

New York State Board of Law Examiners

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Executive Director

October 26, 2011

Re: **Misconduct**

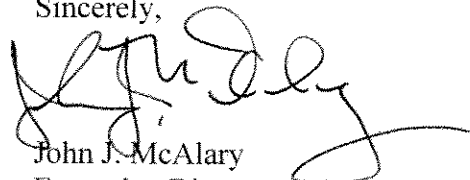
Dear Dean:

We write regarding a matter of concern in the administration of the New York bar examination. Specifically, the Board has noted a troubling increase in the number of cases of misconduct. The Board would ask your assistance in alerting your students who plan to take our exam to read Board Rule 6000.9 on Fraud, Dishonesty and Other Misconduct and our Security Policy. Copies of each are attached for your convenience.

The Board routinely imposes penalties on candidates who are found to have violated these provisions. We attach a chart showing some of the penalties that have been imposed. Please make your students aware of the seriousness of violation of the rules pertaining to sitting for our bar examination.

We appreciate your assistance.

Sincerely,



John J. McAlary
Executive Director

Attachments

New York State Board of Law Examiners
22 NYCRR Part 6000

6000.9 Fraud, Dishonesty and Other Misconduct. (Revised October 2010)

(a) If it shall appear to the Board that there is credible evidence which would establish that an applicant has:

- (1) either by omission or commission falsified the application or proofs required for admission to the bar examination or misrepresented the applicant's eligibility to sit for the bar examination;
- (2) either by omission or commission falsified the proofs required for admission to practice without examination or misrepresented the applicant's eligibility to be admitted to practice without examination;
- (3) either by omission or commission falsified documentation submitted in support of a request for test accommodations under Rule 6000.4 or secured such documentation under false pretenses;
- (4) brought any item or material prohibited by the Board's security policy through the security checkpoint, or possessed any such item or material at any time after passing through the security checkpoint;
- (5) reviewed and/or used any item or material prohibited by the Board's security policy at any time after passing through the security checkpoint, or secreted any such item or material with the intent to review and/or use it;
- (6) broken the seal on the question book, opened the question booklet, or reviewed the questions in the question book prior to the announcement that the examination has begun;
- (7) written or designated any answers to questions or other unauthorized information on any examination materials, answer sheet or booklet prior to the announcement of the beginning of the examination session;
- (8) written or designated any answers to questions or other information on any examination materials, answer sheet or booklet after the announcement of the conclusion of the examination session;
- (9) sought, obtained or used answers or information from or given answers or information to another applicant or any other person during the bar examination;
- (10) removed or attempted to remove any examination materials or notes made during the examination from the examination room;
- (11) otherwise violated any of the oral or written instructions given in connection with the administration of the bar examination;
- (12) otherwise violated the Board's examination security policy;

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(13) memorized questions for the purpose of reporting and/or reported the substance of questions to any person or entity engaged in, or affiliated with any person or entity engaged in, the preparation of applicants to take the bar examination or otherwise violated the copyright protection afforded to bar examination materials;

(14) engaged in fraud, dishonesty or other misconduct in connection with an application to or the administration of the Multistate Professional Responsibility Examination (MPRE) or to a bar examination of any other jurisdiction;

(15) sat for the bar examination without having a *bona fide* intention to seek admission to practice law in the State of New York;

(16) compromised or disrupted the process for admission to or administration of the bar examination;

(17) violated the Board's civility policy; or

(18) failed to cooperate in a misconduct investigation made pursuant to this section, or made a false statement in connection with a misconduct investigation;

the applicant may be charged with having engaged in fraud, dishonesty or other misconduct. The applicant shall be served with written notice of such charges by regular mail and email at the last address provided to the Board by the applicant. The charges shall state with particularity the facts upon which they are based. The applicant's examination results shall be withheld pending the decision on the charges by the Board.

(b) The applicant, no later than 30 days after the service of charges, shall cause to be delivered to the office of the Board a verified answer to such charges. Such answer shall identify with specificity the charges disputed by the applicant, who shall set forth any evidence which can be adduced by the applicant in contradiction of such charges. The applicant must indicate in such written answer whether a hearing before the Board is requested. Upon receipt of a verified answer the Board shall, upon request, disclose to the applicant the evidence which forms the basis of the charge.

(c) In the event such applicant does not submit a written and verified answer as provided in subsection (b), the Board shall deem the facts set forth in the written charges to be true.

(d) In the event such applicant does not request a hearing as provided in subsection (b), the Board may make a decision based on the evidence submitted, or may, on its own motion, determine to conduct a hearing.

(e) If the applicant shall request a hearing, or if the Board, on its own motion, determines to conduct a hearing, the Board shall set a date for a hearing. Reasonable notice of the hearing shall be provided to the applicant. The hearing shall be conducted by the Board or by one or more members of the Board who shall make a recommendation to the full Board which shall render a decision. The Board is not bound by the rules of evidence.

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(f) If the applicant shall be found guilty by reason of:

- (1) applicant's admission that such charges are true, in whole or in part; or
- (2) applicant's default in answering the written charges, in whole or in part; or
- (3) decision of the Board, after a hearing, or where no hearing was conducted, after the Board's review of the evidence submitted,

the Board shall issue a written determination of its decision in which one or more of the following penalties, and any other penalty which the Board may deem appropriate, may be imposed:

- (i) forfeiture of all fees paid by such applicant;
- (ii) nullification of the examination taken or the application made by such applicant;
- (iii) disqualification of the applicant from taking the New York State Bar Examination or applying for admission on motion for a period not to exceed six years from the date of such determination;
- (iv) invalidation or striking of one or more answers of the examination taken by such applicant, or the reduction of applicant's final score by one or more points;
- (v) transmission of a written report of the matter to the Committee on Character and Fitness in New York State having jurisdiction of the applicant;
- (vi) transmission of a written report of the matter to the bar admission authority and/or disciplinary authority in any jurisdiction of the United States and, where applicable, to any foreign jurisdiction deemed appropriate by the Board;
- (vii) postponement of certification to the Committee on Character and Fitness in New York State having jurisdiction of the applicant.

(g) If the applicant shall be found not guilty, or if the Board determines that the charges should be dismissed, the applicant shall be notified in writing of the Board's decision and the Board shall release the applicant's examination results.

(h) The Board shall serve its determination on such applicant by regular mail and email at the last address provided to the Board by the applicant as soon as practicable. Any determination is final and not subject to further review by the Board.

(i) The applicant shall be entitled to be represented and advised by counsel, at his or her own expense, at every stage of the proceeding. Any person who appears at a hearing held pursuant to subsection (e) of this rule shall be entitled to be represented and advised by counsel, at his or her own expense.

NEW YORK STATE BOARD OF LAW EXAMINERS BAR EXAMINATION SECURITY POLICY

REQUIRED IDENTIFICATION: You must have your Seating Ticket and Government Issued Photo ID in hand and ready to present to security at the security checkpoint. A non-U.S. citizen who does not possess a U.S. issued driver's license must present a valid passport

PERMITTED ITEMS: The following items are permitted past the security checkpoint and must be stored in one, clear gallon-sized plastic food storage bag (no grocery store bags):

Blue or black ink pens - NY day only No. 2 Pencils and Erasers Medications Foam Earplugs Keys
Feminine Hygiene Products Non-programmable wristwatch Tissues Quiet Snack Wallet
One beverage/drink in a re-sealable clear plastic container (max size: 1 liter, no label, no glass, cans or cups). *If the plastic container contains a label, the label must be removed.* It must be kept under the table when not being used.

PROHIBITED ITEMS: The following items are strictly prohibited and will NOT be permitted past the security checkpoint:
NO electronic devices of any kind including but not limited to cell phones, Blackberries, iPhones, PDAs, wireless e-mail devices, iPods, MP3 players, pagers, calculators, clocks, cameras, scanners, radios, recording devices, hand-held computers, programmable watches, etc.
NO headphones, headsets, ear phones, ear buds or blue tooth devices (ordinary ear plugs are acceptable).
NO notes, papers, books, bar review or other study materials in any format or media (including CDs).
NO CDs, USB keys, DVDs or other electronic media.
NO newspapers, magazines, dictionaries, prayer books or any other written material.
NO luggage, handbags, purses, backpacks, briefcases, tote bags, or bags of any kind.
NO highlighters.
NO pens on MBE day
NO weapons of any kind.
NO hats, baseball caps or visors (religious apparel that does not contain a brim or obscure the applicant's facial features is permitted).
NO flip flops or other shoes or garments which are noisy and can disrupt other candidates.

ANY OTHER ITEM NOT SPECIFICALLY LISTED ABOVE IS ALSO PROHIBITED.

THE BOARD HAS A ZERO TOLERANCE POLICY FOR CELL PHONES AND ALL OTHER ELECTRONIC DEVICES. BRINGING AN ELECTRONIC DEVICE PAST THE SECURITY CHECKPOINT IS A VIOLATION OF BOARD RULE 6000.9 ON FRAUD, DISHONESTY AND OTHER MISCONDUCT. IF YOU ARE FOUND TO HAVE BROUGHT ANY SUCH DEVICE PAST THE SECURITY CHECKPOINT IT WILL BE CONFISCATED AND A MISCONDUCT INVESTIGATION WILL BE COMMENCED UNDER BOARD RULE 6000.9. AS A PENALTY YOUR EXAM SCORE MAY BE NULLIFIED AND, IF AT ANY TIME YOU PASS THE EXAM, A REPORT WILL BE MADE TO THE CHARACTER & FITNESS COMMITTEE. OTHER PENALTIES PERMITTED BY RULE MAY ALSO BE IMPOSED. IT IS NOT A DEFENSE TO A MISCONDUCT CHARGE UNDER BOARD RULE 6000.9 THAT YOU WERE NOT AWARE YOU HAD A CELL PHONE OR ELECTRONIC DEVICE OR THAT IT WAS TURNED OFF, RENDERED INOPERABLE OR STORED IN YOUR POCKET OR BAG.

NO RE-ENTRY: Once you enter the exam room, you may not leave it at any point except to use the restroom with permission of a proctor. Violation of this rule will prohibit re-entry into the exam room and could disqualify you from completing the exam. You must have an EXIT PASS to leave the exam room when you complete each session. Your proctor will provide you with your EXIT PASS after you have turned in all your examination materials. Do NOT remove examination materials from the exam room. After you leave the exam room, you may not re-enter until the next testing session. NO SMOKING is allowed during the exam.

NO STUDYING PAST THE SECURITY CHECKPOINT: No notes may be brought past the security checkpoint, and no studying is allowed past the security checkpoint.

LAPTOP USERS: For the New York day of the exam, you may bring the following items into the exam room: laptop, mouse, external keyboard, mouse pad, and power cord in a laptop bag or case containing only those items. Laptop bags are subject to be searched for any prohibited items. Laptop candidates must immediately launch the Examsoft software upon entering the exam room and may not access the internet or any notes, study guides, etc. on their laptops once past the security checkpoint. **LAPTOPS AND LAPTOP BAGS MUST BE LEFT IN THE EXAMINATION ROOM DURING THE LUNCH BREAK.** For the MBE day of the exam, no laptop bags are allowed and the general security policy will be strictly enforced.

COATS & SHOES: All coats, jackets and/or outerwear **MUST** be checked and will NOT be permitted in the exam room. Wear soft-soled shoes or sneakers (no flip-flops or noisy shoes).

NO WRITING ON SEAT TICKET: Candidates are NOT permitted to write anything on either side of the Seating Ticket.

SECURITY POLICY VIOLATIONS: If you are found in violation of this security policy, a misconduct investigation under Board Rule 6000.9 will be commenced. Penalties may include nullification of your exam score, disqualification from future exams, notice to the Character and Fitness Committee and any other penalty permitted by Board Rule 6000.9.

New York State Board of Law Examiners

MISCONDUCT

Candidates for the New York State bar examination must comply with the Board's Security Policy and with Board Rule 6000.9 which prohibits acts of fraud, dishonesty and other misconduct in connection with the application to and the taking of the bar examination. The Board strictly enforces its Rule and Security Policy and prosecutes their violation. Both the Rule and the Security Policy are available on the Board's website at <http://www.nybarexam.org>.

The Following Penalties Have Been Imposed for Misconduct Violations

- Nullification of examination results.
- Disqualification from taking future exams.
- Report to Committee on Character & Fitness having jurisdiction of the candidate.
- Report to other United States and foreign jurisdictions where the candidate is admitted or seeks admission.

The Following Conduct is Prohibited

- Bringing a prohibited item (cell phone, notes, bag, etc.) through the security checkpoint even if the item is not brought into the exam room and/or is not being used. Such conduct cannot be excused by the fact that the item was in a clear plastic bag and/or was not discovered by the security officer at the security checkpoint. *This prohibition extends beyond the four walls of the examination room.*
- Using a prohibited item (cell phone, notes, computer file, etc.) after passing through the security checkpoint or while in the exam room, whether or not the exam has begun.
- Writing or typing anything after time is called including completing a word or sentence, filling in a bubble on an answer sheet, crossing out or erasing information or answers, or adding identifying information (i.e. seat number).
- Copying or attempting to copy multiple choice or essay answers from another candidate, or giving such information to another candidate.
- Removing or attempting to remove any examination material (question booklet, answer booklet, notes, instructions, etc.) from the exam room.
- Providing false or intentionally misleading information on any bar examination application including an application for test accommodations.