

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

In the Matter of the Statement of Issues

Against:

NATURAL HEALING INSTITUTE OF
NATUROPATHY, INC.;;
STEVE SCHECHTER, OWNER,

Respondent.

Bureau Case No. 1000999

OAH No. 2016031058

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 13 and 14, 2016, in San Diego, California.

Marichelle S. Tahimic, Deputy Attorney General, Department of Justice, State of California, represented complainant, Chief of the Bureau for Private Postsecondary Education, Department of Consumer Affairs, State of California.

Steve Schechter, respondent, appeared on his own behalf and on behalf of respondent National Healing Institute of Naturopathy, Inc.

The matter was submitted on December 14, 2016.

PROTECTIVE AND SEALING ORDER

Exhibit 3, pages AGO 20-35, contains confidential information. It is impractical to delete all the confidential information. To protect privacy and prevent inappropriate disclosure of confidential information, Exhibits 3, pages AGO 20-35, shall be sealed. This sealing order governs the release of documents to the public. A reviewing court, parties to this matter, their attorneys, or a government agency decision maker or designee under Government Code section 11517 may review the documents subject to this sealing order, provided the documents containing confidential information remain protected from release to the public. No court reporter or transcription service shall transcribe the information contained in Exhibit 3, pages AGO 20-35.

SUMMARY

Respondent National Healing Institute of Naturopathy, Inc. (NHI), is a private postsecondary non-accredited educational institution headquartered in Encinitas, California. Steve Schechter is NHI's owner and Chief Executive Officer.

On March 13, 2012, respondent filed an Application for Renewal of Approval to Operate and Offer Educational Programs for Non-Educational Institutions, Application Number 24563, with the Bureau of Private Postsecondary Education. Numerous documents accompanied the application, but respondent did not provide the Bureau with an annual statement for 2011 or a current financial statement that complied with regulatory requirements. Over the next several years, the Bureau sent deficiency letters to respondent, seeking additional documentation necessary for approval of the application. Respondent failed to provide required documentation, resulting in the filing of a second amended statement of issues.

Although respondent cured several outstanding deficiencies during the course of this administrative proceeding - by amending an enrollment agreement and notifying the Bureau of a non-substantive change for a program being offered - respondent did not produce annual reports for 2011, 2012, or 2013 and did not provide a financial statement that complied with applicable regulations.

The burden of proof was on respondent to establish by a preponderance of the evidence that it possesses the capacity to satisfy minimum operating standards incumbent upon private postsecondary non-accredited educational institutions. Respondent failed to meet that burden. Respondent's application for renewal is denied. Respondent forthwith shall cease enrolling students, but shall be permitted to provide educational services to current students under a teach-out plan approved by the Bureau. On July 1, 2017, respondent shall cease all operations.

FACTUAL FINDINGS

The Bureau for Private Postsecondary Education

1. In the late 1980s, accreditation and regulation of private postsecondary educational institutions in California was accomplished by a division within the State Department of Education. As a result of concerns over the integrity and value of degrees being issued by private postsecondary institutions, California's regulatory program was overhauled and oversight responsibility for private colleges was transferred to a 20-member Council. Around the same time, the Legislature adopted the Maxine Waters School Reform and Student Protection Act. The law governing the 20-member Council was merged with the Waters Act, but doing so created a regulatory framework with duplicative and conflicting statutory provisions. On January 1, 2007, the law governing the accreditation and regulation

of the private postsecondary education sector was allowed to sunset, leaving California without an administrative body responsible for accrediting, regulating, and overseeing private postsecondary educational institutions.

In 2009, the Legislature and the Governor reached agreement on AB 48, the Private Postsecondary Education Act, and created a new administrative agency within the Department of Consumer Affairs, the Bureau of Private Postsecondary Education. The Bureau is responsible for protecting students and others against fraud, misrepresentation, and improper business practices that might lead to the loss of tuition and related educational funds; establishing and enforcing minimum standards for ethical business practices and the health, safety and fiscal integrity of postsecondary educational institutions; and establishing and enforcing minimum standards for instructional quality and institutional stability for students in all types of private postsecondary educational and vocational institutions.

2. The Bureau's paramount objective is protection of the public. To achieve its mission, the Bureau reviews and approves applications to operate private postsecondary educational institutions that demonstrate the institution is capable of complying with minimum requirements set forth in the California Private Postsecondary Education Act of 2009 and corresponding regulations. The Bureau may deny the renewal application or cite, revoke, suspend, place on probation, or bring an action for equitable relief against any approved institution whenever the institution has violated laws governing an institution's operation.

The Bureau's enforcement program is intended to ensure that timely and appropriate disciplinary action is taken against non-compliant institutions. The Bureau utilizes services of the California Department of Consumer Affairs, the Office of the Attorney General, and the Office of Administrative Hearings to ensure that disciplinary actions are handled in a fair and judicious manner.

Steve Schechter

3. Steve Schechter, N.P., H.H.P., owns and operates Natural Healing Institute for Naturopathy, Inc. Mr. Schechter grew up in Ohio. In 1970 he graduated cum laude from the University of Michigan, Ann Arbor, with a bachelor's degree in Clinical Psychology and Comparative Religions. From 1972 through 1974, he trained in herbal medicine and naturopathy at the Instituto Naturista Adventista in Guatemala, an institution operated by the Seventh Day Adventist Church. He received a degree in Naturopathy following his training there. Mr. Schechter then obtained additional religious and naturopathic training at other institutions, including Pendle Hill, a Quaker retreat and Spirit-led learning and community center in Wallingford, Pennsylvania, and Naropa University, an educational institution in Boulder, Colorado, where students engage in a program of study "combining rigorous liberal arts training with disciplined training of the heart." Since then, Mr. Schechter has completed additional training and education in his specific fields of interest.

Mr. Schechter is an experienced holistic health practitioner and educator. In 1977 he founded Austin Life Center in Austin, Texas. In 1980 he founded Ozark Life Center School of Therapy Technology in Faith Hill, Arkansas, an accredited school for massage therapy that offered students education and accreditation. He operated Ozark Life Center for approximately six years before turning over its operation to friends.

Mr. Schechter moved to California, where he founded Vital-Life Training Institute. He practiced and taught holistic healing, nutrition, herbology and other alternative health care practices at Vital-Life. In 1988 he transferred ownership of Vital-Life to his former wife, Annie Schechter, during dissolution of marriage proceedings.

4. Mr. Schechter testified he was a respected author, and for a long time his text, *Fighting Radiation and Chemical Pollutants with Foods, Herbs and Vitamins—Documented Natural Remedies That Boost Immunity & Detoxify*, was on the best seller list. In addition to that text, Mr. Schechter has written a book on fat loss and a training manual for health therapists. Mr. Schechter testified he has served as a paid consultant for three of the four largest herb companies, two of the three largest supplement companies, and was on the medical advisory boards of two nationally prominent magazines

5. Mr. Schechter founded NHI in 1987. He obtained full approval from the Department of Education to operate NHI as a private postsecondary educational institution on June 29, 1987. He has operated NHI continuously since then. He incorporated NHI on August 18, 1997.

In addition to being responsible for the operation of NHI, Mr. Schechter teaches there on a part-time basis. The 20 other members of NHI's faculty are independent contractors.

NHI's operation is currently being conducted in a 2,500 square foot facility in Encinitas, California, that includes a reception area, a secretarial area, a therapy room, four demonstration offices, one of which is used as a library, and a 780 square foot classroom.

Natural Healing Institute of Naturopathy, Inc.

6. NHI is a private postsecondary non-accredited educational institution. NHI provides residential (on-campus) and distance-learning classes and programs to students enrolled at NHI.

7. The Bureau most recently provided NHI with institutional and program approvals on June 27, 1997, for the following non-degree educational programs: Aromatherapy, Clinical Herbology, Clinical Master Herbalist-Distance Learning, Clinical Master Herbology, Clinical Nutrition, Clinical Nutrition-Distance Learning, Holistic Health Practitioner, Holistic Health Practitioner-Distance Learning, Lomi-Lomi/Hawaiian Healing Arts, Massage Technician, Massage Therapy, Naturopathic Practitioner, Naturopathic Practitioner-Distance Learning, Professional Hypnotherapy, Spa & Massage Therapist,

Sports Therapist & Performance Enhancement, Thai Massage, Yoga Instructor, and Somatics and Movement Therapist.

8. The June 27, 1997, approvals expired on June 27, 2011. In order to remain in business, NHI was required to file a renewal application and supporting documentation.

NHI's Renewal Application

9. On March 13, 2012, NHI filed an Application for Renewal of Approval to Operate and Offer Educational Programs for Non-Educational Institutions, Application No. 24563. Mr. Schechter completed and signed that application in his capacity as NHI's Chief Executive Officer.

Among other documents, NHI provided the Bureau with its enrollment agreement, refund policy, and catalog. NHI provided copies of bank statements. An annual report for 2011 was not provided. Neither an audited financial statement nor a reviewed financial statement prepared by a CPA was provided.

On April 24, 2012, the Bureau sent NHI a deficiency letter stating that the Bureau was unable to grant NHI's renewal application because of various deficiencies, such as a lack of documentation related to the institution's Articles of Incorporation and Bylaws and a regulatory compliant current financial statement.

On October 29, 2012, November 6, 2012, and February 27, 2013, the Bureau received NHI's responses to the April 24, 2012, deficiency letter. NHI provided additional information and documentation that resolved several deficiencies mentioned in the Bureau's deficiency letter, but NHI did not provide annual statements for 2011 or 2012, which had become due. NHI did not provide a compliant financial statement.

On September 30, 2013, the Bureau sent NHI a second deficiency letter advising of several deficiencies that remained. On March 10, 2014, the Bureau received NHI's response to the second deficiency letter.

On April 3, 2014, the Bureau sent NHI a third deficiency letter advising of the deficiencies that had not been resolved. On November 14, 2014, the Bureau received NHI's response to that deficiency letter.

On June 30, 2015, the Bureau denied NHI's Application for Renewal of Approval to Operate a Non-Accredited Institution and served NHI with a Notice of Denial.

Issues Addressed at the Hearing

10. After denying NHI's renewal application, the Bureau filed and served on respondent a Statement of Issues and a First Amended Statement of Issues. The Statement of Issues and First Amended Statement of Issues contained statutes and regulations that were

relevant to the Bureau's denial, a statement of facts, and comprehensive summaries explaining the reasons for the denial of the renewal application.

11. NHI provided the Bureau with additional information and documentation in an attempt to cure the purported deficiencies that had been identified in the Statement of Issues and First Amended Statement of Issues. The additional information resulted in the filing of a Second Amended Statement of Issues that did not mention issues that had been resolved.

12. When the hearing on the Second Amended Statement of Issues commenced, the Bureau asserted NHI's renewal application was subject to denial for four reasons:

First Cause for Denial: NHI's enrollment agreement did not include the period covered by the enrollment agreement; it failed to state the date by which a student was required to exercise his or her right to cancel or withdraw; and it failed to state, on the page intended to contain the student's signature, the total charges for the current period of attendance, the estimated total charges for the entire educational program, and the total charges the student was obligated to pay upon enrollment in underlined capital letters.

Second Cause for Denial: NHI failed to provide current financial statements as defined by California Code of Regulations, title 5, section 74115.¹

Third Cause for Denial: NHI failed to submit complete Annual Reports for 2011, 2012 and 2013, under penalty of perjury and signed by a responsible corporate officer.

Fourth Cause for Denial: NHI failed to notify the Bureau of a non-substantive change to an educational program.²

13. During the hearing on the Second Amended Statement of Issues, Mr. Schechter provided the Bureau with amended enrollment agreements (Exhibits A and B),

¹ The Second Amended Accusation alleged NHI submitted bank statements with its application on March 13, 2012, a profit and loss statement that was neither reviewed nor audited on November 6, 2012, and financial statements that were neither reviewed nor audited on March 10, 2014. The Second Amended Accusation alleged NHI submitted its 2012 tax returns on November 14, 2014, compiled financial statements not audited or reviewed by a CPA for 2014 and 2015 on November 15, 2016. The Second Amended Accusation alleged NHI again submitted compiled financial statements not audited or reviewed by a CPA for 2014 and 2015 on November 29, 2016. The Second Amended Accusation asserted the documents NHI provided did not comply with regulatory requirements related to current reviewed or audited financial statements.

² NHI advertised and offered a Certified Nutritionist Consultant program in its Distance Learning Catalog and Residential Catalog for 2016, a program that had not been approved by the Bureau, and NHI failed to submit a notification of a non-substantive change to establish it was the same program was previously offered by NHI under a different title.

each of which met with the Bureau's approval; and, he provided notification to the Bureau of a non-substantive change (Exhibit D) that the Board agreed was sufficient to permit NHI to offer and provide a Certified Nutritionist Consultant program. The first and fourth causes for denial were resolved favorably to respondent during the hearing.

The issues requiring resolution include NHI's alleged failure to submit a current financial statement and alleged failure to submit annual reports for 2011, 2012, and 2013.

The Requirement to Submit Current Financial Statements

14. California Code of Regulations, title 5, section 71240, requires a private postsecondary educational institution to submit "current, reviewed financial statements at the time it applies for renewal to operate. Each set of financial statements shall comply with Section 74115 of this chapter."

15. California Code of Regulations, title 5, section 74115, provides:

(a) This section applies to every set of financial statements required to be prepared or filed by the Act or by this chapter.

(b) A set of financial statements shall contain, at a minimum, a balance sheet, an income statement, and a cash flow statement, and the preparation of financial statements, shall comply with all of the following:

(1) Audited and reviewed financial statements shall be conducted and prepared in accordance with the generally accepted accounting principles established by the American Institute of Certified Public Accountants by an independent certified public accountant who is not an employee, officer, or corporate director or member of the governing board of the institution.

(2) Financial statements prepared on an annual basis as required by section 74110(b) shall be prepared in accordance with the generally accepted accounting principles established by the American Institute of Certified Public Accountants. Nonprofit institutions shall provide annual financial statements as required under generally accepted accounting principles for nonprofit organizations.

(3) The financial statements shall establish that the institution meets the requirements for financial resources required by Section 71745.

(4) If an audit performed to determine compliance with any federal or state student financial aid program reveals any failure to comply with the requirements of the program and the noncompliance creates any liability or potential liability for the institution, the financial statements shall reflect the liability or potential liability.

(5) Any audits shall demonstrate that the accountant obtained an understanding of the institution's internal financial control structure, assessed any risks, and has reported any material deficiencies in the internal controls.

(c) Work papers for the financial statements shall be retained for five years from the date of the statements and shall be made available to the Bureau upon request.

(d) "Current" with respect to financial statements means completed no sooner than 120 days prior to the time it is submitted to the Bureau, and covering no less than the most recent complete fiscal year. If more than 8 months will have elapsed between the close of the most recent complete fiscal year and the time it is submitted, the fiscal statements shall also cover no less than five months of that current fiscal year.

16. California Code of Regulations, title 5, section 71475, subdivision (e), provides:

The institution shall submit at the time it applies for renewal current financial statements that meet the requirements of section 74115 as follows: (1) for an institution with annual gross revenues of \$500,000 and over, statements shall be audited; (2) for an institution with annual gross revenues less than \$500,000, statements shall be reviewed.

NHI's Evidence of its Financial Condition

17. NHI provided the Bureau with several profit and loss statements, bank statements, tax returns, and several letters signed by NHI's certified public accountant to which there were attachments. Mr. Schechter believed these documents substantially complied with regulatory requirements directing NHI to submit a current financial statement with its renewal application. Mr. Schechter argued NHI established its capacity to satisfy minimum operating financial standards through the submission of these documents and NHI's history of having successfully remained in business for more than 18 years.

18. NHI provided the Bureau with letter from a certified public accountant addressed “to the Shareholder” dated March 3, 2014. The letter stated:

I have prepared the accompanying proforma statement of assets, liabilities and equity - income tax basis of Natural Healing Institute of Naturopathy, Inc., (a subchapter S corporation) as of December 31, 2011[,] and the related statement of income, and expenses – income tax basis for the twelve months then ended.

The attachment contained a profit and loss statement that set forth NHI’s total income of \$664,124 for the year ending December 31, 2011. NHI also submitted a 2012 federal tax return that set forth gross receipts of \$811,086.

19. In a memo emailed to counsel for complainant on November 15, 2016, Mr. Schechter represented:

We were told that schools that gross less than \$500,000 do not have to submit CPA audited financials – only a review statement. Also, please note that after receiving this from our CPA, I called our CPA . . . who prepared our corporate Federal and State returns, regarding her cover letter that she did not do an audit. She said she no longer does audits . . . Also, she indicated the usual conventional charge for an audit is \$12,000 to \$25,000, which for a small school is cost prohibitive. We are happy to submit monthly bank statements and also copies of the actual tax returns to show we are consistently in the black and have never had a month in the red for every month and year for the last eighteen years.

20. Attached to Mr. Schechter’s email was a letter from a CPA, dated November 14, 2016. The letter represented the CPA had completed a statement of assets, liabilities and equity of NHI as of December 31, 2014, along with a statement of NHI’s income, expenses, and retained earnings. The CPA’s letter warned: “I have not reviewed or audited the accompanying financial statements and accordingly, do not express an opinion or provide any assurance about whether the financial statements are in accordance with the income tax basis of accounting.” The CPA’s letter also stated: “[NHI] Management is responsible for the preparation and fair presentation of the financial statements with the income tax basis of accounting and for designing, implementing, and maintaining internal controls relevant to the preparation and fair presentation of the financial statements.” And, the CPA’s letter stated: “Management has elected to omit substantially all of the disclosures ordinarily included in financial statements required in accordance with the income tax basis of accounting.”

21. Profit and loss statements that accompanied the email were prepared by the same CPA who authored the November 14, 2016, letter. Those statements set forth NHI’s

total income of \$682,787 for the year ending December 2014 and \$595,737 for the year ending December 2015.

22. Mr. Schechter testified NHI was late in filing some tax returns, and that was part of the reason for NHI's delay in submitting documentation to the Bureau. Mr. Schechter said he believed NHI's gross annual income was less than \$500,000. Mr. Schechter testified someone at the Bureau, likely Jennifer Jones or Bea Santillan, and/or someone at CAPTs, an industry organization, told him NHI did not need to file a CPA-audited financial statement if NHI had a gross income of \$500,000 or less. He said he believed the letters he provided to the Bureau from NHI's CPA were the equivalent of reviewed financial statements. Mr. Schechter was mistaken on all counts.

The profit and loss statements and tax return reflected NHI's gross annual receipts in amounts in excess of \$500,000. Only one document showed NHI's gross annual revenues were less than \$500,000. When asked why he thought NHI's gross annual receipts were always less than \$500,000, Mr. Schechter testified the CPA may have mistakenly included in the NHI accounting Mr. Schechter's income from private consulting work. This testimony raised questions concerning the reliability of all of the documentation provided by NHI's certified public accountant.

Mr. Schechter's conversations with Ms. Jones and Ms. Santillan occurred in late January 2016, and they did not relate to the Bureau's denial of NHI's renewal application. The timing of Mr. Schechter's conversations with these individuals could not have caused him to submit profit and loss statements, bank statements, and tax returns in 2013, 2014, and 2015 in the mistaken belief he was submitting compliant current financial statements. Mr. Schechter could not identify the person from CAPTs with whom he spoke or precisely when he spoke with that individual, but he certainly knew that individual was not employed or affiliated with the Bureau. Finally, after Mr. Schechter read the regulations at issue during the hearing, which were included in the Statement of Issues, First Amended Statement of Issues, and Second Amended Statement of Issues, he conceded he had not appreciated what NHI was required to provide to the Bureau.

Mr. Schechter testified he had no intent to hide any financial information from the Bureau. He testified he thought the documents he provided were sufficient to meet minimum standards, despite the fact that the Bureau rejected some of those documents several times before their resubmission. Mr. Schechter admitted he did not provide audited financial statements because of the expense involved in conducting an audit.

NHI Failed to Submit Current Financial Statements

23. When NHI applied for renewal, it was required to submit an audited current financial statement that met the requirements set forth in Regulation 74115 because NHI enjoyed annual gross revenues in excess of \$500,000. Under Regulation 74115, required financial documentation included a balance sheet, an income statement, a cash flow statement, and a current financial statement at a minimum. A certified public accountant was

required to conduct an audit and prepare the financial statement resulting from the audit in accordance with the generally accepted accounting principles established by the American Institute of Certified Public Accountants. An independent certified public accountant who was not an employee, officer, or corporate director or member of NHI was required to conduct the audit and prepare the financial statement. The financial statement had to establish that NHI met the requirements for financial resources required by Regulation 71745. A proper audit required a demonstration that the accountant had obtained an understanding of the institution's internal financial control structure, assessed risks, and reported material deficiencies in the internal controls. Finally, "current" with respect to financial statements required the financial statements be completed no sooner than 120 days before its submission to the Bureau, and covering no less than the most recent complete fiscal year. If more than eight months elapsed between the close of the institution's most recent complete fiscal year and the time of submission, the fiscal statements was required to cover no less than five months of that current fiscal year.

Not one of the documents NHI submitted between March 13, 2012, and November 16, 2016, was a current financial statement, despite several deficiency letters and the service of three statements of issue that described precisely what was required. Mr. Schechter paid very little attention to what was required by law in the effort to renew NHI's approval and, instead, sought to substitute his own notion of what financial information was appropriate. Within a month of the hearing, he wrote: "We are happy to submit monthly bank statements and also copies of the actual tax returns to show we are consistently in the black and have never had a month in the red for every month and year for the last eighteen years." It appears the primary motivation in doing less than what was required was an economic one -- NHI wanted to avoid having to pay for an audit review.

24. Respondent failed to establish NHI possesses the capacity to satisfy minimum operating standards incumbent upon private postsecondary non-accredited educational institutions relating to the submission of current financial statements.

The Requirement to Submit Annual Reports

25. "Annual report" means the yearly report required to be filed by institutions. (Educ. Code, § 94815.)

26. Education Code section 94934 provides:

(a) As part of the compliance program, an institution shall submit an annual report to the bureau, under penalty of perjury, signed by a responsible corporate officer, by July 1 of each year, or another date designated by the bureau, and it shall include the following information for educational programs offered in the reporting period:

(1) The total number of students enrolled by level of degree or for a diploma.

(2) The number of degrees, by level, and diplomas awarded.

(3) The degree levels and diplomas offered.

(4) The Student Performance Fact Sheet, as required pursuant to Section 94910.

(5) The school catalog, as required pursuant to Section 94909.

(6) The total charges for each educational program by period of attendance.

(7) A statement indicating whether the institution is, or is not, current in remitting Student Tuition Recovery Fund assessments.

(8) A statement indicating whether an accrediting agency has taken any final disciplinary action against the institution.

(9) Additional information deemed by the bureau to be reasonably required to ascertain compliance with this chapter.

(b) The bureau, by January 1, 2011, shall prescribe the annual report's format and method of delivery.

27. California Code of Regulations, title 5, section 74112, sets forth numerous requirements related to an annual report including the mandated format and content of the annual report and a performance fact sheet. Among other requirements, an annual report must include data for all educational programs in the previous calendar year. The performance fact sheet must be current and available not later than December 1st, and it must report data for the previous two calendar years based upon the "number of students who began the program" as well as the total charges for a student to complete the program. Completion rates must be included in an institution's annual report and performance fact sheet for each educational program. Documentation and supporting data reported must be maintained and provided to the Bureau upon request.

Notification to NHI of the Failure to Submit Annual Reports

28. The deficiency letter dated April 3, 2014, signed by Louman Cheung, a Bureau Licensing Analyst, stated, in part, "In addition, the institution has not submitted its

2011 and 2012 Annual Reports.” The deficiency letter did not state specifically that the denial of the renewal application involved NHI’s failure to submit these reports.

29. The denial letter dated June 30, 2015, signed by Leeza Rifredi, the Bureau’s Licensing Chief, included the following statement with respect to NHI’s failure to submit annual reports: “The Institution failed to submit its complete 2011, 2012, and 2013 Annual Reports to the Bureau. The institution must submit an annual report to the Bureau, under penalty of perjury, signed by a responsible corporate officer. This is a violation of CEC § 94934.”

Evidence of the Submission of Annual Reports

29. Mr. Schechter initially testified he believed NHI submitted the 2011 and 2012 annual reports to the Bureau, after which the Bureau “lost” them. He possessed no evidence to support this speculation, other than he vaguely recalled signing annual reports. Mr. Schechter did not provide a transmittal letter or transmittal memo to document NHI’s submission of those annual reports. Nor did he provide any evidence, other than his testimony, to support his claim that the 2013 Annual Report actually accompanied a transmittal letter to the Bureau.

Mr. Schechter testified he believed there were no problems with the failure to submit annual reports because he had a conversation with someone at the Bureau, likely Ms. Jones, who left him with the impression that the Bureau received and approved of NHI’s 2014 Annual Report. In some fashion, he formed the impression that the Bureau’s receipt of the 2014 Annual Report resolved any failure to provide annual reports for 2011 and 2012.

Mr. Schechter testified many of NHI’s records were located in a storage facility, but a back injury prevented him from moving and opening heavy boxes filled with NHI documents, including, possibly, the annual reports and/or transmittal documents. He also testified it was quite possible an ex-employee, who was fired by NHI for theft, stole those reports and documents. Mr. Schechter never reported the ex-employee’s alleged theft to any law enforcement agency.

Mr. Schechter testified he was involved in a serious bicycle accident in 2010 that resulted in several surgical procedures, the most recent of which occurred in 2015. He testified he was uncertain about some events following the accident because, “It was a fuzzy time in my life.”

Mr. Schechter did not mention any of these matters to the Bureau to explain the missing 2011, 2012, and 2013 annual reports before giving his testimony.

30. Louman Cheung is a licensing analyst with the Bureau. He was one of the persons responsible for reviewing respondents’ renewal application.

Mr. Cheung carefully reviewed numerous documents filed by NHI with the Bureau. Annual reports must be filed with the Bureau by non-accredited private postsecondary educational institutions, and those reports are different than financial statements. Annual reports are important because they provide students and others with critical information, such as an institution's pass rates and default rates. Mr. Cheung was unable to locate NHI's annual report for 2011, 2012, or 2013. He requested NHI provide evidence that it had submitted annual reports for 2011, 2012, and 2013. NHI failed to do so.

31. Mr. Cheung's testimony and conclusion that NHI did not file annual reports for 2011, 2012, and 2013 was far more persuasive than the speculation and evidence to the contrary.

Other Matters

32. Mr. Schechter argued NHI had substantially complied with all requirements necessary to obtain approval of NHI's renewal to operate. He argued NHI had been in business for more than 18 years, and that any failure to provide financial statements that complied with applicable regulations was not intentional and was the result of reasonable misunderstandings, and any failure to provide annual reports was not intentional and such reports would be provided if they had not already been provided, and no harm or risk of harm to any NHI student was established. Mr. Schechter argued the Bureau's disciplinary guidelines, which apply in revocation, suspension, and probation proceedings, should be considered in this matter.

33. Counsel for complainant argued NHI had ample time and opportunity to submit current financial statements that complied with regulatory law and to file mandated annual reports. Counsel argued the Bureau lacked statutory or regulatory authority to take any action on NHI's application for renewal to operate other than to grant or deny it. Counsel argued the application should be denied because NHI failed to provide current financial statements, failed to file mandated annual reports, and filed an application that was incomplete. Counsel argued provisions in the disciplinary guidelines related to rehabilitation do not apply in this renewal proceeding. Complainant had no objection to respondent being given through July 31, 2017, to close out its operation.

LEGAL CONCLUSIONS

The Bureau's Responsibilities

1. Education Code section 94875 provides in part:

The bureau shall regulate private postsecondary educational institutions through the powers granted, and duties imposed, by this chapter. In exercising its powers, and performing its duties,

the protection of the public shall be the bureau's highest priority. If protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Burden and Degree of Proof

2. Education Code section 94891 provides:

(a) The bureau shall adopt by regulation the process and procedures whereby an institution may obtain a renewal of an approval to operate.

(b) To be granted a renewal of an approval to operate, the institution shall demonstrate its continued capacity to meet the minimum operating standards.

(c)(1) An institution that is denied renewal of an approval to operate may file an appeal in accordance with the procedures established by the bureau pursuant to Section 94888.

(2) An institution that has filed an appeal of a denial of a renewal application may continue to operate during the appeal process, but must disclose in a written statement, approved by the bureau, to all current and prospective students, that the institution's application for renewal of approval to operate was denied by the bureau because the bureau determined the application did not satisfy the requirements to operate in California, that the institution is appealing the bureau's decision, and that the loss of the appeal may result in the institution's closure.

(3) If the bureau determines that the continued operation of the institution during the appeal process poses a significant risk of harm to students, the bureau shall make an emergency decision pursuant to its authority provided in Section 94938.

3. "Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact. The "requisite degree of belief" varies depending on the proceeding, but "proof by a preponderance of the evidence" is sufficient unless otherwise provided for by law. (Evid. Code, § 115.)

4. The phrase "preponderance of evidence" is usually defined in terms of probability of truth, e.g., such evidence as, when weighed with that opposed to it, has more

convincing force and the greater probability of truth. (*Utility Consumers' Action Network v. Public Utilities Commission of State of California* (2010) 187 Cal.App.4th 688, 698.)

5. Under Education Code section 94891, subdivision (b), the burden of proof was on respondent to "demonstrate its continued capacity to meet the minimum operating standards" by a preponderance of the evidence.

6. The burden of proof would have been on complainant had this been an action to revoke, suspend, or place NHI on probation. And, the required degree of proof may have been clear and convincing evidence under those circumstances. However, the action in this matter always was filed and prosecuted as an action to deny approval of NHI's application for renewal to operate. There was no showing that the Bureau engaged in selective prosecution for improper purposes, amounting to a violation of a right to equal protection of law. (See, *Murgia v. Municipal Court* (1975) 15 Cal.3d 286.)

Renewal of an Approval to Operate a Non-Accredited Institution

7. California Code of Regulations, title 5, section 71475, governs the renewal of an approval to operate a non-accredited institution.

Under subdivision (b):

An institution seeking to renew its Approval to Operate pursuant to section 94891 of the Code shall, prior to its expiration, complete and submit to the Bureau the "Application for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions," Form Application 94891 (rev. 2/10).

Under subdivision (e):

The institution shall submit at the time it applies for renewal current financial statements that meet the requirements of section 74115 as follows: (1) for an institution with annual gross revenues of \$500,000 and over, statements shall be audited; (2) for an institution with annual gross revenues less than \$500,000, statements shall be reviewed.

Under subdivision (kk):

An incomplete application filed under this section will render the institution ineligible for renewal.

8. California Code of Regulations, title 5, section 71700, provides:

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.

Grounds Exist to Deny NHI's Application for Renewal to Operate

9. Grounds exist under Education Code section 94891, subdivision (b), to deny NHI's application for renewal of an approval to operate as a private postsecondary non-accredited educational institution in California. NHI failed to demonstrate a continued capacity to meet the minimum operating standards. First, NHI failed to provide current financial statements that met regulatory standards; second, NHI failed to provide mandated annual reports for 2011, 2012, and 2013. NHI was given ample time to cure these deficiencies, but failed to do so. NHI's application was incomplete. It cannot be concluded on this record that it would be in the public interest to grant NHI's application for renewal of an approval to operate as a private, postsecondary non-accredited educational institution.

10. Natural Healing Institute of Naturopathy, Inc., shall forthwith cease all operations in California for which approval from the Bureau of Postsecondary Education is required; however, Natural Healing Institute of Naturopathy, Inc. shall be permitted to continue providing teach-out services to students currently enrolled under the close out procedures identified below.

Close Out Procedures

11. Education Code section 94926 provides:

At least 30 days prior to closing, the institution shall notify the bureau in writing of its intention to close. The notice shall be accompanied by a closure plan, which shall include, but not necessarily be limited to, all of the following:

(a) A plan for providing teach-outs of educational programs, including any agreements with any other postsecondary educational institutions to provide teach-outs.

(b) If no teach-out plan is contemplated, or for students who do not wish to participate in a teach-out, arrangements for making refunds within 45 days from the date of closure, or for institutions that participate in federal student financial aid. An institution shall be considered in default of the enrollment agreement when an educational program is discontinued or canceled or the institution closes prior to completion of the educational program.

(c) If the institution is a participant in federal student financial aid programs, it shall provide students information concerning these programs and institutional closures.

(d) A plan for the disposition of student records.

12. Education Code section 94927 provides:

When an institution is in default, student institutional charges may be refunded on a pro rata basis if the bureau determines that the school has made provision for students enrolled at the time of default to complete a comparable educational program at another institution at no additional charge to the students beyond the amount of the total charges in the original enrollment agreement. If the institution does not make that provision, a total refund of all institutional charges shall be made to students.

13. Education Code section 94927.5 provides:

(a) Prior to closing, an institution shall provide the bureau with the following:

(1) Pertinent student records, including transcripts, as determined by the bureau, pursuant to regulations adopted by the bureau.

(2) If the institution is an accredited institution, a plan for the retention of records and transcripts, approved by the institution's accrediting agency, that provides information as to how a student may obtain a transcript or any other information about the student's coursework and degrees completed.

(b) Subdivision (a) applies to all private postsecondary institutions, including institutions that are otherwise exempt from this chapter pursuant to Article 4 (commencing with Section 94874).

14. California Code of Regulations, title 5, section 76240, provides:

All institutions, including those exempt from Bureau regulation pursuant to the Code, shall do the following prior to closing:

(a) At least 30 days prior to closing, the institution shall notify the Bureau in writing of its intention to close and provide a closure plan. The closure plan shall include:

(1) The exact date and reason for the closure.

(2) The last date of instruction for each educational service or program.

(3) A list of students who were enrolled at any time during the 60 days prior to closure.

(4) If any student will not be provided complete educational services or the educational program, the institution shall provide:

(A) A plan for providing teach-outs or transfers, including the details of any agreements with other institutions.

(B) If no teach-out is contemplated, or for students who do not wish to participate in a teach-out, arrangements for making refunds within 45 days from the date of closure, or for institutions that participate in federal student financial aid programs arrangements for making refunds and returning federal student financial aid program funds.

(5) A plan for the disposition of student records.

(6) A plan to notify students of their rights and options under the Act and this chapter.

(b) The institution shall notify the students of the following:

(1) If the institution is a participant in federal student financial aid programs, it shall provide students information concerning those programs and institutional closures.

(2) If any student will not be provided complete educational services or the educational program, information regarding the Student Tuition Recovery Fund and the Bureau's physical and Internet addresses.

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ORDERS

Respondents' Application for Renewal of Approval to Operate and Offer Educational Programs for Non-Educational Institutions (Application Number 24563) is denied.

Respondents shall cease enrollment of new students in all education programs beginning on the effective date of the decision herein.

Respondents shall, within 30 days of the effective date of the decision, provide the Bureau of Postsecondary Education with a closure plan providing for teach-outs of current educational programs, including agreements with any other postsecondary educational institutions to provide teach-outs. The closure plan must result in the completion of educational services on or before July 31, 2017, and shall include:

- (1) The exact date of the closure.
- (2) The last date of instruction for each educational service or program.
- (3) A list of students enrolled when the decision became final.
- (4) If any student will not be provided complete educational services or the educational program, respondent shall provide:
 - (A) A plan for providing teach-outs or transfers, including the details of any agreements with other institutions.
 - (B) If no teach-out is contemplated, or for students who do not wish to participate in a teach-out, arrangements for making refunds within 45 days from the date of closure, or for institutions that participate in federal student financial aid programs arrangements for making refunds and returning federal student financial aid program funds.
- (5) A plan for the disposition of student records.
- (6) A plan to notify students of their rights and options under existing law.

Respondent shall, at least 30 days before closing, provide the Bureau with: (1) pertinent student records, including transcripts, as determined by the Bureau; and (2) a plan for the disposition of student records.

Respondent shall comply with all procedures required by the Bureau related to notification to, and management of, students.

Dated: December 27, 2016

DocuSigned by:
James Ahler
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JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Statement of Issues
Against:

**NATURAL HEALING INSTITUTE OF
NATUROPATHY, INC.; STEVE SCHECHTER,
OWNER**

Respondent.

Case No. 1000999

OAH No. 2016031058

ORDER OF DECISION

DECISION

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.

The Decision shall become effective APR 15 2017.

DATED: March 8, 2017



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs