



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM 2.1 APRIL 2025 BOARD OF TRUSTEES**

**DATE:** April 2, 2025

**TO:** Members, Board of Trustees

**FROM:** Leah T. Wilson, Executive Director

**SUBJECT:** Overview of Roles of the Board of Trustees and the Committee of Bar Examiners in Oversight and Administration of Admissions Functions

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### **EXECUTIVE SUMMARY**

This item provides an overview of the subentity review process conducted in response to the 2017 Governance in the Public Interest Task Force Report (GIPTF), with a specific focus on those aspects of the review related to the Committee of Bar Examiners (CBE). The review identified key areas for improvement for that body, including role definition, authority, transparency, and decision-making. Pursuant to work stemming from the 2017 GIPTF review, the CBE gained new explicit responsibilities for bar exam development and administration policy, greater standardization and transparency were introduced to the moral character determination and law school accreditation processes, first-level review of a host of appeals was transitioned from the CBE to staff, and the CBE's role in review of the Admissions Fund budget was clarified.

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### **RECOMMENDED ACTION**

Informational only.

### **DISCUSSION**

In its 2017 report, the State Bar's Governance in the Public Interest Task Force "assess[ed] whether the structure of the subentities aligns with assigned tasks and appropriate oversight mechanisms are in place." That assessment, contained in Appendix I of the report, posed a number of additional questions related to each subentity.

At its November 2017 meeting, the Board of Trustees directed staff and a number of Board committees "to complete the subentity review pursuant to Appendix I" by August 31, 2018.

The Board subsequently discussed a conceptual framework for the review centered around the following elements:

1. Role definition
2. Accountability and transparency
3. Clear lines of authority
4. Impartial, fair, and consistent decision-making
5. Engagement
6. Size

Beginning in 2017 and continuing throughout 2018, the State Bar engaged in a collaborative and inclusive process to review the subentities of the State Bar and evaluate them in the context of the 2017 Governance in the Public Interest Task Force Report and the framework described above.

A starting point for the review was the fact that the State Bar relied on more volunteers and more subentities than any other California regulatory body, despite the fact that the State Bar did not have more licensees than some comparable agencies.

The final report, “Opportunities for Improving Governance and Services Delivery”, submitted to the Board in September 2018, utilized this framework to examine the various subentities of the State Bar. The Board adopted a set of recommendations pursuant to that report.

#### **SUBENTITY REVIEW AND THE COMMITTEE OF BAR EXAMINERS**

With respect to the Committee of Bar Examiners, the subentity review relied heavily on an extensive process led by former State Bar Executive Director Elizabeth Parker and organizational consultant Elise Walton. That process included iterative interviews and engagement with current and former members of the CBE and admissions-related stakeholders, as well as research into the functioning of parallel bodies in other states.

Reforms were identified in a number of areas including:

*Role Definition and Lines of Authority:* It was noted that there was confusion over CBE's role related to scope, authority, and independence. Importantly, one area highlighted was budget oversight; the 2018 report clarified that although historically updates regarding the Admissions Fund budget were reported to the CBE, that body had never had the authority to make budgetary decisions.

In September 2017, the CBE inquired with the Office of General Counsel (OGC) of the State Bar as to its authority. The questions posed (What can CBE decide on its own? What is reported to the Board of Trustees? What must be approved by the Board? What requires Legislative approval or must be reported to the Legislature? What requires Supreme Court approval?) reflect the confusion at that time as to the authority of the CBE. OGC's response to the CBE indicated, in essence, that the CBE derives its authority

from the State Bar subject to the authority of the Supreme Court.<sup>1</sup> The CBE is authorized “to administer requirements for admission to practice law, examine all applicants for admissions, and certify to the Court for admission those applicants who fulfill the requirements.”<sup>2</sup> The CBE administers these functions “only to the extent that the Board so authorizes, subject to the ultimate authority of the Court.”<sup>3</sup>

*Accountability & Transparency:* The 2018 report highlighted the need for enhanced analysis of bar examination data, as opposed to publication alone, as well as the need for greater transparency and consistency in the administration of the moral character determination process.

*Impartial, Consistent, and Fair Decision-Making:* In addition to flagging needed improvements in the moral character determination process, the 2018 report identified a number of potential reforms related to the law school accreditation process, specifically recommending that professionalization of that work be considered.

*Engagement:* While CBE members were noted as being consistently engaged, lower levels of participation and involvement by California law schools in policy making were noted.

*Size:* The report highlighted the large size of the CBE in contrast to its comparator bodies in other states.

In addition to these observations aligning with the subentity review elements established by the Board in its November 2017 staff directive, additional recommendations were generated informed by the Parker/Walton report and discussions with the CBE. These recommendations reflected a shift in administrative work from CBE to staff (transitioning from CBE to staff responsibility for first-level consideration of exam violation and other types of appeals for example), clarification that the Board, not the CBE, is responsible for the Admissions Fund budget, and adding new policy and oversight functions to the CBE related to exam development and administration.

Table 1 below summarizes all of the CBE-related recommendations brought forward to and adopted by the Board of Trustees in 2018.

- The second column proposes who should be responsible for the function and/or related tasks going forward;
- The third column indicates whether the proposal represents new work or a change from the current work and/or division of labor between the CBE and State Bar staff;
- The fourth column indicates how law schools will be engaged in the work, whether appropriate; and
- The fifth column describes the role of the Board of Trustees.

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<sup>1</sup> This legal opinion is provided as [Appendix B](#) of the 2018 board item linked under the Previous Action section of this report.

<sup>2</sup> State Bar Office of General Counsel, op. cit., p2.

<sup>3</sup> Ibid., p4.

**Table 1. Proposed Role Changes in Exam, Accommodations & Moral Character Processes**

<b>I. Exam Development</b>	<b>Proposed Responsible</b>	<b>Change from Current?</b>	<b>Proposed Law School Role</b>	<b>Proposed Board of Trustees Role</b>
1. Develop questions	EDG Team			
2. Review of questions	CBE			Review results
3. Evaluate grading	CBE	<i>New</i>		Review results
4. Sampling plan	Staff & psychometrician	<i>New</i>		Review as part of 7-year bar exam study.
5. Challenges to exam questions	CBE			
6. Set exam fee	CBE			Review changes. <sup>4</sup>
<b>II. Testing Accommodations</b>	<b>Proposed Responsible</b>	<b>Change from Current?</b>	<b>Proposed Law School Role</b>	<b>Proposed Board of Trustees Role</b>
1. Policy Development	Staff & CBE		Serve on working groups to develop policies	Review & approve proposed policy changes
2. Review petitions	Staff (with consultant)			
3. Review appeals	CBE			
<b>III. Moral Character</b>	<b>Proposed Responsible</b>	<b>Change from Current?</b>	<b>Proposed Law School Role</b>	<b>Proposed Board of Trustees Role</b>
1. Policy Development	Staff & CBE		Serve on working groups to develop policies	Review & approve proposed policy changes
2. Reviews & Informal Conferences	Staff	<i>Change</i>		
3. Review appeals	CBE			
<b>IV. Eligibility &amp; Enforcement of Exam Rules</b>	<b>Proposed Responsible</b>	<b>Change from Current?</b>	<b>Proposed Law School Role</b>	<b>Proposed Board of Trustees Role</b>

<sup>4</sup> OGC subsequently flagged this entry as an error. The Board is the entity responsible for setting exam fees, generally upon CBE's recommendation.

1. Policy development	Staff & CBE		Inform via law school assembly & e-newsletter	Review & approve proposed policy changes
2. Enforcement	Staff for initial decisions	<i>Change</i>		
3. Appeals	CBE			

#### V. Exam Analysis & Review

	Proposed Responsible	Change from Current?	Proposed Law School Role	Proposed Board of Trustees Role
1. Standard setting study	Staff (with consultant)		Serve on working group	Review and submit results to Supreme Court and Legislature
2. Content validation study	Staff (with consultant)		Serve on working group	Review and submit results to Supreme Court and Legislature
3. Job analysis	Staff (with consultant)		Serve on working group	Review and submit results to Supreme Court and Legislature

#### VI. Budget

	Proposed Responsible	Change from Current?	Proposed Law School Role	Proposed Board of Trustees Role
1. Budget development & management	Staff	<i>Change<sup>5</sup></i>		Approve annual budget and amendments

#### VII. Personnel

	Proposed Responsible	Change from Current?	Proposed Law School Role	Proposed Board of Trustees Role
1. Personnel	Staff			

#### VIII. Trends in Licensing & Certification

	Proposed Responsible	Change from Current?	Proposed Law School Role	Proposed Board of Trustees Role
1. Trends study	Staff & CBE	<i>New</i>	Inform via law school assembly & e-newsletter, serve on working group	Review results, consider for 7-year study design

<sup>5</sup> Reflecting on this table seven years later, the "Change" designation was in error as the CBE was never responsible for approving budgets and amendments. The CBE did, however, provide feedback on these topics.

## **PREVIOUS ACTION**

- [2017 Governance in the Public Interest Task Force Report](#)
- [September 2018 Board agenda item: Appendix I Sub-Entity Review: Report and Recommendations](#)

## **FISCAL/PERSONNEL IMPACT**

None

## **AMENDMENTS TO RULES**

None

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## **STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS**

### **Goal 4. Protect the Public by Engaging Partners**

- b. 1. Create and sustain partnerships with other organizations, entities, and stakeholder groups.
- c. 3. Engage diverse voices in the development and evaluation of State Bar policy.

## **RESOLUTIONS**

None

## **ATTACHMENT LIST**

None