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Board of Law Examiners

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Test Accommodations Handbook

Instructions, Forms, and Documentation Guidelines

For questions, call the Board at (518) 453-5990 or
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GENERAL INFORMATION

Introduction.

The Board of Law Examiners (Board) will provide reasonable nonstandard test accommodations (NTA) at no additional cost to qualified applicants with disabilities as defined under the American with Disabilities Act, as amended (ADA). The extent of accommodations will be consistent with the nature and purpose of the examination and exam format and necessitated by the applicant's disabilities. Test Accommodations for Applicants with Disabilities is specifically covered under 22 NYCRR 6000.7.

If an applicant has general questions after reading these instructions or at any time during the process of applying for NTA, we encourage the applicant to contact the Test Accommodations Department at (518) 453-5990 or via email to NTAInquiries@nybarexam.org.¹ If an applicant has

¹ While you may use this email address to contact the Test Accommodations Department, do not send your

a question about their determination, they are likewise encouraged to contact the Test Accommodations Department. While Board staff cannot change a determination over the phone or in an email response, they are happy to explain it and to also explain how to pursue an appeal with the Board.

New York administers the Uniform Bar Exam (UBE) twice per year and the New York Law Exam (NYLE) four times per year.

With an in-person UBE, the schedule for standard-time applicants consists of a morning and afternoon test session per day on two consecutive days. Each in-person test session is three hours in duration during which restroom breaks are permitted. With the remote UBE (administered in response to the COVID-19 pandemic), the schedule for standard-time applicants consists of four test sessions per day

application or supporting documentation to this e-mail address. Rather, use the online NTA application available through the Applicant Services Portal (<https://portal.nybarexam.org/>).

on two consecutive days. Each remote test session is only 90 minutes in duration during which the applicant must remain in view of the webcam but applicants will have a 30-minute (or more) break between each test session during which they may eat, stretch, use the restroom, etc. Where appropriate, references will be made to the in-person and remote format of the UBE.

The Americans with Disabilities Act of 1990 as Amended (ADA).

The ADA and applicable regulations define a person with a disability as someone with a physical or mental impairment that substantially limits one or more major life activities as compared to most people in the general population. The Board provides reasonable and necessary test accommodations to applicants who are qualified to take the bar examination and who are disabled under the ADA and relevant regulations and case law.

The Purpose of Test Accommodations.

The purpose of test accommodations is to provide equal access to the bar examination. Test accommodations are adjustments or modifications to the standard testing conditions which alleviate the impact of the applicant's impairment on the examination process without: fundamentally altering the nature of the examination; imposing an undue administrative or financial burden on the Board; compromising the security, validity or reliability of the examination; or providing an unfair advantage to the applicant with the disability. Test accommodations must be reasonable, consistent with the nature and purpose of the examination, and necessitated by the applicant's disability. While the use of accommodations on the bar examination should enable applicants to better demonstrate their knowledge mastery, test accommodations are not a guarantee of improved performance, test completion or a passing score.

Applicant's Burden of Proof under the ADA.

The burden of proof is on the applicant to establish a disability as defined by the ADA and to establish the need for test accommodations. Requests for test accommodations are evaluated on a case-by-case basis. Applicants are required to complete the appropriate application in accordance with these instructions. The documentation necessary to support a request for test accommodations varies with the nature of the exam format and disability and is described in the documentation guidelines provided with this document: Guidelines for the Documentation of Attention Deficit/Hyperactivity Disorder, Guidelines for the Documentation of Learning and Other Cognitive Disabilities, Guidelines for the Documentation of Physical and Chronic Health Disabilities, Guidelines for the Documentation of Psychiatric Disabilities, and Guidelines for the Documentation of Visual Disabilities. Documentation that sufficed in other testing situations may not be sufficient to support a request for accommodations on the New York State bar examination.

Who Should Complete an Application for Test Accommodations?

Applications for test accommodations should be completed only by those individuals with disabilities under the ADA who require test accommodations on the bar examination. Accommodations do not automatically “carry-over” from one exam to the next. You must timely submit one of the following each time you are requesting test accommodations:

Application for Test Accommodations.

This application must be timely submitted by applicants requesting test accommodations on the bar examination for the first time; applicants who were denied accommodations on a prior bar examination; applicants for re-examination who did not previously request accommodations; and applicants who were granted accommodations in the past but who have not taken the bar examination in the last three (3) years.

Re-Application for Test Accommodations.

The Re-Application must be timely submitted by applicants who have previously been granted test accommodations by the Board and have taken the examination with those accommodations within the past three (3) years.

For Re-Applications requesting different or additional accommodations based on a change in the nature or extent of your disability or a new medical evaluation, you must submit new comprehensive medical documentation which demonstrates the change in your disability since the last bar examination you took. Your new medical documentation must be in full compliance with the Board's guidelines. Failure to provide new supporting documentation will result in the denial of your request for different/additional accommodations, and your re-application will be treated as one for the same accommodations you received on the last examination. If you are re-applying on the basis of a NEW disability or condition, you must submit comprehensive medical documentation in compliance with the Board's

documentation guidelines, just as if this were an initial application.

Who does NOT need to complete an Application for Test Accommodations?

Food and Drink.

For an in-person UBE, all applicants are permitted to have quiet snacks and one beverage/drink in a re-sealable clear plastic container with labels removed. If the plastic container contains a label, the label must be removed. It must be kept under the table when not being used.

For a remote UBE, all applicants are permitted to have one beverage/drink in a re-sealable clear plastic container with labels removed. Eating is not permitted during the remote UBE.

Medications.

For an in-person UBE, all applicants are permitted to have necessary over-the-counter and legally

prescribed medications in the exam room during the examination. Medications must be brought in their original containers.

For a remote UBE, all applicants are permitted to have necessary over-the-counter and legally prescribed medications in the testing area.

Laptop Computer.

For an in-person UBE, all applicants are allowed to participate in the Board's laptop program, regardless of disability. Applicants who seek only the use of a laptop computer do not need to complete an NTA application. Such applicants must register for the laptop program by checking "Yes" to the laptop question on the online bar examination application and then timely complete all registration steps. Applicants who are requesting the use of a laptop computer and any other accommodation (i.e. additional testing time) must timely submit an application for test accommodations.

For a remote UBE, applicants will use a computer that meets certain minimum system requirements and a webcam and microphone to compose answers to all questions on the UBE and will take the remote exam at the location of their choice.

Administrative Accommodations.

Please see the Administrative Accommodations Request form at:

<https://www.nybarexam.org/forms/forms.htm>

For an in-person UBE, applicants who only want permission to bring an assistive device, such as a lumbar cushion, diabetic supplies or a lactation pump into the examination room, or who want to request a special seating arrangement due to a medical condition, should make a written request to the Board on the Administrative Accommodation Request form provided by the Board that is available on our website. Such applicants do not need to submit an application for NTA. Likewise, nursing

applicants seeking off the clock breaks during the course of an in-person exam (up to 30 minutes per each three-hour testing session) to use a lactation pump do not need to complete an application for test accommodations, but must complete the Administrative Accommodation Request form. The completed Administrative Accommodation Request form and supporting documentation must be received in the Board's office by June 1st for a July exam, or January 1st for a February exam. Should the need for an administrative accommodation arise after this deadline, you may make the request using the required form (and providing supporting documentation) but the Board cannot guarantee that the request will be granted. If the request is granted, the Board will provide a letter granting the request which must be presented to security at the entrance of the test center.

For a remote UBE, all candidates are permitted to use a lumbar cushion or support device during each test session.

Application Format (How to Apply for Test Accommodations).

Apply Online or By Mail.

The Application and Re-Application for Test Accommodations must be submitted to the Board independent of the online general bar examination application. Applicants may now complete the Application/Re-Application for Testing Accommodations online by logging into their account through the Applicant Services Portal (available at <https://portal.nybarexam.org/>). The online Application/Re-Application will not be deemed submitted until all required supporting documentation is electronically uploaded to the Board, which must be done by the posted deadlines. Applicants who do not wish to complete the Application/Re-Application online may still mail a signed and completed Application/Re-Application with all supporting documentation to the Board by the posted deadlines.

Deadline.

The UBE is held twice a year: once during the last week of February, and once during the last week of July. The NYLE is held four times a year on dates set by the Board and published on its website and in this handbook. The Application/Re-Application for NTA together with all required supporting documentation must be submitted by the deadlines set forth in Board Rule 6000.4, which are:

Exam	Application Received By
February UBE	November 30
July UBE	April 30
NYLE- New Applicants	90 days prior to NYLE
NYLE – Re-Applicants	30 days prior to NYLE

(Note: If you were previously denied accommodations you are a new applicant)

The electronic Application/Re-Application will not be deemed timely submitted unless all questions are answered and any and all required supporting documentation is electronically uploaded to the Board by the posted deadline. The Application/Re-Application will not be deemed timely submitted until and unless all required supporting documentation is submitted electronically to the Board by 11:59 PM Eastern Time or received in hard copy at the Board's office by close of business (5:00 PM Eastern Time) on the day of the posted deadline. Please note that this is NOT a "postmarked by" deadline. Faxing or emailing your request by the deadline does not satisfy this requirement, nor does postmarking the paper Application/Re-Application by the deadline. The Board strongly recommends filing early and filing online. The Board's office is not open on weekends or holidays and does not receive mail on these days. If the filing deadline falls on a Saturday, Sunday, or public holiday, the filing deadline will be extended to the next business day. Mailing applicants are strongly advised to use carriers with tracking and delivery confirmation. A carrier's delay or mistake in delivering a paper Application/Re-

Application is not a valid excuse for an application that arrives to the Board's office after the deadline.

Extension for Candidates Failing the Immediately Preceding Administration of the UBE

(this extension does not apply to candidates failing the NYLE).

An applicant who received a failing score on the immediately preceding administration of the UBE must file the Application/Re-Application for NTA by the later of (1) the deadline indicated above or (2) the 14th day following the date of the Board's notification of failure.

Address.

Completed paper Applications/Re-Applications for NTA together with all required supporting documentation may be submitted to the Board in digital format by signing into your account through the Applicant Services Portal or may be mailed to:

New York State Board of Law Examiners
Corporate Plaza – Building 3
254 Washington Avenue Extension
Albany, NY 12203-5195

Late Applications.

It is the applicant's obligation to ensure that the Application/Re-Application is timely submitted. Applicants should keep a copy of the completed paper Application/Re-Application and all documentation that is submitted to the Board for their own records. In addition, for those who opt to mail paper copies of the documents, proof of receipt of mailing should be obtained and retained. The Board will consider only those Applications/Re-Applications that are timely submitted. Any Application/Re-Application that is untimely shall be rejected.

Incomplete Applications.

The Board will consider only those Applications/Re-Applications that are complete. To be complete,

each and every question must be answered on the Application/Re-Application and all required supporting documentation must be timely submitted. Please note that some supporting documentation must be obtained from third parties. Care must be taken to plan ahead so that all documentation is available as of the filing deadline.

Early Applications.

A request for NTA may be made as early as six months prior to the date of the examination. Applicants are encouraged to submit applications as soon as they know they will be requesting accommodations.

Faxing and Emailing Policy.

Neither faxing nor emailing the Application/Re-Application satisfies the filing requirement or relieves

applicants from their responsibility to timely submit the Application/Re-Application (with all required supporting documentation) by the deadline.

Test Center Locations.

For an in-person UBE, the Board has two primary test centers for applicants with disabilities: one in New York City, and the other in the Albany area. Seating is no longer based on an applicant's residency. First-time applicants who graduated with a Juris Doctor degree from a First or Second Department law school will be given first preference to available seats at the test center in the New York City area. First-time applicants who graduated with a Juris Doctor degree from a Third or Fourth Department law school will be given first preference to available seats outside of the New York City area. All other applicants, including all repeat applicants and all applicants attending law school outside of New York State, will be assigned to a test center where seats are available. Seating availability will not be known to the Board staff until approximately

four weeks after the application period closes. Seating in either New York City or Albany for a previous administration of the exam does NOT guarantee the same seating location for a future exam. If an applicant has a preference for seating, that preference can be stated but is NOT guaranteed.

Review Process for Applications for Test Accommodations.

Independent Review.

Pursuant to Board Rule 6000.7 (c) (5), the Board reserves the right to have any Application/Re-Application for NTA together with all supporting documentation evaluated by an expert(s) in the appropriate area of disability for a fair and impartial professional review. The Board may, in its discretion,

require the applicant to provide additional information and documentation in support of the request, and may also require the applicant to submit to examination by an expert professional designated by the Board.

Determinations.

All complete and timely Applications/Re-Applications for NTA will be acted on as soon as is practicable. For the February examination, determination letters will generally be available by the first week of February; for the July examination, determination letters will generally be available by the first week in July. The determination letter will be sent via email to the email address provided by the applicant. It is the applicant's responsibility to make sure that the email address on file with the Board is up-to-date by signing into the Applicant Services Portal. If the application is granted, the determination letter will detail the specific accommodations awarded and will include a

certification which must be signed and returned to accept the terms of the accommodations. If the application is denied in whole or in part, the determination letter will describe the reason(s) for the denial and the appeal process under Judiciary Law §460-b and Board Rule 6000.7 (e). If an applicant has questions about their determination, they are encouraged to contact the Test Accommodations Department. While Board staff cannot change the determination over the phone or in an email response, they are happy to explain it and to also explain how to pursue an appeal with the Board.

Appeals.

Applicants are referred to Board Rule 6000.7 (e) for complete details on filing an appeal. An appeal is not a substitute for an incomplete application.

Original signed and notarized appeals, along with any supporting documentation, must be received at the Board's office no later than 14 days from the date of the Board's determination. Upon a showing

of good cause, the Board may, in its discretion, extend this deadline if an application for extension of the time to appeal is made prior to the expiration of this 14 day period. Such extensions are not guaranteed, and must be supported by good cause. In filing an appeal, there is no need to resubmit information already on file with the Board. The Board will make a decision on the appeal and notify the candidate as soon as is reasonably possible. NOTE: Rule 6000.7 (e) only provides for an appeal for applicants whose applications are denied in whole or in part. Applicants whose applications are rejected as incomplete or untimely do not have the right to appeal.

Other Eligibility Requirements.

All applicants, whether awarded accommodations or not, must still meet all eligibility requirements for the bar examination and NYLE in order to sit for those examinations. These include: timely registration for the UBE or NYLE; paying the appropriate fees; meeting all legal education requirements; and timely

providing the appropriate supporting proofs (i.e. Certificate of Law School Attendance, transcript(s), handwriting sample). Questions concerning these other eligibility requirements should be addressed to the Board's office.

Email.

The Board will email determination letters and other important information to applicants at the email address on file with the Board. Applicants must ensure that email addresses are kept up-to-date and that the same email address is used for all Board correspondence. Applicants should use an email address which will remain active after graduation and at least through the results reporting period (May for a February exam and November for a July exam). Applicants are encouraged to check their email at least once a day for important information from the Board.

Documentation Guidelines for Attention Deficit/Hyperactivity Disorder

The Americans with Disabilities Act (ADA) as amended defines a person with a disability as someone with a physical or mental impairment that substantially limits one or more major life activities as compared to most people in the general population. To support an application for test accommodations based on a disability, you must provide recent medical documentation of your disability that is comprehensive. The following guidelines are provided to assist you and your clinician in documenting the need for accommodations. Documentation that fails to fully comply with the Board's guidelines will result in the rejection of the application for test accommodations as incomplete. Candidates must provide a comprehensive assessment which contains the following information:

1. Set forth the qualifications of the evaluator. The report should establish the professional credentials of the evaluator that qualify him/her to make the particular diagnosis, including information about license or certification, and specialization in the area

of the diagnosis. Professionals conducting assessments and rendering diagnoses of ADHD must be qualified to do so. Comprehensive training in the differential diagnosis of ADHD and other psychiatric disorders and direct experience in the diagnosis and treatment of adults is necessary. If multiple diagnoses are given, the evaluator must demonstrate he or she is qualified to make all diagnoses.

2. The documentation must be current (Recent Documentation). The granting of reasonable test accommodations is based on assessment of the current impact of the applicant's disability on the testing activity. Since the manifestations of a disability may vary over time and in different settings, the following guidelines apply:

(a) Your medical documentation must be no more than five years old measured from the date of the evaluation to the date of your current application for test accommodations.

(b) If you were evaluated as an adult (age 21 or older), the Board will consider that documentation, even if it is more than five years old, but if the

documentation is not comprehensive (discussed below), the Board may ask you to supplement the documentation.

If an evaluation is outdated or inadequate in scope or content, it should be updated by a qualified professional to address the current level of functioning and the continued need for test accommodations.

3. Documentation to substantiate the disability must be comprehensive. Objective evidence of a substantial limitation in a major life activity must be provided. Since the symptoms of ADHD are first exhibited in childhood (although it may not have been formally diagnosed) and are manifested in more than one setting, objective, relevant, historical information is essential. Therefore, a clinical evaluation should provide information verifying a chronic course of ADHD symptoms from childhood through adolescence to adulthood, such as educational transcripts, report cards, teacher comments, tutoring evaluations, job assessments, past psycho-educational testing, etc. At a minimum, the comprehensive written report must be on

professional letterhead, typed, dated, signed, and otherwise legible and should contain the following information:

A. Diagnostic interview and history taking. The report must include a summary of a comprehensive diagnostic interview that includes relevant background information to support the diagnosis. Information collected by the qualified professional must consist of more than self-report. Information from third party sources is critical in the diagnosis of adult ADHD. The evaluation must include a summary of a comprehensive diagnostic interview that should include, but not necessarily be limited to, the following:

- (1) History of presenting attentional symptoms, including evidence of ongoing impulsive/hyperactive or inattentive behavior that has significantly impaired functioning over time;
- (2) Developmental history;
- (3) Family history for presence of ADHD and other educational, learning, physical or psychological difficulties deemed relevant by the examiner;

- (4) Relevant medical and medication history, including the absence of a medical basis for the symptoms being evaluated;
- (5) Relevant psychosocial history and any relevant interventions;
- (6) A thorough academic history of elementary, secondary and postsecondary education;
- (7) Review of any prior psycho-educational test reports to determine whether a pattern of strengths or weaknesses is supportive of attention or learning problems; and
- (8) Relevant employment history (i.e. summary of jobs held, reason for leaving, explanation of dismissal, performance evaluations, etc.).

B. Assessment. A neuropsychological or psycho-educational assessment may be necessary in order to determine the individual's pattern of strengths or weaknesses and to determine whether there are patterns supportive of attention problems. Test scores or subtest scores should not be used as the sole basis for the diagnostic decision. Selected subtest scores from measures of intellectual ability,

memory functions tests, attention or tracking tests, or continuous performance tests do not in and of themselves establish the presence or absence of ADHD. They may, however, be useful as one part of the process in developing clinical hypotheses.

Checklists and/or surveys can serve to supplement the diagnostic profile but by themselves are not adequate for the diagnosis of ADHD and do not substitute for clinical observations, evidence from history, an analysis of current functioning, and sound diagnostic judgment. When testing is used, age-based standard scores must be provided for all normed measures. In addition, effort should be tested to address the issue of malingering.

C. A Specific Diagnosis. The report must include a specific diagnosis of ADHD based on professional guidelines and criteria (e.g. DSM). Individuals who report problems with organization, test anxiety, memory and concentration only on a situational basis do not fit the prescribed diagnostic criteria for ADHD. Given that many individuals benefit from prescribed medications and therapies, a positive response to medication by itself is not supportive of a diagnosis, nor does the use of medication in and

of itself either support or negate the need for accommodation.

D. Identification that the disorder meets professional guidelines (e.g. DSM) for a diagnosis of ADHD.

A diagnosis is not enough to establish a disability under the ADA. The report must include a review and discussion of the diagnostic criteria for ADHD both currently and retrospectively and specify which symptoms are present and the extent to which the patient currently meets those criteria. The report must also include:

- (1) Symptoms of hyperactivity-impulsivity or inattention that cause impairment that were present in childhood;
- (2) Current symptoms that have been present for at least the past six months; and
- (3) Impairment from the symptoms across several life settings (home, school, work, social, etc.).

E. Records of academic history. Since ADHD, by definition, is a disorder with a childhood onset (although it may not have been formally diagnosed

until later) that impairs more than one life setting, relevant, objective, historical information is essential to the diagnosis. Information and documentation verifying a chronic course of ADHD symptoms across various life settings from childhood through adolescence to adulthood (i.e. academic transcripts, report cards, teacher comments, standardized test scores, employment records, etc.) are necessary and should be reviewed by the examiner and attached to the report where available. Such records will serve to substantiate self-reported symptoms and academic difficulties.

F. Clinical Summary. A well-written diagnostic summary based on a comprehensive evaluative process is a necessary component of the report. Assessment instruments and the data they provide do not diagnose; rather, they provide important data that must be integrated by the evaluator with background information, historical information, and clinical observations of the applicant during the testing situation, and current functioning. It is essential then that the qualified professional integrate all information gathered in a well-

developed clinical summary. The clinical summary must include:

- (1) A discussion of the differential diagnosis, including alternative or co-existing mood, behavioral, neurological and/or personality disorders that may confound the diagnosis of ADHD;
- (2) Exploration of possible alternative diagnoses as well as educational and cultural factors impacting the applicant that may mimic ADHD;
- (3) Demonstration that the qualified professional has ruled out alternative explanations for inattentiveness, impulsivity, and/or hyperactivity as a result of psychological or medical disorders or non-cognitive factors;
- (4) An indication of how patterns of inattentiveness, impulsivity and/or hyperactivity across the life span and across settings are used to determine the presence of ADHD;
- (5) An indication of the substantial limitation to current learning or other major life activity presented by ADHD and the degree to which it impacts the individual in the context of the bar examination (a

description of the bar examination and what is expected of applicants is included below);

(6) An indication of whether medication has been tried as a method of treatment, what results were obtained, and if medication is not an appropriate treatment, why not;

(7) An indication of whether or not the applicant was evaluated while on medication, whether or not there is a positive response to the prescribed treatment, and whether or not a positive response to the treatment obviates the need for test accommodations; and

(8) An indication as to why specific accommodations are needed and how the effects of ADHD symptoms are mediated by the accommodations.

4. Recommendations for Accommodations and Rationale. The report must include specific data-based recommendations for accommodations as well as a detailed explanation as to why each accommodation is necessary. The evaluator should describe the impact the diagnosed ADHD has on a specific major life activity as well as the degree of

significance of this impact on the individual as compared to most people in the general population. The evaluator should support recommendations with specific test results and clinical observations. The summary should also include any record of prior accommodation or auxiliary aids, including any information about specific conditions under which the accommodations were used (e.g., standardized testing, final exams, licensing or certification examinations). It is important to recognize that accommodation needs can change over time and are not always identified through the initial diagnostic process. If no prior accommodations have been provided, the qualified professional should include a detailed explanation as to why no accommodations were needed in the past and why accommodations are now needed.

DESCRIPTION OF THE NEW YORK STATE BAR EXAMINATION

The New York State bar examination consists entirely of the Uniform Bar Examination (UBE). Please see the Board's website (<https://www.nybarexam.org/Default.html>) for the

description of the UBE as it will be administered for the upcoming exam.

Documentation Guidelines for Learning and Other Cognitive Disabilities

The Americans with Disabilities Act (ADA) as amended defines a person with a disability as someone with a physical or mental impairment that substantially limits one or more major life activities as compared to most people in the general population. To support an application for test accommodations based on a disability, you must provide recent medical documentation of your disability that is comprehensive. The following guidelines are provided to assist you and your clinician in documenting the need for accommodations. Documentation that fails to fully comply with the Board's guidelines will result in the rejection of the application for test accommodations as incomplete. Candidates must provide a comprehensive psycho-educational or neuropsychological assessment which contains the following information:

1. Set forth the qualifications of the evaluator. The report should establish the professional credentials of the evaluator that qualify him/her to make the

particular diagnosis, including information about license or certification, specialization in the area of the diagnosis, and training and direct experience with an adult population. If multiple diagnoses are given, the evaluator must demonstrate he or she is qualified to make all diagnoses.

2. The documentation must be current (Recent Documentation). The granting of reasonable test accommodations is based on assessment of the current impact of the applicant's disability on the testing activity. Since the manifestations of a disability may vary over time and in different settings, the following guidelines apply:

(a) Your medical documentation must be no more than five years old measured from the date of the evaluation to the date of your current application or re-application for test accommodations.

(b) If you were evaluated as an adult (age 21 or older), the Board will consider that documentation, even if it is more than five years old, but if the documentation is not comprehensive (discussed below), the Board may ask you to supplement the documentation.

If an evaluation is outdated or inadequate in scope or content, it should be updated by a qualified professional to address the current level of functioning and the continued need for test accommodations.

3. Documentation must be comprehensive. Objective evidence of a substantial limitation in cognition or learning must be provided. Reports must be on professional letterhead, typed, dated, signed, and otherwise legible and contain the following information:

A. Diagnostic Interview and History Taking

The report of assessment should include a summary of a comprehensive diagnostic interview that includes relevant background information to support the diagnosis. Since learning disabilities are commonly manifested during childhood, though not always formally diagnosed, relevant historical information regarding the applicant's academic history and learning processes in elementary, secondary, and post-secondary education should be investigated and documented. In addition to the

applicant's self-report, the report of assessment should include:

- A description of the presenting problem(s) including, where relevant, DSM symptoms;
- Developmental, academic, medical, psychosocial and employment histories;
- Relevant family history, including primary language of the home. If English is a second language, describe the applicant's current level of fluency in English and when and how intensively the applicant began learning English;
- Relevant academic history including results of prior standardized testing, psychological evaluations, IEPs, reports of classroom performance and behaviors including report cards, transcripts, study habits and attitudes and notable trends in academic performance;
- A discussion of dual diagnosis, alternative or co-existing mood, behavioral, neurological, personality and/or psychiatric disorders along with any history of relevant medication and current medication that may impact the individual's learning; and

□ Exploration of possible alternatives which may mimic a learning disability when, in fact, one is not present (e.g., motivational problems).

B. Assessment.

The neuropsychological or psycho-educational evaluation must provide clear and specific evidence that a learning or cognitive disability exists.

Clinicians must use best practices in making any evaluation, including using the most up-to-date and psychometrically adequate (reliable and valid) test batteries/instruments to assess aptitude, achievement, and effort. These measures should be standardized on the general population and provide standard scores based on age comparisons (not grade). Any resulting diagnosis must be based on the aggregate of the test results, history, and level of current functioning. Objective evidence of a substantial limitation to learning or other major life activity must be provided. Specific achievement tests such as, the Test of Written Language (TOWL), the Wide Range Achievement Test (WRAT), and the Nelson-Denny Reading Test (NDRT) may be useful instruments when administered under standardized

conditions and when interpreted within the context of other diagnostic information. However, they are not comprehensive measures of achievement and not acceptable if used as the sole measure of achievement. If such measures are used, you must identify the norms that are being used. In addition, relevant clinical observations of the applicant made during the test administration may be useful and should be included in the report.

C. A specific DSM diagnosis should be included in the report.

The diagnosis must be supported by the test data, history, anecdotal and clinical observations that may include comments about the applicant's level of motivation, study skills, and other non-cognitive factors. These findings must demonstrate that the patient's functional limitations are the result of the diagnosed disability. It is important to rule out alternative explanations for problems in learning such as emotional, attentional or motivational problems that may be interfering with learning but do not constitute a disability. The clinician is encouraged to use direct language in the diagnosis

and documentation of a disability, avoiding the use of terms such as “suggests” or “is indicative of.” Individual “learning styles,” “learning differences,” “academic problems,” English as a Second Language, and “test difficulty or anxiety,” do not by themselves constitute a learning disability for which accommodations will be granted. Where required in the DSM, the diagnosis must include identification and a full discussion of the significant discrepancy and/or the significant impairment.

D. Records of academic history.

Since learning disabilities are commonly manifested during childhood, though not always formally diagnosed, relevant records detailing difficulties in elementary, secondary and postsecondary education should be reviewed by the examiner and discussed in the report. Copies of any academic records (i.e. transcripts, report cards, teacher comments, IEPs, previous psychological and educational evaluations, standardized test scores) and previous neuropsychological records that are reviewed by the evaluator and cited in his/her report should be annexed to the report. Interviews with

informants that provide information that contributes to a diagnostic formulation (e.g., parent, teacher, tutor) should be clearly reported with information as to who was interviewed, when the interview took place, the focus of questions, and the use of any specific structured interviews or scales. Such records will serve to substantiate self-reported academic difficulties.

E. Clinical Summary.

A well-written diagnostic summary based on a comprehensive evaluative process is a necessary component of the report. Assessment instruments and the data they provide do not diagnose; rather, they provide important data that must be integrated by the evaluator with background information, historical information, and clinical observations of the applicant during the testing situation, and current functioning. It is essential then that the qualified professional integrate all information gathered in a well-developed clinical summary. The clinical summary must include:

- (1) Demonstration that the evaluator has ruled out alternative explanations for academic problems as a result of poor education, poor motivation and/or study skills, emotional problems, attentional problems and cultural or language differences;
- (2) Indication of how patterns in cognitive ability, achievement and information processing are used to determine the presence of a disability;
- (3) An indication of the substantial limitation to current learning or other major life activity presented by the disability and the degree to which it impacts the individual in the context of the bar examination (a description of the bar examination and what is expected of applicants is included below) keeping in mind that the DSM provides that: (a) impairment in academic performance is based on comparison to all other people of the same age group, not the same IQ or educational level; and (b) a substantial limitation on a standardized achievement test is considered to be >1.5 standard deviations below the test mean;
- (4) Indication as to why specific accommodations are needed and how the effects of the specific

disability are mediated by the recommended accommodations; and

(5) Indication of any corrective measures (i.e., tutoring, speed reading programs, assistive devices) that alleviate the substantial limitation and the extent thereof.

4. Recommendations for Accommodations and Rationale: The report must include specific data-based recommendations for accommodations as well as a detailed explanation as to why each accommodation is necessary. The evaluator should describe the impact the diagnosed disability has on a specific major life activity as well as the degree of significance of this impact on the individual. The evaluator should support recommendations with specific test results and clinical observations.

The summary should also include any record of prior accommodation or auxiliary aids, including any information about specific conditions under which the accommodations were used (e.g., standardized testing, final exams, licensing or certification examinations). It is important to recognize that accommodation needs can change over time and

are not always identified through the initial diagnostic process. If no prior accommodations have been provided, the qualified professional should include a detailed explanation as to why no accommodations were needed in the past and why accommodations are now needed.

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Documentation Guidelines for Physical and Chronic Health Disabilities

The Americans with Disabilities Act (ADA) as amended defines a person with a disability as someone with a physical or mental impairment that substantially limits one or more major life activities as compared to most people in the general population. To support an application for test accommodations based on a disability, you must provide recent medical documentation of your disability that is comprehensive. The following guidelines are provided to assist you and your clinician in documenting the need for accommodations. Documentation that fails to fully comply with the Board's guidelines will result in the rejection of the application for test accommodations as incomplete.

If you are requesting test accommodations based on a physical or chronic health disability, you must provide a recent comprehensive written report prepared by a qualified professional who has conducted an individualized assessment which demonstrates compliance with the following requirements:

1. Format. The report should be on professional letterhead, typed, dated, signed, and otherwise legible. A doctor's note or script is insufficient.
2. Qualifications of the evaluator. The report must establish the professional credentials of the evaluator that qualify him/her to make the particular diagnosis, including information about license or certification, specialization in the area of the diagnosis, and training and direct experience in the area of the diagnosis. If multiple diagnoses are given, the evaluator must demonstrate he or she is qualified to make all diagnoses.
3. Current Nature of the Disability (Recent Documentation). The granting of reasonable test accommodations is based on an assessment of the applicant's current ability to take the bar examination under standard conditions. The report must indicate the date the patient was last seen by the evaluator. Since the manifestations of a disability may vary over time and in different settings, the following guidelines apply:
 - (a) **PERMANENT DISABILITIES** - If you have a disability that has been present since birth, or is

expected to be permanent, or is not expected to improve over time, provide a copy of your most recent medical evaluation so stating. You may also include prior evaluations to demonstrate changes in disorder severity or to provide a baseline. If further information is needed to comply with the Board's guidelines, attach prior evaluations as necessary.

(b) **RECENT OR TEMPORARY DISABILITIES –**

If you have a disability that has not been present since birth, or is expected to be temporary, or is expected to improve with time, your medical documentation must be no more than one year old measured from the date of the evaluation to the date of your current application or re-application for test accommodations. You may also include prior evaluations to demonstrate changes in disorder severity or to provide a baseline.

4. **Diagnosis.** The evaluator must state a professionally recognized diagnosis.

5. **Diagnostic Procedure(s).** The report must describe the specific diagnostic criteria and/or diagnostic tests used, including the date(s) of the evaluation(s), the tests performed, and a detailed

interpretation of the test results. The report should include relevant educational, developmental, and medical history. Diagnostic methods used should be appropriate to the disability and current professional practices within the field. Informal or non-standardized evaluations should be described in enough detail that other professionals could understand their role and significance in the diagnostic process.

If the evaluator reports a cognitive problem caused by the disability or a medication taken for the disability, then the claim may need to be supported by a brief but well-conceived psychological test battery. The report should state the specific functional limitation caused by the disability or medication and provide objective test data demonstrating the limitation. The test data must show a deficiency that affects the candidate's ability to take the bar examination, usually the candidate's ability to read and/or write. Test results must be reported using age norms where available. Also, where available, test scores should be compared to the appropriate normative group (e.g., depressed normative group, non-depressed normative group).

6. **Functional Limitations.** The report should list all major life activities that are affected by the individual's current condition and explain how the impairment substantially limits those major life activities as compared to most people. The report should describe the individual's functional limitations due to the diagnosed disability and how the limitations will substantially limit the individual's ability to take the bar examination under regular testing conditions. The report must relate the functional limitation to one or more aspects of the standard bar examination. A description of the New York bar examination is set forth below.

7. **Amelioration of the Functional Limitations.** The report should contain a description of current treatments, assistive devices, medications, etc. that ameliorate the impact of the disability.

8. **Recommendation.** The report must include a specific data-based recommendation for test accommodations using objective methods to determine the need for the recommended accommodation. The recommendation should include a detailed explanation of why the

accommodation is needed and how it will reduce the impact of the identified functional limitations. If extra examination time is recommendation, the report must explain how extra examination time will reduce the impact of the functional limitation.

9. History of Accommodations. If accommodations have not been provided in the past, the report should include a detailed explanation of why no accommodations were needed in the past and why accommodations are needed now.

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Documentation Guidelines for Psychiatric Disabilities

The Americans with Disabilities Act (ADA) as amended defines a person with a disability as someone with a physical or mental impairment that substantially limits one or more major life activities as compared to most people in the general population. To support an application for test accommodations based on a disability, you must provide recent medical documentation of your disability that is comprehensive. The following guidelines are provided to assist you and your clinician in documenting the need for accommodations. Documentation that fails to fully comply with the Board's guidelines will result in the rejection of the application for test accommodations as incomplete.

PSYCHIATRIC DISABILITIES

If you are requesting test accommodations based on a psychiatric disability, you must provide a complete and recent assessment by a qualified mental health professional in the form of a comprehensive written

report which demonstrates compliance with the following requirements:

1. **Format.** The report should be on professional letterhead, typed, dated, signed, and otherwise legible. A doctor's note or script is insufficient.
2. **Qualifications of the evaluator.** The report must establish the professional credentials of the evaluator that qualify him/her to make the particular diagnosis, including information about license or certification, specialization in the area of the diagnosis, and training and direct experience in the area of the diagnosis. If multiple diagnoses are given, the evaluator must demonstrate he or she is qualified to make all diagnoses.
3. **Current Nature of the Disability (Recent Documentation).** The granting of reasonable test accommodations is based on an assessment of the applicant's current ability to take the bar examination under standard conditions. The report must indicate the date the patient was last seen by the evaluator. Since the manifestations of psychiatric disabilities may vary over time and in different settings, your medical documentation must be no more than one

year old measured from the date of the evaluation to the date of your current application or re-application for test accommodations.

4. **Diagnosis.** The evaluator must follow the most up-to-date best practices in making any evaluation, and should state a DSM diagnosis. If a DSM diagnosis is not used, the evaluator must state a professionally recognized diagnosis. Please note that test anxiety, which is the tendency to become very nervous and perform poorly in testing situations, does not generally qualify as a disability under the ADA and is not generally accommodated on the bar examination.

5. **Diagnostic Procedure(s).** The clinician who conducts the assessment should administer:

- (1) a clinical interview addressing all DSM criteria;
- (2) as many self-report scales as are necessary to corroborate the severity of any diagnosed psychiatric disorders;
- (3) a brief account of the applicant's psychiatric, medical, and educational history; and
- (4) effort testing (malingering).

If a DSM diagnosis is not used, the evaluator must describe what criteria were used. Informal or non-standardized evaluations should be described in enough detail that other professionals could understand their role and significance in the diagnostic process.

Reliance on self-report data alone is insufficient to document a psychiatric disability. Clinicians are encouraged to use other sources of evidence in their diagnostic analysis. If a standardized interview is not used, then the clinician must provide a detailed synopsis of exactly which symptoms were endorsed, which conditions were ruled out, and all other information on how the diagnosis was arrived upon.

The medical documentation submitted with the application for test accommodations must include a complete and current assessment. It is not enough for a clinician to state that an applicant has a long-standing condition or that the applicant is currently in treatment. Accommodations are awarded based on the current nature of the applicant's disability. There must be a recent evaluation and diagnostic report regardless of the candidate's prior history or current

treatment, especially if there was no diagnostic interview administered in the medical record.

If the clinician reports a cognitive problem caused by the disability or a medication taken for the disability, then the claim may need to be supported by a brief but well-conceived psychological test battery. The report should state the specific functional limitation caused by the disability or medication and provide objective test data demonstrating the limitation. The test data must show a deficiency that affects the candidate's ability to take the bar examination, usually the candidate's ability to read and/or write. Test results must be reported using age norms where available. Also where available, test scores should be compared to the appropriate normative group (e.g., depressed normative group, non-depressed normative group).

6. **Functional Limitations.** The report should list any major life activities that are affected by the individual's current condition and explain how the impairment substantially limits those major life activities as compared to most people. The report should describe the individual's functional limitations

due to the diagnosed disability and how the limitations will substantially limit the individual's ability to take the bar examination under regular testing conditions. The report must relate the functional limitation to one or more aspect of the standard bar examination. A description of the New York bar examination and what is expected of applicants is set forth below.

7. Amelioration of the Functional Limitations. The report should contain a description of current treatments, assistive devices, medications, etc. that ameliorate the impact of the disability.

8. Recommendation. The report must include a specific data-based recommendation for test accommodations using objective methods to determine the need for the recommended accommodation. The recommendation should include a detailed explanation of why the accommodation is needed and how it will reduce the impact of the identified functional limitations. If extra examination time is recommendation, the report must explain how extra examination time will reduce the impact of the functional limitation.

9. History of Accommodations. If accommodations have not been provided in the past, the report should include a detailed explanation of why no accommodations were needed in the past and why accommodations are needed now.

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Documentation Guidelines for Visual Disabilities

The Americans with Disabilities Act (ADA) as amended defines a person with a disability as someone with a physical or mental impairment that substantially limits one or more major life activities as compared to most people in the general population. To support an application for test accommodations based on a disability, you must provide recent medical documentation of your disability that is comprehensive. The following guidelines are provided to assist you and your clinician in documenting the need for accommodations. Documentation that fails to fully comply with the Board's guidelines will result in the rejection of the application for test accommodations as incomplete.

VISUAL DISABILITIES

If you are requesting test accommodations based on a visual disability, you must provide a recent comprehensive written report prepared by a qualified professional who has conducted an individualized assessment which demonstrates compliance with the following requirements:

1. Format. The report should be on professional letterhead, typed, dated, signed, and otherwise legible. A doctor's note or script is insufficient.
2. Qualifications of the evaluator. The report must establish the professional credentials of the evaluator that qualify him/her to make the particular diagnosis, including information about license or certification, specialization in the area of the diagnosis, and training and direct experience in the area of the diagnosis. If multiple diagnoses are given, the evaluator must demonstrate he or she is qualified to make all diagnoses. Typically, an optometrist or ophthalmologist is qualified to provide supporting documentation for visual disabilities. Depending on the accommodations requested and the rationale given for those accommodations, however, a psychologist or a learning or reading specialist with relevant training and experience may also be needed to provide documentation addressing the functional impact of the disability on the skills required to take the bar exam.
3. Current Nature of the Disability (Recent Documentation). The granting of reasonable test

accommodations is based on an assessment of the applicant's current ability to take the bar examination under standard conditions. The report must indicate the date the patient was last seen by the evaluator. Since the manifestations of a disability may vary over time and in different settings, the following guidelines apply:

(a) **PERMANENT DISABILITIES** - If you have a visual disability that has been present since birth, or is expected to be permanent, or is not expected to improve over time, provide a copy of your most recent medical evaluation so stating. You may also include prior evaluations to demonstrate changes in disorder severity or to provide a baseline. If further information is needed to comply with the Board's guidelines, attach prior evaluations as necessary.

(b) **RECENT OR TEMPORARY DISABILITIES** – If you have a visual disability that has not been present since birth, or is expected to be temporary, or is expected to improve with time, your medical documentation must be no more than one year old measured from the date of the evaluation to the date of your current application or re-application for test

accommodations. You may also include prior evaluations to demonstrate changes in disorder severity or to provide a baseline.

4. Diagnosis. The evaluator must state a professionally recognized diagnosis.

5. Diagnostic Procedure(s). The report should include a description of general eye health; a binocular evaluation; best corrected visual acuity for distance and near point; focusing skills at distance and near point (with corrective lenses); oculomotor skills; and visual fields. The report must describe the specific diagnostic criteria and/or diagnostic tests used, including the date(s) of the evaluation(s), the tests performed, and a detailed interpretation of the test results. The report should include relevant educational, developmental, and medical history. Diagnostic methods used should be appropriate to the disability and current professional practices within the field. Informal or non-standardized evaluations should be described in enough detail that other professionals could understand their role and significance in the diagnostic process.

6. **Functional Limitations.** The report should list all major life activities that are affected by the individual's current condition and explain how the impairment substantially limits those major life activities as compared to most people. The report should describe the individual's functional limitations due to the diagnosed disability and how the limitations will substantially limit the individual's ability to take the bar examination under regular testing conditions. The report must relate the functional limitation to one or more aspects of the standard bar examination. A description of the New York bar examination is set forth below.

7. **Amelioration of the Functional Limitations.** The report should contain a description of current treatments, assistive devices, medications, etc. that ameliorate the impact of the disability.

8. **Recommendation.** The report must include a specific data-based recommendation for test accommodations using objective methods to determine the need for the recommended accommodation. The recommendation should include a detailed explanation of why the

accommodation is needed and how it will reduce the impact of the identified functional limitations. If extra examination time is recommendation, the report must explain how extra examination time will reduce the impact of the functional limitation.

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