

1 XAVIER BECERRA
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 CARTER OTT
Deputy Attorney General
4 State Bar No. 221660
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3485
6 Facsimile: (415) 703-5480
E-mail: Carter.Ott@doj.ca.gov
7 *Attorneys for Complainant*

8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION**
STATE OF CALIFORNIA
11

12 In the Matter of the Accusation Against:

Case No. 1004881

13 **OIKOS UNIVERSITY**
14 **7901 Oakport Street, Ste. 3000**
Oakland, CA 94621

ACCUSATION

15 **Accredited Institution Approval to Operate**
16 **No. 93159648**

17 Respondent.

18
19 **PARTIES**

20 1. Dr. Michael Marion, Jr. (Complainant) brings this Accusation solely in his official
21 capacity as the Chief of the Bureau for Private Postsecondary Education, Department of
22 Consumer Affairs.

23 2. On or about May 13, 2011, the Bureau for Private Postsecondary Education (Bureau)
24 issued Respondent Oikos University, a California non-profit corporation, Non-Accredited
25 Institution Approval to Operate Number 93159648. Respondent's Non-Accredited Institution
26 Approval to Operate expired on May 12, 2016 and was superseded by Accredited Institution
27 Approval to Operate Number 93159648, issued by the Bureau on or about December 22, 2016.
28

1 The Accredited Institution Approval to Operate was in full force and effect at all times relevant to
2 the charges brought in this Accusation, and will expire on May 31, 2021, unless renewed.

3 **JURISDICTION**

4 3. This Accusation is brought before the Director of the Department of Consumer
5 Affairs (Director) for the Bureau for Private Postsecondary Education, under the authority of the
6 following laws. All section references are to the Education Code (Code) unless otherwise
7 indicated.

8 4. Business and Professions Code section 118, subdivision (b) states:

9 “(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
10 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
11 order of a court of law, or its surrender without the written consent of the board, shall not, during
12 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
13 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
14 provided by law or to enter an order suspending or revoking the license or otherwise taking
15 disciplinary action against the licensee on any such ground.”

16 5. Section 94875 states:

17 “The Bureau for Private Postsecondary Education, as established by Section 6 of Chapter
18 635 of the Statutes of 2007, is continued in existence and shall commence operations. This
19 chapter establishes the functions and responsibilities of the bureau, for the purposes of Section 6
20 of Chapter 635 of the Statutes of 2007. The bureau shall regulate private postsecondary
21 educational institutions through the powers granted, and duties imposed, by this chapter. In
22 exercising its powers, and performing its duties, the protection of the public shall be the bureau's
23 highest priority. If protection of the public is inconsistent with other interests sought to be
24 promoted, the protection of the public shall be paramount.”

25 6. Section 94936 states:

26 “(a) As a consequence of an investigation, which may incorporate any materials obtained or
27 produced in connection with a compliance inspection, and upon a finding that the institution has
28 committed a violation of this chapter or that the institution has failed to comply with a notice to

1 comply pursuant to Section 94935, the bureau shall issue a citation to an institution for violation
2 of this chapter, or regulations adopted pursuant to this chapter.

3 “(b) The citation may contain any of the following:

4 “(1) An order of abatement that may require an institution to demonstrate how future
5 compliance with this chapter or regulations adopted pursuant to this chapter will be
6 accomplished.

7 “(2) Notwithstanding Section 125.9 of the Business and Professions Code, an
8 administrative fine not to exceed five thousand dollars (\$5,000) for each violation. The bureau
9 shall base its assessment of the administrative fine on:

10 “(A) The nature and seriousness of the violation.

11 “(B) The persistence of the violation.

12 “(C) The good faith of the institution.

13 “(D) The history of previous violations.

14 “(E) The purposes of this chapter.

15 “(F) The potential harm to students.

16 “(3) An order to compensate students for harm, including a refund of moneys paid to the
17 institution by or on behalf of the student, as determined by the bureau.

18 “(c)(1) The citation shall be in writing and describe the nature of the violation and the
19 specific provision of law or regulation that is alleged to have been violated.

20 “(2) The citation shall inform the institution of its right to request a hearing in writing
21 within 30 days from service of the citation.

22 “(3) If a hearing is requested, the bureau shall select an informal hearing pursuant to Article
23 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the
24 Government Code or a formal hearing pursuant to Chapter 5 (commencing with Section 11500)
25 of Part 1 of Division 3 of Title 2 of the Government Code.

26 “(4) If a hearing is not requested, payment of the administrative fine is due 30 days from the
27 date of service, and shall not constitute an admission of the violation charged.

28

1 “(5) If a hearing is conducted and payment of an administrative fine is ordered, the
2 administrative fine is due 30 days from when the final order is entered.

3 “(6) The bureau may enforce the administrative fine as if it were a money judgment
4 pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

5 “(d) All administrative fines shall be deposited in the Private Postsecondary Education
6 Administration Fund.”

7 **STATUTORY PROVISIONS**

8 7. California Code of Regulations, title 5, section 75020 states, in part:

9 “(a) The Bureau Chief, or his or her designee, or the Director's designee, is authorized to
10 issue citations containing orders of abatement and/or administrative fines pursuant to section
11 94936 of the Code against approved private, postsecondary institutions that have committed any
12 acts or omissions that are in violation of the Act or any regulation adopted pursuant thereto.

13 . . .

14 “(c) In addition to the requirements of section 94936 of the Code, each citation shall inform
15 the cited institution or person that:

16 “(1) if a hearing pursuant to the Administrative Procedure Act (APA) is not requested,
17 payment of the administrative fine is due 30 days from the date of service, and shall not constitute
18 an admission of the violation charged.

19 . . .

20 “(3) if the cited institution or person desires an informal conference to contest the finding of
21 a violation prior to an APA hearing, the informal conference shall be requested by written notice
22 to the Bureau within 30 days from service of the citation;

23 “(4) failure to comply with any order of abatement within the time set forth in the citation,
24 unless the citation is being appealed, may result in disciplinary action being taken by the Bureau;
25 and

26 “(5) the Bureau may enforce the administrative fine as if it were a money judgment
27 pursuant to the California Code of Civil Procedure (beginning with section 680.010).
28

1 “(d) Each citation shall be served on the cited institution or person, in person, or by certified
2 and regular mail at the address of record on file with the Bureau. Citations served by certified and
3 regular mail shall be deemed “served” on the date of mailing.

4”

5 8. California Code of Regulations, title 5, section 75040 states, in part:

6 “(a) Pursuant to section 94936(c)(2) of the Code, a cited institution or person may, within
7 30 days of service of the citation, request a hearing in writing to the Bureau, or it is waived. In
8 addition to contesting a citation by requesting a hearing, the cited institution or person may,
9 within the same 30 days, submit a written request to the Bureau for an informal conference.

10 “(b) The Bureau Chief, or his or her designee, or the Director, or his or her designee, shall
11 within 30 days from the Bureau's receipt of a written request for an informal conference, hold an
12 informal conference with the cited institution or person. The 30-day period may be extended by
13 the Bureau Chief or the Director for good cause. The informal conference may be by telephone.

14 “(c) Following the informal conference, the Bureau Chief, or his or her designee, or the
15 Director, or his or her designee, will affirm, modify, or dismiss the citation, including any fine
16 assessed and/or order of abatement issued. A written order affirming, modifying, or dismissing
17 the original citation shall be served on the cited institution or person within 30 days from the
18 informal conference. If the order affirms or modifies the original citation, said order shall fix a
19 reasonable period of time for abatement of the violation and/or payment of the fine of not more
20 than 30 days.

21 . . .

22 “(g) If a written request for a hearing pursuant to section 94936(c)(2) of the Code, or for an
23 informal conference as provided in subsection (a), or both, is not submitted to the Bureau within
24 30 days from service of the citation, the cited institution or person is deemed to have waived the
25 right to an informal conference and/or administrative hearing.”

26 9. California Code of Regulations, title 5, section 75050 states, in part:

27 “(a) If a cited institution or person that or who has been issued an order of abatement is
28 unable to complete the correction within the time set forth in the citation because of conditions

1 beyond the institution's or person's control after the exercise of reasonable diligence, the
2 institution or person may request an extension of time within which to complete the correction.
3 Such a request shall be in writing and shall be made within the time set forth for abatement.

4 “(b) Failure of an applicant or institution issued an approval to operate to abate the violation
5 or to pay the fine within the time allowed is a ground for denial or discipline of an approval to
6 operate.

7”

8 **COST RECOVERY**

9 10. Business and Professions Code section 125.3 provides, in part, that the Bureau may
10 request the administrative law judge to direct a licentiate found to have committed a violation or
11 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
12 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not
13 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
14 may be included in a stipulated settlement.

15 **FACTUAL BACKGROUND**

16 11. On or about January 23, 2019, the Bureau issued Citation Number 1819092 to
17 Respondent, alleging Respondent violated Education Code section 94927. The citation included
18 a fine as well as an order of abatement, in part, directing Respondent to “issue refunds of all
19 institutional charges to all students affected by the closure of [Respondent’s] Associate of Science
20 in Nursing [] program within 45 days.” On or about February 4, 2019, Respondent appealed the
21 Citation and requested an informal conference. Respondent declined to request an administrative
22 hearing.

23 12. The informal conference was held on or about February 19, 2019. Following the
24 informal conference, the Bureau affirmed the citation, and issued an Affirmed Citation on April
25 29, 2019. Respondent subsequently failed to comply with the order of abatement.

26 **CAUSE FOR DISCIPLINE**

27 13. Respondent subjected its Accredited Institution Approval to Operate to disciplinary
28 action for failing to comply with an order of abatement in Citation Number 1819092, affirmed by

1 the Bureau on or about April 29, 2019. (Cal. Code of Regs., title 5, §§ 75020, subd. (c)(4) and
2 75050, subd. (b)). The circumstances are set forth in paragraphs 11 through 12, above.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Director of the Department of Consumer Affairs issue a
6 decision:

- 7 1. Revoking or suspending Accredited Institution Approval to Operate No. 93159648,
8 issued to Respondent Oikos University;
- 9 2. Ordering Respondent Oikos University to pay the Bureau for Private Postsecondary
10 Education the reasonable costs of the investigation and enforcement of this case, pursuant to
11 Business and Professions Code section 125.3; and
- 12 3. Taking such other and further action as deemed necessary and proper.
- 13
14
15

16 DATED: _____

17 DR. MICHAEL MARION, JR.
18 Chief
19 Bureau for Private Postsecondary
20 Education
21 Department of Consumer Affairs
22 State of California
23 *Complainant*

21 SF2019202085
22 21621924.docx