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Joni Seko  
Deputy General Counsel for Admissions Utah State Bar  
Utah Law & Justice Center  
645 South 200 East  
Salt Lake City, UT 84111  
**VIA MAIL AND EMAIL**

Dear Ms. Seko,

We are writing to follow up on our previous correspondence and conversations regarding breastfeeding accommodations during the Utah Bar Exam. Utah's current grade on the American Civil Liberties Union/ Law Students for Reproductive Justice (LSRJ) Report Card on Breastfeeding Policies During the Bar Exam is a B. Last year, the ACLU and LSRJ upgraded Utah's grade from a C+ to a B based on the State Bar's expressed willingness to review its breastfeeding accommodation policies.

We appreciate the individualized accommodations provided for Rebekah Hiatt for the July 2015 exam, during which she was allowed to bring breast pumping equipment and express milk in a private, non-restroom space.

While our correspondence and research for the Report Card found that the State Bar allowed breastfeeding accommodations on a case-by-case basis, we would now like to work with you to adopt a uniform, accessible policy to provide accommodations for nursing test takers. To assist with the adoption of such policies, we would like to extend an offer of assistance in authoring or reviewing policies as needed.

In our November 6, 2015 letter we recommended that the Utah Bar provide the following accommodations for nursing test-takers:

1. Permission to bring to and store at the testing site necessary medical equipment and supplies, including a breast pump, storage supplies, and a cooler or access to a refrigerator.
2. A private, sanitary location other than a bathroom in which to express breast milk.
3. Access to an electrical outlet in the identified location.

4. Additional “stop the clock” break time to express breast milk on a periodic basis depending on individual need.

While the State Bar was unwilling to provide stop-the-clock breaks for Ms. Hiatt, we sincerely recommend that future breastfeeding test takers be allowed to take stop-the-clock breaks to ensure their medical well being and place them on equal footing with other, non-breastfeeding test-takers who may utilize their breaks exclusively for stretching, walking, eating, and so forth. Currently, 39 states make additional break time available to nursing test takers either by default or upon request, including other Uniform Bar Exam States like North Dakota, Missouri, and Nebraska.<sup>1</sup> Nursing individuals are encouraged to pump breast milk as frequently as their baby would typically feed in a day in order to keep lactation hormones at optimal levels- this generally means every 2-3 hours.<sup>2</sup> If a nursing parent is unable to pump as needed, they may experience pain and/or leakage<sup>3</sup>, which can lead to more discomfort, as well as possible infection.<sup>4</sup> The average pumping session takes between 10-30 minutes, depending on an individual’s body and the equipment they use.<sup>5</sup> A policy of not permitting additional breaks for nursing test takers may cost each test taker 50 minutes or more of test time over the course of the 2-day exam.<sup>6</sup>

Further, we recommended that the Utah State Bar streamline and make transparent the accommodation request process for nursing applicants. Streamlining the accommodations process would have two parts. First, the Utah State Bar should make clear on the test registration website (<http://www.utahbar.org/admissions/admissions-application-forms-and-instructions/>) that the above accommodations are available for breastfeeding students, and outline the necessary steps an applicant must follow to request accommodation. Second, the Utah State bar should either update the existing Notice of Medical Alert form or Courtesy Provisions for Health-Related Conditions to explicitly refer to breastfeeding accommodations, or create a new form for breastfeeding accommodation.

We additionally ask that the State Bar modify the timeline for requesting accommodations. Currently, applicants seeking stop-the-clock breaks must apply and provide documentation using the Request for Bar Examination Accommodation form five months in advance of the exam date. The Courtesy Provisions form for bringing in lactation equipment, if considered supplemental documentation, must be submitted four months in advance. Many nursing applicants will not at that point know exactly what their lactation schedule and needs are, and in fact may not yet have given birth. Instead, we recommend a three week or one month

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<sup>1</sup> *Breastfeeding Policies During the Bar Exam by State*, AM. CIVIL LIBERTIES UNION, <https://www.aclu.org/map/breastfeeding-policies-during-bar-exam-state> (last visited Jun. 14, 2016).

<sup>2</sup> *How Often do I have to Pump When I go Back to Work?*, LA LECHE LEAGUE INTL., <http://www.llli.org/faq/pumpfreq.html> (last visited Jun. 2, 2016).

<sup>3</sup> *Common Questions about Breastfeeding and Pain*, U.S. DEPT. OF HEALTH AND HUMAN SERV., <http://www.womenshealth.gov/itsonlynatural/overcoming-challenges/common-questions-about-breastfeeding-pain.html> (last visited Jun. 2, 2016).

<sup>4</sup> *Breast Infection (Mastitis)*, SUMMIT MED. GRP., [http://www.summitmedicalgroup.com/library/adult\\_health/hhg\\_mastitis/](http://www.summitmedicalgroup.com/library/adult_health/hhg_mastitis/) (last visited Jun. 9, 2016)

<sup>5</sup> La Leche League, *supra* note 1

<sup>6</sup> This conservative estimate was reached by estimating 10 minutes for a pumping session, with ~3 minutes estimated for travel to the nursing room and getting out/putting away equipment, estimating 1 pumping session in the morning (registration, instructions, and test taking equate to 4 hours) and 1 in the afternoon (instructions and exam take 3.5 hours) each day, assuming that the test taker also pumps during the 1 hour lunch break.

notice period to better allow applicants to realistically assess their needs in requesting accommodations.

Currently, the Provisions for Health-Related Conditions form explicitly states that applicants who need additional stop-the-clock breaks, as breastfeeding students likely do, may not use the Provisions for Health-Related Conditions form. Instead, applicants seeking stop-the-clock breaks must fill out the Request for Bar Examination Accommodation form, which is geared specifically towards Americans with Disabilities Act accommodations and requires things like law school documentation of accommodation that may not be applicable to breastfeeding students. The Notice of Medical Alert form, which applicants are currently instructed to fill out if they personally contact the State Bar, does not seem like a request for accommodations so much as an emergency contact/ procedure form that most applicants would not understand to be applicable to breastfeeding unless explicitly told to fill out the form by the State Bar.

In our November 6, 2015 letter we provided an example of an accommodations form that specifically caters to applicants seeking breastfeeding accommodations. I am attaching that form again for your reference, as we believe it provides a useful example of a policy that makes the accommodation process accessible and comprehensible for applicants.

Finally, we ask that the Utah State Bar provide training to all managers and staff responsible for fielding, processing and rendering determinations on such requests to ensure that consistent and correct information is given to those who inquire as to eligibility.

We are pleased by the Utah State Bar's expressed willingness to examine its test taking accommodations to better serve breastfeeding individuals and make the Bar Exam and legal profession more accessible to parents. As we wrote earlier, we are happy to assist you in drafting or editing policy changes. Ideally, the State Bar can amend its policies in time to accommodate individuals registering for the February 2017 exam. We would like to sit down in person with you in the coming weeks to discuss how to best move forward.

Sincerely,



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Enclosure

## **Accommodations for Health Related Conditions**

The Office of \_\_\_\_\_ will provide, upon written request, accommodations for health-related conditions not otherwise covered under our policy regarding non-standard testing accommodations for applicants with disabilities.

[General “health-related accommodations” policy here]

### **Applicants who are breastfeeding**

Courtesy accommodations for applicants who are breastfeeding are available upon request to enable such applicants to express breast milk during the examination.

*Process for submitting requests:* Applicants should submit a request for accommodations in writing to [\_\_\_\_\_ appropriate office/individual, with contact information.] A request for lactation accommodations will be granted upon submission of medical documentation from your child’s pediatrician or your qualified medical provider verifying that you are breastfeeding and the child’s date of birth. (Please be advised that applicants may, upon request of the Board of Bar Examiners, be required to submit additional medical documentation to support a request.)

Applicants should list all accommodations you believe will be necessary on the day of the exam with as much specificity as possible. Accommodations may typically include:

- Permission to bring a breast pump and accompanying equipment, storage containers, and a cooler if necessary.
- A private location for expressing milk (other than a bathroom), with an electrical outlet.
- Exam room seating that affords the swiftest possible route between the test room and the lactation area during breaks.
- Additional off-the clock break time if existing breaks are insufficiently frequent for an individual’s circumstances.

Except in extraordinary circumstances or due to a recently emergent event, requests for lactation- related accommodations must be received by the Board of Bar Examiners at least three (3) weeks prior to the first day of the bar examination.