



Bureau for Private Postsecondary Education
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APPEAL OF CITATION INFORMAL CONFERENCE
DECISION: CITATION MODIFIED

July 23, 2020

Lucky Kit, LLC., Owner
National Cosmetology Beauty School
315 Eleventh Street
Oakland, CA, 94607

Date of Issuance	Citation Number	Institution Code
July 23, 2020	1920254	0106131

On May 14, 2020, an informal telephone conference was held in the matter of Citation: Assessment of Fine and Order of Abatement No. 1920254 (Citation) against Lucky Kit, LLC., Owner of National Cosmetology Beauty School (Institution). In attendance were Beth Scott, Enforcement Chief, Dalleen Stewart, Owner/Director, and Duncan Stewart, Business Manager.

Pursuant to Business and Professions Code, section 125.9; California Education Code, section 94936; and Title 5 of the California Code of Regulations, section 75020 and section 75040, the Bureau for Private Postsecondary Education (Bureau) renders the following decision relative to your appeal of the Citation No. 1920254.

It is the decision of the Enforcement Chief that on July 17, 2020, Citation No. 1920254 is modified and makes the following change(s):

VIOLATION CODE SECTIONS

#	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>Violation: 5, CCR Section 71930 (c)(1)(d)– Maintenance of Records <i>(c) A record is considered current for three years following a student's completion or withdrawal. A record may be stored on microfilm, microfiche, computer disk, or any other method of record storage only if all of the following apply:</i> <i>(1) The record may be stored without loss of information or legibility for the period within which the record is required to be maintained by the Act;</i> <i>(d) The institution shall maintain a second set of all academic and financial records required by the Act and this chapter at a different location unless the original records, including records stored pursuant to subdivision (b) of this section, are maintained in a manner secure from damage or loss. An acceptable manner of storage under this subsection would include fire resistant cabinets.</i></p> <p>During the investigation, the Institution representative stated that student files are not backed up anywhere offsite or electronically. In addition, the Bureau Investigator found that student files were</p>

located in boxes on the floor in the office. Therefore, the Institution is in violation of 5, CCR Section 71930 for failing to maintain a backup copy of student files and storing original student files in a manner secure from damage or loss.

Order of Abatement:

The Bureau orders the Institution to submit an established policy, or procedure, of how the Institution will maintain future compliance per 5, CCR section 71930(c)(1)(d).

Reason for modification: New substantive facts were presented at the informal conference. The Order of Abatement has been withdrawn.

Assessment of Fine

The fine for this violation is \$1,000.00

The administrative fine for this violation has been modified from \$1,000.00 to \$100.00.

2.

Violation:

5, CCR Section 71750 (b)- Withdrawals and Refunds

(b) An institution may not enforce any refund policy that is not specified in the catalog as required pursuant to section 94909(a)(8)(B) of the Code, and must refund all institutional charges upon a student's withdrawal. Withdrawal policy procedures pursuant to section 94909(a)((8)(B) of the Code shall include, at a minimum: the acceptable methods of delivery of a notice to withdraw; whether withdrawal can be accomplished by conduct, and if so, how; the position or positions to whom the notice to withdraw must be delivered; and the date that the notice to withdraw is considered effective, which shall be no later than the date received by the institution.

CEC Section 94909 (a)(8)(B) - Minimum Requirements for School Catalog

(a) Except as provided in subdivision (d), prior to enrollment, an institution shall provide a prospective student, either in writing or electronically, with a school catalog containing, at a minimum, all of the following:

(8) A detailed description of institutional policies in the following areas:

(B) Cancellation, withdrawal, and refund policies, including an explanation that the student has the right to cancel the enrollment agreement and obtain a refund of charges paid through attendance at the first class session, or the seventh day after enrollment, whichever is later. The text shall also include a description of the procedures that a student is required to follow to cancel the enrollment agreement or withdraw from the institution and obtain a refund consistent with the requirements of Article 13 (commencing with Section 94919).

CEC Section 94919 (b) - Institution Participating in Federal Student Financial Aid Programs

(b) The institution shall advise each student that a notice of cancellation shall be in writing, and that a withdrawal may be effectuated by the student's written notice or by the student's conduct, including, but not necessarily limited to, a student's lack of attendance.

The Institution's withdrawal policy located in the catalog failed to include the information for acceptable methods of delivery of a notice to withdraw, to whom the notice must be delivered, or the date that the notice to withdraw is considered effective.

Order of Abatement:

The Bureau orders the Institution to include the withdrawal policy in their catalog. The policy should include information for acceptable methods of delivery of a notice to withdraw, to whom the

notice must be delivered, or the date that the notice to withdraw is considered effective in the catalog. In addition, the Bureau orders that the Institution submit an established policy, or procedure of how the Institution will maintain future compliance with 5, CCR section 71750 and CEC Sections 94909 and 94919.

Modified Order of Abatement:

The Bureau orders the Institution to continue working with the Licensing Unit to complete the necessary correction.

Reason for modification: New substantive facts were presented at the informal conference.

Assessment of Fine

The fine for this violation is \$1,000.00

The administrative fine for this violation has been modified from \$1,000.00 to \$100.00.

3. **Violation:**

CEC Section 94899.5 (b) – Collection of Tuition

(b) For those programs designed to be four months or longer, an institution shall not require more than one term or four months of advance payment of tuition at a time. When 50 percent of the program has been offered, the institution may require full payment.

During the investigation, the Institution representative stated that the statement “obligated to pay upon enrollment” listed on the Enrollment Agreement meant the amount of money a student was obligated to pay overall after the student had enrolled into the program. The Bureau investigator advised the Institution representative of CEC Section 94899.5. The Institution is in violation of CEC Section 94899.5 for charging the student the full cost of the program upon enrollment.

Order of Abatement:

The Bureau orders the Institution to update the Enrollment Agreement to be in compliance with CEC section 94899.5 and submit proof of compliance to the Bureau. In addition, the Institution is ordered to cease charging the full cost of programs that are four months or longer in length.

Modified Order of Abatement:

The Bureau orders the Institution to continue working with the Licensing Unit to complete the necessary correction.

Reason for modification: New substantive facts were presented at the informal conference.

Assessment of Fine

The fine for this violation is \$2501.00

The administrative fine for this violation has been modified from \$2,501.00 to \$250.00.

4. **Violation:**

CEC Section 94897 (j)(3) - Prohibited Business Practices

(j) In any manner make an untrue or misleading change in, or untrue or misleading statement related to, a test score, grade or record of grades, attendance record, record indicating student completion, placement, employment, salaries, or financial information, including any of the following:

(3) Any other record or document required by this chapter or by the bureau.

	<p>The Bureau investigator reviewed the student file for B.B. and determined it contained misleading statements about the cost of attendance. The 2018 Catalog list the cost of attendance as \$4300.00, however, the student was charged \$4500.00. The Institution is in violation of CEC Section 94897 for failing to document the justification for the increase of price for cost of attendance.</p> <p><u>Order of Abatement:</u> The Bureau orders the Institution to provide a refund in the amount of \$200.00 to student B.B. and provide proof of refund to the Bureau. In addition, submit a policy, or procedure, of how the Institution will maintain compliance per CEC Section 94987(j)(3).</p> <p><u>Modified Order of Abatement:</u> The Bureau orders the Institution to provide proof of attempts to pay student B.B.'s refund.</p> <p><u>Reason for modification:</u> New substantive facts were presented at the informal conference.</p> <p><u>Assessment of Fine:</u> The fine for this violation is <u>\$1,000.00</u></p> <p>The administrative fine for this violation has been modified from \$1,000.00 to <u>\$100.00</u>.</p>
5.	<p><u>DISMISSED</u> <u>Violation:</u> 5, CCR Section 71660 - Notifications of Non-Substantive Changes <i>An institution shall notify the Bureau of a non-substantive change including: change of location of less than 10 miles; addition of a program related to the approved programs offered by the institution; addition of a new branch five miles or less from the main or branch campus; addition of a satellite; and change of mailing address. All such notifications shall be made within 30 days of the change and sent to the Bureau, in writing, to the address listed in section 70020.</i></p> <p>The Bureau Investigator reviewed the student files for M.H. and R.G. and found that they contained an enrollment agreement that listed an unapproved "Esthetician Tutoree" and "Tutor Cosmetology" program. The Institution is in violation of offering unapproved course and failing to submit a non-substantive change notification to the Bureau.</p> <p><u>Order of Abatement:</u> The Bureau orders that the Institution provide a full refund to students M.H. and R.G., as well as any student that enrolled in the Esthetician Tutoree and Tutor Cosmetology programs. The Institution shall provide proof of refunds to the Bureau.</p> <p><u>Reason for modification:</u> New substantive facts were presented at the informal conference. The Order of Abatement is dismissed.</p> <p><u>Assessment of Fine</u> The fine for this violation is <u>\$1000.00</u></p> <p>The administrative fine for this violation has been modified from \$1,000.00 to <u>\$00.00</u>.</p>
6.	<p><u>Violation:</u> 5, CCR Section 76130 (a-e)- Collection and Submission of Assessments <i>"(a) A qualifying institution shall collect the assessment from each student in an educational program at the time it collects the first payment from or on behalf of the student at or after enrollment. The</i></p>

assessment shall be collected for the entire period of enrollment, regardless of whether the student pays the institutional charges in increments.

(b) A qualifying institution shall complete the STRF Assessment Reporting Form (Rev. 2/10) and remit it with the STRF assessments collected from students to be received by the Bureau no later than the last day of the month following the close of the quarter as follows:

(1) April 30 for the first quarter,

(2) July 31 for the second quarter,

(3) October 31 for the third quarter, and

(4) January 31 for the fourth quarter. If the due date falls on a Saturday, Sunday or State or federal holiday, the due date shall be extended to the next regular business day for the Bureau.

If the due date falls on a Saturday, Sunday, or State or federal holiday, the due date shall be extended to the next regular business day for the Bureau.

(c) The STRF Assessment Reporting Form shall contain the following information:

(1) Total number of students who signed enrollment agreements for educational programs during the reporting period; and

(2) Total number of students eligible for STRF who signed enrollment agreements for educational programs during the reporting period; and

(3) The total number of students who signed their enrollment agreement during the reporting period, were eligible for STRF, and who made their first payment during the reporting period; and

(4) The total number of students who signed their enrollment agreement in a previous reporting period, were eligible for STRF, and who made their first payment during the current reporting period; and

and

(5) Total amount of institutional charges after rounding each student's institutional charges to the nearest \$1,000, for all eligible STRF students whose STRF assessment was collected in the reporting period; and (6) Current contact telephone number of the person preparing the form; and

(7) A declaration dated and signed under penalty of perjury by the person preparing the form that the form and any attachments are true and correct.

(d) In the event of a school closure, any collected assessments shall be remitted to the Bureau within seven days following the cessation of instruction.

(e) Submission of all prior reports and assessments required by this section is a condition of renewal."

The Institution has failed to submit a STRF Assessment Reporting Form for the following quarters:

- **Second, Third and Fourth Quarters of 2017; and**
- **Second, Third and Fourth Quarter of 2019.**

On June 29, 2017, the Institution was mailed a notice at, 139 Brook Street, San Carlos, CA 94070, stating that the STRF Assessment Reporting Form for the 2nd quarter of 2017 was due. As of March 12, 2020, the Bureau has not received the STRF Assessment Reporting Form from the Institution.

On October 2, 2017, the Institution was mailed a notice at, 139 Brook Street, San Carlos, CA 94070, stating that the STRF Assessment Reporting Form for the 3rd quarter of 2017 was due. As of March 12, 2020, the Bureau has not received the STRF Assessment Reporting Form from the Institution.

On January 2, 2018, the Institution was mailed a notice at, 139 Brook Street, San Carlos, CA 94070, stating that the STRF Assessment Reporting Form for the 4th quarter of 2017 was due. As of March 12, 2020, the Bureau has not received the STRF Assessment Reporting Form from the Institution.

On June 24, 2019, the Institution was mailed a notice at, 139 Brook Street, San Carlos, CA 94070,

stating that the STRF Assessment Reporting Form for the 2nd quarter of 2019 was due. As of March 12, 2020, the Bureau has not received the STRF Assessment Reporting Form from the Institution.

On September 18, 2019, the Institution was mailed a notice at, 139 Brook Street, San Carlos, CA 94070, stating that the STRF Assessment Reporting Form for the 3rd quarter of 2019 was due. As of March 12, 2020, the Bureau has not received the STRF Assessment Reporting Form from the Institution.

On December 17, 2019, the Institution was mailed a notice at, 139 Brook Street, San Carlos, CA 94070, stating that the STRF Assessment Reporting Form for the 4th quarter of 2019 was due. As of March 12, 2020, the Bureau has not received the STRF Assessment Reporting Form from the Institution.

Order of Abatement:

The Bureau orders that the Institution submit the delinquent STRF Assessment Reporting Forms for the quarters listed above. The information provided shall comply with "Record Keeping Requirements" Pursuant to 5, CCR section 76140.

Reason for modification: New substantive facts were presented at the informal conference. The Order of Abatement has been satisfied.

Assessment of Fine

The fine for this violation is \$50.00

TOTAL MODIFIED ADMINISTRATIVE FINE DUE: \$600.00

ORDER OF ABATEMENT

The Bureau orders that you comply with the orders described in the 'Violation Code Sections' of this document and submit evidence of compliance within 30 days from the date of this decision.

PENALTY – ASSESSMENT OF A FINE

Payment of the administrative fine is due within 30 days from the date of this decision. Please complete the Payment of Fine form. Payment must be made to the Bureau by check, or money order. Please include the citation number on the payment of the fine assessment. Payment of the administrative fine shall not constitute an admission of the violation(s) charged and shall be represented as satisfactory resolution of the matter for purposes of public disclosure. Payments may be mailed to:

Gabriella Perez, Discipline Citation Program
Bureau for Private Postsecondary Education
1747 N. Market Blvd., Suite 225
Sacramento, CA 95834

APPEAL OF CITATION

You *do not* have the right to request another Informal Conference to appeal this modified Citation. If you did not initially request an Administrative Hearing within 30 days from when the original citation was issued, you can no longer request one.

EFFECTIVE DATE OF CITATION AND FINE ASSESSMENT

This modified Citation is effective on **July 23, 2020**. The Order of Abatement and payment of administrative fine are due by **August 22, 2020**.

Failure to abate the violation or to pay the administrative fine within the time allowed is grounds for denial of an application for an approval to operate or discipline. The Bureau will promptly take all appropriate action to enforce the Modified 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 decision or desire further information, please contact Gabriella Perez, Citation Analyst, at (916) 574-8969 or at Gabriella.Perez@dca.ca.gov.

Original signature on file”

“7/23/2020”

Christina Villanueva
Discipline Manager

Date

Enclosures

- Payment of Fine
- Declaration of Service by Certified and First-Class Mail