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

13 In the Matter of the Accusation Against:

Case No. 1002816

14 **NEWPORT INTERNATIONAL**
15 **UNIVERSITY**
16 **5959 Topanga Canyon Blvd., Ste 120**
Woodland Hills, CA 91367

A C C U S A T I O N

17 **Institution Code: 87487641**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Dr. Michael Marion, Jr. (Complainant) brings this Accusation solely in his official
23 capacity as the Chief of the Bureau for Private Postsecondary Education (Bureau), Department of
24 Consumer Affairs.

25 2. On or about October 1, 2014, the Bureau issued an Approval to Operate, Institution
26 Code Number 87487641 (Approval to Operate) to Newport International University
27 (Respondent). Pursuant to the Approval to Operate, the Bureau approved Respondent to offer the
28 following degree programs: Bachelor of Arts in Business Administration, Bachelor of Arts in

1 Psychology, and Master of Business Administration. The Approval to Operate was in full force
2 and in effect at all times relevant to the charges brought herein and will expire on October 1,
3 2019.

4 **JURISDICTION**

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

8 4. Code section 94937 provides, in pertinent part:

9 (a) As a consequence of an investigation, which may incorporate any
10 materials obtained or produced in connection with a compliance inspection, and
11 upon a finding that an institution has committed a violation, the bureau may place
12 an institution on probation or may suspend or revoke an institution's approval to
13 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.

18 ...

19 **STATUTORY PROVISIONS**

20 5. Code section 94868 states: "'To offer to the public' means to advertise, publicize,
21 solicit, or recruit."

22 6. Code section 94893 states:

23 If an institution intends to make a substantive change to its approval to
24 operate, the institution shall receive prior authorization from the bureau. Except as
25 provided in subdivision (a) of Section 94896, if the institution makes the
26 substantive change without prior bureau authorization, the institution's approval to
27 operate may be suspended or revoked.

28 7. Code section 94926 provides, in pertinent part:

1 At least 30 days prior to closing, the institution shall notify the bureau in
2 writing of its intention to close. The notice shall be accompanied by a closure plan,
which shall include, but not necessarily be limited to, all of the following:

3 (a) A plan for providing teach-outs of educational programs, including any
4 agreements with any other postsecondary educational institutions to provide teach-
outs. ...

5 8. Code section 94930.5(d)(1)(A) provides, in pertinent part:

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

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

12 9. Code section 94931 states:

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

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

17 10. Code section 94934 provides, in pertinent part:

18 (a) As part of the compliance program, an institution shall submit an annual
19 report to the bureau, under penalty of perjury, signed by a responsible corporate
20 officer, by July 1 of each year, or another date designated by the bureau, and it shall
include the following information for educational programs offered in the reporting
period:

21 (1) The total number of students enrolled by level of degree or for a diploma.

22 (2) The number of degrees, by level, and diplomas awarded.

23 (3) The degree levels and diplomas offered.

24 (4) The Student Performance Fact Sheet, as required pursuant to Section
94910.

25 (5) The school catalog, as required pursuant to Section 94909.

26 (6) The total charges for each educational program by period of attendance.

27 (7) A statement indicating whether the institution is, or is not, current in
remitting Student Tuition Recovery Fund assessments.

28 (8) A statement indicating whether an accrediting agency has taken any final
disciplinary action against the institution.

(9) Additional information deemed by the bureau to be reasonably required to
ascertain compliance with this chapter.

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REGULATORY PROVISIONS

11. California Code of Regulations, title 5 (Regulations), section 71650, states:

(a) An institution seeking to change its educational objectives shall complete the "Change in Educational Objectives" form (OBJ rev. 2/10) to obtain prior authorization. The form shall be submitted to the Bureau along with the appropriate fee as provided in Section 94930.5(c) of the Code. For an institution approved under section 94885 of the Code it shall be signed and dated by the signatory(ies) required by section 71380, and for an institution approved under section 94890 of the Code it shall be signed and dated by the signatory(ies) required by section 71390, and each fact stated therein and each attachment thereto shall be declared to be true under penalty of perjury, in the following form:

"I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

(Date)

(Signature)"

(b) For an application to add a degree program:

(1) "Unrelated to the approved educational programs" as used in section 94894(a) of the Code includes the addition of a degree program where no degree at that level was previously approved, whether or not the proposed program would offer a degree in the same subject area as a previously approved non-degree program or lower level degree; and a program leading to licensure whether or not the proposed program is in the same subject area as a previously approved program that did not lead to licensure.

(2) The owner of an institution approved pursuant to section 94886 of the Code seeking to add a degree-granting program must complete an accreditation plan under section 71105, or provide proof of accreditation with the scope of that accreditation covering the institution and at least one degree program.

(3) If an application is granted pursuant to this subdivision, the Bureau shall issue a provisional approval of no more than two degree programs for which approval is sought. Such approval of the program shall run in conjunction with any existing approval to operate the institution.

(c) The application shall establish that the institution, including any branch, can meet the minimum operating standards contained in Chapter 3, and shall include:

(1) The name, school code, address, website address, and telephone and fax numbers of the institution;

- 1 (2) The reasons for changing the educational objectives, and how the
proposed change helps to further the institution's mission and objectives;
- 2 (3) When the institution proposes to change the educational objectives;
- 3 (4) The impact of the change on the financial resources of the institution,
including the institution's ability to comply with section 71745;
- 4 (5) A description of the facility and equipment, as required by section 71260,
required for the change;
- 5 (6) For addition of a new program, all information required by sections
71210 and 71220;
- 6 (7) If the application is for a change to an existing program, a description of
the differences between any programs approved and the proposed programs,
7 including differences in admissions standards, degree requirements, curricula, and
standards for student achievement;
- 8 (8) A statement that the institution has contracted with duly qualified faculty
that meet the requirements of section 71720;
- 9 (9) A description of library and other learning resources, as required by
Section 71270, required for the proposed change;
- 10 (10) The name, address, email address, and telephone and fax numbers of the
11 institution's contact person for the purpose of this application; and
- 12 (11) Any additional information required by the Bureau pursuant to section
71340.

13 (d) An institution that has been granted an approval to operate by means of
14 accreditation shall notify the Bureau of the substantive change within 30 days of
15 that change on the Change in Educational Objectives form, by providing the
16 information required by (c)(1) and (c)(10), and shall attach certification from the
17 institution's accreditation agency demonstrating that the substantive change was
made in accordance with the institution's accreditation standards, and complies
with the Act and this Division.

18 12. Regulations, section 71745(a)(6) provides, in pertinent part:

19 (a) The institution shall document that it has at all times sufficient assets and
20 financial resources to do all of the following:

21 ...

22 (6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or
greater at the end of the most recent fiscal year when using generally accepted
23 accounting principles, or for an institution participating in Title IV of the federal
Higher Education Act of 1965, meet the composite score requirements of the U.S.
24 Department of Education. For the purposes of this section, current assets does not
25 include: intangible assets, including goodwill, going concern value, organization
expense, startup costs, long-term prepayment of deferred charges, and non-
26 returnable deposits, or state or federal grant or loan funds that are not the property
of the institution but are held for future disbursement for the benefit of students.
27 Unearned tuition shall be accounted for in accordance with general accepted
accounting principles.

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...

13. Regulations, section 74006(a-b) provides, in pertinent part:

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

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

...

14. Regulations, section 74110(a-d) states:

(a) The annual report required by Section 94934 of the Code shall include the information required by sections 94929.5 and 94934 for all educational programs offered in the prior calendar year, and all of the following for the prior calendar year:

(1) Information regarding institutional branch campuses, including addresses and programs offered at each campus, if applicable;

(2) Information regarding satellite locations, including addresses and with which campus(es) the satellite location is affiliated, if applicable;

(3) Name of institutional accreditors for each branch and satellite campus, and for each such campus at which any programs have programmatic accreditation, the names of the programmatic accreditor for each such program, and effective dates for each programmatic accreditation, if applicable;

(4) Information regarding participation in state and federal student loan and grant programs, including the total amount of funding received from each source for those students enrolled in an approved California school regardless of their state of residency;

(5) Information regarding participation in other public funding programs, including the amount of funding received from each public funding source; for purposes of this section, public funding is any financial aid paid on behalf of students or directly to an institution from any public source, such as the Workforce Investment Act, any veterans' financial aid programs pursuant to Section 21.4253 of Title 38 of the Code of Federal Regulations or any other financial aid program that is intended to help students pay education-related expenses, including tuition, fees, room and board, and supplies for education; and

(6) The total percentage of institutional income that comes from any public funding sources.

(b) In addition to the information required by section 94934 and this section provided under penalty of perjury, the institution shall have annual financial statements prepared for the institution's prior fiscal year and signed under penalty of perjury, and shall submit a hard copy under separate cover of such statements in conjunction with its annual report. The form, content and mode of preparation of financial statements shall comply with Section 74115 of this Division. The Bureau may request that the institution immediately make available for inspection to a

1 representative of the Bureau, these financial statements at the offices of the
2 institution.

3 (c) An institution shall file its annual report by December 1st. The Bureau
4 may extend the period for filing if the institution demonstrates evidence of
5 substantial need but in no case longer than 60 days. The institution shall not change
6 the date of its filing its annual report because of a change in the fiscal year without
7 the Bureau's approval.

8 (d) The annual report shall be electronically filed by submitting the
9 information required by section 94934 of the Code and this section via the online
10 form provided on the Bureau's website, electronically attaching, as directed, the
11 School Performance Fact Sheet, the enrollment agreement, and the school catalog.

12 15. Regulations section 74250, states:

13 (a) If an unaccredited institution that has a provisional approval from the
14 Bureau to offer degree programs or an unaccredited degree-granting institution
15 that has an approved accreditation plan pursuant to section 71105.5 fails to meet
16 the requirements of either section 94885.1 or 94885.5 of the Code or section
17 71105 or 71105.5 and is notified by the Bureau that their approval to operate or
18 their approval to offer degree programs has been automatically suspended, the
19 institution must immediately cease enrolling students and within 30 days provide
20 to the Bureau a degree program closure plan. The degree program closure plan
21 shall include:

22 (1) The exact date the institution stopped enrolling new students in its
23 degree programs.

24 (2) A list of contact information for all students currently enrolled in each
25 degree program.

26 (3) A teach-out plan that includes a plan for the disposition of student
27 records and is compliant with the provisions of section 94927 of the Code.

28 (4) A copy of the notification to be provided to students pursuant to
subdivision (b) of this section.

(b) The institution must notify, in writing, all currently enrolled students
within five business days of the following:

(1) That the institution has received a notice of suspension from the Bureau
and may no longer offer degree programs.

(2) A teach-out plan, which shall provide, at minimum, the following
information:

(A) The name and location of the institution(s) that is (are) providing the
teach-out.

(B) The date upon which instruction at the teach-out institution(s) will
begin.

(C) How and when payments will be made to the new institution and any
relevant financial information.

(D) Whom to contact at the new institution(s).

1 (3) That the student has a right to choose not to participate in the teach-out,
2 and instead seek a refund for any classes the student is currently enrolled in or has
3 not yet completed.

4 (c) Any student may seek a refund from the institution rather than
5 participate in a proposed teach-out program. A refund must be made within 45
6 days of such a request by a student.

7 (d) Failure of any institution to comply with the requirements of this section
8 will be considered a violation and subject to action by the Bureau.

9 16. Regulations, section 76240(a)(4)(A)(B)(6) provides, in pertinent part:

10 All institutions, including those exempt from Bureau regulation pursuant to
11 the Code, shall do the following prior to closing:

12 (a) At least 30 days prior to closing, the institution shall notify the Bureau in
13 writing of its intention to close and provide a closure plan. The closure plan shall
14 include:

15 ...

16 (4) If any student will not be provided complete educational services or the
17 educational program, the institution shall provide:

18 (A) A plan for providing teach-outs or transfers, including the details of any
19 agreements with other institutions.

20 (B) If no teach-out is contemplated, or for students who do not wish to
21 participate in a teach-out, arrangements for making refunds within 45 days from
22 the date of closure, or for institutions that participate in federal student financial
23 aid programs arrangements for making refunds and returning federal student
24 financial aid program funds.

25 ...

26 (6) A plan to notify students of their rights and options under the Act and
27 this chapter.

28 17. Regulations, section 76130 states:

(a)(1) 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.

(2) The assessment to be collected from a re-enrolling student shall be
limited to any amount that is due after crediting any prior assessment amount paid

1 by the student. The enrollment agreement shall clearly identify any prior STRF
2 assessment paid by the student.

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

- 7 (1) April 30 for the first quarter,
- 8 (2) July 31 for the second quarter,
- 9 (3) October 31 for the third quarter, and
- 10 (4) January 31 for the fourth quarter.

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

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

- 14 (1) Total number of students who signed enrollment agreements for
15 educational programs during the reporting period; and
- 16 (2) Total number of students eligible for STRF who signed enrollment
17 agreements for educational programs during the reporting period; and
- 18 (3) The total number of students who signed their enrollment agreement
19 during the reporting period, were eligible for STRF, and who made their first
20 payment during the reporting period; and
- 21 (4) The total number of students who signed their enrollment agreement in a
22 previous reporting period, were eligible for STRF, and who made their first
23 payment during the current reporting period; and
- 24 (5) Total amount of institutional charges after rounding each student's
25 institutional charges to the nearest \$1,000, for all eligible STRF students whose
26 STRF assessment was collected in the reporting period; and
- 27 (6) Current contact telephone number of the person preparing the form; and
- 28 (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.

COST RECOVERY

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

19. Business and Professions Code section 125.3 provides, in pertinent part, that the
Board may request the administrative law judge to direct a licentiate found to have committed a

1 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
2 investigation and enforcement of the case, with failure of the licentiate to comply subjecting the
3 license to not being renewed or reinstated. If a case settles, recovery of investigation and
4 enforcement costs may be included in a stipulated settlement.

5 **BACKGROUND FACTS**

6 20. On July 21, 2017, the Bureau issued Respondent an Order Suspending Approval to
7 Operate Degree Granting Programs (Suspension Order), effective July 26, 2017, due to
8 Respondent not meeting the requirements of achieving either accreditation, or pre-accreditation
9 candidacy to offer degree programs, despite being notified on May 4, 2017 of this requirement
10 and the risk of automatic suspension.

11 21. On August 17, 2017, the Bureau rescinded the Suspension Order based on
12 Respondent's request for an extension of time. The Department of Consumer Affairs conducted
13 an informal conference on August 30, 2017. On October 25, 2017, the Bureau re-issued the
14 Suspension Order, effective October 30, 2017, based on Respondent' failure to demonstrate it
15 was making strong progress toward obtaining accreditation.

16 22. On June 12, 2018, the Bureau issued citation number 1718049 (Citation) to
17 Respondent for six violations, including:

18 a) Respondent's failure to comply with the Suspension Order by not submitting a degree
19 program closure plan, and continuing to advertise degree granting programs on Respondent's
20 website;

21 b) Respondent's failure to submit a non-substantive change application for a non-degree
22 English program that was not approved by the Bureau;

23 c) Respondent's failure to submit its 2016 annual report;

24 d) Respondent's failure to submit its 2016 and 2017 annual fee;

25 e) Respondent's failure to submit completed Student Tuition Recovery Fund (STRF)
26 reporting forms; and

27 f) a recruitment violation for failure to create an employee/employer relationship between
28 the institution and the overseas agents used to recruit foreign students.

1 23. The Citation included an assessed fine of \$10,600.00, and an Order of Abatement.

2 24. On October 3, 2018, following an informal conference conducted by the Bureau, the
3 Bureau modified the Citation because Respondent paid its 2016 annual fee, and submitted the
4 delinquent STRF reporting forms. The Bureau reduced the fine from \$10,600.00 to \$10,050.00.

5 25. On November 7, 2018, Respondent requested a payment plan, and the Bureau agreed
6 to allow Respondent to make twelve equal monthly payments of \$837.50.

7 26. To date, Respondent has failed to submit the required items to fulfill the Order of
8 Abatement for all violations contained in modified Citation 1718049.

9
10 **FIRST CAUSE FOR DISCIPLINE**
(Application for a Change in Educational Objectives)

11 27. Respondent has subjected its Approval to Operate to disciplinary action for failing to
12 comply with requirements for changing educational objectives. As set forth in paragraphs 22 and
13 26 above, Respondent changed its educational objectives by continuing to advertise and offer
14 non-degree English programs, for which it is not approved, in violation of Code section 94893
15 and Regulations section 71650, subdivision (a).

16
17 **SECOND CAUSE FOR DISCIPLINE**
(Financial Resources)

18 28. Respondent has subjected its Approval to Operate to disciplinary action for failing to
19 meet the Bureau's financial requirement of total current assets to total current liabilities of 1.0 to
20 1.25. Instead, Respondent's total current assets are \$26.99, and its total current liabilities are
21 \$352,206.62, in violation of Regulations section 71745, subdivision (a)(6).

22
23 **THIRD CAUSE FOR DISCIPLINE**
(Annual Report)

24 29. Respondent has subjected its Approval to Operate to disciplinary action for failing to
25 submit Respondent's annual report for the year 2016, as set forth in paragraphs 22 and 26 above,
26 in violation of Code section 94934 and Regulations section 74110.

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FOURTH CAUSE FOR DISCIPLINE
(Annual Fee)

30. Respondent has subjected its Approval to Operate to disciplinary action for failing to remit Respondent's annual fee for the year 2017, as set forth in paragraphs 22 and 26 above, in violation of Code section 94930.5, subdivision (d)(1)(A) and Regulations section 74006, subdivisions (a) and (b). Additionally, Respondent is subject to a 35 percent late payment pursuant to Code section 94931, subdivision (b).

FIFTH CAUSE FOR DISCIPLINE
(Degree Program Closure Plan and Cease Enrolling Students)

31. Respondent has subjected its Approval to Operate to disciplinary action under Regulations section 74250. As set forth in paragraphs 22 and 26, above, Respondent failed to provide the Bureau a degree program closure plan, and cease enrolling students, within 30 days of October 30, 2017, the date of the Bureau notifying Respondent that its approval to operate and offer degree programs had been automatically suspended.

SIXTH CAUSE FOR DISCIPLINE
(Required Notices and Teach-Out Plan)

32. Respondent has subjected its Approval to Operate to disciplinary action under Code section 94926 and Regulations section 76240. As set forth in paragraphs 22 and 26, above, Respondent failed to provide the Bureau a degree program closure plan within 30 days prior to closing, and which meets all requirements of Regulations section 76240.

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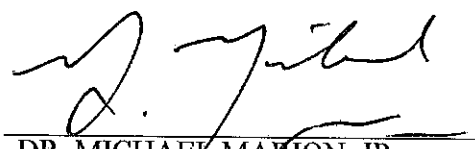
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of the Department of Consumer Affairs issue a decision:

1. Revoking, suspending, or otherwise imposing discipline upon the Approval to Operate Institution Code Number 87487641, issued to Respondent;
2. Ordering Respondent to pay the Bureau the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 7/15/19



DR. MICHAEL MARION, JR.
Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant