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8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION**
11 **STATE OF CALIFORNIA**

12
13
14 In the Matter of the Accusation Against:

Case No. 1006317

15 **DIANOVA INSTITUTE**
1998 Pacific Avenue, Suite 305
16 **San Francisco, CA 94109**

ACCUSATION

17 **Institution Code No. 51315935**

18 Respondent.

19
20 **PARTIES**

21 1. Deborah Cochrane (Complainant) brings this Accusation solely in her official
22 capacity as the Chief of the Bureau for Private Postsecondary Education (Bureau), Department of
23 Consumer Affairs.

24 2. On or about March 11, 2020, the Bureau for Private Postsecondary Education issued
25 Institution Code No. 51315935 (Approval to Operate) to DiaNova Institute (Respondent).
26 Pursuant to the Approval to Operate, the Bureau approved Respondent to offer the following non-
27 degree program: Community Health and Sexual Trauma Recovery Program. The Approval to
28

1 Operate was in full force and in effect at all times relevant to the charges brought in this
2 Accusation and will expire on March 11, 2025.

3 **JURISDICTION**

4 3. This Accusation is brought before the Director of the Department of Consumer
5 Affairs (Director) for the Bureau, under the authority of the following laws. All section
6 references are to the Education Code (Code) unless otherwise indicated.

7 4. Code section 94937 provides, in relevant part:

8 (a) As a consequence of an investigation, which may incorporate any
9 materials obtained or produced in connection with a compliance inspection, and
10 upon a finding that an institution has committed a violation, the bureau may place
11 an institution on probation or may suspend or revoke an institution's approval to
12 operate for:

13 ...

14 (2) A material violation or repeated violation of this chapter or regulations
15 adopted pursuant to this chapter that have resulted in harm to students. For
16 purposes of this paragraph, "material violation" includes, but is not limited to,
17 misrepresentation, fraud in the inducement of a contract, and false or misleading
18 claims or advertising, upon which a student reasonably relied in executing an
19 enrollment agreement and that resulted in harm to the student.

20 ...

21 **STATUTORY PROVISIONS**

22 5. Code section 94930.5 provides, in relevant part:

23 (d)(1) In addition to any fees paid to the bureau pursuant to subdivisions (a) to
24 (c), inclusive, each institution that is approved to operate pursuant to this chapter shall
25 remit both of the following:

26 (A) An annual fee for each campus designated by the institution as a main
27 campus location in California, in an amount equal to 0.45 percent of the campus' total
28 gross revenue derived from students in California, but not to be less than two
thousand five hundred dollars (\$2,500) and not to exceed sixty thousand dollars
(\$60,000).

(B) An annual campus fee for each branch of the institution in an amount equal
to 0.45 percent of the branch's total gross revenue derived from students in California,
but not to be less than two thousand five hundred dollars (\$2,500) and not to exceed
sixty thousand dollars (\$60,000).

(2) The amount of the annual fees pursuant to paragraph (1) shall be
proportional to the bureau's cost of regulating institutions under this chapter, but shall

not exceed seven hundred fifty thousand dollars (\$750,000) for any institution.

...

(f) It is the intent of the Legislature that the fees established pursuant to this section be evaluated during the 2017-18 state budget process and, if necessary, adjusted by subsequent legislation based upon information provided to the Legislature by the department and the bureau.

(g) Notwithstanding subdivision (d), effective July 1, 2018, the annual fee for each campus described in subparagraphs (A) and (B) of paragraph (1) of subdivision (d) shall be in an amount equal to 0.55 percent of that campus' total gross revenue derived from students in California, but not to be less than two thousand five hundred dollars (\$2,500) and not to exceed sixty thousand dollars (\$60,000) for each campus.

6. Code section 94931 states:

(a) A fee that is not paid on or before the 30th calendar day after the due date for the payment of the fee shall be subject to a 25 percent late payment penalty fee.

(b) A fee that is not paid on or before the 90th calendar day after the due date for payment of the fee shall be subject to a 35 percent late payment penalty fee.

7. Code section 94936 states:

(a) As a consequence of an investigation, which may incorporate any materials obtained or produced in connection with a compliance inspection, and upon a finding that the institution has committed a violation of this chapter or that the institution has failed to comply with a notice to comply pursuant to Section 94935, the bureau shall issue a citation to an institution for violation of this chapter, or regulations adopted pursuant to this chapter.

(b) The citation may contain any of the following:

(1) An order of abatement that may require an institution to demonstrate how future compliance with this chapter or regulations adopted pursuant to this chapter will be accomplished.

(2) Notwithstanding Section 125.9 of the Business and Professions Code, an administrative fine not to exceed five thousand dollars (\$5,000) for each violation. The bureau shall base its assessment of the administrative fine on:

(A) The nature and seriousness of the violation.

(B) The persistence of the violation.

(C) The good faith of the institution.

(D) The history of previous violations.

(E) The purposes of this chapter.

1 (F) The potential harm to students.

2 (3) An order to compensate students for harm, including a refund of moneys
3 paid to the institution by or on behalf of the student, as determined by the bureau.

4 (c)(1) The citation shall be in writing and describe the nature of the violation
5 and the specific provision of law or regulation that is alleged to have been violated.

6 (2) The citation shall inform the institution of its right to request a hearing in
7 writing within 30 days from service of the citation.

8 (3) If a hearing is requested, the bureau shall select an informal hearing
9 pursuant to Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1
10 of Division 3 of Title 2 of the Government Code or a formal hearing pursuant to
11 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
12 Government Code .

13 (4) If a hearing is not requested, payment of the administrative fine is due 30
14 days from the date of service, and shall not constitute an admission of the violation
15 charged.

16 (5) If a hearing is conducted and payment of an administrative fine is ordered,
17 the administrative fine is due 30 days from when the final order is entered.

18 (6) The bureau may enforce the administrative fine as if it were a money
19 judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the
20 Code of Civil Procedure.

21 (d) All administrative fines shall be deposited in the Private Postsecondary
22 Education Administration Fund.

23 8. Business and Professions Code, section 125.9, states:

24 (a) Except with respect to persons regulated under Chapter 11 (commencing
25 with Section 7500), any board, bureau, or commission within the department, the
26 State Board of Chiropractic Examiners, and the Osteopathic Medical Board of
27 California, may establish, by regulation, a system for the issuance to a licensee of a
28 citation which may contain an order of abatement or an order to pay an administrative
fine assessed by the board, bureau, or commission where the licensee is in violation
of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

(1) Citations shall be in writing and shall describe with particularity the nature
of the violation, including specific reference to the provision of law determined to
have been violated.

(2) Whenever appropriate, the citation shall contain an order of abatement
fixing a reasonable time for abatement of the violation.

(3) In no event shall the administrative fine assessed by the board, bureau, or
commission exceed five thousand dollars (\$5,000) for each inspection or each
investigation made with respect to the violation, or five thousand dollars (\$5,000) for
each violation or count if the violation involves fraudulent billing submitted to an

1 insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the
2 board, bureau, or commission shall give due consideration to the appropriateness of
the amount of the fine with respect to factors such as the gravity of the violation, the
good faith of the licensee, and the history of previous violations.

3 (4) A citation or fine assessment issued pursuant to a citation shall inform the
4 licensee that if the licensee desires a hearing to contest the finding of a violation, that
hearing shall be requested by written notice to the board, bureau, or commission
5 within 30 days of the date of issuance of the citation or assessment. If a hearing is not
6 requested pursuant to this section, payment of any fine shall not constitute an
admission of the violation charged. Hearings shall be held pursuant to Chapter 5
7 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
Government Code.

8 (5) Failure of a licensee to pay a fine within 30 days of the date of assessment,
9 unless the citation is being appealed, may result in disciplinary action being taken by
the board, bureau, or commission. Where a citation is not contested and a fine is not
10 paid, the full amount of the assessed fine shall be added to the fee for renewal of the
license. A license shall not be renewed without payment of the renewal fee and fine.

11 (c) The system may contain the following provisions:

12 (1) A citation may be issued without the assessment of an administrative fine.

13 (2) Assessment of administrative fines may be limited to only particular
14 violations of the applicable licensing act.

15 (d) Notwithstanding any other provision of law, if a fine is paid to satisfy an
assessment based on the finding of a violation, payment of the fine shall be
16 represented as satisfactory resolution of the matter for purposes of public disclosure.

17 (e) Administrative fines collected pursuant to this section shall be deposited in
the special fund of the particular board, bureau, or commission.

18 **REGULATORY PROVISIONS**

19 9. California Code of Regulations, title 5, section 74006, subdivision (a-b), provides, in
20 relevant part:

21 (a) An institution's annual fee is due within 30 days of the date on which the
22 institution originally receives its approval to operate and each year thereafter on the
anniversary of the date of the original approval.

23 (b) An institution shall pay its annual fee in addition to any other applicable
24 fees.

25 ...

26 10. California Code of Regulations, title 5, section 75020, states:

27 (a) The Bureau Chief, or his or her designee, or the Director's designee, is
28 authorized to issue citations containing orders of abatement and/or administrative

1 fines pursuant to section 94936 of the Code against approved private, postsecondary
2 institutions that have committed any acts or omissions that are in violation of the Act
3 or any regulation adopted pursuant thereto.

4 (b) The Bureau Chief, or his or her designee, or the Director's designee, is
5 authorized to issue citations containing orders of abatement and administrative fines
6 not to exceed \$100,000 pursuant to section 94944 of the Code against persons who
7 are without proper approval to operate a private, postsecondary institution. In
8 addition, the citation may contain an order of abatement pursuant to section 149 of
9 the Business and Professions Code that requires the unapproved person to cease any
10 unlawful advertising and to notify the telephone company furnishing services to the
11 cited person: (1) to disconnect the telephone services furnished to any telephone
12 number contained in the unlawful advertising, and (2) that subsequent calls to that
13 number shall not be referred by the telephone company to any new number obtained
14 by that person. The provisions of section 75040 shall apply to this subsection.

15 (c) In addition to the requirements of section 94936 of the Code, each citation
16 shall inform the cited institution or person that:

17 (1) if a hearing pursuant to the Administrative Procedure Act (APA) is not
18 requested, payment of the administrative fine is due 30 days from the date of service,
19 and shall not constitute an admission of the violation charged.

20 (2) if a hearing pursuant to the APA is conducted and payment of an
21 administrative fine is ordered, the administrative fine is due 30 days from when the
22 order is effective;

23 (3) if the cited institution or person desires an informal conference to contest
24 the finding of a violation prior to an APA hearing, the informal conference shall be
25 requested by written notice to the Bureau within 30 days from service of the citation;

26 (4) failure to comply with any order of abatement within the time set forth in
27 the citation, unless the citation is being appealed, may result in disciplinary action
28 being taken by the Bureau; and

(5) the Bureau may enforce the administrative fine as if it were a money
judgment pursuant to the California Code of Civil Procedure (beginning with section
680.010).

(d) Each citation shall be served on the cited institution or person, in person, or
by certified and regular mail at the address of record on file with the Bureau.
Citations served by certified and regular mail shall be deemed "served" on the date of
mailing.

(e) The sanction authorized under this section shall be separate from, and in
addition to, any civil, criminal, or other administrative remedies.

11. California Code of Regulations, title 5, section 75050, states:

(a) If a cited institution or person that or who has been issued an order of
abatement is unable to complete the correction within the time set forth in the citation
because of conditions beyond the institution's or person's control after the exercise of
reasonable diligence, the institution or person may request an extension of time
within which to complete the correction. Such a request shall be in writing and shall
be made within the time set forth for abatement.

1 (b) Failure of an applicant or institution issued an approval to operate to abate
2 the violation or to pay the fine within the time allowed is a ground for denial or
3 discipline of an approval to operate.

4 (c) If an informal conference or hearing is not requested, payment of the fine
5 and/or compliance with any order of abatement shall not constitute an admission of
6 the violation charged and shall be represented as satisfactory resolution of the matter
7 for purposes of public disclosure.

8 12. California Code of Regulations, title 5, section 76130, states:

9 (a)(1) A qualifying institution shall collect the assessment from each student
10 in an educational program at the time it collects the first payment from or on behalf
11 of the student at or after enrollment. The assessment shall be collected for the
12 entire period of enrollment, regardless of whether the student pays the institutional
13 charges in increments.

14 (2) The assessment to be collected from a re-enrolling student shall be
15 limited to any amount that is due after crediting any prior assessment amount paid
16 by the student. The enrollment agreement shall clearly identify any prior STRF
17 assessment paid by the student.

18 (b) A qualifying institution shall complete the STRF Assessment report and
19 remit it with the STRF assessments collected from students to be received by the
20 Bureau no later than the last day of the month following the close of the quarter as
21 follows:

- 22 (1) April 30 for the first quarter,
- 23 (2) July 31 for the second quarter,
- 24 (3) October 31 for the third quarter, and
- 25 (4) January 31 for the fourth quarter.

26 If the due date falls on a Saturday, Sunday, or State or federal holiday, the
27 due date shall be extended to the next regular business day for the Bureau.

28 (c) The STRF Assessment report shall contain the following information:

- 29 (1) Total number of students who signed enrollment agreements for
30 educational programs during the reporting period; and
- 31 (2) Total number of students eligible for STRF who signed enrollment
32 agreements for educational programs during the reporting period; and
- 33 (3) The total number of students who signed their enrollment agreement
34 during the reporting period, were eligible for STRF, and who made their first
35 payment during the reporting period; and
- 36 (4) The total number of students who signed their enrollment agreement in a
37 previous reporting period, were eligible for STRF, and who made their first
38 payment during the current reporting period; and
- 39 (5) Total amount of institutional charges after rounding each student's
40 institutional charges to the nearest \$1,000, for all eligible STRF students whose
41 STRF assessment was collected in the reporting period; and
- 42 (6) Current contact telephone number of the person preparing the form; and
- 43 (7) A declaration dated and signed under penalty of perjury by the person
44 preparing the form that the form and any attachments are true and correct.

1 (d) In the event of a school closure, any collected assessments shall be
2 remitted to the Bureau within seven days following the cessation of instruction.

3 (e) Submission of all prior reports and assessments required by this section is a
4 condition of renewal.

5 **COST RECOVERY**

6 13. Code section 94937, subdivision (c), provides that when the Bureau takes disciplinary
7 action against an institution such as Respondent, the Bureau may seek reimbursement of its costs
8 pursuant to Business and Professions Code, section 125.3.

9 14. Business and Professions Code section 125.3 provides, in relevant part, that the Board
10 may request the administrative law judge to direct a licentiate found to have committed a
11 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
12 investigation and enforcement of the case, with failure of the licentiate to comply subjecting the
13 license to not being renewed or reinstated. If a case settles, recovery of investigation and
14 enforcement costs may be included in a stipulated settlement.

15 **FACTUAL ALLEGATIONS**

16 15. On or about March 11, 2020, the Bureau issued Approval to Operate Institution Code
17 No. 51315935 to Respondent.

18 16. On September 17, 2020, the Bureau issued citation No. 2021090 (Citation) to
19 Respondent for two violations, including:

20 a) Respondent's failure to submit completed Student Tuition Recovery Fund (STRF)
21 Assessment Reporting Form for the second quarter of 2020;

22 b) Respondent's failure to submit its 2020 annual fee within 30 days of the date on which
23 the Institution originally received its approval to operate.

24 17. The Citation included an assessed fine of \$50.00, and Orders of Abatement. The
25 Orders of Abatement required Respondent to submit the delinquent Student Tuition Recover
26 Fund (STRF) Reporting Forms with the STRF Assessments collected from students for the
27 Second quarter of 2020 and ordered Respondent to submit its annual fee for the year 2020 in
28 accordance with law. Finally, the Citation ordered Respondent to pay the fine of \$50.00 and

1 provide proof of compliance with the Orders of Abatement within 30 days from the date of
2 service of the Citation. The Bureau served the Citation on Respondent on September 17, 2020.

3 18. On or about November 23, 2020, Respondent submitted its STRF form for the second
4 quarter of 2020 to the Bureau. The Bureau received this form after it had issued Citation No.
5 2021090 on September 17, 2020.

6 19. On December 22, 2020, Bureau staff sent a Demand for Payment and Orders of
7 Abatement Notice (Notice) to Respondent advising them that full payment and compliance with
8 the Orders of Abatement had to be received by January 24, 2021. The notice warned that failure
9 to do so could result in disciplinary action. Significantly, the Notice also included an email
10 address of Bureau staff for Respondent to contact should they believe that they do not owe the
11 money or if they wish to pay the debt in installments.

12 20. The Bureau did not receive any response from Respondent.

13 21. On February 18, 2021, Bureau staff sent a second Demand for Payment and
14 compliance with the Orders of Abatement Notice to Respondent. Again, the Bureau did not
15 receive any response from Respondent.

16 22. On or about April 9, 2021, Bureau Staff sent a third (and final) Demand for Payment
17 and Orders of Abatement Notice to Respondent. The Bureau did not receive any response from
18 Respondent.

19 23. On May 19, 2021, Bureau staff sent an email to Respondent regarding Citation No.
20 2021090. Attached to the email as .pdfs, were copies of the three Demand Notices and a copy of
21 Citation No. 2021090, all of which were previously sent to Respondent by U.S. mail. The email
22 warned Respondent that the administrative fine of \$50.00 and the 2020 annual fee, with the late
23 payment penalty fee, had to be sent to the Bureau by May 27, 2021, in order for them to avoid
24 collection and disciplinary action.

25 24. To date, Respondent has failed to submit the administrative fine of \$50.00, the 2020
26 annual fee, and late fee to the Bureau as required by Citation No. 2021090.

27 ///

28 ///

1 **CAUSE FOR DISCIPLINE**

2 (Failure to Comply with Citation)

3 25. Respondent has subjected its Approval to Operate to disciplinary action for failing to
4 comply with Citation No. 2021090, in violation of Education Code, section 94936, and California
5 Code of Regulations, title 5, section 75020, subdivision (c)(4). The circumstances are more fully
6 explained in paragraphs 15 through 24, above.

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
9 Accusation, and that following the hearing, the Director of the Department of Consumer Affairs
10 issue a decision:

- 11 1. Revoking Approval to Operate Institution Code No. 51315935, issued to Respondent;
- 12 2. Ordering DiaNova Institute to pay the Bureau for Private Postsecondary Education
13 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
14 Professions Code section 125.3; and,
- 15 3. Taking such other and further action as deemed necessary and proper.

16
17
18 DATED: “10/1/2021”

“Original signature on file”
19 DEBORAH COCHRANE
20 Chief
21 Bureau for Private Postsecondary
22 Education
23 Department of Consumer Affairs
24 State of California
25 *Complainant*

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