



**Regulation Matters:  
a CLEAR conversation**

## **Episode 74: New Pathways – Alternatives to the Licensure Exam February 13, 2024**

**Line Dempsey:** Welcome back again to our podcast, Regulation Matters: a CLEAR conversation. Once again, I'm your host, Line Dempsey. I'm currently the chief compliance officer with Riccobene Associates Family Dentistry here in North Carolina, South Carolina, and Virginia, and I've also been a board member and a past president for CLEAR.

As many of you are aware, the Council on Licensure, Enforcement and Regulation, or CLEAR, is an association of individuals, agencies, and organizations that comprise the international community of professional and occupational regulation. This podcast is an opportunity for you to hear about important topics in our regulatory community.

Now, given the current emphasis on reducing barriers to licensure, one area regulators are turning attention to is the licensure examination. In some professions and occupations, regulators are considering alternatives to the exam, such as maybe an apprenticeship or supervised training programs and experimental learning programs.

Now, recently, the Oregon Supreme Court voted to approve a new pathway to attorney licensure, a supervised practice portfolio examination, as an alternative to the traditional bar exam. So, joining with us today we have Addie Smith and Jo Perini-Abbott from the Oregon State Bar. They are both board members who led the Alternatives to the Exam Task Force. So, we're super glad to have you speaking with us today.

**Addie Smith and Jo Perini-Abbott:** Thanks, Line.

**Line:** Excellent! So, I understand that some of the conversations about alternatives to the traditional bar exam actually began in like 2020 during the start of the pandemic. There were a lot of things that were going on. Obviously in-person examinations were impacted. So, the Oregon Supreme Court granted a temporary, I think it was called a diploma privilege option. So maybe starting with Jo, could you maybe talk more about what that meant?

**Jo:** Sure. So just like you said, it was Covid. We didn't want to put 500 people in a room together. So,

the Supreme Court actually ordered us to do three things. They did order us to have a smaller in-person exam, create an online exam, and grant diploma privilege to a subset of people. So, it was only people who were signed up to take the exam already and who either graduated from an Oregon law school or a law school that traditionally has an 80% bar passage rate. So, although it was diploma privilege - where, if you graduated from law school and passed character and fitness, you were admitted without a further examination - we were still using bar exam results as a proxy for making that admission decision.

**Line:** Gotcha. So basically, you know, they're showing this history of producing candidates that are well versed in the law to be able to pass the bar.

**Jo:** Exactly.

**Line:** So Jo, continuing with you on that, how did that lead to maybe further conversations about alternatives to the exam, and how does that fit in with kind of the changing needs that we have for the legal profession as we speak?

**Jo:** Yeah. So, when the Board of Bar Examiners first saw the petitions for diploma privilege, the Board of Bar Examiners actually pushed back and said, 'We'd be happy to take a look at alternatives to the bar exam. But it needs to be a more thoughtful sort of deliberative process to get there.'

Ultimately the Supreme Court granted diploma privilege in that moment, but then came back to us and said, 'Well, you said you could do a thoughtful, deliberative process. Let's see you do it.' So it started the Alternatives to the Bar Exam Task Force in September of 2020.

**Line:** So you guys spent probably, what, at least a year researching alternatives to the exam. And then from my research at least, it looks like you came up with two proposals - the experimental, or experiential pathway. [laughs] I like experimental, though. Maybe that way I could pass the bar. So maybe that would be the new experimental one! [laughs] But, an experiential pathway as well as a supervised pathway or practice pathway. So now that I've kind of muddied those waters completely, could you maybe walk through, starting with the experiential and tell us more about them?

**Jo:** Yeah. So just even taking a step further back, we actually examined three pathways. We examined a true diploma privilege, like they have in Wisconsin. We examined an experiential law school pathway, similar to what the University of New Hampshire is doing. And we examined supervised practice, similar to the Canadian articling system or what a couple of states did in Covid.

Essentially, what happened with the experiential law school pathway and diploma privilege is they sort of collapsed on each other, in that the people who looked at diploma privilege, said, Well, couldn't the Bar Examiner still examine a portfolio or something of work product. And we said, well, that's exactly what New Hampshire is doing. So, we rejected sort of the true form diploma privilege. The experiential pathway is a law school focused pathway that pushes a more experiential curriculum in

law school, where students are creating a portfolio of work that would be assessed by the Board of Bar Examiners. So, there's still that examination. It's just of authentic legal work product that's developed in law school rather than a 2-day exam.

It's similar to the supervised practice pathway, except that happens after graduation where people are working in the legal field, but also creating a similar portfolio of documents that's assessed by the Board of Bar Examiners.

**Line:** Gotcha. So let me let me kind of move this to Addie, then. It almost sounds like (and again, I could be really wrong), but the supervised practice pathway sounds almost like an apprenticeship of some sort. So maybe describe that if you would for me.

**Addie:** Yeah, happy to. So, the only thing I would say is to the extent that it's an apprenticeship - some of the apprenticeship models out there, like California for example, you don't have to go to law school. In Oregon to participate in what we're calling the [SPPE](#), which is that post-law-school pathway, you do have to have graduated from an ABA accredited law school still. So, you have to have that foundation of law school, and in fact, the program as passed requires you to take specific courses. We often sort of in the legal world call them your 1L curriculum, which is your first year of law school curriculum, which are those foundational courses.

After you've completed that, then you can participate in this program. And it requires 675 hours of supervised legal work under the supervision of a licensed attorney who has been practicing for some time. Then, in addition to sort of practicing, you have to submit eight pieces of legal written work. And then you have to conduct two negotiations as well as two client interviews or counseling sessions with the supervising attorney present and able to assess the quality of those negotiations or counseling sessions.

In addition, it has a host of other requirements, including legal ethics requirements; access to justice requirements; diversity, equity and inclusion requirements; and sort of the requirement that you participate in another foundational CLE program, which in the legal world those are our continuing education units, while you're participating in the program.

So, you have to put all of those together into a portfolio, and that sort of forms the basis of the actual examination. We are going to review and grade for competence those pieces of written work, the negotiations, the client interviews, and then we are going to assess that you have completed all of the other requirements to determine that you're sort of ready to practice. So that's sort of what the foundation looks like in terms of the requirements of the program and then the examination associated with it.

**Line:** It's really interesting, and those are, I mean, both pathways seem quite different from your traditional bar exam route. Addie, how would these pathways maybe aim to bridge that gap in skills necessary for legal practice? I mean, like, it sounds like obviously looking at some of it. But like, how

do we really fix that?

**Addie:** Yeah, I think it's a great question. The first thing I would say is sort of the obvious. We're testing your ability to be a competent attorney by letting you show us your practicing as a competent attorney. It's so obvious it's almost hard to even say, right. The foundation is, we want to see that you're competent to practice while supervised, and then we'll deem you competent to practice without supervision.

The other thing I would say is, in terms of the bar exam specifically, you may or may not be aware that it has changed numerous times throughout the years. And it's currently undergoing yet again another, I don't want to say overhaul but, significant change to what's gonna be called the NextGen Bar Exam. The NextGen Bar Exam, interestingly enough, really dovetails with this program nicely, because what it's beginning to focus on is a lot less of 'did you memorize the right things to come in?' and more of 'are you able to show us you have the skills to be a lawyer?' So, the exam is gonna be much more skill-focused, much like the SPPE and our program is very skill-focused. Can you show us that (1) you have that foundational knowledge of the law because you took those courses in law school and (2) that you actually have the legal writing skills, you have the legal analysis skills, you have the ability to work with clients, and you have the ability to negotiate with co-couns... or not co-counsel, but opposing counsel on issues. . .

**Jo:** [laughing] sometimes co-counsel!

**Addie:** . . . on the issues that matter. So, it's a real practical practice-based. Because in the world of the legal profession, unlike for example the medical profession, you're not licensed to practice in the area of trust and estates. You're not licensed to practice in criminal law. Everyone receives a general licensure. And so, it's very hard to think about the best way to test specific basic knowledge, when for many of us, we have really narrow niches or areas of expertise.

For example, I know Indian child welfare inside and out. If you wanna hand me a will and ask me to review it for you, I'm gonna tell you, you need to talk to anyone but me. That's not something I have expertise in. So, by really following the pattern of the NextGen Bar Exam and understanding that being a lawyer is really about the skills, not always the content - because the content will come once you have the skills. Once you know what you're researching, you'll go find that; you'll go learn that to do it. That's really how we've kind of crafted this program to bridge those gaps.

**Line:** That's really great. So, I'll pose this to Jo then. So you know, obviously the bar exam has been around for a very long time. It's obviously considered a very rigorous and almost like a rite of passage, similar to medical doctors going through residency, right? It has this almost challenge that you have to meet just to be able to prove yourself. Did you receive any pushback when these alternatives might, I guess, lower the bar, if you would, for those attempting to become an attorney?

**Jo:** So, I would say that a lot of people's initial reaction is an assumption that this was lowering the bar,

and we got pushback. I spoke to literally hundreds of lawyers in Oregon. I appeared at every Bar Association that would let me present to them. And, with very few exceptions, once lawyers understood that the Board of Bar Examiners was still actually assessing competence, that there was still some sort of thing that people had to present to show that they were competent practicing lawyers, that it wasn't really just diploma privilege.

And once we talked about the changes in the bar exam that have happened over the last 40 years - you know, saying to a lawyer, the bar exam you took 40 years ago is not the bar exam I took, and it's really not the bar exam someone's about to take. That reduces the number of subjects and things like that. They go, 'Oh, okay.' So this thing that we've always called the bar exam is kind of - it's not fake; there's been a bar exam - but it's not this unified thing that everyone has had to pass. And so, with very few exceptions, at the end of those conversations, at the end of those presentations, people realize that this is actually probably a more rigorous process than taking the bar exam.

But honestly, if you're good at exam taking, you should just sit and take the 2-day exam. It's going to take less time. It's going to be less onerous on you starting out in practice.

But we really had to pause and help people understand the rigor that this program is, that it's not just a free pass where if you graduated law school, you're admitted to practice law.

**Line:** Right. But it does feel like - I don't know if this is the right word - the hazing experience that you would have to go through is missing. I mean, like even like I was in the Navy. And you know, while we got trained all of our skills, there was still that last test that we went through that, you know, we stayed awake for 48 hours and had to go in the gas chamber, do all those kind of things. And that was just kind of that, you know, once you're through with that, you kinda got your little stamp of approval. And then I got to help participate in those for next classes graduating, and it was part of like, you know, you got to pass this to get through. It's taken that - I don't want to say good ol' boy, because that's not the right term - but that hazing experience away. That, you know, we worked so hard to get the first time.

**Jo:** Yeah, there have certainly been comments, particularly in our public comment, that said, 'I took the bar exam. They should have to, too.' And then you just have to have the conversation. What do you mean, you took the bar exam? Well, did you have to do an MPT? Did it look like this? Was it a full day of multiple-choice? Oh, your bar exam was different. Okay. So yes, the intensity, the fear of if I don't study enough to pass this 2-day exam--that has been consistent throughout history. But otherwise, most people change their mind when you really start to show them the details.

**Addie:** I'm tempted to either point out how we've sort of learned that hazing as a practice is no longer the best way way to go, or simultaneously make a joke that you've clearly never been supervised by a partner at a law firm, [laughs] cause that's a hazing experience in and of itself. But I'm not sure either of those are the technical answers you guys are looking for. And I hear your point, for sure.

**Line:** Maybe we can touch on that when I get into the DEI kind of stuff. But, excellent. Well, Addie, so, after reviewing the report, the Oregon Supreme Court basically voted to approve this supervised practice portfolio examination pathway. What impacts do you foresee this having on law students in Oregon right now as well as on the law schools themselves?

**Addie:** Yeah. So I'm currently the chair of the Board of Bar Examiners. And so, I have a monthly meeting with our law schools, and students are very interested in this pathway. I have also received numerous phone calls from students outside the state of Oregon or emails making sure that this program is still something they're eligible for, which as long as your school was an ABA accredited law school, absolutely. This is not limited only to Oregon law school students. So, I think students are really, as Joe sort of mentioned, weighing what pathway is the best way for them to show the skills that they have gained through law school and their competence as an attorney.

I will say the one question that remains open, that our law schools and our students are grappling with, is comity or reciprocity. We're at the forefront of what's happening in this area in Oregon. We are moving forward with the SPPE. You can know with certainty that if you're able to pass our exam, you're gonna be licensed to practice in Oregon. The question of whether other states will accept that licensure once you've put your time in as an attorney is still an open one. I will say that we know that our sister/brother/sibling states are starting to look at this - Washington, Utah, California all have work groups happening, things being drafted, conversations they're engaged in around alternatives to the bar - some of which look very, very similar where they've sort of taken our blueprint; some of which look a little bit different. So, there's a strong hope.

But in terms of how it's affecting law students right now, I think, in Oregon in particular, our students are very aware that, come May 15th, they could choose this instead of taking the bar exam. And I think for a lot of students, it's a relief, because for whatever reason, they're not best able to show their skills via examination.

**Line:** Right. That makes sense. You know, diversity, equity, and inclusion in the regulatory arena is definitely something that CLEAR specifically as well as its member regulatory organizations have been quite focused on the last few years. How do you think this new pathway will support diversity and equity in the legal profession?

**Addie:** Yeah, great. I mean, I think the obvious that we all know is that for a host of reasons, students of diverse backgrounds don't always excel at standardized tests. The research has been clear for a couple of decades now on that. And so, to the extent that we're stepping away from a standardized test, I think that in and of itself creates an opportunity for more students of diverse backgrounds to come through and be licensed to practice in Oregon.

I think the other piece that's baked into this is the mentorship piece of having a supervisor. I think we know that often individuals of different backgrounds don't have a seat at the table and are left out of the conversation. Here, it's our hope that students will be able to work with and find a wide array of

supervisors who will not only mentor them in the actual practice of the law and competency to practice law but will also offer that support needed for individuals who maybe didn't have a dad who was an attorney, or who may be the first to graduate college in their family, or who are now facing the experience of being the only person of color in the room, etc. And so those two pieces--eliminating sort of a standardized test and offering the opportunity to really build in a support system for individuals who may or may not have the same type of experience as their sort of cis het white counterparts. Really, it's our hope that that will promote diversity, equity, inclusion, and not just in name, and not just by opening the door, but by holding that door open, by pulling that chair up to the table for those individuals.

**Line:** That's great. I like that. Not just opening the door, but holding the door open. I will use that. Fantastic, and thank you for that! So for us from CLEAR, we did in one of the news articles we shared in our CLEAR news reporting on this change and used the headline - let me make sure I get it right - "A history-making vote changes attorney licensure in Oregon." So, Jo, do you think this change is history making? And why?

**Jo:** I would love to call it history changing. I would love for Oregon to get that credit. We are sort of the tip of a wave of making this explicit change. But I don't think it's history making. I think the bar exam, as all regulatory exams are, has been evolving processes, and this is just sort of the next evolution of what is always a changing system. Every regulatory exam should be constantly self-assessing to determine if there is a better, more authentic way to decrease both false positives and false negatives, to really determine, is someone competent? Or have we erected artificial barriers, or are we letting people in who shouldn't be? And so, I think Oregon did a lot of work from standing on the shoulders of other people who had done a lot of work. A lot of academics have been pushing for this for a long time, and Oregon finally sort of took that research, said, 'yes, we can do this. We can make these changes.' But, like Addie said, a lot of other states are very close behind. And I just think it's a natural evolution in something that's always been evolving. [laughs] But you can keep calling us history making. That's great, too!

**Line:** Great! Well, last question, and this one you don't have to answer right now - But what do I need to do to get an honorary law license in Oregon? You can get back to me directly later. You don't have to answer that now. But I will say it's been great talking to you guys, and it's certainly very interesting and exciting to hear how Oregon has navigated through this process of considering alternatives to traditional licensure exams. So thank you, Addie and Jo, for speaking with me today.

**Jo:** Thanks so much.

**Addie:** Thanks so much. We're excited.

**Line:** It's certainly been a pleasure. And we'd like to continue this conversation with our members. So, here's some questions for our listeners to think about and maybe use on our regulatory network. What benefits and drawbacks do you see to allowing alternative pathways to licensure - whatever

path that is and whatever licenses you're offering? And what do you foresee as future trends in this area?

We greatly appreciate and thank our members for your feedback, and these questions will be posted in our CLEAR Regulatory Network for member discussion. If you haven't already joined the CLEAR Regulatory Network, we invite and encourage you to join and take a part in the online discussions.

I also wanna thank our listeners for tuning in for this episode. We'll be back with another episode of Regulation Matters: a CLEAR conversation very soon. And if you're new to the CLEAR podcast, please subscribe to us. You can find us on Podbean or any of your favorite podcast services. And if you've enjoyed this podcast episode, please leave a rating or comment in the app. Those reviews help us to improve our ranking and make it easier for new listeners to find us.

Feel free also to visit our website at [www.clearhq.org](http://www.clearhq.org) for additional resources as well as a calendar of upcoming programs and events. Finally, I'd like to thank our CLEAR staff, specifically Stephanie Thompson. She is our content coordinator and editor for this program. Once again, I'm Line Dempsey, and I hope to be speaking to you again very soon.

*The audio version of this podcast episode is available at [https://podcast.clearhq.org/e/alternatives\\_to\\_exam/](https://podcast.clearhq.org/e/alternatives_to_exam/).*