



Bureau for Private Postsecondary Education
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CITATION: ASSESSMENT OF FINE AND ORDER OF ABATEMENT

To: Lucky Kit, LLC., Owner
National Cosmetology Beauty School
315 Eleventh Street
Oakland, CA, 94607

INSTITUTION CODE: 0106131

CITATION NUMBER: 1920254

CITATION ISSUANCE/SERVICE DATE: March 13, 2020

DUE DATE: April 12, 2020

FINE AMOUNT: \$ 6,551.00

ORDER OF ABATEMENT INCLUDED: Yes

Christina Villanueva issues this Citation: Assessment of Fine and Order of Abatement (Citation) in her official capacity as Discipline Manager of the Bureau for Private Postsecondary Education (Bureau) of the California Department of Consumer Affairs.

CITATION

A Citation is hereby issued to Lucky Kit, LLC., Owner of National Cosmetology Beauty School (Institution) located at 315 Eleventh Street, Oakland, CA, 94607, pursuant to Business and Professions Code section 125.9; California Education Code (CEC) sections 94936 and 94932; and Title 5 of the California Code of Regulations (5, CCR) section 75020 for the violations described below.

BACKGROUND

On April 25, 2019, a Bureau Investigator conducted an investigation at the Institution and was accompanied by Board of Barbering Cosmetology (Board) staff. The Investigator provided the Institution representative with a list of documents (current student roster, school catalog, student files, and the faculty list) that the Bureau was requesting to review. The Institution representative provided the Investigator with the requested documents.

A review of the documents determined that the Institution was in violation of Bureau laws and regulations.

In addition, all institutions are required to submit a Student Tuition Recovery Fund (STRF) Assessment Reporting Form to the Bureau no later than the last day of the month following the close of the quarter.

Pursuant to CEC section 94923(a) the Student Tuition Recovery Fund relieves or mitigates economic loss suffered by a student while enrolled in an institution not exempt from this article pursuant to Article 4 (commencing with section 94874), who, at the time of his or her enrollment, was a California resident or was enrolled in a California residency program, prepaid tuition, and suffered economic loss.

The Bureau sends notifications/reminders to all approved institutions 30 days prior to close of each quarter.

As of March 12, 2020, the Institution has not submitted the STRF Assessment Reporting Forms for the 2nd, 3rd and 4th quarters of 2017, and 2nd, 3rd, and 4th quarters of 2019.

VIOLATION

#	Below you will find the California Education Code (CEC) and/or Title 5 of the California Code of Regulations (5, CCR code) section(s) of law you are charged with violating.
1.	<p><u>Violation:</u> 5, CCR Section 71930 (c)(1)(d)– Maintenance of Records <i>(c) A record is considered current for three years following a student's completion or withdrawal. A record may be stored on microfilm, microfiche, computer disk, or any other method of record storage only if all of the following apply:</i> <i>(1) The record may be stored without loss of information or legibility for the period within which the record is required to be maintained by the Act;</i> <i>(d) The institution shall maintain a second set of all academic and financial records required by the Act and this chapter at a different location unless the original records, including records stored pursuant to subdivision (b) of this section, are maintained in a manner secure from damage or loss. An acceptable manner of storage under this subsection would include fire resistant cabinets.</i></p> <p style="color: red;">During the investigation, the Institution representative stated that student files are not backed up anywhere offsite or electronically. In addition, the Bureau Investigator found that student files were located in boxes on the floor in the office. Therefore, the Institution is in violation of 5, CCR Section 71930 for failing to maintain a backup copy of student files and storing original student files in a manner secure from damage or loss.</p> <p><u>Order of Abatement:</u> The Bureau orders the Institution to submit an established policy, or procedure, of how the Institution will maintain future compliance per 5, CCR section 71930(c)(1)(d).</p> <p><u>Assessment of Fine</u> The fine for this violation is <u>\$1,000.00</u></p>
2.	<p><u>Violation:</u> 5, CCR Section 71750 (b)– Withdrawals and Refunds <i>(b) An institution may not enforce any refund policy that is not specified in the catalog as required pursuant to section 94909(a)(8)(B) of the Code, and must refund all institutional charges upon a student's withdrawal. Withdrawal policy procedures pursuant to section 94909(a)((8)(B) of the Code shall include, at a minimum: the acceptable methods of delivery of a notice to withdraw; whether withdrawal can be accomplished by conduct, and if so, how; the position or positions to whom the notice to withdraw must be delivered; and the date that the notice to withdraw is considered effective, which shall be no later than the date received by the institution.</i></p> <p><u>CEC Section 94909 (a)(8)(B) – Minimum Requirements for School Catalog</u> <i>(a) Except as provided in subdivision (d), prior to enrollment, an institution shall provide a prospective student, either in writing or electronically, with a school catalog containing, at a minimum, all of the following:</i> <i>(8) A detailed description of institutional policies in the following areas:</i> <i>(B) Cancellation, withdrawal, and refund policies, including an explanation that the student has the right to cancel the enrollment agreement and obtain a refund of charges paid through attendance at</i></p>

the first class session, or the seventh day after enrollment, whichever is later. The text shall also include a description of the procedures that a student is required to follow to cancel the enrollment agreement or withdraw from the institution and obtain a refund consistent with the requirements of Article 13 (commencing with Section 94919).

CEC Section 94919 (b) – Institution Participating in Federal Student Financial Aid Programs

(b) The institution shall advise each student that a notice of cancellation shall be in writing, and that a withdrawal may be effectuated by the student’s written notice or by the student’s conduct, including, but not necessarily limited to, a student’s lack of attendance.

The Institution’s withdrawal policy located in the catalog failed to include the information for acceptable methods of delivery of a notice to withdraw, to whom the notice must be delivered, or the date that the notice to withdraw is considered effective.

Order of Abatement:

The Bureau orders the Institution to include the withdrawal policy in their catalog. The policy should include information for acceptable methods of delivery of a notice to withdraw, to whom the notice must be delivered, or the date that the notice to withdraw is considered effective in the catalog. In addition, the Bureau orders that the Institution submit an established policy, or procedure of how the Institution will maintain future compliance with 5, CCR section 71750 and CEC Sections 94909 and 94919.

Assessment of Fine

The fine for this violation is \$1,000.00

3. **Violation:**

CEC Section 94899.5 (b) – Collection of Tuition

(b) For those programs designed to be four months or longer, an institution shall not require more than one term or four months of advance payment of tuition at a time. When 50 percent of the program has been offered, the institution may require full payment.

During the investigation, the Institution representative stated that the statement “obligated to pay upon enrollment” listed on the Enrollment Agreement meant the amount of money a student was obligated to pay overall after the student had enrolled into the program. The Bureau investigator advised the Institution representative of CEC Section 94899.5. The Institution is in violation of CEC Section 94899.5 for charging the student the full cost of the program upon enrollment.

Order of Abatement:

The Bureau orders the Institution to update the Enrollment Agreement to be in compliance with CEC section 94899.5 and submit proof of compliance to the Bureau. In addition, the Institution is ordered to cease charging the full cost of programs that are four months or longer in length.

Assessment of Fine

The fine for this violation is \$2501.00

4. **Violation:**

CEC Section 94897 (j)(3) - Prohibited Business Practices

(j) In any manner make an untrue or misleading change in, or untrue or misleading statement related to, a test score, grade or record of grades, attendance record, record indicating student completion, placement, employment, salaries, or financial information, including any of the following:

(3) Any other record or document required by this chapter or by the bureau.

The Bureau investigator reviewed the student file for B.B. and determined it contained misleading statements about the cost of attendance. The 2018 Catalog list the cost of attendance as \$4300.00, however, the student was charged \$4500.00. The Institution is in violation of CEC Section 94897 for failing to document the justification for the increase of price for cost of attendance.

Order of Abatement:

The Bureau orders the Institution to provide a refund in the amount of \$200.00 to student B.B. and provide proof of refund to the Bureau. In addition, submit a policy, or procedure, of how the Institution will maintain compliance per CEC Section 94987(j)(3).

Assessment of Fine:

The fine for this violation is \$1,000.00

5.

Violation:

5, CCR Section 71660 - Notifications of Non-Substantive Changes

An institution shall notify the Bureau of a non-substantive change including: change of location of less than 10 miles; addition of a program related to the approved programs offered by the institution; addition of a new branch five miles or less from the main or branch campus; addition of a satellite; and change of mailing address. All such notifications shall be made within 30 days of the change and sent to the Bureau, in writing, to the address listed in section 70020.

The Bureau Investigator reviewed the student files for M.H. and R.G. and found that they contained an enrollment agreement that listed an unapproved “Esthetician Tutoree” and “Tutor Cosmetology” program. The Institution is in violation of offering unapproved course and failing to submit a non-substantive change notification to the Bureau.

Order of Abatement:

The Bureau orders that the Institution provide a full refund to students M.H. and R.G., as well as any student that enrolled in the Esthetician Tutoree and Tutor Cosmetology programs. The Institution shall provide proof of refunds to the Bureau.

Assessment of Fine

The fine for this violation is \$1000.00

6.

Violation:

5, CCR Section 76130 (a-e)- Collection and Submission of Assessments

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

(b) A qualifying institution shall complete the STRF Assessment Reporting Form (Rev. 2/10) and remit it with the STRF assessments collected from students to be received by the Bureau no later than the last day of the month following the close of the quarter as follows:

(1) April 30 for the first quarter,

(2) July 31 for the second quarter,

(3) October 31 for the third quarter, and

(4) January 31 for the fourth quarter. If the due date falls on a Saturday, Sunday or State or federal holiday, the due date shall be extended to the next regular business day for the Bureau.

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

(c) The STRF Assessment Reporting Form shall contain the following information:

(1) Total number of students who signed enrollment agreements for educational programs during the

reporting period; and

(2) Total number of students eligible for STRF who signed enrollment agreements for educational programs during the reporting period; and

(3) The total number of students who signed their enrollment agreement during the reporting period, were eligible for STRF, and who made their first payment during the reporting period; and

(4) The total number of students who signed their enrollment agreement in a previous reporting period, were eligible for STRF, and who made their first payment during the current reporting period; and

(5) Total amount of institutional charges after rounding each student's institutional charges to the nearest \$1,000, for all eligible STRF students whose STRF assessment was collected in the reporting period; and (6) Current contact telephone number of the person preparing the form; and

(7) A declaration dated and signed under penalty of perjury by the person preparing the form that the form and any attachments are true and correct.

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

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

The Institution has failed to submit a STRF Assessment Reporting Form for the following quarters:

- Second, Third and Fourth Quarters of 2017; and
- Second, Third and Fourth Quarter of 2019.

On June 29, 2017, the Institution was mailed a notice at, 139 Brook Street, San Carlos, CA 94070, stating that the STRF Assessment Reporting Form for the 2nd quarter of 2017 was due. As of March 12, 2020, the Bureau has not received the STRF Assessment Reporting Form from the Institution.

On October 2, 2017, the Institution was mailed a notice at, 139 Brook Street, San Carlos, CA 94070, stating that the STRF Assessment Reporting Form for the 3rd quarter of 2017 was due. As of March 12, 2020, the Bureau has not received the STRF Assessment Reporting Form from the Institution.

On January 2, 2018, the Institution was mailed a notice at, 139 Brook Street, San Carlos, CA 94070, stating that the STRF Assessment Reporting Form for the 4th quarter of 2017 was due. As of March 12, 2020, the Bureau has not received the STRF Assessment Reporting Form from the Institution.

On June 24, 2019, the Institution was mailed a notice at, 139 Brook Street, San Carlos, CA 94070, stating that the STRF Assessment Reporting Form for the 2nd quarter of 2019 was due. As of March 12, 2020, the Bureau has not received the STRF Assessment Reporting Form from the Institution.

On September 18, 2019, the Institution was mailed a notice at, 139 Brook Street, San Carlos, CA 94070, stating that the STRF Assessment Reporting Form for the 3rd quarter of 2019 was due. As of March 12, 2020, the Bureau has not received the STRF Assessment Reporting Form from the Institution.

On December 17, 2019, the Institution was mailed a notice at, 139 Brook Street, San Carlos, CA 94070, stating that the STRF Assessment Reporting Form for the 4th quarter of 2019 was due. As of March 12, 2020, the Bureau has not received the STRF Assessment Reporting Form from the Institution.

Order of Abatement:

The Bureau orders that the Institution submit the delinquent STRF Assessment Reporting Forms for the quarters listed above. The information provided shall comply with “Record Keeping

	Requirements” Pursuant to 5, CCR section 76140.
	<u>Assessment of Fine</u> The fine for this violation is <u>\$50.00</u>
TOTAL ADMINISTRATIVE FINE DUE: \$6,551.00	

ASSESSMENT OF A FINE

In accordance with CEC section 94936; and 5, CCR sections 75020 and 75030, the Bureau hereby orders this assessment of fine in the amount of **\$6,551.00** for the violations described above. **Payment must be made, to the Bureau, within 30 days from the date of service of the Citation.**

COMPLIANCE WITH ORDER OF ABATEMENT

In accordance with the provisions of CEC section 94936 and 5, CCR section 75020 the Bureau hereby issues the order(s) of abatement described above. **Evidence of compliance with the order(s) of abatement must be submitted, to the Bureau, within 30 days from the date of service of the Citation.**

APPEAL OF CITATION

You have the right to contest this Citation through an informal conference with the Bureau; and/or through an administrative hearing in accordance with Chapter 5 (Commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

If you wish to contest this Citation, you must submit the ‘Notice of Appeal of Citation – Request for Informal Conference and/or Administrative Hearing’ form (enclosed) within 30 days from the date of service of the Citation. *If you do not request an informal conference and/or an administrative hearing within 30 days from the service of the Citation, you will not be able to request one at a later time.*

Unless a written request for an informal conference and/or an administrative hearing is signed by you and delivered to the Bureau by **April 12, 2020**, you will be deemed to have waived or forfeited your right to appeal this matter.

EFFECTIVE DATE OF CITATION

If you do not request an informal conference and/or an administrative hearing, this Citation shall become effective on **March 13, 2020**. Payment of the administrative fine and evidence of compliance with the order(s) of abatement shall be due by **April 12, 2020**. Your payment of the administrative fine shall not constitute an admission of the violation(s) charged.

If a hearing is requested, you will not be required to comply with this Citation until 30 days after a final order is entered against you.

Payment of the administrative fine and/or written request for appeal must be mailed to:

Cheryl Lardizabal, Discipline Citation Program
Bureau for Private Postsecondary Education
1747 N. Market Blvd., Suite 225
Sacramento, CA 95834

Failure for an applicant or institution to abate the violation(s) listed above or to pay the administrative fine within the time allowed may result in denial of an application for an approval or renewal to operate; disciplinary action, and/or collection action. The Bureau will promptly take all appropriate action to enforce this Citation and recover the civil penalties prescribed therein or found to be due after a hearing.

CONTACT INFORMATION

If you have any questions regarding this Citation, or desire further information, please contact Cheryl Lardizabal, Citation Analyst, at (916) 574-8968 or Cheryl.Lardizabal@dca.ca.gov.

“Original signature on file”

“3/13/2020”

Christina Villanueva
Discipline Manager

Date

Enclosures

- Applicable Laws Violated
- Statement of Rights: Appeal Process Information Sheet
- Notice of Appeal of Citation: Request for Informal Conference and/or Administrative Hearing
- Payment of Fine – Waiver of Appeal
- Declaration of Service by Certified and First- Class Mail