

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

In the Matter of the Citation Against:

HINTON BARBER COLLEGE, LLC dba HINTON BARBER AND BEAUTY COLLEGE,

1035 Tennessee Street

Vallejo, CA 94590

Citation No.: 1920229

Institution Code: 97715528

OAH Case No.: 2020050263


Respondent.

DECISION AND ORDER

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

This Decision shall become effective on NOV 29 2020, 2020.

It is so ORDERED October 22, 2020.



RYAN MARCROFT
DEPUTY DIRECTOR, LEGAL AFFAIRS DIVISION
DEPARTMENT OF CONSUMER AFFAIRS

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Respondent.

Citation No. 1920229

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PROPOSED DECISION

Administrative Law Judge Traci C. Belmore, State of California, Office of Administrative Hearings, heard this matter on August 19, 2020, by telephone and videoconference.

Deputy Attorney General Carter Ott represented the Bureau for Private Postsecondary Education.

Respondent Hinton Barber College, LLC was represented by its owner and Executive Director, Gerald D. Hinton.

The record closed and the matter was submitted for decision on August 19, 2020.

FACTUAL FINDINGS

1. On January 26, 2007, the Bureau for Private Postsecondary Education (Bureau) approved Barber Instructor, Barbering, and Cosmetology Crossover Course for Barbers programs for respondent Hinton Barber College, LLC, doing business as Hinton Barber and Beauty College (Hinton Barber). The Bureau approved the Cosmetology Program for Hinton Barber on July 3, 2015. Gerald Hinton is the owner and Executive Director of Hinton Barber.

2. The Bureau initiated an unannounced compliance inspection on March 1, 2019, beginning with a desk review and ending with an on-site inspection conducted by inspector Gema Fider on June 13, 2019. As a result of the inspection, a citation was issued against respondent's institution code.

3. Citation No. 1920229, issued on February 21, 2020, alleged violations of the following regulations:

a. California Code of Regulations, title 5, section 74112, subdivisions (i)(1-4) (performance fact sheet job placement rates) and (m)(1-9) (documentation supporting data on performance fact sheet). The citation assessed an administrative fine of \$5,000 for these alleged violations.

b. California Code of Regulations, title 5, section 71720, subdivision (b)(1) (faculty minimum qualifications). The citation assessed an administrative fine of \$1,000 for this alleged violation.

Factual Basis for Citation

4. During Fider's on-site inspection she observed and reported the conditions that were the basis for the citation.

5. Fider found that the documentation supporting the school performance fact sheet (SPFS) for 2016-2017 school year did not contain all the items required by California Code of Regulations, title 5, section 74112, subdivision (m). Specifically, there was no list of job classifications to be considered gainfully employed; some of the addresses for the students were missing; graduates' positions, employment dates and salary were missing; some of the contact information for graduates' employers was absent; some graduates' self-employment documentation was missing; there were no records of attempts to contact student or employer; documentation supporting license examination and results was missing; and there was no contact information for the representative of the institution responsible for gathering all of the information. (Cal. Code Regs., tit. 5, §74112, subd. (m)(1-9).)

Fider also found a discrepancy in the job placement and gainfully employed categories charts, and a missing figure in the job placement rates chart in the 2016-2017 SPFS in violation of California Code of Regulations, title 5, section 74112, subdivisions (l)(1-4).

6. California Code of Regulations, title 5, section 71720, subdivision (b)(1), provides that instructors at an institution must have a minimum of three years of experience, education and training in the subject area they are teaching. Fider testified that she reviewed the resume and application of one instructor and that instructor did not meet the minimum qualifications. While some of the education occurred over 10

years ago, when combined with her experience and training, the instructor does meet the three-year minimum requirement.

7. Hinton credibly testified that Fider was provided the documentation assembled for the Institution's accreditation through the National Accrediting Commission of Career Arts and Sciences (NACCAS). That documentation, while including some of the documentation required by the Bureau, does not fully comply with the Bureau's requirements pursuant to California Code of Regulations, title 5, section 74112, subdivision (m). As to the other alleged violations, Hinton had no explanation for the missing number in the SPFS and stated that the discrepancy was simply a typographical error. Hinton acknowledged that he must improve his recordkeeping and that he must ensure the correct documentation is provided to the Bureau.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving, by a preponderance of the evidence, all facts necessary to support the citation. (*Owen v. Sands* (2009) 176 Cal.App.4th 985, 992.) The factual findings above reflect this standard.

2. California Code of Regulations, title 5, section 75020, authorizes the Bureau to issue citations and administrative fines for violations of the statutes and regulations governing private, postsecondary institutions.

3. California Code of Regulations, title 5, section 74112, subdivision (m), requires certain information to be documented in an institution's file in support of a SPFS. Hinton acknowledged that he did not provide the correct information to Fider. Cause exists to discipline respondent for this violation. (Factual Findings 5 and 7.)

4. California Code of Regulations, title 5, section 71720, subdivision (b)(1), provides that instructors at an institution must have a minimum of three years of experience, education and training in the subject area they are teaching. Based on the matters set forth in Factual Finding 6, cause does not exist to discipline respondent for violating section 71720, subdivision (b)(1).

5. Education Code section 94936, subdivision (b)(2), requires that the assessment of an administrative fine be based on the following factors; the nature and seriousness of the violation; the persistence of the violation; the good faith of the institution; the history of previous violations; and the potential harm to students. California Code of Regulations, title 5, section 75030 states the minimum administrative fine for a violation is \$50 and the maximum is \$5,000 and classifies violations according to the nature of the violation, "Class A" being the most serious and "Class D" the least serious.

The Bureau assessed a \$5,000 administrative fine, which is the maximum fine for a "Class A" violation, for the errors on the SPFS and the missing supporting documentation. Given the evidence as set forth in Factual Findings 5 through 7, the more appropriate classification for these violations is "Class C" (a minor or technical violation, which may be detrimental to students or potentially impact their education). The minimum administrative fine for a "Class C" violation is \$501, and the maximum is \$1,000. The appropriate fine for the violations established in this matter is \$750.

ORDER

Citation No. 1920229 is modified as follows:

1. The appeal of the citation for violations of California Code of Regulations, title 5, section 74112, subdivisions (l)(1-4) and (m)(1-9), is denied. However, the administrative fine is reduced to \$750.

2. The appeal of the citation for violation of California Code of Regulations, title 5, section 71720, subdivision (b)(1) is granted.

DATE: September 17, 2020

DocuSigned by:
Traci C. Belmore
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TRACI C. BELMORE

Administrative Law Judge

Office of Administrative Hearings