



Bureau for Private Postsecondary Education
2535 Capitol Oaks Drive, Suite 400, Sacramento, CA 95833
P.O. Box 980818, West Sacramento, CA 95798-0818
P (916) 431-6959 F (916) 263-1897 www.bppe.ca.gov



CITATION: ASSESSMENT OF FINE AND ORDER OF ABATEMENT

To: AFDNP, Inc., Owner
Functional Diagnostic Nutrition
12455 Poway Road, Suite 6
Poway, CA 92064

INSTITUTION CODE: Unapproved
CITATION NUMBER: 1819068
CITATION ISSUANCE/SERVICE DATE: December 12, 2018
DUE DATE: January 11, 2019
FINE AMOUNT: \$ 100,000.00
ORDER OF ABATEMENT INCLUDED: YES

Christina Villanueva issues this Citation: Assessment of Fine and Order of Abatement (Citation) in her official capacity as Discipline Manager for the Bureau for Private Postsecondary Education (Bureau) of the California Department of Consumer Affairs.

CITATION

A Citation is hereby issued to AFDNP, Inc., Owner of Functional Diagnostic Nutrition (Institution) located at 12455 Poway Road, Suite 6, Poway, CA 92064 pursuant to Business and Professions Code section 125.9 and 149; California Education Code (CEC) section 94944; and Title 5 of the California Code of Regulations (5, CCR) section 75020 for the violation(s) described below.

BACKGROUND

On July 28, 2015, the Bureau received a tip alleging that the Institution was operating without Bureau approval in violation of CEC section 94886. Bureau staff investigated the complaint and found that the Institution charges \$4,995.00 in tuition for its online Functional Diagnostic Nutrition course, and is owned by AFDNP, Inc. AFDNP, Inc. operates from a California address at 12455 Poway Road, Suite G, Poway, CA 92064 with a telephone number of (858)386-0733. Bureau staff gathered evidence of this violation through emails, letters, corporate records, Whois.com website, Certificates of Completion and the Institution's website at www.functionaldiagnosticnutrition.com. The evidence shows that Institution is operating a private postsecondary institution without Bureau approval, is charging over \$2,500.00 in tuition, and is not exempt under any provision of the Private Postsecondary Act of 2009.

VIOLATION(S)

#	Below you will find the California Education Code (CEC) and/or Title 5 of the California Code of Regulations (5, CCR code) section(s) of law you are charged with violating.
1.	<p><u>Violation:</u> CEC 94886. Approval to Operate Required <i>“Except as exempted in Article 4 (commencing with Section 94874) or in compliance with the transition provisions in Article 2 (commencing with Section 94802), a person shall not open, conduct, or do business as a private postsecondary educational institution in this state without obtaining an approval to operate under this chapter.”</i></p> <p>CEC 94817.5. Approved to Operate or Approved “Approved to operate” or “approved” means that an institution has received authorization pursuant to this chapter to offer to the public and to provide postsecondary educational programs.”</p> <p>CEC 94868. To Offer to the Public “To offer to the public” means to advertise, publicize, solicit, or recruit.”</p> <p>CEC 94869. To Operate “To operate” means to establish, keep, or maintain any facility or location in this state where, or from which, or through which, postsecondary educational programs are provided.”</p> <p>On July 28, 2015, the Bureau received a tip alleging that the Institution was operating without Bureau approval, in violation of CEC section 94886.</p> <p>On August 3, 2015, Bureau staff sent the Institution’s President, an email which explained that that Institution is operating without Bureau approval. The President replied to that e-mail and stated that the Institution is not an educational institution.</p> <p>On June 8, 2016, Bureau staff researched the Institution’s website at http://functionaldiagnosticnutrition.com/decisions and found that its Functional Diagnostic Nutrition certificate course costs \$4,995.00.</p> <p>On June 13, 2016, Bureau staff sent the President a letter via regular and certified mail notifying him that the Institution was operating without Bureau approval, in violation of CEC section 94886 and it must cease operating as a private postsecondary educational institution immediately. The Bureau did not receive a response to that letter.</p> <p>On June 28, 2016, Bureau staff made a telephone call to the President at (858) 842-3266 to confirm he had received the preceding letter, he stated he had not received it. Bureau staff sent him a copy of that letter via e-mail.</p> <p>On July 13, 2016, the President sent Bureau staff an e-mail stating that he had lowered the price of the Institution’s course to \$2,499.00. and stated that the price change had caused so much confusion that he closed the Institution’s registration webpage.</p>

On July 20, 2016, the President sent Bureau staff a letter stating that the Institution had stopped enrolling students and that the Institutions course price would be \$2,500.00 or less when it began enrolling students again.

On October 5, 2016, upon Bureau staff's request, an Institution employee sent Bureau staff an e-mail stating that the price of the Institutions course is \$4,995.00, and that students can enroll any time through the Institution's website. That e-mail listed the Institution's mailing address of PO Box 500978, San Diego, CA 92150. Bureau staff reviewed the Institution's webpage at <https://ua175.infusionsoft.com/app/orderForms/FDN-Course-Order-Form> and found that its course price is listed as \$4,995.00.

On July 17, 2017, Bureau staff researched the Institution's Nevada Articles of Incorporation and found that the Institution's principal place of business is 12455 Poway Rd., Suite G, Poway, CA 92064.

On July 17, 2017, Bureau staff researched the location of the Institutions server on the Whois website at <http://whois.domaintools.com>. According to the website, the Institution's "Registrant Organization" is AFDNP, Inc., which is located at 12455 Poway Road, Suite G, Poway, CA 92064.

Order of Abatement:

The Bureau Orders that the Institution cease to operate as a private postsecondary educational institution. The Institution must discontinue recruiting or enrolling students and cease all instructional services and advertising in any form or type of media including Internet web sites <https://functionaldiagnosticnutrition.com>, and any other websites not identified here that are associated with the Institution, until such time as an approval to operate is obtained from the Bureau. The Institution must disconnect all telephone service numbers including but not limited to, (858) 842-3266, that are associated with the Institution until such time as an approval to operate is obtained from the Bureau. To comply with the Order of Abatement the Institution must submit a school closure plan to the Bureau pursuant to California Education Code 94926The Institution must provide a roster of each student currently enrolled at the Institution. The roster must include the names of the students, their contact information (including phone number, email address, and physical address), the programs in which they are enrolled, the amount paid for the programs.

Assessment of Fine

The fine for this violation is \$100,000.00

TOTAL ADMINISTRATIVE FINE DUE: \$100,000.00

ASSESSMENT OF A FINE

In accordance with CEC section 94944; and 5, CCR section 75020(b), the Bureau hereby orders this assessment of a fine in the amount of **\$100,000.00** for the violations described above. **Payment must be made, to the Bureau, within 30 days from the date of service of the Citation.**

COMPLIANCE WITH ORDER OF ABATEMENT

In accordance with the provisions of 5, CCR Section 75020 (b) the Bureau hereby issues the order(s) of abatement described above. In accordance with Business and Professions Code Section

149, the Bureau may disconnect any telephone service numbers used by an unapproved Institution. **Evidence of compliance with the order(s) of abatement must be submitted, to the Bureau, within 30 days from the date of service of the Citation.**

APPEAL OF CITATION

You have the right to contest this Citation through an informal conference with the Bureau; and/or through an administrative hearing in accordance with Chapter 5 (Commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

If you wish to contest this Citation, you must submit the 'Notice of Appeal of Citation – Request for Informal Conference and/or Administrative Hearing' form (enclosed) within 30 days from the date of service of the Citation. *If you do not request an informal conference and/or an administrative hearing within 30 days from the service of the Citation, you will not be able to request one at a later time.*

Unless a written request for an informal conference and/or an administrative hearing is signed by you and delivered to the Bureau by **January 11, 2019**, you will be deemed to have waived or forfeited your right to appeal this matter.

EFFECTIVE DATE OF CITATION

If you do not request an informal conference and/or an administrative hearing, this Citation shall become effective on **December 12, 2018**. Payment of the administrative fine and evidence of compliance with the order(s) of abatement shall be due by **January 11, 2019**. Your payment of the administrative fine shall not constitute an admission of the violation(s) charged.

If a hearing is requested, you will not be required to comply with this Citation until 30 days after a final order is entered against you.

Payment of the administrative fine and/or written request for appeal must be mailed to:

Gurinder Sandhu, Discipline Citation Program
Bureau for Private Postsecondary Education
2535 Capitol Oaks Drive, Suite 400
Sacramento, CA 95833

Failure for an applicant or institution to abate the violation(s) listed above or to pay the administrative fine within the time allowed may result in denial of an application for an approval or renewal to operate; disciplinary action, and/or collection action. The Bureau will promptly take all appropriate action to enforce this Citation and recover the civil penalties prescribed therein or found to be due after a hearing.

CONTACT INFORMATION

If you have any questions regarding this Citation, or desire further information, please contact Gurinder Sandhu, Citation Analyst, at 916-431-6940 or Gurinder.sandhu@dca.ca.gov.



Christina Villanueva
Discipline Manager



Date

Enclosures

- Applicable Laws Violated
- Statement of Rights: Appeal Process Information Sheet
- Notice of Appeal of Citation: Request for Informal Conference and/or Administrative Hearing
- Payment of Fine – Waiver of Appeal
- Declaration of Service by Certified and First-Class Mail