

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

In the Matter of the Citation Against:

INTEGRATIVE WELLNESS ACADEMY, LLC dba INTEGRATIVE WELLNESS ACADEMY

8120 Aldea Ave.

Lake Balboa, CA 91406

Citation No.: 1819194

OAH Case No.: 2020030500

Respondent.

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 DEC 23 2020, 2020.

It is so ORDERED November 9, 2020.



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 Citation against:

**INTEGRATIVE WELLNESS ACADEMY, LLC, dba INTEGRATIVE
WELLNESS ACADEMY, Respondent**

Agency No. 1819194

OAH No. 2020030500

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on August 17, 2020, by video and teleconference.

Stephanie J. Lee, 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.

James C. Stevens, Attorney at Law, appeared on behalf of respondent Integrative Wellness Academy, LLC, doing business as Integrative Wellness Academy (IWA), which was present through its President and Head Instructor, Rachel Eva (Zeskind) Dew, Ph.D.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 17, 2020.

FACTUAL FINDINGS

Jurisdiction

1. The Bureau, through Christina Villanueva, acting in her official capacity as the Bureau's Discipline Manager, issued Citation number 1819194 (Citation) to respondent on May 14, 2019. The Citation asserted that IWA offers educational programs as a private postsecondary educational institution in Los Angeles, California, without Bureau approval. The Citation assessed an administrative fine of \$5,000 and included an Order of Abatement, ordering respondent to cease operating as a private postsecondary educational institution unless it qualifies for an exemption.

2. Respondent timely filed a Request for an Informal Conference and a Notice of Appeal. An informal conference convened telephonically on October 4, 2019. Dr. Dew, Richard Katz, consultant, and Leeza Rifredi, Deputy Bureau Chief, participated. The Deputy Bureau Chief decided to affirm the Citation, finding that no new substantive facts were presented at the conference. Jason Laughlin, Staff Services Analyst for the Bureau, certified that, as of March 18, 2020, that respondent had not applied for approval to operate or for verification of exempt status.

The Citation

3. Mika Scott, a Licensing Analyst for the Department for six years, and an investigator for six months during 2019, was assigned to investigate respondent. The Bureau's Licensing Unit received an inquiry from Marie Rueda, Accreditations

Supervisor with the Better Business Bureau, asking whether a "life coach academy/school that certifies others to become a life coach" needs a license from the Bureau. Rachel Fabbri, an office technician in the Licensing Unit, responded that the Bureau had no record of respondent and would refer the information to the proper unit to investigate. "Ultimately, if they do not meet an exemption category, they are operating unapproved and can risk disciplinary action." (Ex. 4, p. 52.) On February 1, 2019, Ms. Fabbri forwarded the "tip" to the Enforcement Complaints & Investigations Unit, where Ms. Scott worked at the time.

4. Ms. Scott testified that institutions not under an exemption must apply for and obtain Bureau approval to offer postsecondary education. Institutions operating programs costing \$2,500 or less, when no part of the charges is paid from state or federal student financial aid programs, may qualify for an exemption.

5. During her investigation, Ms. Scott reviewed materials from the Secretary of State, the Franchise Tax Board, Yelp, and respondent's web pages. Ms. Scott found that respondent was a registered corporation with the Secretary of State and was in good standing with the Franchise Tax Board. Ms. Scott did not speak with respondent or notify it that it was being investigated.

6. Ms. Scott found that respondent offered post-secondary education to the public. Its website conveyed that respondent was a full educational institution with many programs in its curriculum; it offered live courses, required registration, and posted testimonials from students and quotes from program instructors. The website referred to the program offering certifications and a program to become a master in integrative life coaching; she did not testify or establish that this is equivalent to a master's degree, and respondent appears to offer no such degree. Both the Yelp site and the Secretary of State registration show a Los Angeles address for respondent,

but, Ms. Scott testified, an organization need not operate, or offer courses, out of a "brick and mortar" location to be subject to Bureau oversight.

7. Among the many courses offered on respondent's website, the following courses exceeded a cost to students of \$2,500, the limit for an exemption: "Holistic Life Planner (HLP) (Add-on certification course) (\$3,500); "Holistic Life Planner Certification Course (\$4,300); Master Integrative Life Coaching (MILC) In-Person (\$3,400); Integrative Life Coaching (ILC) Certification, MILC Certification, and Business Mastery Course (MBC)—12-week course (\$3,599); and MILC Online Course (\$3,200).

8. Ms. Scott testified that an institution need not apply for an exemption if all its courses cost less than \$2,500 and the institution does not participate in any state or federal aid program. She wrote that respondent was "not operating as an exempt institution as several of the program tuition fees exceed the threshold that permits them to operate under Categories of Exempt Institutions," citing Education Code section 94874, subdivision (f). (Ex. 3, p. 49.)

9. Ms. Scott found the charge of a violation substantiated. "Rachel Zeskind, owner of Integrative Wellness Academy[,] is operating a private postsecondary institution outside of any exemption or Bureau approval." (Ex. 3, p. 49.)

10. Once Ms. Scott issued her report, the Citation Unit issued the Citation. The Citation recites that it issued under Business and Professions Code section 148, Education Code section 94944,¹ and California Code of Regulations (CCR), title 5,

¹ Further statutory references are to the Education Code except where otherwise stated.

sections 75020 and 75040.² The Citation cited respondent for violating section 94886, which requires Bureau approval to operate a private postsecondary educational institution in California.

11. The Citation recites:

Based on the Bureau's investigation, the Institution is operating a private postsecondary educational institution . . . , outside of exempt[ion] from the provisions of the California Private Postsecondary Act of 2009. The Institution advertises educational programs with tuition fees ranging from \$3200.00 to \$4300.00. Total charges exceed the threshold for operating under . . . section 94858 and requires Bureau approval for operating a private postsecondary institution.

(Ex. 1, p. 30.)

12. The Order of Abatement included in the Citation "orders that the Institution cease to operate as a private postsecondary educational institution, *unless the Institution qualifies for an exemption under [California Education Code] section 94874*. The Institution must discontinue recruiting or enrolling students and cease all instructional services and advertising . . . [and] must disconnect all telephone service numbers . . . until an approval to operate is obtained from the Bureau." (Ex. 1, p. 30, italics added.)

² Further references to the CCR are to title 5.

13. The Order of Abatement required respondent to submit a school closure plan to the Bureau, as well as a roster of students currently enrolled. The Citation assessed a fine of \$5,000 for the violation, payable within 30 days of the date of the Citation. "Failure to abate the violation or to pay the administrative fine within the time allowed is grounds for denial of an application for an approval to operate or discipline." (Ex. 1, p. 31.)

Mitigation and Rehabilitation

14. Dr. Dew received a master's degree and doctorate in natural medicine from International Integrative Quantum University. She is certified in 10 wellness modalities and has authored six books on integrative wellness. She has worked in the field of life coaching since 1983 and created respondent in 2015 as an integrative coaching school, teaching coaching skills for personal life and for professional reasons. She is the sole owner of respondent and developed the core curriculum; some courses and retreats were conducted in person, others were available online. Dr. Dew herself taught courses at IWA, but only for a short time, until the COVID-19 pandemic.

15. Before opening for business, Dr. Dew testified, she talked to yoga and meditation business owners, inquiring about any certification requirements. No one informed her of the existence of the Bureau. She filed with the Secretary of State as a limited liability corporation. At some point, she applied for Better Business Bureau (BBB) membership to enhance IWA's presence in the community. She told the BBB that respondent is not licensed because the field is not regulated, so no accreditation was needed. Shortly afterward, BBB sent its inquiry to the Bureau. Dr. Dew had never heard of the Bureau until she received the Citation; she could not believe that a California agency would issue an abatement order and fine without first talking to her. She was unsuccessful in resolving the issues at the informal hearing.

16. IWA does not participate in state or federal student aid programs, and never has, nor has it ever awarded any degrees. None of respondent's programs costs more than \$2,500 now. Dr. Dew lowered the cost of her courses after the informal citation hearing in 2019.

17. IWA currently has no employees and no independent contractors, having temporarily laid everyone off due to COVID-19. Dr. Dew testified that the pandemic has been devastating for respondent, resulting in significantly reduced enrollments. Before the pandemic, almost all students, the majority of whom were high school graduates, paid for their classes in advance; eventually many began using a payment plan. Dr. Dew, after laying off her independent contractors, has been doing all the work involved herself. She testified she can no longer support her family on the income from running respondent.

18. IWA does not have \$5,000 to pay the fine. IWA had, at the time of this hearing, a bank balance of \$252.48. Dr. Dew, who had to lay off her bookkeeper, does not know the accounts receivable figures. She believes 20 students have enrolled in the last six months. If all the students paid \$1,200 in advance, that would only amount to \$4,000 per month revenue. But most do not pay in advance anymore.

19. Dr. Dew testified that, contrary to Ms. Scott's testimony, she submitted an Application for Verification of Exempt Status. She signed the exemption application on January 20, 2020, but did not submit it until August 10, 2020, by overnight mail; she delayed sending it until she was able to afford the required \$250 payment.

20. Neither respondent nor Dr. Dew has ever been cited or has ever been the subject of any disciplinary proceedings before this. Dr. Dew testified she did not intentionally violate the Education Code, and has taken steps to correct the violation.

She lowered course costs to below \$2,500, and she filed an Application for Verification of Exempt Status. She testified that she has never misled or harmed a student and has never been sued by a student; she submitted various student testimonials about the program. She wants to continue to operate IWA. If IWA were ordered closed, her life's work, she testified, could be lost, and hundreds of people would not obtain the tools they need to live better lives. And her family and workers will be financially devastated. She would like the Bureau to grant her exemption, significantly reduce the fine and allow her to pay with an affordable payment plan, and allow her to continue to operate IWA.

21. The weight of the evidence has established that IWA is a private postsecondary educational institution. It operates in California, showing a California address in FTB and Secretary of State filings and on the school's website; Dr. Dew also testified that she offered in-person courses in California. IWA's life coaching and other courses were designed in part to assist students become professional life coaches. IWA did not obtain approval to operate and did not, at the time the Citation issued, qualify for an exemption from the approval requirement. Since receiving the Citation and Order of Abatement, Dr. Dew has taken steps to bring IWA into compliance with waiver requirements, and has filed an application for exempt status verification.

22. Ms. Scott testified that if respondent no longer charges more than \$2,500 for any course, then it may be in compliance with the Order of Abatement and might be exempt if it meets all regulatory requirements. She testified, though, that whether respondent is currently compliant does not address the issue of respondent's having been out of compliance at the time the Citation issued. Were respondent to file an application for exemption now, it would have to show corrective actions taken to bring it into compliance.

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. (§ 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. (§ 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." (§ 94857.) "To offer to the public" means "to advertise, publicize, solicit, or recruit." (§ 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." (§ 94869.)

3. All private postsecondary educational institutions must obtain an approval to operate from the Bureau, unless exempted. (§ 94886.) Among the various statutory exemptions is the exemption for an institution "that does not award degrees and that solely provides educational programs for total charges of two thousand five hundred dollars (\$2,500), or less when no part of the total charges is paid from state or federal student financial aid programs." (§ 94874, subd. (f).)

4. "The bureau shall establish, by regulation, a process pursuant to which an institution that is exempt from this chapter may request, and obtain, from the bureau

verification that the institution is exempt. The verification shall be valid for a period of up to two years, as long as the institution maintains full compliance with the requirements of the exemption. The bureau shall establish a reasonable fee to reimburse the bureau's costs associated with the implementation of this section." (§ 94874.7.)

5. "In order to obtain verification from the Bureau that it is exempt pursuant to Section 94874 of the Code, an institution must complete an "Application for Verification of Exempt Status," Form Application 94874 (rev. 2/10)." (CCR, § 71395(a).)

6. The Bureau may issue a citation for violations of the Act. (§ 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.~~ (§ 94936, subd. (b).) The Bureau Chief may issue citations

containing orders of abatement and administrative fines not to exceed \$100,000 pursuant to section 94944 of the Code against persons who are without proper approval to operate a private, postsecondary institution. In addition, the citation may contain an order of abatement pursuant to section 149 of the Business and Professions Code that requires the unapproved person to cease any unlawful advertising and to notify the telephone company furnishing services to the cited person: (1) to disconnect the telephone services furnished to any telephone number contained in the unlawful advertising, and (2) that subsequent calls to

that number shall not be referred by the telephone company to any new number obtained by that person.

(CCR, § 75020.)

7. Cause exists to affirm Citation number 1819194 issued to respondent for violation of Education Code section 94874, in that respondent operated as a postsecondary educational institution without Bureau approval and while not eligible for an exemption, as set forth at Factual Findings 3 through 13, 16, and 21.

8. The weight of the relevant statutory factors for determining the fine for a violation warrants a significant reduction in the administrative fine assessed. The violation, respondent's failure to comport with the course cost requirements for an exemption from obtaining Bureau approval to operate, is fairly serious. When students are charged more than \$2,500 for a course, Bureau approval to operate is required, and the oversight such approval entails helps ensure that students are receiving something of value for their money. Respondent did not persist in the violation; once IWA was cited, Ms. Dew reduced course fees to comply with waiver requirements. No evidence whatsoever was introduced to establish that respondent has acted in bad faith. There is no history of previous violations. There is evidence of potential financial harm to students who were being charged more than \$2,500 per course in violation of the waiver requirements and contrary to the purposes of the Act; the evidence did not establish any other harm.

9. In addition to the administrative fine exceeding what would be necessary to achieve the ends of the Act, the only evidence on the record demonstrates respondent's inability to pay the amount assessed. (See Factual Findings 17, 18, & 20.)

10. The language of the Order of Abatement is overbroad and internally contradictory, appearing to require both that respondent (a) qualify for an exemption from the need for Bureau approval to operate and (b) secure a Bureau approval to operate. If respondent qualifies for an exemption, there is no need for Bureau approval to operate; if, on the other hand, respondent does not qualify for an exemption, it must obtain Bureau approval. The Order shall be modified to require that respondent cease operations until it either qualifies for an exemption or obtains Bureau approval to operate.

11. It is not clear from the applicable statute (§ 74874, subd. (f)) and the applicable regulation (CCR, § 71395) that an institution that qualifies for an exemption must obtain from the Bureau a verification of exempt status. The basis for the Citation in this case was respondent's charging more than \$2,500 for certain courses and therefore not qualifying for an exemption; the basis was not respondent's failure to apply for and obtain a verification of exempt status from the Bureau. Ms. Scott, appearing as a witness for the Bureau, testified that the determining factor is whether an institution is, in fact, exempt, not whether it obtains a verification of exempt status from the Bureau. What can be ascertained from the regulatory scheme is that the risk of being found not to qualify for an exemption is eliminated if Bureau verification of exempt status is obtained.

ORDER

Citation number 1819194, issued to respondent Integrative Wellness Academy, LLC, owner, Integrative Wellness Academy, is affirmed; however, the Order of Abatement and the administrative fine are modified, as follows.

The Order of Abatement is modified to require respondent to cease to operate as a private postsecondary educational institution until it *either* (a) qualifies for an exemption under Education Code section 94874, *or* (b) obtains an approval to operate from the Bureau.

The administrative fine is reduced to \$1,200, to be paid in full within 12 months following the effective date of this decision, in accordance with a monthly payment plan.

DATE: September 17, 2020

DocuSigned by:

Howard W. Cohen

HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings