

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

In the Matter of the Statement of Issues Against:

SCHOOL OF HEALING TOUCH,

Respondent.

Case No. BPPE22-215

OAH CaseNo.2022070549

DECISION AND ORDER

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

This Decision shall become effective on January 5 ,2023.

It is so ORDERED December 2 , 2022.

"Original Signature on File

RYAN MARCROFT
Deputy Director, Legal Affairs Division
Department of Consumer Affairs

**BEFORE THE
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, Respondent.

Agency Case No. BPPE22-215

OAH No. 2022070549

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on November 14, 2022, by videoconference.

Deputy Attorney General Carter Ott represented complainant Deborah Cochrane, Chief of the Bureau for Private Postsecondary Education.

Respondent Hussein Azar, owner and director of the School of Healing Touch, appeared representing himself.

The matter was submitted for decision on November 14, 2022.

FACTUAL FINDINGS

1. Respondent Hussein Azar has operated the School of Healing Touch for more than 30 years.

a. Before November 2017, Azar held approval to operate the School of Healing Touch as a private postsecondary educational institution.

b. Between November 2017 and November 2021, the Bureau for Private Postsecondary Education had verified that the School of Healing Touch did not require approval to operate, and otherwise was exempt from Bureau regulation, because it offered only non-degree courses that cost \$2,500 or less and for which students did not receive state or federal financial aid.

2. In October 2021, Azar applied to the Bureau for Private Postsecondary Education for renewal of his exemption verification for the School of Healing Touch. Azar sought verification that the manner in which he intended to continue operating the School of Healing Touch would exempt the school from Bureau regulation under Education Code section 94874, subdivision (a) ("avocational or recreational educational programs"), or in the alternative under Education Code section 94874, subdivision (f) (non-degree program with courses that cost \$2,500 or less and for which students do not receive state or federal financial aid).

3. After an investigation (summarized below in Findings 10 through 13), the Bureau denied respondent's exemption verification application in two letters, both dated February 14, 2022. Respondent requested a hearing.

4. Acting in her official capacity as Chief of the Bureau, complainant Deborah Cochrane served respondent in June 2022 with a statement of issues.

Complainant alleges two grounds to deny respondent's October 2021 application for exemption verification: (1) the application fails to demonstrate that the School of Healing Touch intends to offer "solely avocational or recreational educational programs"; and (2) the application fails to demonstrate that the School of Healing Touch intends to offer only non-degree courses that cost \$2,500 or less.

Program Description in October 2021 Application

5. The exemption verification application respondent submitted in October 2021 asked for the "title and description of the educational program" and for information about any "diploma, certificate, degree or other similar title awarded to students who complete the program."

6. The application also asked respondent to state the "total institutional charges for the educational program," and whether any student "receives state or federal financial assistance."

7. Respondent provided a blank form that a student could fill out to enroll in a course. The form listed three courses, in table format:

<u>Course</u>	<u>CEU's</u>	<u>Hours</u>	<u>Cost</u>
• Acupressure & Swedish	100	100	\$750.
• Acupressure & Soft Tissue	250	250	\$1,600.
• Acupressure & Deep Tissue	500	500	\$2,500.

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8. Respondent also provided two sample certificates with the application: a "Certificate of Completion" for an "Acupressure Training Course (250 hours CEU),"¹ and a "Certificate of Completion" for a "Soft Tissue Training Course (100.hours CEU)."

9. Finally, respondent provided three documents summarizing training programs.

a. One document, with the heading "OFFICIAL TRANSCRIPT" but no course or program title, described 500 total instructional hours in topics including anatomy, physiology, and kinesiology; "Clinical Pathology and recognition of various conditions"; massage and acupressure techniques; and "Business practices and professionalism." This document did not state a price for the program it described.

b. One document, with no heading or program title, described 250 total instructional hours. The topics included those listed in Finding 8.a, as well as "foot and hand reflexology," "spa therapy," and "under water massage techniques." This document stated at the bottom, "TOTAL COST include books and supplies. \$1600."

c. One document, also with the heading "OFFICIAL TRANSCRIPT" but no course or program title, described 100 total instructional hours. This program included instruction in "codes of Nature," breath and movement during "foot reflexology," "inner sensory & foot reflex," and "Healing The Emotional and Subtle Bodies." This document did not state a price for the program it described.

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¹ Respondent included two identical copies of this certificate.

Additional Program Materials Submitted After Application

10. Bureau Licensing Analyst Kimberly Harris caused the Bureau to send a letter to respondent on November 1, 2021, telling him that the Bureau could not approve his application. The letter explained why Harris found the application inadequate to show that respondent qualified for exemption:

The Bureau's decision is based on the analysis that the institution did not provide the Bureau with the title and description of each educational program the institution offers. The certificates submitted to the Bureau do not match up with the transcripts also submitted. In addition, the institution did not provide the Bureau with the total charges for each educational program. Furthermore, the institution did not provide a statement regarding whether the institution receives state or federal financial assistance on behalf of their students. Lastly, the Bureau was unable to determine that the programs that the institution is seeking to offer are solely avocational or recreational programs as they can lead to employment.

The letter invited respondent to submit additional information addressing these concerns.

11. Respondent sent the Bureau additional documents in response to the letter described in Finding 10:

a. A statement that the school did not receive state or federal financial aid for students;

- b. Two copies of a document dated September 11, 2014, describing a 500-hour course titled, "Acupressure & Deep Tissue Course/Foot Reflexology";
- c. Two copies of an undated document describing a 250-hour course titled, "Acupressure Training Course";
- d. Two copies of an undated document describing a 250-hour course titled, "Introduction to Spa and Massage Therapy Training";
- e. Two copies of an undated document describing a 100-hour course titled, "Prenatal Massage Therapy";
- f. A sample "Certificate of Completion" for "Acupressure & Deep tissue courses (500 hours CEU)"; and
- g. Additional copies of the documents described in Findings 7, 8, and 9.

12. Harris caused the Bureau to send another letter to respondent on December 20, 2021, telling him that the Bureau still could not approve his application. The letter reiterated Harris's explanation:

The Bureau's decision is based on the analysis that the institution provided the Bureau with the title and description of several educational programs; however, the Bureau was unable to determine the title and description of each completion certificate as the program titles vary. In addition, the institution did not provide the Bureau with the total charges for each educational program.

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13. Respondent answered the December 2021 letter by providing another copy of the registration form described in Finding 7, with the phrase "registration fee books and uniforms are included" typed above the course chart. He provided nothing else to explain how the course descriptions and certificates he had submitted related to the three courses with prices that the registration form listed.

Additional Evidence

14. In its heyday, the School of Healing Touch offered a comprehensive training program in acupressure, massage, and similar types of bodywork. Some courses provided initial training and experience for students who wished to qualify for professional certification. Others provided continuing education for experienced professionals, or complementary training for persons licensed in other healthcare professions such as nursing.

15. In recent years, respondent has scaled back the school's program. He now offers only continuing education programs, in which respondent is the sole instructor. The references to "CEU's" on the registration form and course certificates described above in Findings 7 and 8 were to continuing education units that many professional organizations for massage therapists and bodyworkers require to maintain professional certification.

16. Respondent established a Facebook page for the School of Healing Touch many years ago that described career training. He has never updated it to reflect his current limited course offerings.

17. The three programs respondent offers are those listed on the registration form described in Finding 7. He formerly offered courses including "Introduction to Spa and Massage Therapy Training" and "Prenatal Massage Therapy," but does not

offer them any longer. Except to clarify that he does not offer these two courses, respondent did not explain how the three courses listed on the registration form relate to the course descriptions and certificates described in Findings 8, 9, and 11.

Grounds to Deny Exemption Verification

18. Because respondent's application demonstrated that the School of Healing Touch would offer courses for professional continuing education, it did not demonstrate that the school's operations would consist solely of courses for entertainment or recreation.

