challenges of this pandemic we have sought input from many relevant components of State government, the Courts, as well as the Department of Health and Human Services, and have carefully examined CDC and DHHS guidance. We hope this letter will address the concerns you express in all three letters.

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You are mistaken in your assumption that the Board did not consider rulemaking, diploma privilege, some form of interim licensure, the financial circumstances of the applicants, and the public need for competent representation. Thank you for noting the great measures taken by the Board in an effort to assure the safety of this year's bar applicants, staff, the legal profession and the general public during this crisis.

The Board of Law Examiners, after giving careful consideration to all proposed alternatives, decided that a July 28-29, 2020 administration of the Uniform Bar Examination in Raleigh, North Carolina was in the best interests of the applicants and the general public of North Carolina. The exam will be given to approximately 770 applicants in three separate buildings: the Jim Graham Building (95,000 square feet) and Exposition Center (50,000 square feet) at the NC State Fairgrounds and the Jane S. McKimmon Center (33,509 square feet) on the NCSU Campus. These buildings will be accessed on exam day by the use of separate entrances leading to physically distanced quadrants, where applicants will be seated at tables such that every applicant is at least six feet in distance from all other applicants, in all directions. In addition, there will be additional rooms for various purposes.

Check-in will be streamlined, and orderly, and hand-to-hand passage of materials minimized, with physical distance being enforced from the time applicants arrive in the parking lot until they return to their vehicles. All persons in attendance, including applicants, proctors, staff, security, and maintenance, will be required to wear a mask/face covering at all times. Proctors and staff will be required to wear gloves at all times. Surfaces will be sanitized regularly, and materials will be handled in a manner that minimizes any person-to-person transfer. Also, the Board has not denied any timely request for ADA reasonable accommodations that it has received for this exam by immunocompromised individuals.

Prior to the examination, applicants will receive detailed instructions regarding exam procedures, including entrance locations and procedures for entry and exit for each testing session. The Board will provide additional information as it becomes available. Those instructions will take into account new information received. Each applicant will have the opportunity, at any time before completion of the exam, to stop the process and transfer their fees to the February 2021 exam in the event they become uncomfortable for any reason taking the exam under these unusual conditions.

Among the requests in your letter, you urge adoption of a diploma privilege this year or perhaps for all years. North Carolina bar exam overall passage rates have remained between 50-60% for almost all exam administrations in the recent past. A short-term diploma privilege decision has the potential to expose the public, which relies on the Board to establish a measure of demonstrated professional competency, to hundreds of attorneys who do not meet that standard. The public relies on attorneys to provide advice on matters that can result in the loss of physical liberty, financial livelihood or assets. Removing this step would cause long-term harm to clients, the judicial system, and strain on the disciplinary processes of the State Bar. Beyond that, a written examination for attorneys is a crucial part of admission to the bar and is required by NCGS § 84-24. A law license granted upon successful passage of the bar examination, signed by all the members of the Board of Law Examiners, is an assurance to the public that the Board is satisfied

with that licensee's knowledge of the law and ability to demonstrate that knowledge in writing. The Uniform Bar Exam (UBE) is the best available measure of those skills, and results in a score that is transferable. The MEE (Multistate Essay Exam) and the MPT (Multistate Performance Test) allow an applicant to demonstrate legal skills such as their ability to recognize legal issues, to engage in legal analysis, and to recommend an appropriate course of action. The MBE (Multistate Bar Exam) is a measure of an applicant's ability to apply fundamental legal principles and reasoning to specific factual scenarios.

The online "Emergency Remote Option" referenced on the NCBE website is not the UBE, and will not result in a transferable or portable UBE score. It is offered to jurisdictions in which in-person UBE administration is unavailable, and is not available to applicants on an individual basis.

You suggest that utilization of the law schools is an appropriate venue. We disagree. The Board is very appreciative of the support and coordination the Board receives from various law schools. Equitable treatment of all applicants, including out-of-state applicants, should also be considered in any venue decision. Additionally, the NCBE provides support to jurisdictions before, during, and after each UBE exam administration to ensure the safety and reliability of the test results. The safeguarding of exams and exam content in delivery to exam sites must also be addressed. In addition, it is not at all clear that infection control at multiple law schools would be better than the system devised by the Board and the sites which will be used. The introduction of additional uncertainty for all participants is not helpful.

You suggest a provisional license without examination as an alternative, and suggest the provisional license could ripen into a full license after some probationary period. Experience of the State Bar is that complaints begin to surface after several years, not months. Obligating the State Bar to discipline attorneys who fail to meet the standards for professional conduct over many years is a poor substitute for removal at the outset, even in a crisis, and assures that client harm will occur.

The Board carefully considered rulemaking as a mechanism to respond to the pandemic. Rulemaking involves action by the Board, authorization to publish for comment by the State Bar, review of comments, republication as necessary, and review by the Supreme Court thereafter. Even in the absence of opposition, it is likely no rule could be changed by the end of 2020, no matter when the process began. Most all your proposals involve changes in rules likely to be subject of lengthy debate and a time-consuming process. Ordinarily this process produces well-considered, but not speedy, results.

The Board has been entrusted with the duty and discretion to make the necessary decisions regarding administration of the exam, even under these trying circumstances. Care, caution and deliberation has been a part of the decisions made in this evolving situation. There has been no abuse of that discretion.

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Thank you again for your correspondence. Please share this response with all the signers of your letter. Please extend to each my hope and best wishes for each of them. Please direct any further inquiries to me as counsel for the Board.

Sincerely yours,

YOUNG MOORE AND HENDERSON, P.A.

By:



John N. Fountain

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