

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

In the Matter of the Accusation Against:

NEWPORT INTERNATIONAL UNIVERSITY, Respondent.

Agency Case No. 1002816

OAH No. 2019100056

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.

The Decision shall become effective July 10, 2020.

DATED: June 4, 2020

“Original Signature on File”

RYAN MARCROFT

Deputy Director, Legal Affairs

Department of Consumer Affairs

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FOR THE BUREAU FOR PRIVATE POSTSECONDARY
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PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on March 11, 2020.

Michelle Nijm, Deputy Attorney General, represented complainant Michael Marion, Jr., Chief of the Bureau for Private Postsecondary Education (BPPE), Department of Consumer Affairs (Department). Jay Askari (Askari), President of Newport International University (NIU), appeared on behalf of, and represented, respondent NIU.

Complainant alleges NIU's failure to satisfy certain statutory accrediting requirements and NIU's noncompliance with an order suspending its operations, among other things, warrant revocation of BPPE's prior Approval to Operate. NIU offered testimony and documentary evidence explaining and defending its current

state of affairs. The record closed and the matter was submitted for decision on April 3, 2020.¹ The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order revoking the Approval to Operate issued to NIU.

FACTUAL FINDINGS

Jurisdictional Matters

1. On July 15, 2019, complainant, acting in an official capacity, filed the Accusation² in the above-captioned matter against respondent.
2. On August 20, 2019, NIU filed a Notice of Defense requesting a hearing to present a defense to the Accusation.
3. All jurisdiction requirements are satisfied.

¹ Consistent with a March 12, 2020 Post-Hearing Order in this matter, the record remained open for supplemental submissions and objections, if any. NIU submitted a packet consisting of three letters from individuals previously enrolled at NIU. The packet is marked for identification, and, over complainant's objection (see Exhibit F), is admitted in evidence as Exhibit E pursuant to Government Code section 11513, subdivision (d), as hearsay to supplement or explain other evidence.

² At the outset of the administrative hearings, pursuant to Government Code section 11507, the Second Cause for Discipline alleged in the Accusation was amended by interlineation on page 11, lines 19 and 20 to read "... total current assets to total current liabilities of 1.25 to 1.0."

NIU's Operations and License History

4. Askari has an extensive history of leadership positions at institutions offering distance learning curricula. He is the sole owner of Newport International Services Corporation (NIS Corp.), which does business as NIU. Askari's tenure as NIU's president commenced in 2011.

5. NIU is physically located on the first floor of a multi-story building in West Hills, California. Its facility includes three classrooms, a medical lab, a student lounge, and administrative offices. NIU operates with three full-time administrators, one full-time secretary, and one part-time information technologist. NIU retains up to 40 instructors on an as needed basis to provide online instruction.

6. On October 1, 2014, BPPE issued an Approval to Operate, Institution Code Number 87487641, to NIU to offer three degree programs—Bachelor of Arts in Business Administration, Bachelor of Arts in Psychology, and Master of Business Administration. The Approval to Operate was to expire on October 31, 2019. However, on October 3, 2019, NIU submitted an *Application for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions* (Renewal Application) to BPPE. On October 23, 2019, BPPE wrote Askari informing him that “[b]ecause the Renewal Application was received by the Bureau and has been determined to be complete, the institutional approval shall continue until such time the Bureau processes the application.” (Exhibit C.) As supporting authority, in the letter BPPE cites California Code of Regulations, title 5, section 71475, subdivision (ii), which states, “Provided that a complete renewal is received by the Bureau prior to the expiration of the approval, a valid approval to operate shall continue until the Bureau has acted upon the renewal application.”

Alleged Cause for Discipline of Approval to Operate

7. Three students enrolled at NIU after BPPE initially granted NIU an Approval to Operate.

8. In May 2015, Askari wrote BPPE Correspondence and Report Coordinator Karen Mam informing her that several international students interested in online study at NIU have some degree of difficulty with English. "Therefore, we contracted an international on-line English language organization to help and support our potential students or those who plan to become Newport International University students. We would like to assist them both prior and during their program of study and, if necessary, provide on-line tutoring to those students who need extra help." (Exhibit A.) Askari explained, NIU would assign students a tutor to whom they would submit written assignments for comments, corrections, and evaluation. On May 26, 2015, Mam informed Askari, "After talking to my manager, it has been determined that any tutoring service is not required to be approved by the BPPE." (*Ibid.*)

9. On June 19, 2015, NIU submitted to BPPE a plan for accreditation identifying the Accrediting Council for Independent Colleges and Schools (ACICS) as its accreditation agency. The accreditation plan additionally identifies ACICS's eligibility and minimum requirements and outlines a process for NIU to achieve full accreditation by July 1, 2020, as required by California Code of Regulations, title 5, section 71105.5.

10. On February 10, 2016, NIU completed ACICS's minimum eligibility requirements. On February 11, 2016, NIU received a Notification of Ability to Proceed with Registration from ACIC.

11. On a date not established by the evidence, ACIC subsequently notified BPPE that it was discontinuing the accreditation process with NIU. Askari testified at

the administrative hearing, "ACIC was in trouble." Consequently, NIU was required to select another accrediting agency and to submit a new accreditation plan to BPPE.

12. On April 10, 2016, NIU identified Distance Education Accrediting Commission (DEAC) to BPPE as its new accrediting agency. NIU submitted to BPPE a new accreditation plan outlining each step in the accreditation process and anticipated dates of completion.

13. As required by DEAC's Accreditation Benchmark Table, NIU reviewed the DEAC Handbook and Application and completed an online tutorial titled *Preparing for DEAC Accreditation* by August 2016.

14. On December 7, 2016, Askari sought guidance from BPPE personnel. By email, Askari asked, "If an institution started the preliminary steps to become accredited by ACICS and after several months was force[d] to change to a different accreditation agency, would the institution receive extra time for the pre-approval of the accreditation?" (Exhibit 9-AG004.) On December 12, 2016, BPPE personnel responded stating, "Senate Bill 1192 contains a provision to allow the Bureau to permit an extension of time to institutions demonstrating that they are making 'strong progress' toward achieving accreditation. My guidance at this point would be to ensure the school is indeed making solid measurable progress toward pre-accreditation/pre-approval with its selected accreditor. If the institution feels that an extension may be needed, I would suggest they wait until the beginning of June and contact us at that point in time." (Exhibit 9-AG003.)

15. In January and February 2017, acting on behalf of NIU, Askari unsuccessfully petitioned DEAC for a waiver of its eligibility standard requiring two consecutive years of continuous student enrollment before considering an

accreditation application. NIU did not meet this DEAC eligibility requirement because NIU had been enrolling students only since 2016. NIU offered DEAC no compelling rationale for a waiver of the two-year eligibility requirement. Askari subsequently provided DEAC with additional details and a timeline regarding student enrollment, and based on the information provided, on April 28, 2017, DEAC determined NIU could proceed to submit an Application for Initial Accreditation. (Exhibit 9-AG008.)

16. On May 4, 2017, BPPE wrote Askari requesting a status report of the steps NIU had made toward achieving accreditation, "including the institution's progress toward achieving accreditation candidacy or pre-condition by July 1, 2017." (Exhibit 8-AG001.) BPPE's May 4, 2017 letter explains, "For purpose of the July 1, 2017 deadline, "candidacy" or "pre-accreditation" means that your institution has submitted—to a United States Department of Education recognized accreditor—a completed application for accreditation with fees, which the accreditor accepted." (*Ibid.*) The May 4, 2017 letter provides Askari with instructions for submitting an amended accreditation plan identifying any change of accreditor since submission of the initial accreditation plan and for requesting additional time to achieve accreditation candidacy or pre-accreditation to meet the July 1, 2017 deadline. The May 4, 2017 letter warns, "The institution is reminded that, unless granted an extension, failure to achieve accreditation candidacy or pre-accreditation by July 1, 2017 shall result in the Bureau's issuance of an order suspending the institution's approval to operate." (*Ibid.*) BPPE required its receipt of any request for an extension no later than June 30, 2017.

17. On June 30, 2017, BPPE received NIU's Request for Extension in which Askari explains "efforts to obtain pre-accreditation, candidacy, accreditation has been challenged by events that were unforeseen and not in control of the University."

(Exhibit 9-AG001.) In the Request for Extension Askari informs BPPE about the sequence of events requiring its selection of DEAC to replace ACIC as set forth in Factual Findings 9 through 13 and 15. Askari requests an extension of time for NIU to obtain accreditation through DEAC. Askari additionally informs the BPPE "NIU has completed the Application for Initial Accreditation pending the audited financial statement for 2016. The Audit is scheduled to begin in July 2017." Askari explains, "NIU could not schedule previously since most auditors were unavailable until after June 30, 2017 (due to tax time and School audits due typically by June 30th). Additionally, NIU is in the process of completing its Self-Evaluation Report (SER) to show it surpassed qualification for DEAC." (Exhibit 9-AG002.) Along with the Request for Extension, Askari submitted to the BPPE a revised Accreditation Benchmark Table depicting dates by which NIU was expected to complete certain enumerated tasks and steps to obtain accreditation. According to the revised Accreditation Benchmark Table, NIU anticipated submitting an "Application and Required Documents" to DEAC by October 2017. (Exhibit 9-AG009.)

18. On July 21, 2017, BPPE issued an Order Suspending Approval to Operate Degree Granting Programs to NIS Corp and NIU (July 21, 2017 Order), which automatically suspended all NIU's degree programs effective July 26, 2017. The July 21, 2017 Order directs NIU to cease enrolling new students immediately, to submit a degree program closure plan to BPPE within 30 days of the order's effective date, and to notify currently enrolled students about the order within five business days of its effective date, a teach-out plan, and their right to a refund in lieu of participation in the teach-out plan.

19. On August 17, 2017, BPPE informed NIU the July 21, 2017 Order was cancelled, effective immediately, pending its decision on NIU's June 30, 2017 Request for Extension.

20. In September and October 2017, Joanna Murray, a BPPE Senior Education Specialist, emailed DEAC Director of Accreditation Nan Bayster Ridgeway inquiring about the status of NIU's application. On September 13, 2017, Ridgeway informed Murray, "No, we haven't received an application to date" (Exhibit 12-AG003.) On October 12, 2017, Ridgeway informed Murray, "I haven't heard from Newport International." (Exhibit 12-AG004.)

21. On October 13, 2017, BPPE wrote Askari informing him BPPE denied NIU's Request for Extension "as the Institution has not submitted sufficient evidence to demonstrate that the institution is making strong progress toward obtaining accreditation." (Exhibit 13-AG001.) BPPE specified several steps or requirements NIU failed to satisfy, including its submission of an application to DEAC by October 2017. BPPE also noted an absence of documentation from DEAC indicating NIU was likely to meet accreditation requirements. The October 13, 2017 letter states, "In fact, as recent as October 12, 2017, DEAC officials report they have not heard from the Institution in the past couple of months." (Exhibit 13-AG002.)

22. Thereafter, on October 25, 2017, BPPE issued an Order Suspending Approval to Operate Degree Granting Programs (Suspension Order) to NIS Corp. and NIU, which automatically suspended all NIU's degree programs effective October 30, 2017. The Suspension Order directs NIU to cease enrolling new students immediately, to submit a degree program closure plan to BPPE within 30 days of the order's effective date, and to notify currently enrolled students about the order within five

business days of its effective date, a teach-out plan, and their right to a refund in lieu of participation in the teach-out plan.

23. On November 17, 2017, NIU appealed the Suspension Order to the Director of the Department.

24. On December 15, 2017, a designee of the Director convened an informal office conference. In a Written Argument for Suspension of Degree Programs submitted at the informal office conference, BPPE maintained NIU failed to meet DEAC's pre-accreditation or candidacy requirements and DEAC had not accepted any application for accreditation from NIU on or before July 1, 2017. BPPE argued the following:

A request for an extension of time to achieve pre-accreditation or candidacy status was received by the bureau. The request indicated the process was delayed by a question of eligibility (regarding whether there had been the required two years of continual enrollments). The institution appealed the DEAC's determination of eligibility in December 2016 and received word in April 2017 that they would be permitted to apply. The accreditation plan submitted in August 2016 indicated that the institution would apply for accreditation in May of 2017. As the institution learned in April of 2017 that DEAC would permit them to apply, there is no reason why the institution could not have executed the plan to apply in May of 2017. Active steps were not demonstrated in that the institution

neglected to use the available time (August 2016-July 2017)
to prepare an application for DEAC accreditation.

(Exhibit 15-AG003.)

25. Upon considering the evidence and arguments submitted at the informal conference, the Director designee affirmed the Suspension Order. Thereafter, NIU appealed the matter to the Department.

26. On March 12, 2018, in *In the Matter of the Automatic Suspension of Approval to Operate Degree Granting Programs Directed to Newport International University*, case number 1002816, the Department issued a Decision affirming the Director designee's Order Suspending Approval to Operate Degree Granting Program. The Decision, in pertinent part, states:

The University offered testimony at the informal office conference that it had not submitted its accreditation application to DEAC. Because the University did not even submit its application to DEAC by July 1, 2017, it did not satisfy the requirement to have a completed application submitted to, and accepted by, the accrediting body by that date.

As discussed, an institution that does not submit evidence to the Bureau of having achieved accreditation candidacy or pre-accreditation by July 1, 2017, "shall have its approval to operate automatically suspended on the applicable date. The bureau shall issue an order suspending the institution and that suspension shall not be lifted until the institution

complies with the requirements of this section." (Ed. Code § 94885.1, subd. (e)). Since the University did not satisfy the July 1, 2017 deadline, the Bureau appropriately suspended the University's approval to operate degree programs.

(Exhibit 16-AG006 –AG007.)

27. Given the March 12, 2018 Decision affirming the Suspension Order, NIU was obligated to comply with the terms of the Suspension Order requiring NIU to cease enrolling new students immediately, to submit a closure plan to BPPE, and to notify currently enrolled students about a teach out plan and their refund rights. (See Factual Finding 22.) NIU complied with none of these requirements.

28. On April 2, 2018, Murray, BPPE Senior Education Specialist, conducted a search of the internet using, as she testified at the administrative hearing, "derivative pages," and she discovered NIU's website touting NIU as "an approved private institution." (Exhibit 17-AG003, AG004.) The website recruits students for online instruction in programs granting degrees in business and psychology. The website announces, "In partnership with a language school, NIU can now assist students from all over the world in obtaining a student visa (F-1) to come to the United States to learn English." (Exhibit 17-AG005.) The website additionally announces "NIU also offers online English courses which are personalized to the level of each student. Students can learn at their own pace via internet." (*Ibid.*) Murray prepared a *Summary of Findings* determining NIU was in violation of the Suspension Order by failing to submit a degree program closure plan and by continuing to advertise its degree programs. The Summary of Findings additionally determined since issuance of the Suspension Order NIU committed additional violations including advertising a non-degree

program for which it had no prior approval and failing to pay certain annual fees. (Exhibit 17.)

29. Consequently, on June 12, 2018, BPPE issued Citation Number 1718049 to NIU. The citation alleges violations of Education Code sections 94893 (authorization required for substantive change), 94926 (orderly institutional closure and teach outs), 94930.5 (fee schedule), 94931 (late payment), 94934 (annual report) and California Code of Regulations, title 5, sections 71650 (application for change in educational objectives), 74006 (annual fee), 74120 (annual report), 74250 (automatic suspension of unaccredited degree-granting institution), 76130 (collection and submission of assessments), and 76240 (required notices and teach out plans). The citation assesses administrative fines totaling \$11,000. (Exhibit 19.)

30. NIU appealed the citation, and on August 7, 2018, Askari appeared telephonically before BPPE's enforcement chief for an informal conference, at the conclusion of which the citation was modified, as reflected in an October 3, 2018 *Appeal of Citation Informal Conference Decision: Citation Modified*. The modified citation reflects NIU's failure to remit its annual fee for the calendar year 2017. NIU submitted its annual fee for the calendar year 2016 and its delinquent Student Recovery Fund (STRF) Assessment Reporting Forms for students for the first, second, and fourth quarters of 2015, the first and third quarters of 2016, and the first, second, third, and fourth quarters of 2017. The total assessed administrative fines were reduced to \$10,050. (Exhibit 19.) NIU has paid the \$10,050 fine.

31. After the June 12, 2018 issuance of the citation, but before its October 3, 2018 modification, on August 8, 2018, BPPE Inspection Analyst Michelle Loo conducted an inspection of NIU to determine its compliance with minimum requirements relating to STRF reporting, the institution catalog, the institution

enrollment agreement, student records, faculty, advertisements, the institution website, and School Performance Fact Sheet. At the time of the compliance inspection NIU presented Loo with information and documents correcting violations underlying the citation. In particular, Loo obtained completed quarterly STRF submissions. Loo reviewed NIU's catalog and a corrected enrollment agreement, and she determined they were compliant with requirements of the Education Code and applicable regulations. Loo determined NIU no longer advertised. Loo determined NIU's website was inactive after receiving an error message while trying to access the site.

32. Loo's compliance inspection of NIU, however, detected material violations of the Education Code and accompanying regulations. For example, NIU's ratio of total current assets to total current liabilities was zero for the year ending December 31, 2017, which is inconsistent with the requirement of a one to 1.25 ratio of total current assets to current liabilities. At the time of the inspection, NIU had not submitted its 2016 Annual Report, 2015-2016 School Performance Fact Sheets, and financial records to the BPPE Annual Report Unit.

Hearing Testimony on Behalf of NIU

33. At the administrative hearing, Askari explained NIU's failure to achieve accreditation candidacy or pre-accreditation by the July 1, 2017 statutory deadline testifying that during the evaluation process his spouse was diagnosed with brain cancer. "All my attention went to my wife." After a passage of time DEAC informed NIU "it couldn't do it anymore."

34. Askari testified, "There are no advertisements. . . . The website is suspended. I cannot get to the website." Askari was surprised to learn from Senior Education Specialist Murray's testimony that she was able to access NIU's defunct

website by accessing "derivative pages." (See Factual Finding 28.) Askari additionally testified three students were enrolled at NIU prior to the Suspension Order, and letters from three students corroborate his testimony. None of the students paid tuition to NIU at the time of their enrollment or at any subsequent time. Each student received notification of the Suspension Order prior to cessation of instruction for the courses in which they enrolled. (See Exhibit E.) Askari incorrectly maintained NIU was not required to submit a degree closure plan to BPPE because NIU had no students after BPPE issued the Suspension Order, and, in any event, NIU and BPPE were "in discussion about obtaining students." Askari admitted NIU sought to enroll new students notwithstanding suspension of its operations. "We tried to enlist recruiters to enroll students, but we are struggling because of the suspension." Askari also testified, "No accrediting agency will let us do anything because of the suspension."

35. Askari admitted, as of the date of the administrative hearing, NIU had not submitted any application for accreditation to any accrediting authority, including DEAC.

Costs of Enforcement

36. BPPE incurred \$12,942.50 as its reasonable costs of enforcement in this matter.

37. Askari's unrebutted testimony establishes NIU's financial inability to pay a cost recovery award. Askari explained, NIU having paid the \$10,050 fine set forth in Factual Finding 30 and a \$13,000 fee in connection with its Renewal Application set forth in Factual Finding 6, it would be a "huge burden" on NIU to pay a cost recovery award "because the organization is not making money for a few years."

LEGAL CONCLUSIONS

1. Under the California Private Postsecondary Education Act of 2009 (the ACT),³ BPPE has oversight responsibility for private postsecondary educational institutions. BPPE's responsibility includes, among other things, protecting students and consumers against fraud, misrepresentation, or other business practices which may lead to a loss of student tuition and related education funds and establishing and maintaining minimum operation standards for fiscal integrity, financial stability, and educational quality.

2. To fulfill these public protection goals, all non-exempt private postsecondary educational institutions operating in California must obtain an approval to operate from BPPE. (Ed. Code, §§ 94885, 94887, & 94891; Cal. Code Regs., tit. 5, § 71475.)

3. Institutions granted an approval to operate from BPEE are additionally required to obtain accreditation from an accrediting agency recognized by the United States Department of Education. Education Code section 94885.1 so provides:

(a) An institution that is not accredited by an accrediting agency recognized by the United States Department of Education and offering at least one degree program, and that has obtained an approval to operate from the bureau on or before January 1, 2015, shall be required to satisfy at least one of the following no later than July 1, 2015:

³ Ed. Code, § 94800 et seq.

(1) Accreditation by an accrediting agency recognized by the United States Department of Education, with the scope of that accreditation covering the offering of at least one degree program by the institution.

(2) Compliance with subdivision (b).

(b) The bureau shall identify institutions that are subject to subdivision (a) and notify those institutions by February 1, 2015, of the accreditation requirements pursuant to this section and that the institution is required to provide the following information to the bureau if the institution plans to continue to offer a degree program after July 1, 2015.

(1) An accreditation plan that, at a minimum, identifies an accrediting agency recognized by the United States Department of Education from which the institution will seek accreditation, with the scope of that accreditation covering the offering of at least one degree program, and outlines the process by which the institution will achieve accreditation candidacy or pre-accreditation by July 1, 2017, and full accreditation by July 1, 2020.

(2) Evidence of having achieved accreditation candidacy or pre-accreditation by July 1, 2017.

(3) Evidence of having obtained full accreditation by July 1, 2020.

(4) Any additional documentation the bureau deems necessary. [f]

(d)(1) The bureau shall, upon the timely submission of sufficient evidence that an unaccredited institution is making strong progress toward obtaining accreditation, grant an institution's request for an extension of time, not to exceed two years, to meet the requirements of this section.

(2) Evidence submitted to the bureau pursuant to paragraph (1) shall include, but is not limited to, an amended accreditation plan adequately identifying why pre-accreditation, accreditation candidacy, or accreditation outlined in the original plan submitted to the bureau was not achieved, active steps the institution is taking to comply with this section, and documentation from an accrediting agency demonstrating the institution's likely ability to meet the requirements of this section.

(3) The bureau may establish policies and procedures to comply with the requirements in this subdivision. . . .

(e) Any institution that fails to comply with the requirements of this section by the dates provided, as required, shall have its approval to operate automatically suspended on an applicable date. The bureau shall issue an order suspending the institution and that suspension shall

not be lifted until the institution complies with the requirements of this section. A suspended institution shall not enroll new students in any of its degree programs, and shall execute a teach out plan for its enrolled students.

4. As an institution not accredited by an accrediting agency, and offering at least one degree program, and which obtained an Approval to Operate from BPPE on October 1, 2014, which is prior to January 1, 2015, Education Code section 94885.1 requires NIU to achieve accreditation candidacy or pre-accreditation by July 1, 2017, and full accreditation by July 1, 2020.

5. As set forth in Factual Findings 17 through 21, NIU requested, but was denied, an extension of time to meet the July 1, 2017 pre-accreditation deadline because NIU failed to demonstrate it was making strong progress toward obtaining accreditation. For example, although NIU purportedly completed an Application for Initial Accreditation in June 2017, NIU has never submitted that application to DEAC. (Factual Findings 17 and 35.) In addition, DEAC officials informed BPPE they received no communication from NIU for months (Factual Finding 21). Askari explained his personal circumstances affecting NIU's inability to meet the statutory deadline for pre-accreditation (Factual Finding 33), but he never disputed NIU's actual failure to demonstrate strong progress toward obtaining accreditation.

6. NIU having failed to comply with the requirements of Education Code section 94885.1, BPPE issued the Suspension Order, which remains in effect until NIU complies with the section 94885.1 requirements. (Factual Finding 22.) Askari testimony at the administrative hearing establishes NIU is unlikely to satisfy any of the accrediting requirements of Education Code section 94885.1. Askari disclosed that as of the date of the administrative hearing—March 11, 2020—NIU had not submitted an

application to DEAC. (Factual Finding 35.) Askari additionally acknowledged the Suspension Order effectively precludes accrediting agencies, including DEAC, from proceeding with any evaluation or verification that NIU meets accepted standards of education accreditation. (Factual Finding 34.) The July 1, 2017 pre-accreditation deadline has lapsed. The July 1, 2020 full accreditation deadline is imminent.

7. As a suspended institution, NIU was statutorily obligated to cease operating and to comply with certain degree closure plan requirements. BPPE issued a citation to NIU when it appeared NIU was not only violating the terms of the Suspension Order, but also committing fresh violations of the statutory and regulatory requirements for private post-secondary educational institutions. (Factual Findings 28 and 29.) The citation was subsequently modified to reflect NIU's compliance with or correction of certain statutory and regulatory requirements. (Factual Finding 30 and 31.)

8. With respect to the First Cause for Discipline (Application for a Change in Educational Objectives) alleged in the Accusation, complainant established NIU offered a non-degree English program for which it had no prior approval in violation of Education Code section 94893. (See Factual Finding 28.)

9. With respect to the Second Cause for Discipline (Financial Resources) alleged in the Accusation, complainant established NIU failed to meet the requirement of a one to 1.25 ratio of total current assets to current liabilities in violation of California Code of Regulations, title 5, section 71745, subdivision (a)(6). (See Factual Finding 32.)

10. With respect to the Third Cause for Discipline (Annual Report) in the Accusation, complainant established NIU failed to submit an annual report for year

2016 in violation of Education Code section 94934 and California Code of Regulations, title 5, section 74110. (See Factual Finding 32.)

11. With respect to the Fourth Cause for Discipline (Annual Fee) in the Accusation, complainant established NIU has not remitted its annual fee for the calendar year 2017 in violation of Education Code section 94930.5, subdivision (d)(1)(A), and California Code of Regulations, title 5, section 74006, subdivisions (a) and (b). (See Factual Finding 30.) Consequently, in accordance with California Code of Regulations, title 5, section 94931, subdivision (b), NIU is subject to a 35 percent late assessment, which it has not paid.

12. With respect to the Fifth Cause for Discipline (Degree Program Closure Plan and Cease Enrolling Students) in the Accusation, complainant established NIU failed to comply with the requirements of the Suspension Order including ceasing to enroll students and providing BPPE a degree closure plan within 30 days of the effective date of the Suspension Order in violation of California Code of Regulations, title 5, section 74250. (See Factual Findings 22, 27, and 34.)

13. With respect to the Sixth Cause for Discipline (Required Notices and Teach Out Plan) in the Accusation, complainant established NIU failed to provide BPPE a degree closure plan meeting the requirements of California Code of Regulations, title 5, section 76240 in violation of Education Code section 94926 and California Code of Regulations, title 5, section 76240. (See Factual Findings 27 and 34.)

14. By reason of Legal Conclusions 1 through 13, cause exists to revoke Approval to Operate Institution Code Number 87487641 issued to NIU.

15. Education Code section 94937 provides BPPE "may seek reimbursement pursuant to Section 125.3 of the Business and Professions Code." Section 125.3

authorizes BPPE to request the Administrative Law Judge to direct a licentiate found to have committed a violation of the Act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

16. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.App.4th 32, 45, BPPE must exercise its discretion to reduce or eliminate costs so as to prevent cost award statutes from deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus BPPE may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Id.*) BPPE, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position and BPPE must consider whether or not the licensee has raised a colorable defense. BPPE must also consider the licensee's ability to make payment.

17. Complainant has proved the allegations in the Accusation. Considering all of the *Zuckerman* factors, including NIU's financial inability to pay cost recovery award as set forth in Factual Finding 37, NIU shall pay the its reasonable costs of enforcement in an amount totaling \$12,942.50 as set forth in the Order below.

ORDER

1. Approval to Operate Institution Code Number 87487641 issued to Newport International University is revoked.

2. Newport International University shall pay the Bureau of Private Postsecondary Education a cost award totaling \$12,942.50 in the event it is granted a subsequent approval to operate.

DATE: April 13, 2020

DocuSigned by:

JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings