

*Observation of the Standard Setting Study  
for the  
California Bar Examination*

Performed for  
The State Bar of California

Submitted by  
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## Executive Summary

California state agencies are responsible for ensuring that examination programs used in the regulatory process comply with psychometric guidelines and legal standards (Government Code Section 12944 (a)). The public must be reasonably confident that an individual passing a credentialing or licensing examination has the requisite knowledge and skills to competently and safely practice in the respective profession.

In May 2017, The State Bar of California (State Bar) contracted with Dr. Tracy Montez to provide the following deliverables: (1) advice and consultation regarding Standard Setting and Validity Studies; (2) attendance at an Analytic Judgment Method workshop and a pre-study methodology review; (3) a post-study findings review and a written analysis, including assessment of the workshop process, and as contextual background information, an overview of the state of the art standard-setting methodologies; and (4) attendance at post-study design meetings in California. This report addresses deliverables one through three (partially).

Created by the California State Legislature in 1927, the State Bar is part of the judicial branch of government, specifically located within the California Supreme Court. The State Bar protects the public by licensing and regulating more than 250,000 attorneys. Further, the State Bar investigates approximately 16,000 complaints of attorney misconduct annually and distributes over \$30 million in grants to legal aid organizations.

The State Bar is led by a Board of Trustees and managed by staff who have served the legal profession.

The State Bar of California's mission is to protect the public and includes the primary functions of licensing, regulation and discipline of attorneys; the advancement of the ethical and competent practice of law; and support of efforts for greater access to, and inclusion in, the legal system (<http://www.calbar.ca.gov/About-Us/Our-Mission>).

Dr. Montez worked with the State Bar through Ron Pi, Principal Analyst with the Office of Research & Institutional Accountability. Standard setting documents provided by ACS Ventures, LLC (ACS), the State Bar's examination vendor, as well as California Bar Examination (CBE) information located on the State Bar's webpage, were reviewed and evaluated. Dr. Montez also attended the first day of the standard setting workshop.

An evaluation of these documents and the corresponding process was made to determine whether the standard setting procedure meets professional guidelines and technical standards outlined in the *Standards for Educational and Psychological Testing (Standards)*<sup>1</sup> and other

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<sup>1</sup> American Educational Research Association, American Psychological Association, & National Council on Measurement in Education. (2014). *Standards for Educational and Psychological Testing*. Washington, DC: American Educational Research Association.

documents<sup>2</sup>. It is important to note that the feedback offered is based on limited observation (i.e., one of a three-day workshop) but reflects experience facilitating numerous standard setting workshops for the California Department of Consumer Affairs (DCA) licensing examination programs.

Although constructive feedback is noted, actions taken by the State Bar demonstrate a commitment to responding to public inquiries, including Senate Bill 690. The State Bar and ACS, appear to adhere to professional guidelines and technical standards, but also recognize that additional strategies can be implemented to further add evidence supporting the pass/fail decisions based on CBE performance.

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<sup>2</sup> Equal Employment Opportunity Commission, Civil Service Commission, Department of Labor, & Department of Justice (1978). *Federal Uniform Guidelines for Employee Selection Procedures*. Washington, DC: Author.

## CHAPTER 1: PASSING SCORES<sup>3</sup>

### Standards

The passing score of an examination is the score that represents the cut off that divides those candidates for certification or licensure who are minimally competent and those who are incompetent.

The relevant *Standards* relating to passing scores, points, cut scores, or standard scores as applied to credentialing or licensing examinations, are:

#### **Standard 5.22**

When cut scores defining pass-fail or proficiency levels are based on direct judgments about the adequacy of item or test performances, the judgmental process should be designed so that participants providing the judgments can bring their knowledge and experience to bear in a reasonable way. (p. 108)

#### **Standard 11.16**

The level of performance required for passing a credentialing test should depend on the knowledge and skills necessary for credential-worthy performance in the occupation or profession and should not be adjusted to regulate the number or proportion of persons passing the test. (p. 182)

The supporting commentary on passing scores or cut scores in the *Standards, Chapter 5 – Scores, Scales, Norms, Score Linking and Cut Scores* states that there can be no single method for determining cut scores for all tests and all purposes. The process used should be clearly documented and defensible. The qualifications of the judges involved, and the process of selection should be part of the documentation. A sufficiently large and representative group of participants should be involved, and care must be taken to assure that those making judgments understand what they are to do.

In addition, the supporting commentary in the *Standards – Chapter 11 – Workplace Testing and Credentialing* states that the focus of credentialing standards is on levels of knowledge and performance necessary for safe and appropriate practice. “Standards must be high enough to ensure the public, employers, and government agencies are well served, but not so high as to be unreasonably limiting” (p. 176).

In addition to Dr. Montez observing the first day of the standard setting workshop, the State Bar provided the *Recent Performance Changes on the California State Bar Examination (CBE): Insights from CBE Electronic Databases, California State Bar Exam: Standard Setting Workshop* PowerPoint presentation, and *Conducting a Standard Setting Study for the California Bar Exam: Draft Report* for review and consideration.

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<sup>3</sup> A passing score is also known as a cut score, pass point or standard.

Comments and feedback are presented in Table 1 (adapted from Hambleton, 2001). The “Questions” listed (and numbered) in the table are criteria offered as guidelines for evaluating a standard setting study. The “Topics” listed are from the Standard Setting Study PowerPoint presentation.

Included with the comments and feedback are references to *Standards* and other materials reviewed.

This report concludes with a brief introduction to occupational analysis and Business and Professions Code Section 139 as suggested strategies to strengthen validation evidence.

**Table 1**  
**Conducting a Standard Setting Study<sup>4</sup>**

<i>Questions/Topics</i>	<i>Comments/Feedback</i>
Purpose of the Workshop	<p>The purpose of the workshop was clearly stated.</p> <p>Feedback:</p> <ol style="list-style-type: none"> <li>1. More context should be given in terms of specific background information (e.g., why were the studies were initiated) and general validation information (e.g., the cycle of examination validation).</li> <li>2. Further, reference to guiding principles and technical standards (e.g., <i>Standards, Federal Uniform Guidelines for Employee Selection Procedures</i>) should be presented to emphasize that the methodology used in this workshop goes beyond the CBE.</li> </ol>
Roles in the Process	<p>Good explanation of participants and their respective roles in the process.</p> <p>Feedback:</p> <ol style="list-style-type: none"> <li>1. The number of observers should be significantly reduced once the rating process begins. That is, in addition to the Facilitator and subject matter experts (SME) panelists, only State Bar staff and the External Evaluator(s) should be observing. SMEs can be influenced by the presence of certain individuals. At DCA, board members are discouraged from participating in standard setting workshops.</li> <li>2. More time should be spent reassuring SME panelists that they each bring a level of professional expertise to the process. It is not their responsibility to be an expert across all fields nor a testing expert. Rather, the Facilitator (testing expert) will train them and use their unique expertise to establish a passing score recommendation (<i>Standard 5.22, p. 108</i>).</li> </ol>

<sup>4</sup> Questions, as presented in the referenced chapter, were paraphrased.

(1)	Was consideration given to the groups who should be represented on the standard setting panel and the proportion of the panel that each group should represent?	<p>It appears the group of panelists recruited to participate as SMEs were representative of practicing attorneys. The State Bar used a “Standard-Setting Study Panel Member Nomination Form” to ensure important variables such as experience practicing in the field were considered (<i>Standard 5.21</i>, p. 107).</p> <p>Feedback:</p> <ol style="list-style-type: none"> <li>1. The DCA attempts to avoid using educators/faculty in standard setting workshops because of potential conflict of interest.</li> <li>2. SME Mr. Maio may have unduly influenced the group with his extensive experience and strong presence in the exam process.</li> </ol>
(2)	Was the panel large enough and representative enough of the appropriate constituencies to be judged as suitable for setting the performance standards on the assessment?	It appears, the State Bar with guidance from ACS, took great care to recommend that panelists with diverse perspectives be selected from the legal community (The Bar of California Memorandum, dated March 8, 2017).
(8)	Were the qualifications and other relevant demographic data about the panelists collected?	Yes, this information was collected and summary information is expected to be presented in the standard setting study final report.
(4)	Were sufficient resources allocated to carry out the study properly?	From limited knowledge of panelists’ accommodations, it appears the panelists were provided with suitable travel arrangements and hotel accommodations. The resource of time may have been an issue (see below – response to Question 13).
(7)	Were the panelists explained the purposes of the assessment and the use of the test scores at the beginning of the standard-setting meeting?	Yes, purpose and use were thoroughly explained at the beginning of the training and throughout the workshop.
	Step 1: Purpose of the BAR Exam	Excellent discussion on the points covered in this key slide.
	Step 2: Overview of Content Specifications	Good overview, but detail associated with content specifications should have been presented in the beginning of the workshop when providing context via the cycle of examination validation ( <i>Standard 11.3</i> , p. 178).
(6)	Was the standard setting method appropriate for the particular assessment and was it described in detail?	The standard setting approach used, Analytical Judgment Method (Plake & Hambleton, 2001), is designed for constructed response assessments. It appears appropriate for the CBE.

(5)	Was the performance standard setting method field tested in preparation for its use in the standard setting study and revised accordingly?	As part of the training, SMEs were first asked to review and rate performance independently. In my professional opinion, this represents an acceptable example of field testing for this study.
(9)	Were the panelists administered the assessment, or at least a portion of it?	It does not appear the panelists were administered the assessment or a portion of it. Given the nature of the assessment, essay/performance, it is presumed this step was purposely omitted.
(10)	Were the panelists suitably trained on the methods to set performance standards?	<p>SME panelists were provided with a Performance Level Descriptor created by the BAR Exam working group. It is not clear how the working group developed this performance descriptor, other than input from subject matter experts. Time was then spent discussing the knowledge, skills, and abilities representative of the work of a minimally competent candidate (MCC). Discussion of panelist ratings, including performance data, was incorporated into the training</p> <p>Feedback:</p> <ol style="list-style-type: none"> <li>1. Although examples were given and time was spent generating further examples among the SMEs, it appeared panelists struggled with creating a common frame of reference from which to score the exam responses. Additional time should have been allocated to defining a MCC (<i>Standard 11.2, p. 178</i>).</li> <li>2. Further, the Facilitator should remind panelists of their unique expertise and how to determine what is reasonable in terms of MCC. The Facilitator should create consensus among the diverse group of panelists by building a common frame of reference for a MCC.</li> <li>3. Finally, an occupational analysis of California practice should be conducted to ascertain expectations for entry-level or MCC performance. The information derived from this analysis can be used as a tool to assist defining MCC during standard setting workshops.</li> </ol>
(11)	Were descriptions of the performance categories clear to the extent that they were used effectively by panelists in the standard setting process?	
(14)	Were the panelist given the opportunity to “ground” their ratings with performance data and how was the data used?	
(12)	If an iterative process was used for discussing and reconciling rating differences, was the feedback to panelists clear, understandable, and useful? Were the facilitators able to bring out appropriate discussion among the panelists with biasing the process?	
(16)	Was the approach for arriving at final performance standards clearly defined and appropriate?	
(3)	Were two panels used to check the generalizability of the performance standards across the panels? Were subpanels within a panel	

	formed to check the consistency of performance standards over independent groups?	
(15)	Were the panelists provided consequential data to use in their deliberations?	The draft report provides a passing score range, illustrating impact of resulting passing score and use of the standard error of the median, for policymakers to consider when arriving at a final passing score ( <i>Standard 11.4</i> , p. 179).
(13)	Was the process itself conducted efficiently? Were the rating forms easy to use? Were the documents simply coded? Were facilitators qualified?	<p>Except for time, the process appeared to be conducted efficiently in terms of the materials (e.g., rating forms, candidate materials) used and the qualifications of the Facilitator.</p> <p>Feedback:</p> <ol style="list-style-type: none"> <li>1. Several panelists noted in their evaluations that they felt rushed during the process and did not have enough time to adequately rate candidate performance.</li> </ol>
(18)	Was evidence compiled to support the validity of the performance standards?	<p>To evaluate the passing score recommendations resulting from the study, ACS applied Kane's (1994; 2001) framework (i.e., procedural, internal and external) for validating standard setting activities.</p> <p>Feedback:</p> <ol style="list-style-type: none"> <li>1. Opportunities through greater discussion about the MCC and use of occupational analysis data can strengthen evidence.</li> </ol>
(17)	Was an evaluation of the process carried out by the panelists?	Yes, panelists were asked to complete a 15-question survey of the standard setting workshop, evaluating the training, recommended performances for the minimally competent candidate (for days 1-3) and the overall workshop (Cizek, 2006).
(19)	Was the full standard-setting process documented?	The standard setting process draft report was provided for comment. It is expected that the full process will be documented in a final report once all comments are received and considered ( <i>Standard 5.21</i> , p. 107).
(20)	Were effective steps taken to communicate the performance standards?	The State Bar presents examination information to candidates via their webpage <a href="http://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination">http://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination</a> ( <i>Standard 8.1</i> , p. 133).

## CHAPTER 2: OCCUPATIONAL ANALYSIS<sup>5</sup>

### Standards

The most relevant *Standard* relating to occupational analyses, as applied to credentialing or licensing examinations, is:

#### **Standard 11.13**

The content domain to be covered by a credentialing test should be defined clearly and justified in terms of the importance of the content for credential-worthy performance in an occupation or profession. A rationale should be provided to support a claim that the knowledge or skills being assessed are required for credential-worthy performance in an occupation and are consistent with the purpose for which the licensing or certification program was instituted. (p. 181)

The comment following *Standard 11.13* emphasizes its relevance:

*Comment:* Some form of job or practice analysis provides the primary basis for defining the content domain. If the same examination is used in the licensure or certification of people employed in a variety of settings and specialties, a number of different job settings may need to be analyzed. Although the job analysis techniques may be similar to those used in employment testing, the emphasis for credentialing is limited appropriately to knowledge and skills necessary for the effective practice . . . In tests used for licensure, knowledge and skills that may be important to success but are not directly related to the purpose of licensure (e.g., protecting the public) should not be included. (p. 182)

Although a national job analysis and a CBE Content Validation have been conducted, it is highly recommended that the State Bar conduct a comprehensive occupational analysis of California practice. Given that a state-specific occupational analysis does not appear to have been conducted, it is critical to have this baseline for making high-stakes decisions (e.g., determining content to be measured on the CBE; creating a common frame of reference for a MCC when establishing passing scores; providing preparation and training information to candidates and schools).

As mandated by Assembly Bill 1005, Chapter 67 (Statutes of 1999), Business and Professions Code Section 139, implements the DCA Licensure Examination Validation Policy. The intent of this policy is to establish guidelines that define psychometrically sound and valid licensure examination development and administration procedures for DCA programs. It is further recommended that the State Bar implement a similar policy, with technical staff, to govern its examination program and add to transparency of licensing program.

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<sup>5</sup> An occupational analysis is also referred to as a job, practice or task analysis.

## References

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