

PRESIDENT'S PAGE

by Erica Moeser

Imagine walking into a doctor's office to seek care of some sort and discovering that the physician you are seeing had just hung out a shingle after completing four years of medical school. It gives me the shivers. Of course, that is what can and does happen when some new lawyers spill out of law school.

The magnitude of what lawyers—new or experienced—are licensed to do came home to me last year in letters writ large when the NCBE Long Range Planning Committee grappled with developing a list of tasks that lawyers perform. This was done in conjunction with the job analysis that NCBE commissioned as part of the Content Validity Study related to its testing program.

The job analysis report, titled *A Study of the Newly Licensed Lawyer*, is now available on the NCBE website, www.ncbex.org. It is informative about the actual tasks performed by newly licensed lawyers as well as the knowledge, skills, and abilities the respondents—all newly licensed lawyers—felt that they needed in order to perform those tasks.

A quick scan of the tasks is sobering. Can a three-year law school curriculum actually prepare recent graduates to undertake work of the breadth and complexity listed? There is so much to know, and so much to know how to do. In addition, there is the application of professional judgment that ranges far beyond sheer knowledge.



While for NCBE the objective of the job analysis was to better inform us about the relationship between what we test and what newly licensed lawyers do—and it will serve us as we continue ongoing evaluation of our testing program—the information obtained serves other purposes, too.

For law schools, the job analysis information serves as a reminder of what graduates face when they complete their legal studies and offers guidance, if you will, about how the law school curriculum can help graduates emerge prepared for what awaits them. For some law schools, the information in the job analysis report will serve as a pleasant affirmation that the curriculum is already moving in step with their students' needs.

To continue with the medical profession analogy, the medical school graduate moves into a residency system that monitors, mentors, corrects, and develops the medical professional. The same cannot be said for many who emerge from law school, and for this reason, and barring any change to our existing licensing model, the license to practice law that is conferred shortly after law school graduation is a general license. It will continue to be for the new lawyer to recognize the tasks beyond his or her capabilities, and some of the time, when the new lawyer does not, the outcome achieved will occur at the expense of trusting clients.

In any event, I encourage anyone interested in thinking about what the practice of law entails, or what preparation for the practice of law should or must involve, to spend a few moments visiting *A Study of the Newly Licensed Lawyer*.

On another topic, I recently asked members of the NCBE testing staff to look at how many times lawyers attempt the bar examination. We started with the group that first took the Multistate Bar Examination in July 2006. Few took the test more than twice. The results for this cohort were so striking that it made sense to ask if the July 2006 results were aberrational. As a result, the study was replicated with the group that took the bar examination for the first time in July 2007. Those results followed the same pattern.

Of course, the data were not complete, in that of the candidates who sat for the examinations in July 2006 and July 2007 (51,176 and 50,181, respectively), we could only identify and longitudinally track a subset because we needed clear data points that are not always available to us at NCBE. The samples were of a good size, however: 30,878 for July 2006 and 30,759 for July 2007.

This is what we learned from following those first-time takers through 11 test administrations: for July 2006, 84.2% took the examination only once, 9.3% took it twice, 3.2% took it three times, and 1.5% took it four times. For July 2007, 85.3% took it only once, 9.1% took it two times, 2.9% took it three times, and 1.3% took it four times.

We also determined that of the first-time takers who sat in July 2006, 0.9% took the examination more than five times. For the July 2007 cohort this figure was 0.8%. The good news is that most candidates move into licensed status fairly quickly,

since presumably most of those who stop testing are successful. I was interested in seeing what the data would show because of my interest in a law school accreditation policy that judges schools based on the performance of graduates over 10 bar exam administrations. I offer it here as food for thought. My thanks go to Dr. Susan Case, NCBE Director of Testing, and Doug Ripkey, Associate Director of Testing, for doing all the heavy lifting that produced this analysis. (For more detailed results for the July 2007 group, which was followed through July 2012, see the Testing Column on page 20.)

As the year draws to a close, we see on the horizon three likely additions to the ranks of Uniform Bar Examination jurisdictions. This will bring us to 13 if our predictions, which are always conservative, hold true. There are several more jurisdictions in the pipeline, and in each of these there is a local process usually driven by the Court or the Board of Bar Examiners. There is an inexorable move in the direction of a common test, with decisions about applicant eligibility and the need to teach or test significant state-law distinctions left to the individual jurisdictions.

Finally, NCBE salutes our Director of Financial Operations, Marian Kontek, upon her retirement early next month after almost 13 years of excellent service. As one of the “unseen hands” as far as most examiners and administrators are concerned, Marian has been a faithful guardian of the organization’s assets, with a keen eye on keeping the resources of this nonprofit organization prudently budgeted and spent. She has been an important part of the NCBE family, producing reports to the Board of Trustees that have allowed it to carry out its fiduciary responsibilities to the organization with confidence. We wish her many happy times ahead. We thank her, and we will miss her. 📷