

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
STATE OF CALIFORNIA

In the Matter of the Petition for Early Termination of Probation of:
CALIFORNIA UNIVERSITY OF MANAGEMENT AND SCIENCES

Institution No. 3012941

Petitioner.

Case No. 999964

OAH Case No.: 2017110624

DECISION GRANTING EARLY TERMINATION OF PROBATION

The petition for early termination of probation by California University of Management and Sciences (the University) came before the Director of the Department of Consumer Affairs (Director) for the Bureau for Private Postsecondary Education (Bureau). Having read and considered the entire record, including the petition and submissions of the parties, the Director through her designee hereby grants the petition to terminate probation.

FACTUAL FINDINGS

On January 1, 1995, the Bureau for Private Postsecondary and Vocational Education, the Bureau's predecessor, issued an approval to operate to California University of Management and Sciences.

On August 16, 2017, the Bureau filed an accusation against the University. In sum, the accusation alleged that between 2013 and 2016, the University:

- Improperly modified or altered student records, in violation of Education Code section 94897, subdivisions (j) and (m), in conjunction with section 94900, subdivision (b)(3) and California Code of Regulations, title 5, section 71920, subdivision (b)(5)(A);
- Failed to maintain or destroyed student records, and failed to make records immediately available to the Bureau, in violation of Education Code section 94897, subdivision (k), in conjunction with section 94900, subdivisions (a) and (b)(1) and California Code of Regulations, title 5, section 71930, subdivisions (b)(1) and (e);
- Committed recruiting violations, in violation of Education Code sections 94897, subdivision (g), and 94901;
- Unlawfully assessed student tuition recovery fund payments, in violation of California Code of Regulations, title 5, section 76120, subdivision (b);
- Improperly directed individuals to refrain from reporting unlawful conduct to the Bureau or another government agency, in violation of Education Code section 94897, subdivision (m);
- Improperly failed to identify an officer, corporate director, or board member of the San Diego branch campus, in violation of Education Code section 94897, subdivision (j)(3) and California Code of Regulation, title 5, sections 71130, 71380, 71150, and 71550; and,
- Failed to obtain the Bureau's prior authorization before offering a veterinary technician program, in violation of Education Code sections 94892, 94893, 94896, 94899, 94927, and 94897.

Effective July 6, 2018, the Director approved a Stipulated Settlement and Disciplinary Order to resolve the disciplinary matter. The University stipulated to the truth of the allegations and charges in the accusation. The stipulation revoked the University's approval to operate, stayed the revocation, and placed the University on probation for five years, subject to certain terms, including replacing certain responsible school officials, retaining a Bureau-approved operations and billing auditor to prepare and produce to the Bureau regular auditing reports, and paying the Bureau's costs of enforcement in the amount of \$19,389.91. The Bureau reserved the right to revoke probation at any time for a violation of the probationary conditions.

The University submitted a petition to terminate its probation early, which is otherwise scheduled to end in July 2023. The petition was based in part on its "full compliance with the terms of probation" On July 9, 2021, the Director requested written argument from the University and the Bureau regarding whether to grant the petition. The University submitted written argument, but the Bureau did not respond.

On September 23, 2022, the Director requested additional written argument regarding whether the petition should be granted. In response, the Bureau opposed early termination, "prior to payment in full of outstanding cost recovery in the amount of \$19,389.91," which at that point had not been paid. The Bureau did not otherwise object to early termination of probation.

The University also responded to the Director's order, and included a copy of a check to the Bureau in the amount of \$19,389.91, in full satisfaction of the outstanding probation condition. In addition, the University submitted evidence of its compliance with probation for more than four years. It provided its most recent quarterly compliance

reports to the Bureau attesting to full compliance with probation. It submitted 2020 site visit evaluation reports from its accreditor that “found the institution to be well-prepared with a leadership team that was responsive to the team’s questions and requests for additional information and documentation.” The accreditor also noted “[t]he campus’s well-qualified and positive staff, neat and attractive work environment, and dedication and commitment to their students was evident to the [accreditor’s] team throughout the visit.” And the University submitted a student satisfaction survey it conducted in the summer of 2022, which surveyed a variety of components of the institution with overall positive results.

The University also submitted the Bureau’s compliance inspection results from 2019 and 2021, which noted that the Bureau did not identify compliance issues during its inspections. And it submitted a letter from its auditor, who stated that “there has been no instances of non-compliance with the [Director’s] Decision and Order of July 6, 2018.”

Additionally, the University noted recent actions of the United States Department of Education to terminate recognition of the University’s current accreditor, and the University’s need to identify a new accreditor. The University reported that it sought accreditation from a new accreditor, but the accreditor denied the University pre-accreditation status due to its current probationary status with the Bureau.

LEGAL CONCLUSIONS

The Bureau’s top priority is public protection. (Ed. Code, § 94875.) It is charged with enforcing the Private Postsecondary Education Act of 2009, Education Code section 94800, et seq., which is designed to ensure minimum institutional quality

standards and opportunities for success for California students, and to prevent harm to students and the deception of the public that results from fraudulent or substandard educational programs. (Ed. Code, § 94801.)

Government Code section 11522 provides that licensees may petition for reinstatement or a reduction of a disciplinary penalty after a period of at least one year from the effective date of the decision. When considering a petition for a reduction in penalty, the Bureau considers the rehabilitation of the institution in light of the following factors:

- (1) The nature and severity of the acts under consideration as grounds for denial;
- (2) Evidence of any acts committed after the acts under consideration as grounds for denial that also could be considered grounds for denial;
- (3) The time that has elapsed since commission of the acts described above;
- (4) The extent to which the applicant has complied with any terms of probation or any other sanctions lawfully imposed against the applicant; and,
- (5) Evidence of any rehabilitation submitted by the applicant.

(Cal. Code Regs., tit. 5, §§ 75070, 75500 [incorporating by reference the Bureau's August 2010 Disciplinary Guidelines, pp. 15-16].)

In a proceeding for the restoration of a revoked approval to operate, the burden at all times rests on the petitioner to prove that it is rehabilitated and entitled to a restored license. (See *Flanzer v. Bd. of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The University must bear in mind that as an applicant for restoration of its approval to operate, it "is not in the position of an untried newcomer, but a fallen licentiate." (*Ibid.*) As such, the University bears a heavy burden of proving

rehabilitation. (See *Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091-92.) It must establish by clear and convincing evidence that it is entitled to the requested relief. (*Ibid.*; *Flanzer, supra*, 220 Cal.App.3d at 1398.)

DISCUSSION

The University met its burden of establishing sufficient rehabilitation to have its probation terminated approximately seven months early. The underlying discipline was serious, and the University admitted its wrongdoing as part of the stipulated settlement. But officials responsible for the misconduct separated from the school, and the violations occurred more than six years ago. They also reflect the University's only disciplinary misconduct, even though it was an approved institution since 1995. Moreover, the University consistently performed well on probation for more than four years, receiving commendable remarks from its accreditor and students, and maintaining compliance with the governing laws and auditing standards.

Also, significantly, the Bureau opposed the University's early termination of probation only to the extent that the University did not pay the Bureau's enforcement costs, which at the time was an unfulfilled condition of its probation. But after receiving notice from the Bureau about the outstanding costs, the University promptly paid them, satisfying the condition.

Lastly, as the University notes, on August 19, 2022, the United States Department of Education terminated recognition of its current accreditor, and the University represents that early termination of probation will enable it to apply for accreditation from a new accreditor.

Based on the foregoing findings and conclusions, the Director finds that the University is sufficiently rehabilitated to have its probation terminated early.

ORDER

The petition for early termination of probation is granted. The University's probation shall be terminated and its approval to operate fully restored on the effective date of this decision.

This decision shall take effect November 25, 2022.

IT IS SO ORDERED this 27th day of October 2022.

"Original Signature on File"

RYAN MARCROFT
Deputy Director
Legal Affairs Division
Department of Consumer Affairs