



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

**In the Matter of the Citation Against:**

**APPEAR MEDIA, INC., d.b.a. BRENTWOOD UNIVERSITY,**

**Respondent**

**Agency No. 1005506**

**OAH No. 2021010014**

**PROPOSED DECISION**

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on May 5, 2021, by video and teleconference. By Stipulation and Order dated April 16, 2021, this matter was consolidated for a single hearing with OAH Case No. 2021040506, regarding Citation No. 1920271. Separate decisions will be issued.

Amie F. Flynn, Deputy Attorney General, appeared on behalf of complainant Dr. Michael Marion, Jr., Chief, Bureau for Private Postsecondary Education (bureau), Department of Consumer Affairs, State of California.

Dr. Marc Pakbaz, Chief Executive Officer, represented Appear Media Inc., d.b.a. Brentwood University, respondent.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on May 5, 2021.

## **SUMMARY**

Respondent failed to timely file its 2017 Annual Report and complainant issued a citation to respondent and initially assessed a \$5,000 penalty with an Order of Abatement that required respondent to file its Annual Report through the bureau's website and a hard copy of its 2017 Financial Statement by mail. After an informal conference, complainant reduced the penalty to \$2,500 based on technical difficulties respondent had accessing the bureau's website. Complainant further modified the Order of Abatement, which required respondent to file its financial statements for 2017. Respondent does not dispute that it failed to timely file the annual report but asks that the penalty be vacated because of the technical difficulties it encountered to file the report electronically. After giving due consideration to the evidence of record and the factors under Education Code section 94936, subdivision (b), the penalty is reduced to \$1,250. The Order of Abatement is modified to give respondent 90 days to file the 2017 financial statements.

## **FACTUAL FINDINGS**

### **Jurisdiction and Citation**

1. On August 11, 2016, the bureau approved respondent for degree programs in Doctor of Business Administration and Master of Business Administration, and certificate programs in Business Administration, Entrepreneurship and Project Management. Per the certificate of licensure received into evidence, the degree

programs are identified as suspended. The full approval expiration date for these programs is August 11, 2021. The certificate of licensure admitted as evidence indicates respondent has no citation or disciplinary history.

2. On January 30, 2020, Christina Villanueva, acting in her official capacity as the bureau's Discipline Manager, issued Citation number 1920195 (Citation) to respondent.

The Citation asserts that respondent failed to timely file an Annual Report by the date the bureau set for registered institutions to file their annual reports and as a result, violated Education Code section 94934, subdivision (a), and California Code of Regulations title 5, section 74110, subdivision (c). Per these authorities respondent was required to file an Annual Report electronically by December 1st for all education programs it offered in the prior calendar year. For 2017, respondent was required to file its Annual Report by December 1, 2018. The bureau, however, extended this deadline for all bureau registrants to May 16, 2019, due to technical problems with the bureau's online portal. Originally, the bureau assessed an administrative fine of \$5,000 and issued an Order of Abatement ordering respondent to submit its 2017 Annual Report within 30 days through the bureau's online submission portal and separately file a hard copy of its 2017 financial statements by mail.

3. On February 27, 2020, respondent timely filed a Request for an informal conference and a request to schedule an administrative hearing. On April 3, 2020, an informal conference was held telephonically. The bureau's enforcement chief, Beth Danielson, modified the citation and reduced the amount of the fine to \$2,500 on April 14, 2020.

4. In her decision to modify the citation, Ms. Danielson found that respondent had difficulty submitting the Annual Report through the website and that respondent had hired an external company for help. Ms. Danielson acknowledged that respondent had submitted the Annual Report but had not submitted the 2017 Financial Statement. Dr. Pakbaz, however, stated at the informal conference that respondent had submitted the 2017 Financials in 2017. But per Ms. Danielson's note sheet from the conference, Jennifer Jones, Lead Annual Report Analyst at the bureau, told Ms. Danielson that as of April 14, 2020, respondent had not submitted the 2017 Financial Statement.

5. In addition to reducing the penalty, Ms. Danielson decided that a new order of abatement requiring respondent to submit its 2017 Financial Statement within 30 days should be issued.

6. On May 7, 2020, Ms. Villanueva signed a modified citation which was served upon respondent with the modified reduced \$2,500 penalty and the order of abatement that required respondent to submit by mail the institution's 2017 Financial Statements within 30 days from the date of the bureau's decision. The effective date of the modified citation was May 7, 2020, and the due dates for the order of abatement and payment of fine were set for June 6, 2020.

7. Per email correspondence between bureau staff on September 18, 2020, Ms. Jones stated that while respondent submitted the Annual Report for 2017 on February 28, 2020, (with some information missing) as of September 18, 2020, respondent had not filed the Financial Statements for 2017. Dr. Pakbaz did not testify at the hearing that respondent had submitted the 2017 financials, and nothing in the record indicates it has done so.

## **Dr. Pakbaz's Testimony**

8. Dr. Pakbaz testified that Brentwood University is a small institution with about 30 students and a small budget of about \$30,000. All the students attend through remote learning. In 2017 the institution offered one doctorate program and one master's degree program in business administration and had five students. Respondent also offered three diploma or certificate programs in entrepreneurship, project management, and business administration.

9. Dr. Pakbaz does not dispute that he failed to file the annual report timely. He explained that he did not file the report because he was unable to access the bureau's online portal and upload information because, as he later learned, respondent's servers are outside the country. The bureau acknowledged that he had technical difficulty submitting the 2017 Annual Report for this reason. However, it appears that Dr. Pakbaz did not take affirmative steps to determine why he was not able to file the report electronically until well after the citation was issued.

10. Dr. Pakbaz stated that as a small institution, the \$2,500 penalty is not insignificant and asked that the penalty be vacated due to the technical difficulties respondent encountered.

## **LEGAL CONCLUSIONS**

1. On October 11, 2009, the Bureau for Private Postsecondary Education Act of 2009 (Act) was signed into law; the Act became operative on January 1, 2010, establishing the Bureau for Private Postsecondary Education. The bureau is responsible for regulating private postsecondary educational institutions. Protection of the public is its highest priority. (Ed. Code § 94875.)

2. A "private postsecondary educational institution" is "a private entity with a physical presence in this state that offers postsecondary education to the public for an institutional charge." (Ed. Code, § 94858.) "Postsecondary education" is "a formal institutional educational program whose curriculum is designed primarily for students who have completed or terminated their secondary education . . . , including programs whose purpose is academic, vocational, or continuing professional education." (Ed. Code, § 94857.) "To offer to the public" means "to advertise, publicize, solicit, or recruit." (Ed. Code, § 94868.) "To operate means "to establish, keep, or maintain any facility or location in this state where, or from which, or through which, postsecondary educational programs are provided." (Ed. Code, § 94869.)

3. The bureau may issue a citation for violations of the Act. (Ed. Code, § 94936, subd. (a).) The citation may include an order of abatement, and an administrative fine not to exceed \$5,000 for each violation. The fine shall be based on the nature and seriousness of the violation, the persistence of the violation, the good faith of the institution, the history of previous violations, the potential harm to students, and the purposes of the Act. (Ed. Code, § 94936, subd. (b).)

4. All private postsecondary educational institutions must submit an annual report under penalty of perjury to the bureau by a date the bureau designates. (Ed. Code, § 94934.) In this report the institution must provide detailed information to give prospective and current students, and the public, information regarding the institution so they can make informed decisions regarding attending the institution. This information includes the number of students enrolled, the programs offered, the number of degrees and diplomas awarded, the degree levels and diplomas offered, a

copy of the institution's catalog, the School Performance Fact Sheet,<sup>1</sup> the total charges for each educational program by program attendance, and other information. (Ed. Code, § 94934, subd. (a)(1) to (9).) California Code of Regulations, title 5, section 74110, identifies additional information institutions must provide in the annual report. (Cal. Code Regs, title 5, §74110, subd. (a)(1) - (6).) Institutions are required to file their annual reports electronically. (Cal. Code Regs, title 5, § 74110, subd. (d).)

5. Under California Code of Regulations, title 5, section 74110, the institution must file its annual report by December 1st. (Cal. Code Regs, title 5, § 74110, subd. (c).) In addition, under this rule the institution is required to submit annual financial statements for the prior calendar year. (Cal. Code Regs, title 5, §74110, subd. (b).)

6. Cause exists to affirm Citation number 1920195 issued to respondent for violating Education Code section 94934. Respondent failed to timely file an annual report for 2017 by the May 19, 2019, deadline the bureau set.

7. Consistent with the factors under Education Code section 94936, the \$2,500 penalty the bureau set for this violation is reduced to \$1,250 for these reasons: Respondent's failure to timely file the 2017 Annual Report deprived prospective students, current students, and the public of important information about the institution and, in this sense, students and prospective students have been potentially harmed. Respondent, however, it does not appear, undertook a serious effort to

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<sup>1</sup> Education Code section 94910 requires institutions to complete and file and make available information relating to program completion rates, placement rates, licensee examination passage rates, and salary and wage information.

discover why respondent was unable to upload required information to the bureau's online portal until well after the citation was issued and shortly before the informal conference. Thus, vacating the penalty entirely, as respondent seeks, is not an appropriate disposition. However, a reduction in the amount of the remedy is warranted because respondent's failure to submit this report timely was due, in part, to technical difficulties accessing the bureau's online portal because the institution's servers are outside the country. The annual report information for 2017 was uploaded in February 2020.

8. With respect to the Order of Abatement, respondent did not explain why the 2017 financials have not been filed with the bureau. To give respondent the opportunity to submit this information to the bureau, the Order of Abatement is modified to require respondent to submit the 2017 financial statements within 90 days of the effective date of this decision.

### **ORDER**

Citation number 1920195 issued to respondent Appear Media, Inc., d.b.a. Brentwood University, is affirmed; however, the administrative fine is reduced to \$1,250, to be paid in full within 180 days following the effective date of this decision.

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The Order of Abatement is affirmed but modified to require respondent to submit the 2017 financial statements within 90 days of the effective date of this decision unless the bureau agrees to an extension.

DATE: May 10, 2021

*Abraham M. Levy*

ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings