

# THE TESTING COLUMN

## THE UNIFORM BAR EXAMINATION: WHAT'S IN IT FOR ME?

*by Susan M. Case, Ph.D.*

**B**y now, many of you are familiar with the basic concept of the Uniform Bar Examination (UBE). The UBE is an examination used across multiple jurisdictions; the score that an examinee receives is transportable to other UBE jurisdictions that are part of the UBE group. The UBE is composed of the Multistate Bar Examination (MBE), six Multistate Essay Examination (MEE) questions, and two Multistate Performance Test (MPT) tasks. Every UBE jurisdiction will use the same essay questions, the same performance tasks, and the same grading guidelines. The MBE will be weighted 50 percent and the written portion (MEE and MPT) will be weighted 50 percent.

As of February 2010, 34 jurisdictions use the MPT and 26 jurisdictions use the MEE. These numbers have increased considerably over the last few years. Given this current uniformity, some people are no doubt wondering why the UBE is being offered, why jurisdictions are interested in administering the UBE, and who will benefit from the new test. This column identifies the primary stakeholders and notes some of the advantages each will see.

It should be noted that NCBE does not anticipate a larger number of examinees as a result of the UBE. Although uniform adoption of the UBE will increase



the number of MEE and MPT first-time takers, adoption of the UBE will reduce the number of examinees who are taking these tests for the second or third time as a result of seeking admission in another jurisdiction.

### EXAMINEES

Each examinee who takes the UBE will receive a total scaled score. This score may be submitted to other UBE jurisdictions for use in seeking admission; such an examinee will not have to retake the examination. The pass/fail result will not transfer, but the actual score will transfer.

A pass from one jurisdiction does not guarantee a pass from another jurisdiction because jurisdictions have varying passing standards. Other admission requirements may also vary. While the UBE scores will transfer, jurisdictions will still review all applicants with regard to character and fitness and other requirements before admitting them. Some jurisdictions will likely add a test or course related to local content. In these jurisdictions, although examinees will be excused from retaking the MBE, MEE, and MPT, they will need to take the local component.

The equal weighting of the MBE and the written portion is a fair system overall. While research has not shown that any ethnic or racial group performs

better as a group on one format or the other, individuals may perform relatively better on one of the formats (i.e., some individuals perform better on the multiple-choice component whereas others perform better on the written components). Creating a single total scaled score allows examinees who perform better on one component to compensate for weaker performance on another component, and weighting the written and multiple-choice portions equally assures overall fairness.

An examinee who takes the bar exam in a jurisdiction, works exclusively in that jurisdiction, and never moves from that jurisdiction probably will not realize a particular benefit from the UBE. However, the transportability of the UBE score is a significant advantage to an examinee who fails to get the job he or she intends and has to move to another jurisdiction to find work, or one who ends up working for a firm that has clients in multiple jurisdictions.

## LAW SCHOOLS

The benefit to a law school is that all of its students, as well as students from many other schools in other jurisdictions, will be taking exactly the same exam and receiving scores that will have the same meaning across the country. While every jurisdiction with the exception of Washington and Louisiana currently uses the MBE, many jurisdictions use locally crafted essay questions. The UBE will only include essay questions and performance tasks that are developed centrally, researched thoroughly, and subjected to considerable quality control and review. These questions and performance tasks are packaged with grading materials, and graders have access to grading workshops to aid in the consistent grading of the essays and performance tasks.

The MBE and the written portions of the UBE will be weighted equally, ensuring reliable scores that do not give advantage to those who perform better on multiple-choice questions or those who perform better on written exams. Currently, the weights applied to each exam score vary by jurisdiction, making it more challenging for law schools to prepare their students who may be taking different bar exams.

## JURISDICTIONS

The primary benefit to the jurisdictions is that they are relieved from the burdens of developing high-quality written exams and grading materials and of completing the development of these materials in a timely manner. The UBE questions and grading materials will be developed by committees of content experts under the direction of NCBE; the grading materials will be used by all UBE graders. This application of uniform grading materials will help to ensure grading consistency across UBE jurisdictions.

UBE jurisdictions will be invited to participate in the development of best practices materials. NCBE has already worked at developing best practices for various jurisdictions, but this process would become more efficient if the practices were applicable to a larger number of jurisdictions. These materials will address issues such as the best way to calibrate graders, the best structure for score reports and feedback to examinees, and the best means of giving feedback to law schools.

Currently NCBE provides aid to jurisdictions at no cost to the jurisdictions. This aid would be more efficient if the jurisdictions followed similar procedures. NCBE is also considering providing additional

services for UBE jurisdictions as needed. These services may include centralized ADA decision making, centralized grading of written materials, and centralized score reporting. Such services would be offered by NCBE, but UBE jurisdictions would determine which tasks and services they wish to retain and which they prefer to have done centrally.

## THE PUBLIC

The UBE will provide more consistency in the requirements for bar admission across the country. And more consistency will make the bar admissions process more understandable to members of the public. Take a minute to look at Chart VII: Grading and Scoring in the *Comprehensive Guide to Bar Admission Requirements 2010* found on our website ([www.ncbex.org/comprehensive-guide-to-bar-admissions/](http://www.ncbex.org/comprehensive-guide-to-bar-admissions/)). This chart highlights the differences among jurisdictions in grading and scoring the various components of the bar exam. The chart shows that most jurisdictions use the MBE, most scale the written component to the MBE, and most combine scores. But the MBE weights range from 33 to 50 percent, the MEE and/or local essay exam weights range from 25 to 67 percent, and the MPT and/or local performance test weights range from 7 to 26 percent. One might wonder: How were these weights determined? Which of these reflects best practices? Why is there so much variety from one jurisdiction to the next?

The passing standard score ranges from 65 to 2,400. Do the various constituents understand what these standards mean? Is it really 36.92 times as hard to be admitted in Oklahoma as in Oregon? Questions arise, such as: Why are these passing standards expressed as they are? How can these standards be interpreted? Can comparisons be made across jurisdictions?

## FINAL THOUGHTS

Several jurisdictions are working to be on the forefront of the UBE, others are holding back to see how much momentum there is, and others have not begun to think about it. More than 20 years ago, I was involved in the development of a uniform licensing exam for physicians (the USMLE). In that case, the exam was developed for graduates of medical schools around the world (i.e., for both U.S.-trained and foreign-trained physicians) who seek to practice in the United States. The initial reactions to the USMLE were very similar to reactions to the UBE. Although one could argue that the human body is the same worldwide, concerns were raised about the differences from one jurisdiction to the next—differences in terms of ethnic and socioeconomic makeup, rural/urban breakdown, social and religious belief structures that combine to affect the prevalence of disease, the types of injuries, the availability of resources that affect treatment, and the structures of patient care.

Despite the challenges that complicated the development of a uniform medical licensing exam, we were able to develop an exam that met the needs of the entire country. I have no doubt that the same will be possible in law. It is important to remember that the multistate bar exams are not designed to assess the ability to apply knowledge to every conceivable legal issue that a newly licensed lawyer might encounter. Rather, they are designed to assess the ability to apply knowledge to a reasonable set of tasks to ensure that each admitted lawyer has at least minimal competence to practice law. The UBE seeks to achieve that goal while benefiting those involved in the bar admissions process. 

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