19. The registration form described in Finding 7 listed only three courses, and did not list any course price exceeding \$2,500. The documents described in Findings 9 and 11, however, either described other courses, or described the same three courses as the registration form but used different course titles. Neither respondent's application materials nor his testimony fully explained this discrepancy. Because respondent's application did not state clearly that the School of Healing Touch would offer only the three courses listed on its registration form, it did not demonstrate that the school's operations would consist solely of courses costing students \$2,500 or less.

20. As to the three courses listed on the registration form described in Finding 8, the form stated total per-course charges of \$2,500 or less. Although it included no further cost breakdown for any course, the form and related documents that respondent provided with the application did not imply that students would incur other undisclosed costs to take any of these courses. To the contrary, the documents described in Findings 9.b and 13 provide reasonable confirmation of respondent's intent to offer these courses at the total prices stated on the registration form.

LEGAL CONCLUSIONS

1. 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.) The matters stated in Findings 1, 14, and 15 establish that the School of Healing Touch has been, and that respondent intends it to continue to be, a private postsecondary educational institution.

2. The Bureau regulates private postsecondary educational institutions for consumer protection. (Ed. Code, § 94875.) Although the Bureau's regulatory program is complex, the Bureau may issue exemption verifications to institutions. (*Id.*, § 94874.7.) An exemption verification confirms that as long as an institution operates in accordance with its exemption application, the institution may operate without full Bureau approval and without dose Bureau oversight. (*Id.*)

3. An applicant for exemption verification bears the burden of demonstrating by a preponderance of the evidence that the manner in which the applicant intends to operate its private postsecondary educational institution meets one or more of the statutory exemption criteria. (See Cal. Code Regs., tit. 5, § 71395.)

First Cause for Exemption Verification Denial

4. A private postsecondary educational institution is exempt from the requirement to obtain and abide by Bureau approval to operate if the institution offers solely "avocational or recreational educational programs." (Ed. Code, § 94874, subd (a).) Such programs are "for the purpose of personal pleasure, entertainment, or enjoyment" (*id.*, § 94818), or teach "the fundamentals, skills or techniques of sports or games" (Cal. Code Regs., tit. 5, § 70000, subd. (x)).

5. The matters stated in Findings 5 through 13, 15, 16, and 18 do not establish that respondent's educational program is solely "avocational or recreational," within the meaning of Education Code section 94874, subdivision (a). These matters constitute cause to deny respondent's exemption verification application with respect to exemption under this statutory subdivision.

Second Cause for Exemption Verification Denial

6. A private postsecondary educational institution is exempt from the requirement to obtain and abide by Bureau approval to operate if the institution does not offer degrees, offers only courses costing \$2,500 per course or less in total, and does not accept state or federal student financial aid. (Ed. Code, § 94874, subd (f).)

7. The matters stated in Findings 5 through 13, 16, 17, 19, and 20 suggest that respondent offers some courses meeting the exemption criteria,² but they also suggest that respondent offers other courses. For this reason, respondent's application materials, in total, do not demonstrate that the School of Healing Touch's program consists solely of courses meeting the exemption criteria stated in Education Code section 94874, subdivision (f). Respondent's failure to present evidence establishing

² Complainant alleges that respondent's failure to provide a "breakdown of the total cost" for each course also would be cause to deny exemption verification, even if the courses that respondent has represented to cost \$2,500 or less per course were respondent's only courses. The regulation complainant cites (Cal. Code Regs., tit. 5, § 71395, subd. (b)(9)) does not call for a "breakdown," however; it calls for "the total institutional charges for the educational program."

the program's exemption is cause to deny respondent's exemption verification application with respect to exemption under this statutory subdivision.

ORDER

The October 2021 application by Hussein Azar for verification that the School of Healing Touch meets a statutory criterion for exemption from the requirement to obtain Bureau approval to operate is denied.

DATE: **11/17/2022**

"Original Signature on File"

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings