

Other Areas of Practice**Writing a U.S. bar exam? Check policies on feminine products | Jennifer Fahrenholt**By **Jennifer Fahrenholt**

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(August 6, 2020, 8:51 AM EDT) -- Social media has been abuzz lately with the various approaches that each state in the United States has taken towards its bar examinations. Some are moving online, some are providing a form of diploma privilege, some are delayed indefinitely and some are pushing onward with in-person examinations despite the global pandemic.

While there does not seem to be a "best practice," some candidates who will be taking in-person examinations have found that the policies in place are less than accommodating to individuals of the female sex.

Generally, each state administers a closed-book bar examination, so the list of permitted items is quite short. Many of these lists are reminiscent of the Law School Admission Test (LSAT) policies. However, I distinctly recall being able to bring my own feminine hygiene products into the LSAT testing room in a clear Ziploc bag when I took the test in January 2019. However, some states that are proceeding with in-person examinations this year despite COVID-19 have different views on the subject of feminine hygiene products.

For example, the Arizona Supreme Court recently changed course on its policy after a social media uproar. Initially, the Arizona policy stated, "NO feminine hygiene products (products will be made available in women's restrooms)." While products were to be provided in the restroom, that presented many other issues.

One issue is questionable access to products for menstruating individuals using the men's restroom, lack of selection for those requiring a specific type of product, and of course, the potential spread of germs from grabbing from a shared supply inside of a restroom during a pandemic. Thankfully, Arizona changed course and will now permit candidates to bring "feminine products" in a clear plastic bag.

Texas seems to have a similar policy of providing feminine hygiene products to candidates sitting for the bar exam. It does not expressly prohibit these items, but it does state that feminine hygiene products will be provided. It is unclear whether candidates must use those products that are provided, or if they would accommodate individuals bringing their own menstrual products in a clear plastic bag.

The West Virginia Judiciary still has a policy on its website prohibiting everything except what is expressly permitted in the bar examination FAQs. Since it is not stated that feminine hygiene products are permitted, those items may fall under the catchall prohibition that "[n]othing else is allowed."

As with the former policy in Arizona and the current policy in Texas, feminine hygiene products will be provided. The website does not say whether those products are only provided in the women's restroom.

It is possible that in all situations, a menstruating individual could potentially request an accommodation to be able to bring feminine hygiene products of their choosing. The question is, why

is that necessary in 2020 when more and more females are entering the legal field?

If someone can bring feminine hygiene products with them into the LSAT examination room for use during the breaks, why is it any different for a bar examination? If anything, someone who has graduated from law school and has taken courses on professional responsibility would be more ethical and less apt to cheat than someone taking the LSAT.

Putting aside the absurd logistics of writing out the *Federal Rules of Civil Procedure* on a tampon (even jumbo-sized), the individual state bar associations and state Supreme Courts that put together these policies and procedures are out of touch with reality. Menstruating individuals are graduating from law school. Menstruating individuals are sitting for the bar exam. Menstruating individuals are even going on to become very successful lawyers.

This is not something new to the 21st century. To not allow candidates sitting for a bar exam the right to bring feminine hygiene products at this point in time is mind-boggling.

One bright spot in the United States is Oregon. The Oregon state bar felt it necessary to put a July 2020 update on its website that the "prohibition on paper does not apply to feminine hygiene products" and that it has "never, and will never, forbid such products in [its] exam rooms."

Just to highlight one Canadian province in comparison, the Law Society of Ontario website has a list of "permitted items" that each candidate may bring into the testing area. Being an open-book examination, this list includes certain notes and textbooks, along with some personal items. "Hygiene products" are permitted if they are stored in a "re-sealable, clear, plastic storage bag."

This is a completely reasonable policy, and while this seems to be the most popular solution in the majority of North American bar exams, it sadly is not the standard across the board.

In short, if you are part of the roughly 50 per cent of the world's population that happens to menstruate, and if you are considering taking a bar exam in the United States, be sure to do your research on the individual state's policies beforehand. You may have to do some extra preparation in receiving accommodations if you happen to be born with a uterus.

Jennifer Fahrenholt is a second-year law student in the dual JD program at the University of Windsor Faculty of Law and the University of Detroit Mercy School of Law. She is interested in immigration law and corporate law.

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