

EXAM SECURITY

International Conference of Funeral Service Examining Boards
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Speaker

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Uniform Examinations

Importance of uniformity

- Consistency in the licensure process
- Facilitates mobility
- Eases burdens on licensing boards
- **ICF National Exam**
 - Components
 - Arts
 - Sciences
 - Practice Exam

Role of Board

- Carry out purpose of enabling legislation
- Enforce practice act in interest of public protection
- License/renew applications, in part, based upon competence
- Essential for board members to have knowledge of process

Licensure exams

- *Minimum competence* based upon the practice analysis
- Test entry level skills
- Exam use
 - prior to graduating from accredited program
 - at time of licensure
 - as a tool for practitioners out of practice for an extended period
 - as a post discipline tool
 - others...

Legalities

Legally-defensible exam

- How is this ensured?
 - Validity + Reliability =
Legal Defensibility
 - **Validity** = exam tests the knowledge, skills and abilities (KSAs) it is intended to test.
 - **Reliability** = similarly situated candidates receive essentially the same score.

Legalities

Legally-defensible exam

- How is this ensured?
 - Standards for Educational and Psychological Testing
 - American Psychological Association
 - National Council on Measurement in Education
 - American Education Research Association

55-2009

- ***Ricci v. DeStafano, 129 S.Ct. 2658 (United States Supreme Court 2009)***
 - Supreme Court reversed court of appeals (2nd Circuit) and held that City of New Haven, CT decision to disregard examination results in determining promotion issues for firefighters violated Title VII of the Civil Rights Act.
 - Exam-passing white & Hispanic candidates filed suit alleging Civil Rights violation and 14th Amendment violations.

Ricci v. DeStafano

- The city could either accept the exam results and risk allegations of race/ bias in that white candidates outperformed minority candidates or disregard exam results and risk allegations of discrimination from white examinees.
- Supreme Court held that Plaintiffs under disparate treatment claim were entitled to judgment, noting that fear of litigation alone cannot justify an employer's reliance on race to disregard examination results.

Development/Administration

- Practice analysis
- Identification of content areas
- Development of blueprint
- Item development
 - Content areas
 - KSAs
- Statistical analyses
- Live/scored items
- Scoring processes
- Re-examination

Confidentiality: Internal and External

- Development
 - Internal exposure to participants in process
 - External exposure to vendor personnel
- Administration
 - External exposure to vendor personnel and candidates
- Scoring
 - External exposure to vendor personnel
- Maintenance
 - Internal and external exposure

Confidentiality: Internal and External

- Relationship with vendors
- Relationship with member boards
- Relationship with examinees
- Disabilities laws
 - accommodations

Security

- Conference takes steps throughout the entire process to ensure integrity and security of the exam.
- Contracts with participants and vendors
- Remember the difference between the Conference (a private entity) and the member boards (public entities subject to Open Records/FOIA laws).

Exam Breach

- How it happens:
 - Technology
 - Individual candidates
 - Collective candidates
 - Review courses
 - Academia
 - Test center personnel
 - Imposters
 - Others

Magnitude of breach

- Magnitude of breach
 - Local
 - Regional
 - National
 - international

56-2003

- ***Department of Consumer and Industry Services v. Sobh, 2003 WL 22160657 (App. Ct. MI 2003)***
 - Appellate Court affirmed the revocation of a pharmacist's license based upon credible evidence that licensee had sent an imposter to take the licensing exam in his place.
 - Licensee had failed the exam on three previous occasions. Court found Department's expert witness to be credible and questioned the witness for the licensee.

92-2008

- ***Bates v. Dunn, 2008 WL 554243 (Dist. Ct. 2008 ND)***
 - US District Court dismissed complaint filed against state Superintendent of Education and Chairman of the Board of Education filed by former substitute teacher.
 - Teacher failed to pass state exam newly required of all teachers (numerous times), and a board-initiated investigation indicated that she had another individual take (and pass) the exam in her name.
 - Board voided the passing score, informed her that it would deny all future applications, and denied her application to renew her substitute certificate.

54-2008

- ***National Association of Boards of Pharmacy v. Board of Regents of the University System of Georgia, 2008 WL 1805439 (Dist. Ct. GA 2008)***
 - United States District Court dismissed from copyright violation allegations the Board of Regents of the University System of Georgia (but not certain individual defendants) based upon sovereign immunity.
 - Plaintiffs damages claims cannot be litigated in federal court under the 11th Amendment.
 - Also, UGA did not waive such immunity through a previous settlement agreement alleging similar wrongdoing.

53-2009

- **National Council of Examiners for Engineering and Surveying v. Cameron-Ortiz, 626 F.Supp.2d 262, (Dist. Ct. Puerto Rico 2009)**
 - District Court entered default judgment against examinee who sat for two portions of the uniform exams required for licensure as an engineer for breach of contract regarding application/registration for the examination as well as copyright violations.
 - Examinee confronted during one testing found to have significant recording and transmitting devices hidden in her vest.
 - Exam owner found examinee also had electronically copied another of its licensure exams using technology. Court entered default judgment with damages in excess of \$1M.

Consequences of Breach

- Jeopardizes public protection
- Integrity of the licensure process
- Integrity of the licensure endorsement/reciprocity process
- Integrity of the exam
- \$\$\$\$\$\$\$\$

Legal Causes of Action

- Who does what?
- **Conference**
 - Contract
 - Tort
 - Copyright
 - Criminal
 - Interference with contractual relations

Legal Causes of Action

- **Board**
 - Applications for licensure
 - Applications for renewal
 - Grounds for discipline
 - Specific
 - General
 - Unprofessional conduct
 - Material misrepresentation to acquire/renew license

What Boards Can Do

- **Support the Conference and vendors**
 - Administratively pursue those who have breached exam security.
 - Discovery post-licensure
- **Get involved with ICFSEB**
 - Item writer
 - Exam committee
 - Content/subject matter experts
 - Ghost examinees

Thanks!

- Questions and answers