

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

In the Matter of the Statement of Issues Against:)	
)	
SCHOOL OF HEALING TOUCH;)	Case No. 999666
HUSSEIN F. AZAR, Owner)	OAH No. 2015050649
)	
Applicant for Renewal of Approval to Operate)	
and Offer Educational Programs For)	
Non-Accredited Institutions)	
)	
Respondent.)	
<hr/>		

DECISION AFTER REJECTION

This matter was heard before Michael C. Cohn, Administrative Law Judge (ALJ), State of California, Office of Administrative Hearings, on September 29, 2015, in Oakland, California.

Complainant Joanne Wenzel, Chief of the Bureau for Private Postsecondary Education, Department of Consumer Affairs, was represented by Aspasia A. Papavassiliou, Deputy Attorney General. Respondent School of Healing Touch was represented by its owner, Hussein F. Azar. The matter was submitted for decision on September 29, 2015.

On or about November 18, 2015, the Department of Consumer Affairs (Department) requested that the proposed decision be corrected to include the appropriate burden of proof and standard of proof, as well as address the status of the approval given that the proposed decision was denying the application for renewal of the approval. The Presiding ALJ declined to have the proposed decision corrected, indicating that the burden and standard of proof were not in dispute, so therefore did not have to be included in the decision. Additionally, there was no request for an order to cease operations, and therefore any such order was not necessary.

As a result, on or about December 31, 2015, the Department issued a Notice of Rejection of the proposed decision in order to insert the appropriate burden and standard of proof as one of the legal bases for the decision, as well as directing when the respondent must cease operations of the school in light of the denial of the application for renewal of the approval to operate. No transcript was ordered, and the parties were provided the opportunity to submit written argument on any issues the parties wished to address. Argument having been received by both parties, the Department makes its decision as follows.

SUMMARY

Hussein F. Azar is the sole owner and operator of the School of Healing Touch, a massage therapy school that operated with approval of the Bureau for Private Postsecondary Education from 1997 to 2013. However, because of deficiencies in the school's 2012 renewal application and because Azar was convicted in 2013 of a crime that is substantially related to the qualifications, functions and duties of the operator of a massage therapy school, that renewal application was denied in 2014.

It is concluded that while the application deficiencies were largely minor and easily correctable, in consideration of the recent nature of Azar's conviction and the fact that he remains on criminal probation, protection of the public interest requires denial of the renewal application.

FACTUAL FINDINGS

Procedural background

1. On September 14, 2012, the bureau received from respondent School of Healing Touch an Application for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions. The renewal application had been completed by respondent's owner, Hussein F. Azar.
2. On September 17, 2012, the bureau sent Azar a deficiency letter listing the items in the application deemed to be incomplete and requesting that additional information be submitted. In response, Azar supplied additional materials, which were received by the bureau on October 4, 2012.
3. On April 8, 2014, the bureau issued to Azar a notice of denial of the application submitted on behalf of School of Healing Touch. Listed as grounds for denial were a long list of deficiencies in the materials that had been submitted in support of the application, and the fact that Azar had recently been convicted of a crime that would preclude him from participating in the operation of the school.
4. Azar requested a hearing and this proceeding followed. Azar continued to submit materials in attempts to correct the stated deficiencies in respondent's application, including information submitted on the day of the hearing. That most recent submission resulted in a significant reduction in the number of items still deemed deficient. The Statement of Issues was amended to reflect that.
5. As amended at the hearing, the Statement of Issues alleges four causes for denial: (1) the application was incomplete because respondent failed to submit a current audited statement; (2) Azar was convicted in October 2013 of a violation of Penal Code section 628; (3) respondent's enrollment agreement failed to include specific statements required by Education Code section 94911, subdivisions (i)(1), (i)(2), and (j)(1); and (4) respondent's catalog failed to contain policies and practices regarding the Workforce Investment and Opportunity Act.

Background of School of Healing Touch and Hussein Azar

6. Respondent School of Healing Touch is solely owned by Azar. He is respondent's sole employee, responsible for all administrative and financial duties and for teaching all courses except those taught by independent contractors.

7. The school was initially approved by the bureau in 1997 and received renewal approvals every three years until 2012. The school has been approved to offer training courses in massage therapy, acupressure, foot reflexology, deep tissue massage, prenatal massage therapy, and spa and massage therapy.

8. Azar's training has been in alternative health and medicine. He has been trained in both eastern and western techniques. Before 1997, Azar worked as a massage and spa therapy instructor. He became a certified instructor and in 1997 took over the institution he was working at, naming it School of Healing Touch, and adding eastern techniques to the European techniques that were being taught. He maintains the School of Healing Touch is the only school in the Bay Area that offers massage and spa therapy training using both eastern and western techniques.

9. Between 1997 and 2013, the school provided instruction to about 12 students per quarter. Depending upon the course they were taking, students could receive certifications from the school in between 16 and 52 weeks. The school has not accepted any students since 2013. Azar said there were two reasons he stopped accepting students: (1) the California Massage Therapy Council¹ would no longer accept the school's transcripts, saying it did not meet their qualifications; and (2) he did not want to register any more students until the school's renewal application was approved by the bureau.

10. The school shares a 10,000 square foot facility in Castro Valley with another entity owned by Azar, the School of Health Touch Health Cure Center. The center is a massage therapy clinic in which care is provided to clients by independent contractors. Students provide care at the clinic only when they are engaged in the clinical training portion of their coursework.

On the First Cause for Denial

11. California Code of Regulations, title 5, section 71475, subdivision (w)(2), provides that with each renewal application an institution must submit a current, audited financial statement that complies with section 74115. Section 74115 requires, among other things, that financial statements must be prepared by an independent certified public accountant in accordance with generally accepted accounting principles (GAAP).

12. Azar did not submit any financial statements with the school's 2012 renewal application. In response to the September 17, 2012 deficiency letter he submitted a "balance sheet" for the school showing \$60,000 in assets in 2011. This balance sheet did not comply with the regulations cited above.

¹ The council is a legislatively-established (Bus. & Prof. Code, § 4602, subd. (a)) nonprofit organization that issues certificates to individuals who meet the requirements of the Massage Therapy Act. (Bus. & Prof. Code, § 4600 et seq.)

13. After issuance of the Statement of Issues, Azar provided a 2014 profit and loss statement for the "School of Health Touch Health Cure Center." On the day of hearing he also provided a 2014 "statement of cash flows," and a December 31, 2014, balance sheet, both for the "School of Health Touch Health Cure Center." None of these documents was prepared by an independent CPA in accordance with GAAP.

14. The name on these financial statements - School of Health Touch Health Cure Center - did not match the name of the school - School of Healing Touch - for which the bureau had granted approval. Azar explained that the financial statements related to his clinic, not to the school. He stated he was unable to provide current audited statements for the school because it had had no revenue since 2013.

On the Second Cause for Denial

15. California Code of Regulations, title 5, section 71730, subdivision (g), provides that an institution may not "employ any administrative personnel who were adjudicated in a judicial or administrative proceeding as having violated any provision of this chapter or has having committed any act that would constitute grounds for denial of a license under Section 480 of the Business and Professions Code." An application for a license may be denied under section 480 for conviction of a crime substantially related to the qualifications, functions or duties of the business or profession for which the application is made.

16. On October 16, 2013, Azar was convicted, on his plea of no contest, of a misdemeanor violation of Penal Code section 628 (providing a certificate, transcript, diploma or other document affirming that a person has received instruction in massage therapy knowing that the person has not received instruction in massage therapy), a crime substantially related to the qualifications, functions and duties of the operator of a school of massage therapy.

17. Upon conviction, Azar was placed on a conditional sentence for three years on terms that included 10 days in jail -which he was permitted to serve through the Sheriff's Weekend Alternative Program (SWAP) -payment of \$4,800 in restitution to the State of California, and payment of a \$240 fine. Azar has completed all of these conditions. He performed his SWAP work repairing equipment for the Pleasanton Unified School District. Unless he receives early termination, Azar will remain on the conditional sentence until October 15, 2016.

18. Azar described the circumstances resulting in his conviction as follows: He was working as an independent contractor teaching massage therapy at the Triton Institute in Sunnyvale. A woman talked to him about registering for the Triton program, which had a minimum 500-hour requirement. She told him she was divorced and needed a babysitter for her children, but was limited because she only wanted her sister to babysit. In order to help her out, he told her he would figure out a start and end date for a program that would allow her to come to school at her convenience. He told her that if she started on a certain date, she would graduate 16 weeks later. She was supposed to give him the dates that she would come to class, but she never did that and never showed up for class. Triton, not knowing that the woman never came to class, processed her paperwork and issued her a 500-hour certificate. As it turns out, the woman was an undercover agent.

19. Azar said that he was “just trying to help” the woman by figuring out a way she could attend class at times that were convenient to her, and that he trusted her to follow through and actually attend class.

On the Third Cause for Denial

20. Education Code section 94911, subdivisions (i)(1) and (i)(2), provides that a school’s enrollment agreement must contain specific required statements and a line for the student to initial, certifying he or she had received the specified information.² Education Code section 94911, subdivision (j)(1), provides that a school’s enrollment agreement must contain the following statement: “Any questions a student may have regarding this enrollment agreement that have not been satisfactorily answered by the institution may be directed to the Bureau for Private Postsecondary Education at (address), Sacramento, CA (ZIP Code), (Internet Web site address), (telephone and fax numbers).”

21. The most recent enrollment agreement submitted by respondent does not include the exact language set forth in Education Code section 94911, subdivision (i)(1). It differs from the statutorily required language in that it omits the words, “and the most recent three-year cohort default rate, if applicable.” The enrollment agreement also differs from the language required by subdivision (i)(2) in that it omits that same language from the certification statement. Although it was alleged that the enrollment agreement is *also* deficient in that it does not have a line for the student to initial this statement, the most recently submitted agreement (Exhibit B) does contain such a line.

22. The most recent enrollment agreement submitted by respondent does not include the exact language set forth in Education Code section 94911, subdivision (j)(1). It differs from the statutorily required language in minor ways, stating, “A student or member of the public with questions that have not been satisfactorily answered by the school or who would like to file a complaint about this school may be directed to the Bureau for Private Postsecondary Education” after which are listed an address, a website address and telephone and fax numbers for the bureau. The listed telephone number is incorrect in that it shows a 918 area code when the correct area code is 916. The statement included in respondent’s enrollment agreement conflates the required language of subdivision (j)(1) with part of the required language of subdivision (j)(2) (“A student or any member of the public may file a complaint about this institution with the Bureau for Private Postsecondary Education by calling (toll-free telephone number) or by completing a complaint form, which, can be obtained on the Bureau’s Internet Web site (Internet Web site address).”)

² Subdivision (i)(1) requires the following statement: “Prior to signing this enrollment agreement, you must be given a catalog or brochure and a School Performance Fact Sheet, which you are encouraged to review prior to signing this agreement. These documents contain important policies and performance data for this institution. This institution is required to have you sign and date the information included in the School Performance Fact Sheet relating to completion rates, placement rates, license examination passage rates, salaries or wages, and the most recent three-year cohort default rate, if applicable, prior to signing this agreement.”

Subdivision (i)(2) requires that immediately following the statement required by subdivision (i)(1) there be a line for the student to initial, which includes the following statement: “I certify that I have received the catalog, School Performance Fact Sheet, and information regarding completion rates, placement rates, license examination passage rates, salaries or wages, and the most recent three-year cohort default rate, if applicable, included in the School Performance Fact Sheet, and have signed, initialed, mid dated the information provided in the School Performance Fact Sheet”

23. Azar testified that he will go through the language of the enrollment agreement and will make the necessary corrections to the required language.

On the Fourth Cause for Denial

24. California Code of Regulations, title 5, section 71810, subdivision (b)(6), requires that a school's catalog include the institution's policies and practices regarding any form of financial aid, including all consumer information that the institution is required to disclose to the student under any state or federal financial aid program.

25. Section 25-6 of respondent's most recently submitted catalog states: "Financial Aid. The school does not provide either State or Federal financial aid nor does it provide financial aid directly to its students. A student enrolled in an unaccredited institution is not eligible for federal financial aid programs." While acknowledging that respondent does not participate in "Title IV funding," complainant asserts that respondent does participate in the Workforce Investment and Opportunity Act and that failure to provide a statement concerning how the school administers financial aid through that program constitutes a violation of section 71810, subdivision (b)(6).

26. Azar conceded that in the past respondent accepted students who qualified under the Workforce Investment and Opportunity Act, although it stopped doing so while waiting for its renewal application to be approved. Nevertheless, he testified that this deficiency in the catalog can, and will, be easily resolved.

Respondent's Evidence

27. Azar submitted written testimonials - all headed "Testimonial Letter for Hussein Azar" - from six individuals and video testimonials from four more. One of the testimonial letters is from someone who was a student at the School of Healing Touch and attested to Azar's instructional abilities, knowledge and organization. The remaining testimonials were all from clients of the clinic that shares space with the school. Each of those clients attested to Azar's ability to assist them with relief from pain and stress. None of those testimonials related to the School of Healing Touch itself. Nor did any of them address Azar's character or reputation for honesty, integrity and truthfulness.

28. Respondent submitted a Certificate of Appreciation awarded in May 2014 to the School of Healing Touch by the United States Army's Camp Parks Reserve Forces Training Area. The certificate recognizes the school's "hard work and selflessness" in providing therapy services to military spouses at the camp's Military Spouse Appreciation Day.

29. Concerning the California Massage Therapy Council's not having approved the school for certification of its students, Azar testified he has been working on this and has been told by the council the earliest the school could get onto the approved list is 2017. In the meantime, Azar points out that the school's students could still be certified by local governments that issue their own certifications of massage therapists rather than relying upon the council's certification.

Discussion

30. Regarding the remaining deficiencies in the enrollment agreement (Third Cause for Denial), it is true, as Azar testified, that these deficiencies can be easily corrected - correction merely requires inserting the exact language specified in Education Code section 94911. But because these corrections are so simple, one wonders why, despite repeated attempts, Azar has to date been unable to get it right.

31. It seems the reason the school's most recently submitted catalog did not include the institution's policies and practices concerning students receiving financial aid under the Workforce Investment and Opportunity Act (Fourth Cause for Denial) was because the school was not, at the time, accepting students who qualified for financial aid under that program. Regardless of the reason for not including those policies and practices, correcting the catalog deficiency is again a simple task, requiring only inclusion of a statement concerning financial aid policies and practices.

32. Azar seems like a genuinely nice man and it is entirely plausible that his crime (Second Cause for Denial) was simply the result of his being too trusting when trying to help a potential student coupled with miscommunication about the student's status with the school at which he was working. There was no evidence that Azar profited financially from his crime - it was not shown he accepted money for his actions, that any fees were paid by the student to Azar, or that the amount Azar was paid by Triton as an instructor was affected by enrollment of ml additional student.

33. The purpose of requiring financial statements from institutions seeking the bureau's approval to operate is to demonstrate to the bureau that the institution is financially stable enough to provide an education to its students and to protect those students from financial harm. Azar contends that students in the School for Healing Touch are protected from financial harm because the school collects from its students' assessments for the Student Tuition Recovery Fund and remits those funds to the bureau quarterly.

The Student Tuition Recovery Fund (Cal. Code Regs., tit. 5, § 76020) exists to relieve or mitigate economic losses by students under specified conditions, including the closure of an institution. All institutions approved by the bureau are required to collect STRF assessments and remit them to the fund. Merely complying with this regulatory requirement does not demonstrate the financial stability of an institution, and it does not provide an adequate substitute for submitting the required audited financial statements.

While Azar maintains that he was unable to submit audited financial statements for the School of Healing Touch because the school has had no revenue since 2012 that is not an adequate excuse. Even an institution that has not yet begun operation, and which therefore has no revenue, is required to submit audited financial statements in its initial application to the bureau. (Cal. Code Regs., tit. 5, § 71240.)

LEGAL CONCLUSIONS

1. An applicant for a license must prove that he should be granted a license. (*Martin v. Alcohol Beverage Control Appeals Board* (1959) 52 Cal.2d 238.) At a hearing regarding the denial of

an application, the respondent “must show compliance” with the statutes and regulations outlined in the Statement of Issues. (Gov. Code, § 11504.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code, § 115.)

On the First Cause for Denial

2. California Code of Regulations, title 5, section 71475, subdivision (kk), provides that submission of an incomplete application for renewal of approval to operate a non-accredited institution renders the institution ineligible for renewal. Cause for denial of the renewal application exists under that section because respondent’s application was incomplete since it did not include the audited financial statements required by section 71475, subdivision (w)(2). (Factual Findings 12 through 14 and 33.)

On the Second Cause for Denial

3. Azar’s conviction of a crime that is substantially related to the qualifications, functions and duties of the operator of a massage therapy school renders him ineligible for employment as an administrator at the School of Healing Touch under California Code of Regulations, title 5, section 71730, subdivision (b). Because Azar is respondent’s sole owner and employee, and is responsible for all administrative duties at the school, his ineligibility leaves the school without anyone to run it. This results in an inability for respondent to satisfy the minimum operating standards and constitutes cause for denial of the renewal application. (Ed. Code, §§ 94885, subd. (a)(5) and 94887.) (Factual Findings 15 through 18.)

4. It was alleged that cause for denial of the renewal application also exists under Education Code section 94897, subdivision (j), which provides that, “An institution shall not . . . [i]n any manner make an untrue or misleading . . . statement related to . . . attendance record [or] record indicating student completion, . . .”

No cause for denial under this section was established in that it was not shown either that violating this section constitutes grounds for denial of an application or that any untrue or misleading statements Azar made were in any way connected to or attributable to the School of Healing Touch.

On the Third Cause for Denial

5. California Code of Regulations, title 5, section 71800, provides that in order to meet minimum operating standards, an institution must provide each student with an enrollment agreement that meets the requirements of Education Code section 94911. California Code of Regulations, title 5, section 71475, subdivision (o), requires that exemplars of those student enrollment agreements must be submitted with a renewal application.

6. Cause for denial of the renewal application exists because the enrollment agreement submitted by respondent was deficient as described in Factual Findings 20 through 22. The application was therefore incomplete and failed to demonstrate the capacity to satisfy minimum operating standards. (Ed. Code §94887 and Cal. Code Regs., tit. 5, § 71475, subdivision (kk).)

On the Fourth Cause for Denial

7. California Code of Regulations, title 5, section 71475, subdivision (bb), requires that an application must include a copy of the institution's catalog that meets all statutory and regulatory requirements. Cause for denial of the renewal application exists because the catalog submitted by respondent was deficient as described in Factual Findings 24 through 26. The application was therefore incomplete and failed to demonstrate the capacity to satisfy minimum operating standards. (Ed. Code §94887 and Cal. Code Regs., tit. 5, § 71475, subdivision (kk).)

Disciplinary Considerations

8. Azar operated the School for Healing Touch for 16 years until after the school's 2012 renewal application proved to be deficient in numerous ways. There was no evidence presented that until that time the school's various renewal applications were in any way deficient. Nor was there any evidence that either the school or Azar violated the bureau's statutes and regulations in any way during the school's 16 years of operation. Respondent's good prior record must be taken into consideration in determining the action to be taken on the current renewal application.

9. The enrollment agreement and catalog deficiencies that still exist are minor and can be easily corrected. The failure to submit audited financial statements should also be an easily correctable deficiency, even though Azar seems to believe the school's lack of revenue maims the provision of an audited statement impossible. And considering respondent's prior good record, if those were the only grounds for denial of the renewal application a decision provisionally granting the application on condition that respondent satisfactorily makes the necessary corrections would be sufficient to meet the bureau's statutorily-mandated highest priority -protection of the public. (Ed. Code, § 94875.)

But those are not the only grounds for denial. There is also Azar's conviction of a crime that is substantially - and directly -related to the qualifications, functions and duties of the operator of a massage therapy school. His explanation of the circumstances of the crime - that it was the result of an ultimately misguided attempt to help a prospective student coupled with miscommunication between him and the institution at which he was teaching - is entirely plausible, and there was no evidence the crime was committed for purposes of monetary gain. Nevertheless, the conviction is very recent (occurring just two years ago) and although he has fully complied with the probationary terms imposed upon him, Azar remains on criminal probation. And other than compliance with the terms imposed by the court and his provision of volunteer services on behalf of military spouses, Azar has provided no significant evidence of rehabilitation.

Considering all of this, it is determined that protection of the public interest at this time requires denial of respondent's renewal application. In his written argument submitted to the Department, respondent requests that his application be kept "active," until October 2016 when his criminal probation ends, and then would provide up-to-date financial statements. He states that he would only begin operations again upon receiving notice that the application has been approved. The Department, however, is obligated to act on an application for approval or renewal, and once denied, cannot hold it in suspense. More importantly, upon findings that there are grounds for denial without significant evidence of rehabilitation, denial of the application with an order to cease operations is required in order to protect the public, the highest priority of the Bureau. But respondent is

encouraged to again seek approval to operate a non-accredited institution once Azar has successfully completed his criminal probation.

That said, complainant states that it might be in the interests of both justice and public protection to stay the execution of an order ceasing operations to allow for a plan for the school's closure to be filed with the Bureau.

ORDER

1. Respondent School of Healing Touch's Application for Renewal of Approval to Operate and Offer Educational Programs for a Non-Accredited Institution is denied.
2. Within 30 days of service of this Decision and Order, or by the set effective date of this Decision and Order, whichever is sooner, Hussein F. Azar, School of Healing Touch shall cease operating a private postsecondary institution in California, and shall not resume operation in California unless and until it is approved to do so by the Bureau for Private Postsecondary Education.
3. Within 30 days of service of this Decision and Order, respondent shall submit to the Bureau a plan for the school closure consistent with Ed. Code § 94926 and 94927.5, and Cal. Code Regs., tit. 5, § 76240.
4. The effective date of this decision is STAYED for a period of 30 days in order to allow respondent to submit a school closure plan as ordered in paragraph 3, above.

This Decision shall become effective on MAY - 4 2016.

IT IS SO ORDERED MAR 29 2016.



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs