

OFFICE OF THE STATE AUDITOR

DIANA DIZOGLIO

Official Audit Report – Issued April 4, 2023

Massachusetts Board of Bar Examiners

For the period March 1, 2020 through November 30, 2021



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April 4, 2023

Robert Harris, Chief
Massachusetts Board of Bar Examiners
John Adams Courthouse
One Pemberton Square, Suite 5-140
Boston, MA 02108

Dear Mr. Harris:

I am pleased to provide to you the results of the enclosed performance audit of the Massachusetts Board of Bar Examiners. As is typically the case, this report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, March 1, 2020 through November 30, 2021. As you know, my audit team discussed the contents of this report with agency managers. This report reflects those comments.

I appreciate you and all your efforts at the Massachusetts Board of Bar Examiners. The cooperation and assistance provided to my staff during the audit went a long way toward a smooth process. Thank you for encouraging and making available your team. I am available to discuss this audit if you or your team have any questions.

Sincerely,



Diana DiZoglio
Auditor of the Commonwealth

cc: Kandace Kukas, Executive Director of the Massachusetts Board of Bar Examiners

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LIST OF ABBREVIATIONS

CMS	Case Management System
MBBE	Massachusetts Board of Bar Examiners
SJC	Supreme Judicial Court
UBE	Uniform Bar Examination

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Massachusetts Board of Bar Examiners (MBBE) for the period March 1, 2020 through November 30, 2021. The purpose of our audit was to determine whether MBBE administered the Uniform Bar Examination¹ remotely on October 5–6, 2020; February 23–24, 2021; and July 27–28, 2021, as required by Superior Court Standing Order 8-20, which was approved by the Massachusetts Supreme Judicial Court. We also determined whether MBBE’s five board members and eight employees completed conflict of interest training during our audit period, as required by Section 28 of Chapter 268A of the General Laws.

Below is a summary of our finding and recommendation, with links to each page listed.

Finding 1 Page 6	MBBE did not ensure that all employees and board members completed conflict of interest training.
Recommendations Page 6	<ol style="list-style-type: none">1. MBBE should maintain certificates of completion for its employees and board members.2. MBBE should develop and implement policies and procedures that require all employees and board members to complete conflict of interest training every two years.

1. The National Conference of Bar Examiners created the Uniform Bar Examination, which is a standardized two-day exam used to test the knowledge of individuals who are applying to be licensed to practice law. Massachusetts is one of many states that requires lawyers to pass the Uniform Bar Examination before being licensed in the state.

OVERVIEW OF AUDITED ENTITY

The Massachusetts Board of Bar Examiners (MBBE) was established by Sections 35 and 36 of Chapter 221 of the Massachusetts General Laws to evaluate the qualifications of people seeking admission to the Massachusetts bar. According to MBBE's website, "The Board of Bar Examiners reviews all petitions for admission to the Massachusetts bar submitted by eligible candidates to ensure that all persons admitted to the bar are fully qualified by education, knowledge, character and fitness."

According to Section 35 of Chapter 221 of the General Laws,

There shall be a board of bar examiners consisting of five persons, at least four of whom shall be residents of different counties, one of whom shall annually be appointed by the justices of the supreme judicial court for a term of five years from October first in the year of his appointment, and who may be removed by them. Such justices may fill vacancies.

Although board members are not compensated, they are reimbursed for expenses. As of March 1, 2020, MBBE had eight employees to support the activities of the board: one executive director, one staff investigator, one staff attorney, and five office support employees. The duties of these employees include reviewing the qualifications of petitioners to take the Massachusetts Uniform Bar Examination (UBE) as well as planning and organizing staff activities.

MBBE's appropriations and expenditures are as follows:

Fiscal Year	Appropriations	Expenditures
2020	\$1,695,303	\$1,644,238
2021	\$1,853,730	\$1,363,540
2022	\$1,985,692	\$1,877,891

UBE Application Process

Individuals who want to be admitted to the Massachusetts bar must first complete an application to take the UBE. Applications can be obtained from the Supreme Judicial Court (SJC) website. Applications must include the following: the applicant's name, address, educational background, employment history, and professional licenses, as well as any legal proceedings the applicant was involved in, the location where the applicant will take the UBE, and the applicant's statement attesting that all statements in their

application are true. MBBE reviews each application and documents the status (accepted or rejected) of it.

Examination Process

MBBE makes and upholds the rules for the UBE for admission to the Massachusetts bar in accordance with SJC Rule 3:01. MBBE also evaluates the requirements, which include meeting criteria regarding legal education, character, and fitness to practice law, for an applicant petitioning SJC for admission to the Massachusetts bar by examination. Additionally, MBBE prepares, administers, and grades the UBE. It sends each applicant their results (passed or failed) and communicates all applicants' statuses (qualified or not qualified) to SJC.

MBBE conducted three remote examinations as an emergency response to the 2019 coronavirus pandemic in October 2020,² February 2021, and July 2021. MBBE shifted back to in-person examinations after July 2021.

2. According to MBBE's website, "Scores earned from the October 2020 remote exam are not UBE scores, but will be treated as such for score transfer purposes." Specifically, Massachusetts entered into a reciprocity agreement with several states to allow applicants to use scores from the October 2020 remote examination (which the other states also administered) to apply for admission to any of these states' respective bars. MBBE officials told us that applicants with scores from the October 2020 remote examination were otherwise subject to the same additional criteria as applicants from other examinations.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Massachusetts Board of Bar Examiners (MBBE) for the period March 1, 2020 through November 30, 2021.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Did MBBE administer the Uniform Bar Examination (UBE) remotely in October 2020 and February and July 2021, as required by Superior Court Standing Order 8-20?	Yes
2. Did all MBBE employees and board members complete the conflict of interest training during the audit period, as required by Section 28 of Chapter 268A of the General Laws?	No, see Finding <u>1</u>

To achieve our audit objectives, we gained an understanding of the internal control environment we determined to be relevant to the objectives by conducting inquiries with MBBE officials and reviewing MBBE's internal control plan and applicable agency policies and procedures.

To obtain sufficient, appropriate audit evidence to address our audit objectives, we performed the following procedures.

To determine whether MBBE administered the UBE remotely during the audit period, we obtained a list of all applicants who took the UBE during the audit period from the Case Management System (CMS), which holds applicants' information and is maintained by the Supreme Judicial Court (SJC). For each unique case number, we determined whether the applicant associated with that case number had a final score of greater than zero and had an entry date (application submittal date) before the scheduled UBE test date (October 5–6, 2020; February 23–24, 2021; or July 27–28, 2021).

In addition, for the UBEs conducted on October 5–6, 2020 and February 23–24, 2021, we selected a random, nonstatistical sample of 60 applicants from a population of 2,504 and tested whether the ExamSoft³ data file for each applicant was deleted after the UBE test, as requested by MBBE's director, by attempting to access the applicant's data using their case number. If there was no case number in the system, we concluded that the applicant's data was deleted.

To determine whether all MBBE employees and board members completed the conflict of interest training during the audit period, we requested conflict of interest training certificates of completion for all MBBE employees and board members during the audit period.

Data Reliability Assessment

To assess the reliability of the data within CMS, we exchanged emails with SJC information technology employees who were responsible for the oversight of CMS to understand the data fields related to individuals who took the UBE. We also verified that the MBBE website's references to the UBE clearly stated when the examinations were going to occur. We verified that there were no duplicate case numbers and that all entry dates were formatted as dates within our audit period in instances where the final score field in CMS was a numeric value greater than zero.

We also requested, reviewed, and verified a judgmental sample of 47 original applications received from SJC to determine whether the name on the application matched the name associated with the case number in CMS. We also verified that the application date agreed with the corresponding entry date field in CMS.

Based on the results of these data reliability procedures, we determined the CMS and MBBE data to be sufficiently reliable for purposes of our audit.

3. ExamSoft is a third-party subcontractor of MBBE that stores unique data on each applicant in a controlled environment with very limited access. After UBE results are finalized, ExamSoft deletes the data file for each applicant upon a request from MBBE.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Massachusetts Board of Bar Examiners did not ensure that all employees and board members completed conflict of interest training.

The Massachusetts Board of Bar Examiners (MBBE) did not ensure that all employees and board members completed conflict of interest training. During the audit period, MBBE had eight employees and five board members, but MBBE only provided us a conflict of interest training certificate of completion for one employee.

Without having all employees and board members complete conflict of interest training, there is a higher risk that conflicts of interest will arise, resulting in improper decisions regarding conducting examinations.

Authoritative Guidance

Section 28 of Chapter 268A of the Massachusetts General Laws states,

The state ethics commission shall prepare and update from time to time the following online training programs, which the commission shall publish on its official website: (1) a program which shall provide a general introduction to the requirements of this chapter. . . . Every state, county, and municipal employee shall, within 30 days after becoming such an employee, and every 2 years thereafter, complete the online training program. Upon completion of the online training program, the employee shall provide notice of such completion to be retained for 6 years by the appropriate employer.

Reasons for Issue

MBBE officials told us that it was an oversight that MBBE did not maintain these certificates of completion. Additionally, MBBE did not have policies and procedures that required all employees and board members to complete conflict of interest training.

Recommendations

1. MBBE should maintain certificates of completion for its employees and board members.
2. MBBE should develop and implement policies and procedures that require all employees and board members to complete conflict of interest training every two years.

Auditee's Response

The Massachusetts Board of Bar Examiners (MBBE) has joined the State Ethics Commission's online training program for employees. They administer and track our Code of Conduct training. Any new employees or board members are enrolled promptly.

Auditor's Reply

Based on its response, MBBE is taking measures to address our concerns in this area.