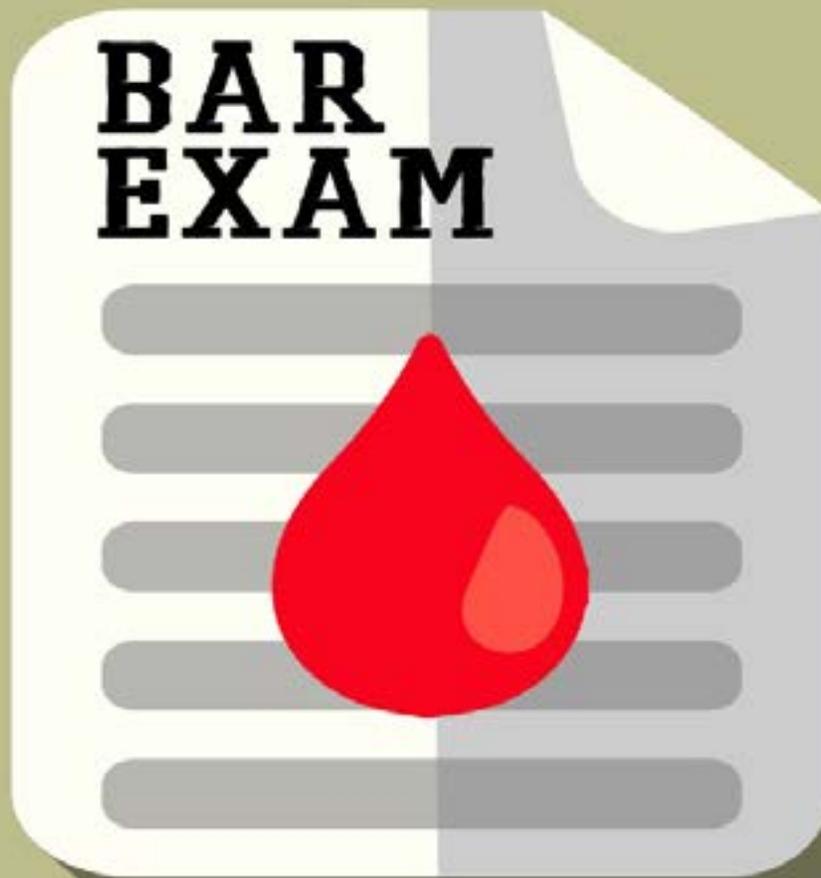


# **MENSTRUATION AND THE BAR EXAM:**

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**MODEL POLICY AND OPERATING PROVISIONS**



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# MENSTRUAL POLICIES AND THE BAR

**Founded in 2020 by law professors Elizabeth B. Cooper (Fordham Law School), Margaret E. Johnson (University of Baltimore School of Law), and Marcy L. Karin (UDC Law), Menstrual Policies and The Bar's ("MP and The Bar") mission is to remove menstruation-related barriers to entering the legal profession, including during the bar exam.**

Through extensive research, surveys, and analysis, MP and the Bar found that existing bar exam policies fail to adequately recognize that examinees may menstruate and, consequently, may cause examinees' dignitary harm. For example, some jurisdictions prevent personal menstrual products from being brought into the exam, declare that products may only be brought in a clear bag, require menstruating examinees to surrender their products and go through a check out process to access them, or deny administrative accommodations related to menstruation. Others limit menstruating examinees to BOLE-provided products accessible solely in women's restrooms, which may out or create additional barriers for some transgender, genderqueer/nonbinary, and intersex individuals. Further, unscheduled bathroom breaks are limited, time consuming, or prohibited altogether. In turn, menstruators report feeling anxious or frustrated by the lack

of transparency and inability to manage their menstruation on exam days. These reasonable concerns led numerous examinees to report self-adjustment of birth control to attempt skipping their period or to consider postponing or withdrawing from the exam.

**MP and The Bar believes that by raising awareness of these harms – and working together – we can revise policies to create a safe and fair bar exam environment for menstruators.**

The following comprehensive Model Policy appropriately balances the need to maintain exam security and integrity with important dignitary principles of privacy and respect, fairness and nondiscrimination, promoting health, providing accommodations, and transparency.



# MODEL POLICY

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**The BOLE commits to principles of dignity, privacy, sensitivity, fairness, non-discrimination, and exam integrity with respect to menstruation and the bar exam.**

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To ensure equitable treatment, examinees shall be allowed to bring their own menstrual products into the bar exam, stored on their person or in a separate bag, and may access bathrooms and have reasonable breaks to address menstruation.

Menstruating examinees also shall be provided reasonable administrative accommodations as needed. This includes modifications to exam conditions such as access to menstrual products and bathrooms, storage of clothing, and the provision of additional exam time. Applicants and examinees also shall have access to a complaint process and be afforded due process for any alleged violation of this policy.

Finally, the BOLE commits to enforcing this policy related to menstruation and the administration of the exam in an accountable and transparent manner.

# OPERATING PROVISIONS

## Privacy, Respect, Fairness, and Non-Discrimination

- 1. Privacy:** BOLE personnel will maintain the dignity, privacy, and confidentiality of applicants and examinees when implementing menstruation-related policies, including when responding to questions regarding menstruation and when inspecting products at an exam.
- 2. Training:** The BOLE shall train all officials, proctors, security, office staff, and other personnel who administer and preside over the examination. These personnel shall have access to and be trained on the BOLE policies on menstruation, including those related to non-discrimination, product possession, security checks, breaks and bathroom usage, accommodations, same day limited accommodations, and policy transparency.
- 3. Non-Discrimination:** The BOLE shall use appropriate non-discriminatory and inclusive language, facilities, policies, and actions. The BOLE also shall not engage in adverse practices based on menstruation or the potential for menstruation.

## Menstrual Products

- 4. Definition of "Menstrual Product":** The term "menstrual product" includes materials that absorb menstrual discharge such as tampons, maxi-pads, diapers, menstrual cups, and underwear; cleaning products such as wet wipes, tissues, and water; and pain-relief products such as pills, patches, and heating pads.
- 5. Product Possession:** Examinees are permitted to keep, access, and use personal menstrual products during the bar exam.

## 6. Product Inspection and Storage:

- a. In-Person Exam:** Examinees may choose to bring menstrual products to the exam and keep them stored in a separate clear or opaque bag or on their person. In the interest of maintaining exam security, these products may be inspected upon entry into the exam.
  - i. Inspection Method Choice:** If inspection of menstrual products is required, examinees shall have the option of the inspection occurring in a private room or area and may make that decision on the day of the exam.
  - ii. Product Integrity:** Examinees may bring menstrual products into the exam in their original packaging. To protect the sterility of products, examinees shall not be required to open an individual menstrual product that is sealed or to remove it from packaging.
  - iii. Presumption of Need:** Examinees shall not be questioned about their need to bring menstrual products into the exam.
  - iv. Additional Bag for Menstrual Products:** Examinees shall not be required to bring menstrual products in the same bag as other personal items that are permitted in the exam. Rather, examinees shall have the option of bringing a separate bag for menstrual products to provide for the number and/or variety of products needed, and to ensure that examinees' menstrual needs do not limit their ability to bring other, authorized personal items into the exam.

- b. Remote Exams:** Examinees shall be allowed to keep menstrual products in camera view without penalty. For exam security purposes, examinees may be required to hold up any products they intend to use during the exam to show the video or proctor that the products are sealed and in original packaging.

### 7. Other Menstrual Product Provisions for In-Person Exams:

- a. Carrying Products:** Examinees shall be allowed to carry security-cleared menstrual products during the exam from the test location to the bathroom without further inspection.
- b. BOLE-Provided Products:** Tampons and pads of different sizes and materials will be provided for free in all bathrooms on-site (i.e., women's bathrooms, men's bathrooms, and all-gender bathrooms). Examinees shall use the administrative accommodations process if they have a need for a specific style/brand of product (e.g., due to an allergy).

## Breaks and Bathrooms

### 8. Exam and Pre-Set Breaks Schedule:

A clear and public schedule of the exam, including designated examination and break times, will be published in advance of the exam. Such breaks shall be long enough to permit all examinees to use the bathroom and to allow those who are menstruating sufficient time to change, clean, or dispose of their menstrual products. There will be at least one thirty-minute break for every ninety minutes of examination time.

- 9. Other Bathroom Breaks:** Outside of pre-set breaks, examinees shall be permitted to use the bathroom during examination periods on an as-needed basis, with appropriate security-related restrictions described below.

- a. In-Person Exams:** Examinees may leave their desk to use the bathroom without penalty, except that in the interest of minimizing noise and traffic

disruptions, examinees may be required to obtain a proctor's permission to do so.

- b. Remote Exams:** After providing oral or written notice to the BOLE via exam software, examinees may leave the camera view during the examination to address menstruation. If technically feasible, the exam material will be locked and inaccessible to the examinee until they return to camera view from using the bathroom.

### 10. Bathroom, In-Person Exams:

- a. Number:** Each exam testing location shall have ample bathrooms (women's bathrooms, men's bathrooms, and all-gender bathrooms) for examinees to use, ensuring that examinees wait no longer to use the women's bathroom than the men's bathroom.
- b. Location:** Bathrooms shall be located within a reasonable distance of exam rooms and shall be easily accessible by examinees.
- c. Facility Cleanliness:** Bathrooms used during exam testing shall be cleaned regularly and offer adequate waste bins, functioning soap dispensers, and working sinks.
- d. Selection:** Examinees may use the bathroom that best corresponds to their gender-identity. Access also shall be provided to an all-gender bathroom, which can be created by temporarily changing the signs on an existing bathroom.

## Accommodations

### 11. Administrative Accommodations:

Applicants and examinees shall have access to an administrative accommodation process to seek and obtain exceptions to bar examination policies to address menstruation. Potential administrative accommodations include an exam location in closer proximity to a bathroom for in-person exams, modifications to product storage rules, access to additional clothing, and additional test time.

**12. Accommodations Schedule:** All applicants and examinees shall have access to information regarding any timelines and appeal rights related to seeking administrative accommodations.

**13. Same Day Limited Accommodations:**

Examinees may ask an exam proctor and obtain limited administrative accommodations related to menstruation on the day of the exam itself, including during the exam. Same day accommodations are limited in scope and may include changes in seating to be closer to a bathroom and access to additional clothing.

## Complaints and Violations

**14. Complaint System:** Applicants and examinees shall have access to an online portal on the BOLE website to submit comments, concerns, and complaints about issues surrounding menstruation and the bar exam, including those related to personnel, site, or testing conditions.

- a. Complainants shall not be required to provide identifying information to utilize this process.
- b. Following the administration of each exam, the BOLE shall publish on its website a summary of the complaints it has received; the number of times each complaint was made; and the action(s), if any, it is taking to address test takers' concerns. This information shall be published, without disclosing the identity of any examinee, no later than the date on which exam results are published.

**15. Accessibility:** Applicants and examinees shall have access to the complaint system via the bar examination website or a designated email address.

**16. Alleged Rule Violation Process:** Examinees shall be afforded due process in response to any alleged violations of bar exam rules related to menstruation. This includes:

- a. Timely, specific notice to examinees of any alleged rule violation related to menstruation;
- b. The right to review relevant/flagged footage related to any allegations of remote exam violations;
- c. The opportunity to respond; and
- d. A commitment that the BOLE will handle the investigation in a timely, confidential, and just manner, including providing the applicant with the result of the inquiry prior to the next bar exam's registration deadline and notice of their right of appeal.

## Policy Transparency

**17. Policy Location and Distribution:** All policies related to menstruation shall be publicly available on the BOLE website. Examinees also shall be e-mailed a copy of the policies prior to taking the exam.

**18. Contact Information:** Contemporaneous and up-to-date contact information for BOLE personnel, including at least a name, phone number, and email address as a point of contact for questions from applicants and examinees shall be posted on the BOLE public website.

**19. Communication:** Applicants and examinees shall receive a response to any phone or email inquiry about menstruation policies within two business days of the test taker's initial contact. If additional time is needed to respond to an examinee's inquiry, the BOLE will provide the examinee with a timeline for a substantive response within two business days of the initial inquiry.

# TOWARD A NEW POLICY

No bar examinee should have to choose between taking the bar exam and safely managing their period. Existing policies unfortunately put some menstruating examinees in that situation, which may impact test takers' well-being and performance. This Model Policy removes the burdens on menstruators who are seeking to become members of our profession in a way that aligns with BOLEs stated values and amidst the backdrop of ongoing conversations about bar exam reform, the need to diversify the bar, and a broader call for menstrual justice. If adopted, the Model Policy will help BOLEs take a critical step toward stopping the stigma against menstruators and removing unnecessary barriers to the practice of law.

# RESOURCES

- Marcy L. Karin, Margaret E. Johnson, & Elizabeth B. Cooper, *Menstrual Dignity and the Bar Exam*, 55 UC DAVIS L. REV. 1 (2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3790439](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3790439)
- Elizabeth Cooper, Margaret Johnson & Marcy Karin, *Punishing Bar Exam Policies on Menstrual Products Must Go*, LAW360 (Feb. 25, 2021, 5:36 PM EST), <https://www.law360.com/employment-authority/articles/1358884/punishing-bar-exam-policies-on-menstrual-products-must-go>
- Elizabeth B. Cooper, Margaret E. Johnson & Marcy L. Karin, *Menstrual Products and the Bar: Advocacy Seeks to Create Equal Bar Exam Testing Conditions for Menstruators*, BEST PRACTS. FOR LEGAL EDUC. BLOG (Aug. 5, 2020), <https://bestpracticeslegaled.com/2020/08/05/menstrual-products-and-the-bar-advocacy-seeks-to-create-equal-bar-exam-testing-conditions-for-menstruators/>
- Margaret E. Johnson, Marcy L. Karin & Elizabeth B. Cooper, *Stop the Stigma Against Menstruation: Starting with the Bar Exam*, NAT'L JURIST, (July 28, 2020, 3:31 PM), <https://www.nationaljurist.com/national-jurist-magazine/stop-stigma-against-menstruation-starting-bar-exam>