



Bureau for Private Postsecondary Education
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CITATION: ASSESSMENT OF FINE AND ORDER OF ABATEMENT

To: Keno Modica
Moler Barber College
1531 Sandmark Dr.
Sacramento, CA 95835

INSTITUTION CODE: Unapproved
CITATION NUMBER: 1617031
CITATION ISSUANCE/SERVICE DATE: February 17, 2017
DUE DATE: March 19, 2017
FINE AMOUNT: \$ 100,000.00
ORDER OF ABATEMENT INCLUDED: YES

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

CITATION

A Citation is hereby issued to Keno Modica (Modica), owner of Moler Barber College (MBC), located at of 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 June 27, 2012, the Bureau received MBC's Application for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions.

On June 30, 2015, the Bureau issued MBC a Notice of Denial of Application for Renewal of Approval to Operate due to enrollment agreement and school catalog deficiencies and MBC's failure to submit financial statements.

On February 6, 2016, Modica entered into a Stipulation Surrender of Approval to Operate and Order (Order), which became effective on April 22, 2016.

On May 10, 2016, the Board of Barbering and Cosmetology (BBC) sent a letter to Modica notifying him that due to the Order, BBC cancelled MBC's school approval and school codes.

The Bureau determined that MBC continued to operate as a private postsecondary educational institution despite the Stipulation Surrender of Approval to Operate and Order based on the following: BBC's unannounced inspection of MBC's main campus in Sacramento on May 11, 2016; the Bureau's unannounced school visit to MBC's branch location in Fresno on May 17, 2016; the student complaint received on May 23, 2016; and the Student Tuition Recovery Fund (STRF) application received on July 13, 2016.

VIOLATION(S)

#	The California Education Code (CEC), Title 5 of the California Code of Regulations (5 CCR), and Business and Professions Code (B&P). Below you will find the code section(s) of law you are charged with violating.
1.	<p><u>Violation:</u></p> <p>CEC section 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 section 94817.5. Approved to Operate or Approved <i>"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.</i></p> <p>CEC section 94868. To Offer to the Public <i>"To offer to the public" means to advertise, publicize, solicit, or recruit.</i></p> <p>CEC section 94869. To Operate <i>"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."</i></p> <p>CEC section 94857. Postsecondary Education <i>"Postsecondary education" means a formal institutional educational program whose curriculum is designed primarily for students who have completed or terminated their secondary education or are beyond the compulsory age of secondary education, including programs whose purpose is academic, vocational, or continuing professional education.</i></p> <p>CEC section 94858. Private Postsecondary Educational Institution <i>"Private postsecondary educational institution" means a private entity with a physical presence in this state that offers postsecondary education to the public for an institutional charge.</i></p> <p>On February 16, 2016, Modica signed the Order agreeing to relinquish and surrender MBC's Approval to Operate. The Order became effective on April 22, 2016.</p> <p>On May 11, 2016, BBC informed the Bureau that during an inspection of MBC's main campus located at 2330 Northgate Blvd, Sacramento, CA 95834 on that same day, BBC found MBC to be in operation. BBC issued Inspection Reports to MBC for unlicensed establishment and to five students for performing services without a license.</p>

On May 17, 2016, Bureau staff conducted an unannounced school visit of MBC's branch location at 2249 North Blackstone Ave, Fresno, CA 93703. Bureau staff observed and took pictures of students provide barbering services and interviewed the MBC instructor who was present. The MBC instructor disclosed to Bureau staff that the students were preparing for a BBC exam. Bureau staff advised the MBC instructor and students that MBC is not approved to operate as a private postsecondary education.

On May 23, 2016, the Bureau received a STRF application from B.G., who indicated that she attended MBC from November 19, 2015 to May 11, 2016.

As of February 15, 2017, MBC advertises Barbering, Re-Fresher, and Cosmetology Cross-Over programs on its website at <http://www.molerbarber.com/>. MBC's website lists the addresses of the Fresno and Sacramento locations and telephone numbers of (916) 567-9668 and (559) 231-7307.

The Bureau's investigation confirmed that despite the Order, effective on April 22, 2016, MBC knowingly continues to operate as a private postsecondary educational institution at 2330 Northgate Blvd, Sacramento, CA 95834 and 2249 North Blackstone Ave, Fresno, CA 93703.

Order of Abatement:

The Bureau orders that MBC cease to operate as a private postsecondary educational institution. MBC must discontinue recruiting or enrolling students, cease all instructional services and advertising in any form or type of media (including Internet websites), and disconnect all telephone service numbers. To comply with the Order of Abatement, MBC must submit a school closure plan to the Bureau pursuant to California Education Code section 94926.

The Bureau orders that MBC provide the Bureau with a roster of all students that have enrolled at MBC since January 1, 2010. The roster shall include the name, address, telephone number, email address, the name of the program in which the student was enrolled, the date the student enrolled, the date the student left or completed the program, the hours the student completed, the amount of tuition charged and collected from the student verification that the student received a refund. Make full refunds to the students who were enrolled at the time the Order became effective on April 22, 2016. Evidence of compliance shall be submitted within 30 days of the issuance of the citation.

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 **March 19, 2017**, 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 **February 17, 2017**. Payment of the administrative fine and evidence of compliance with the order(s) of abatement shall be due by **March 19, 2017**. 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:


Ben Graber, 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 Ben Graber, Enforcement Analyst, at 916-576-2409 or Benjamin.graber@dca.ca.gov.



Elainea Shotwell
Enforcement Manager

2/17/17
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