

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

In the Matter of the First Amended Statement of
Issues Against:

**AMERICAN LIBERTY UNIVERSITY,
KEVIN SOLTANI, Owner**

Respondent.

BPPE Case No. 1002965

OAH No. 2018110412

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Director of the Department of Consumer Affairs as the Decision in the above-entitled matter.

This Decision shall become effective on OCT 11 2019.

IT IS SO ORDERED this 10th day of September, 2019.



RYAN MARCROFT
Deputy Director, Legal Affairs
Department of Consumer Affairs

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PROPOSED DECISION

Adam L. Berg, Administrative Law Judge, Office Administrative Hearings, State of California, heard this matter on May 22, 2019, in San Diego, California.

Marichelle S. Tahimic, Deputy Attorney General, Department of Justice, State of California, represented complainant, Dr. Michael Marion, Jr., Chief of the Bureau for Private Postsecondary Education (bureau), Department of Consumer Affairs, State of California.

Constance Smith, Attorney at Law, made a special appearance on behalf of Lawrence Hoodack, Attorney at Law, who represented respondent, American Liberty University (ALU).¹

The matter was submitted for decision on May 22, 2019.

FACTUAL FINDINGS

Jurisdictional Issues

1. On October 2, 2001, respondent, a California corporation owned by Kevin Soltani, Ph.D., submitted to the bureau's predecessor, the Bureau for Private Postsecondary and Vocational Education (BPPVE), an Application for Approval to Operate an Institution Non-Accredited. Respondent sought approval to offer degree programs in Business

¹ The sole purpose of Ms. Smith's appearance was to renew respondent's request for a continuance, which had been previously denied. There was no other appearance by or on behalf of respondent.

Administration and Alternative Medicine, including a Doctor of Philosophy (Ph.D.) of Business Administration and Alternative Medicine, and a diploma program in acupuncture.

2. On May 13, 2004, the BPPVE issued respondent a temporary approval to operate and authorized respondent to offer the following degree programs: Bachelor of Science in Business Administration, Master of Business Administration (MBA), Ph.D. in Business Administration, and Ph.D. in Traditional Oriental Medicine. Respondent was also authorized to offer a non-degree diploma in acupuncture and post licensure studies in Traditional and Oriental Medicine.

3. After one renewal, the temporary approval expired on December 31, 2006. The date passed without the BPPVE taking any further action.

4. The BPPVE sunset as an agency on July 1, 2007. Respondent continued to operate as an institution.

5. The bureau was established on January 1, 2010, pursuant to the California Private Postsecondary Education Act of 2009 (Act). (Ed. Code, § 94800, et seq.). Under the Act, an institution that had filed an application for approval to operate with the BPPVE could continue to operate pending a decision on the application by the bureau; however, the institution was required to comply with the Act and the bureau's regulations. (Ed. Code, § 94809, subd. (a).) As no decision had been made on respondent's application, respondent has been permitted to operate since this time.

6. On August 2, 2017, the bureau issued respondent a Notice of Denial of Application for Approval to Operate. Respondent requested an administrative hearing.

7. On April 12, 2019, complainant filed the First Amended Statement of Issues seeking denial of respondent's application. Complainant alleged seven causes to deny the application based on respondent's failure to demonstrate capacity to meet minimum operating standards in instruction, educational programs, faculty, undergraduate degree program, and graduate degree program; failure to comply with the requirement of accreditation; and failure to provide records to the bureau.

8. On November 13, 2018, OAH served respondent with a Notice of Trial Date and Date for Settlement Conference, which stated the hearing was scheduled to commence on May 21, 2019, and last for three days. On May 16, 2019, respondent filed a motion for a continuance. On May 17, 2019, the motion was denied for failure to establish good cause for a continuance. On May 19, 2019, respondent filed a request for reconsideration of the denial of the motion for a continuance. In response to the request, an administrative law judge vacated the first day of the scheduled hearing, May 21, 2019, so that respondent could provide additional information in support of the motion. Respondent filed a second request for reconsideration on May 21, 2019. That request was denied, and the parties were notified that the hearing would commence as scheduled on May 22, 2019.

9. On the day of the hearing Ms. Smith made a limited appearance in order to renew the request for a continuance. This request was denied. All of complainant's exhibits were received as evidence.² There was no appearance by or on behalf of respondent for the purpose of submitting evidence in support of the application. The matter proceeded without respondent's participation, as Dr. Soltani elected not to appear at the hearing, despite having been properly notified that his motion for a continuance had been denied.

Evidence Related to Ability to Meet Minimum Operating Standards

10. On June 7, 2011, respondent submitted to the bureau an application to change its educational objectives by adding a Master of Science in Acupuncture and Oriental Medicine degree program, English as a Second Language certificate, and a Therapeutic Clinical Massage certificate. In addition, respondent requested to change the name of the Ph.D. in Traditional Oriental Medicine to Ph.D. in Oriental Medicine.

11. On December 11, 2013, respondent submitted to the bureau an application to add a Ph.D. in Business Administration degree program.

12. On September 17, 2014, bureau staff conducted an informal site visit at respondent's institution. During the visit, bureau staff requested certain documents related to the program. On September 22, 2014, Drew Saeteune, now a Senior Education Specialist with the bureau, sent a letter to Dr. Soltani requesting specific documentation that was requested by bureau staff during the September 17, 2014, visit, as well as documentation related to respondent's request to change educational objectives. On October 3, 2014, respondent responded to the bureau's request for documents.

13. On March 6, 2017, Mr. Saeteune, and Michele Alleger, a bureau Compliance Manager, conducted an inspection of respondent's institution with Jay Herdt, L.Ac., the Education Coordinator for the California Board of Acupuncture. Mr. Herdt's role was as a consultant to the bureau with regard to respondent's Acupuncture and Oriental Medicine programs. Mr. Herdt found respondent's doctoral program atypical. The program stated it was to be research and dissertation based, but the coursework implied more of a clinical professional training curriculum, rather than a solely research-backed doctoral program. For example, the catalog identified numerous clinical programs in oriental medicine and acupuncture, which were inconsistent with an academically based research program. Mr. Herdt had concerns that faculty teaching the clinical programs were not licensed. In addition, many students identified in the program were not licensed. This was problematic because a student could not participate in a clinical training program without being licensed or enrolled in a Board of Acupuncture approved educational establishment.

² Ms. Smith lodged a standing objection to the introduction of all evidence offered by complainant. Because complainant did not offer all of the exhibits listed on its exhibit list, Ms. Smith moved to have all of the remaining documents admitted.

Dr. Soltani advised the bureau that respondent currently did not have any active students because it was awaiting accreditation. No classrooms or clinic facilities were set up to accommodate students at the physical address. This information seemed to conflict with other information showing the school did have active students.

At the conclusion of the inspection, the bureau issued respondent a Notice to Comply. Dr. Soltani refused to post the Notice to Comply as required and became agitated. Dr. Soltani instructed the inspectors to leave. Before leaving, Mr. Saeteune asked a school representative for the copies of student records Mr. Saeteune had requested earlier during the visit. Dr. Soltani intervened and stated, "I'm not giving you guys shit. You guys get nothing." At this point, all members of the site team left without having been provided copies.

14. The evidence established the following areas that the bureau observed and identified that were below the minimum operating standards:

a. Respondent's curriculum and syllabi for the Oriental Medicine program require clinical practice in acupuncture techniques, but such instruction was not provided. It was noted during the March 6, 2017, inspection that the institution did not provide any clinical instruction. In addition, the syllabi provided for the Business Administration program listed course titles that were Business Administration-related (e.g., personnel law, special topics in international trade, international organizations), but a review of the syllabi showed that the course contents related to Oriental Medicine, not Business Administration. Consequently, respondent had not developed an educational program that was comprised of curriculum that included those subject areas that are necessary for a student to achieve the educational objectives in the program in which the student is enrolled.

b. Respondent's syllabi or course outlines for each course lacked the following key components: a statement of educational objectives; length of the educational program; sequence and frequency of lessons or class sessions; complete citations of textbooks and other required written materials (the textbooks were also outdated); sequential and detailed outlines of subject matter to be addressed or a list of skills to be learned and how those skills are to be measured; instructional mode or methods; and specific learning outcomes tied to the sequence of the presentation of the material to measure the students' learning of the material.

c. Respondent's instructors did not possess the requisite academic, experimental, and professional qualifications. There were no instructors who possess the necessary qualifications to teach Business Administration at the doctorate level or to serve on the students' doctoral committees. Only two of the seven Business Administration faculty appeared qualified to teach at the Masters in Business Administration program and only three appeared qualified to teach the core courses of the Bachelor in Business Administration program. Four of the faculty members had degrees unrelated to business administration. In addition, there were faculty serving on the Ph.D. in Traditional Oriental Medicine doctoral committee who did not possess a doctorate in that subject matter. Finally, respondent's 2017/2018 catalog did not include any faculty information such as departments, faculty

name, or faculty credentials. Respondent failed to provide the bureau with updated contracts between it and faculty members.

d. Respondent did not meet the minimum operating standards to award an undergraduate degree for the Bachelor in Business Administration program. Respondent had not developed a curriculum and syllabi that met the minimum operating standards or documented that students would achieve the sequential learning equivalent in general education and achievement in business administration.

e. Respondent did not meet the minimum operating standards to award a graduate degree as follows: Respondent failed to demonstrate that its students would acquire the achievement of learning in Business Administration that is equivalent in depth to that normally acquired in a minimum of 30 semester credits or its equivalent, or one year of study beyond the bachelor's degree for the attainment of a Master of Business Administration. Respondent failed to demonstrate that its students would acquire in-depth knowledge that is equivalent to three years of study at the graduate level for a Ph.D. in Business Administration, including substantial instruction in both theory and research at the advanced level. Respondent did not have faculty members who were qualified to facilitate the program or serve on the doctoral committees. Finally, respondent did not demonstrate that it provided clinical training, despite the fact that the curriculum indicated clinical training was provided in the program.

Evidence Related to Accreditation

15. On January 1, 2015, new statutory provisions became effective pursuant to Senate Bill 1247. One of its requirements was that private postsecondary institutions offering degree programs must achieve full accreditation by an accrediting agency recognized by the United States Department of Education (DoEd) by July 1, 2020. For institutions offering at least one degree program that obtained an approval to operate by the bureau on or before January 1, 2015, the statute required an institution to either achieve full accreditation or an accreditation plan no later than July 1, 2015. (Ed. Code, § 94885.1.) The accreditation plan required the institution to identify a DoEd-recognized accrediting agency and outline the process by which the institution would achieve accreditation candidacy or pre-accreditation by July 1, 2017, and full accreditation by July 1, 2020. (*Id.* at subd. (c).)

16. On June 26, 2015, respondent provided its initial accreditation plan to meet the requirements of Section 94885.1, and selected the Accrediting Council for Independent Colleges and Schools (ACICS) as its accreditor.

17. On September 15, 2016, respondent notified the bureau that it would no longer be seeking ACICS accreditation and was changing its accreditor to the Distance Education Accrediting Council (DEAC).

18. In May 2017, respondent again changed the identified accreditor to the Transnational Association of Christian Colleges and Schools (TRACS).

19. On July 21, 2017, the bureau sent respondent an Order Suspending Approval to Operate Degree Granting Programs because respondent failed to achieve pre-accreditation or candidacy by July 1, 2017. Respondent requested an extension of time to achieve accreditation candidacy or pre-candidacy, and the bureau rescinded the order of suspension pending a decision on the request for an extension.

20. On August 28, 2017, the bureau denied respondent's request for an extension because respondent had failed to demonstrate strong progress toward obtaining accreditation. The bureau noted that respondent initially selected ACICS, and later, DEAC, as accreditors; however, respondent never made notable progress toward achieving accreditation. Finally, in the last week of June 2017, respondent named TRACS as the proposed accreditor, despite the fact that respondent has never identified as a religious institution. None of the information respondent provided indicated that respondent was likely to meet TRAC's accreditation requirements.

21. With the denial of an extension request, the bureau re-issued an Order Suspending Approval to Operate Degree Granting Programs. Respondent appealed the suspension order through an informal office conference held on January 12, 2018, by the designee of the Director of Consumer Affairs. Following the informal conference, the Director's designee upheld the suspension of respondent's approval to operate degree programs in accordance with Education Code section 94885.1.

22. On September 6, 2018, the bureau issued respondent a citation for failing to suspend its degree programs. Respondent did not appeal the citation.

Respondent's Evidence

23. Respondent did not submit any evidence in support of its application.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Except as otherwise provided by law, a party asserting at an administrative hearing that he or she should be granted a certain benefit, such as a license or permit, has the burden to establish by a preponderance of the evidence that he or she should be granted that benefit. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-52.) "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that one is unable to say that the evidence on either side of an issue preponderates, the finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

Statutory and Regulatory Authority

2. Education Code sections 94802 et seq. outlines the transition provisions for institutions that were granted approvals to operate by the BPPVE, or had applications pending at the time the agency sunset. Under Section 94802, an institution that had a valid approval to operate on June 30, 2007, would maintain that approval under the Act and would be valid for three years after the expiration date of the approval, as it read on June 30, 2007. Under Section 94804, subdivision (a), each unresolved matter submitted to the BPPVE prior to July 1, 2007, would be deemed to remain pending before the bureau. Under Section 94809, an institution that had an application for an approval to operate pending with the BPPVE on June 30, 2007, could continue to operate until the bureau makes a decision on the institution's application for approval to operate, but the institution must comply with, and is subject to, the Act.

3. Education Code section 94887 provides:

An approval to operate shall be granted only after an applicant has presented sufficient evidence to the bureau, and the bureau has independently verified the information provided by the applicant through site visits or other methods deemed appropriate by the bureau, that the applicant has the capacity to satisfy the minimum operating standards. The bureau shall deny an application for an approval to operate if the application does not satisfy those standards.

4. Education Code section 94885.1 provides:

(a) An institution that is not accredited by an accrediting agency recognized by the United States Department of Education and offering at least one degree program, and that has obtained an approval to operate from the bureau on or before January 1, 2015, shall be required to satisfy at least one of the following no later than July 1, 2015:

(1) Accreditation by an accrediting agency recognized by the United States Department of Education, with the scope of that accreditation covering the offering of at least one degree program by the institution.

(2) Compliance with subdivision (b).

(b) The bureau shall identify institutions that are subject to subdivision (a) and notify those institutions by February 1, 2015, of the accreditation requirements pursuant to this section and that the institution is required to provide the following

information to the bureau if the institution plans to continue to offer a degree program after July 1, 2015:

(1) An accreditation plan that, at a minimum, identifies an accrediting agency recognized by the United States Department of Education from which the institution will seek accreditation, with the scope of that accreditation covering the offering of at least one degree program, and outlines the process by which the institution will achieve accreditation candidacy or pre-accreditation by July 1, 2017, and full accreditation by July 1, 2020.

(2) Evidence of having achieved accreditation candidacy or pre-accreditation by July 1, 2017.

(3) Evidence of having obtained full accreditation by July 1, 2020.

(4) Any additional documentation the bureau deems necessary.

¶ . . . ¶

(e) Any institution that fails to comply with the requirements of this section by the dates provided, as required, shall have its approval to operate automatically suspended on the applicable date. The bureau shall issue an order suspending the institution and that suspension shall not be lifted until the institution complies with the requirements of this section. A suspended institution shall not enroll new students in any of its degree programs, and shall execute a teach-out plan for its enrolled students.

5. Education Code section 94932 provides:

The bureau shall determine an institution's compliance with the requirements of this chapter. The bureau shall have the power to require reports that institutions shall file with the bureau in addition to the annual report, to send staff to an institution's sites, and to require documents and responses from an institution to monitor compliance. When the bureau has reason to believe that an institution may be out of compliance, it shall conduct an investigation of the institution. If the bureau determines, after completing a compliance inspection or investigation, that an institution has violated any applicable law

or regulation, the bureau shall take appropriate action pursuant to this article.

6. California Code of Regulations, title 5, section 71700 states: "The Bureau may request that an institution document compliance with the standards set forth in the Act and this Division to obtain and maintain an approval to operate."

7. California Code of Regulations, title 5, section 71710 provides:

In order to meet its mission and objectives, the educational program defined in section 94837 of the Code shall be comprised of a curriculum that includes:

(a) those subject areas that are necessary for a student to achieve the educational objectives of the educational program in which the student is enrolled;

(b) subject areas and courses or modules that are presented in a logically organized manner or sequence to students;

(c) course or module materials that are designed or organized by duly qualified faculty. For each course or module, each student shall be provided with a syllabus or course outline that contains:

(1) a short, descriptive title of the educational program;

(2) a statement of educational objectives;

(3) length of the educational program;

(4) sequence and frequency of lessons or class sessions;

(5) complete citations of textbooks and other required written materials;

(6) sequential and detailed outline of subject matter to be addressed or a list of skills to be learned and how those skills are to be measured;

(7) instructional mode or methods.

8. California Code of Regulations, title 5, section 71715, subdivision (b), provides: "The institution shall document that the instruction offered leads to the achievement of the learning objectives of each course."

9. California Code of Regulations, title 5, section 71720, subdivision (a), provides as follows with regard to an educational program leading to a degree:

(1) An institution offering an educational program that leads to a degree shall employ duly qualified faculty sufficient in number to provide the instruction, student advisement, and learning outcomes evaluation necessary for the institution to document its achievement of its stated mission and objectives, and for students to achieve the specific learning objectives of each course offered . . .

10. California Code of Regulations, title 5, section 71850 provides:

Graduation requirements for an undergraduate degree program shall meet minimum credit requirements and shall include provisions for general education appropriate to the level and type of degree. The institution shall specify the distribution of general education credit requirements by subject area for each undergraduate degree program.

(a) A Bachelor's degree may be awarded to a student whom the institution can document has achieved sequential learning equivalent in general education and equivalent in depth of achievement in a designated major field to that acquired in four years of study beyond high school, as measured by a minimum of 120 semester credits or its equivalent. At least 25 percent of the credit requirements for a Bachelor's degree shall be in general education.

11. California Code of Regulations, title 5, section 71865 provides in part:

(a) A Master's degree may only be awarded to a student who demonstrates at least the achievement of learning in a designated major field that is equivalent in depth to that normally acquired in a minimum of 30 semester credits or its equivalent or one year of study beyond the Bachelor's degree.

[¶] . . . [¶]

(c)(1) A Doctor of Philosophy degree (Ph.D.) is a research-oriented degree requiring a minimum of three years of full-time graduate education or the equivalent in part-time study. Such a doctoral program shall include substantial instruction in both theory and research at an advanced level in a designated field and specialty, and may only be awarded to a student who has

completed a program of study that includes research methodology and demonstrated learning achievement through original research directly attributable to the student. Each educational program leading to a Doctor of Philosophy degree shall involve preparation for scholarship and systematic inquiry.

(2)(A) Each Doctor of Philosophy program shall include a minimum of two formal evaluations of the student by a doctoral committee. The doctoral committee shall be composed of at least three members of the institution's own faculty who meet the qualifications in subdivision (c)(3).

[¶] . . . [¶]

(3) The faculty members who serve on each student's doctoral examining committee shall meet the following qualifications:

(A) Each member shall have earned a Doctoral degree from: an institution that is approved by the Bureau or previously approved by a predecessor agency of the Bureau; or an accredited institution in the United States or Canada; or other state approved institution that documents that the institution at which the faculty member earned his or her degree is equivalent to an institution that is approved by the Bureau; or an institution outside the United States or Canada and in addition provides a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES).

(B) The chair and the majority of the committee shall have earned degrees related to the student's field of investigation.

(C) A minimum of 50% of the faculty on the committee shall have degrees conferred by an institution accredited by an accrediting association recognized by the United States Department of Education or the American Bar Association, unless the accreditation does not exist.

(D) All of the faculty shall have three or more years of field or research experience related to their degrees obtained after they obtained their degrees.

(E) All of the faculty shall have been active in their field of scholarship or profession during the five year period preceding their participation on the committee.

12. California Code of Regulations, title 5, section 71930, subdivision (e), provides: "All records that the institution is required to maintain by the Act or this chapter shall be made immediately available by the institution for inspection and copying during normal business hours by the Bureau and any entity authorized to conduct investigations."

Evaluation

FIRST CAUSE FOR DENIAL

13. Cause exists to deny respondent's application pursuant to Education Code section 94887 and Regulation³ 71710, subdivision (a), and 71715, subdivision (b). A preponderance of evidence failed to demonstrate respondent's capacity to meet the minimum operating standards in instruction. The learning objectives of the Oriental Medicine program required clinical practice but respondent does not provide such instruction. In addition, the syllabi provided for the Business Administration program listed course titles that are Business Administration-related, but the actual course syllabi indicated they related to oriental medicine. Consequently, respondent has not developed an educational program that is comprised of curriculum that includes those subject areas that are necessary for a student to achieve the educational objectives in the program in which the student is enrolled.

SECOND CAUSE FOR DENIAL

14. Cause exists to deny respondent's application pursuant to Education Code section 94887 and Regulation 71710, subdivision (c). A preponderance of evidence failed to demonstrate respondent's capacity to meet the minimum operating standards in that syllabi or course outlines for each course did not contain the required information contained in Regulation 71710, subdivision (c).

THIRD CAUSE FOR DENIAL

15. Cause exists to deny respondent's application pursuant to Education Code section 94887 and Regulation 71720. A preponderance of evidence failed to demonstrate respondent's capacity to meet the minimum operating standards with regards to faculty. There are no instructors who possess the necessary qualifications to teach Business Administration at the doctorate level or to serve on the students' doctoral committees. Only two of the seven Business Administration faculty appear qualified to teach at the Masters in Business Administration program and only three appear qualified to teach the core courses of the Bachelor in Business Administration program. Four of the faculty members have degrees unrelated to business administration. In addition, there were faculty serving on the Ph.D. in Traditional Oriental Medicine doctoral committee who do not possess a doctorate in that subject matter.

³ All future references to "Regulation" are to sections contained in California Code of Regulations, title 5.

FOURTH CAUSE FOR DENIAL

16. Cause exists to deny respondent's application pursuant to Education Code section 94887 and Regulation 71850, subdivision (a). A preponderance of evidence failed to demonstrate respondent's capacity to meet the minimum operating standards to award an undergraduate degree for the Bachelor in Business Administration program. Respondent has not developed a curriculum and syllabi that meet the minimum operating standards or document that students will achieve the sequential learning equivalent in general education and achievement in business administration.

FIFTH CAUSE FOR DENIAL

17. Cause exists to deny respondent's application pursuant to Education Code section 94887, Regulation 71865, subdivision (a) and (c), and Regulation 71715, subdivision (b). A preponderance of evidence failed to demonstrate respondent's capacity to meet the minimum operating standards to award a graduate degree. It was not established that students would acquire the achievement of learning in Business Administration that is equivalent in depth to that normally acquired in a minimum of 30 semester credits or its equivalent, or one year of study beyond the bachelor's degree for the attainment of a Master of Business Administration. It was not established that students will acquire in-depth knowledge that is equivalent to three years of study at the graduate level for a Ph.D. in Business Administration, including substantial instruction in both theory and research at the advanced level. Respondent does not have faculty members who are qualified to facilitate the program or serve on the doctoral committees. Finally, respondent did not demonstrate that it provides clinical training, despite the fact that the curriculum indicates clinical training is provided in the program.

SIXTH CAUSE FOR DENIAL

18. Cause does not exist to deny the application pursuant to Education Code section 94885.1, subdivisions (a) and (b). The First Amended Statement of Issues did not charge Education Code section 94887 in conjunction with this cause for denial, and Section 94885.1 does not contain any independent basis to deny an application. Section 94885.5 requires an institution seeking to offer one or more degree programs that has not been accredited to satisfy certain requirements in order to be issued a provisional approval to operate, but complainant did not cite this section.⁴

⁴ Additionally, the bureau's reliance on Section 94885.1 is problematic. It was uncontested that respondent failed to satisfy the deadlines to achieve accreditation candidacy or pre-accreditation as outlined in subdivision (b). However, the applicability of Section 94885.1 itself depends on whether respondent "has obtained an approval to operate from the bureau on or before January 1, 2015." (Ed. Code, § 94885.1, subd. (a).) If not, then the requirements of subdivision (b), do not apply. The bureau's position appears to be that the BPPVE's grant of a temporary approval to operate in 2004, in conjunction with the transition provisions (commencing with Section 94802), constitute an "approval to operate." However,

SEVENTH CAUSE FOR DENIAL

19. Cause exists to deny respondent's application pursuant to Education Code section 94932, Regulation 71700, and Regulation 71930, subdivision (e). A preponderance of evidence failed to establish that respondent made requested records available during the bureau's inspection on March 6, 2017.

Denial of the Application is Required for Public Protection

20. Consumer protection is the bureau's highest priority. (Ed. Code, § 94875.) Respondent had the burden of demonstrating that it was currently capable of meeting the minimum standards to operate a private postsecondary institution in California. The evidence established that respondent failed to demonstrate the capacity to meet minimum operating standards in numerous areas. Respondent offered no evidence in support of its application. The bureau's denial of the application is affirmed.

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this construction is at odds with the plain statutory language of Section 94885.1, subdivision (a). The term "approval to operate" is defined in the Act as, "the authorization pursuant to this chapter [the Act] to offer to the public and to provide postsecondary educational programs, as well as the written document issued to an institution signifying its approval to operate." (Ed. Code, § 94817.) The term "bureau" is defined as the Bureau for Private Postsecondary Education. (Ed. Code, § 94820.) Applying these definitions, respondent was never granted an approval to operate by the bureau under the provisions of the Act. The fact that respondent at one time had a temporary approval from the BPPVE, and, in accordance with the transition provisions, was permitted to remain in operation due to a pending application, is not an "approval to operate" granted by the bureau. Nevertheless, whether Section 94885.1 is applicable to respondent is an issue that need not be decided in this decision. It is noted that respondent has never raised the issue at this hearing, in an appeal of the citation, or during the informal conference challenging the suspension order. In addition, the bureau was not provided an opportunity to brief the issue to support its position.

ORDER

The application of respondent, American Liberty University, Kevin Soltani, owner, for approval to operate an institution not accredited is denied.

DATED: June 18, 2019

DocuSigned by:



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ADAM L. BERG

Administrative Law Judge

Office of Administrative Hearings