

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

In the Matter of the Citation Against:

NETCERTEPERT, INC., OWNER DBA NC EXPERT

5113 Johnson Dr.

Pleasanton, CA 94588

Citation No.: 1918139

Case No. 1002969

OAH Case No.: 2020040152

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 February 6, 2021.

It is so ORDERED December 24, 2020.

"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 Citation Against:

**NETCERTEXPERT, INC., doing business as NC EXPERT,
Respondent.**

Case No. 1002969

OAH No. 2020040152

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on September 14 and 17, 2020, by videoconference.

Deputy Attorney General Carter Ott represented complainant Christina Villanueva, Discipline Manager for the Bureau for Private Postsecondary Education,

Attorney Bob Taylor represented respondent NetCertExpert, Inc. Corporate directors Annmarie Morgan and Philip Morgan attended the hearing for respondent.

The matter was submitted for decision on September 17, 2020,

FACTUAL FINDINGS

1. Respondent NetCertExpert, Inc. (NCE), is a California corporation with its headquarters in Pleasanton. Annmarie Morgan is the corporation's Chief Executive Officer and sole shareholder. Philip Morgan is the corporation's Chief Technology Officer,

2. The Bureau for Private Postsecondary Education (Bureau) has never approved NCE to open, conduct, or do business in California as a private postsecondary educational institution,

3. On March 6, 2019, acting in her official capacity as Discipline Manager for the Bureau, complainant Christina Villanueva issued a citation (Citation No. 1819139) to NCE. After an informal telephone conference on March 27, 2019, complainant modified and reissued the citation on November 5, 2019. NCE had requested a hearing upon receiving the original citation, and did not withdraw that request after receiving the modified citation.

4. As modified, the citation alleges that an NCE representative told a Bureau staff member in September 2017 that NCE "enrolls students using WIOA and VA benefits," and "offers a \$3,000 Cisco Certification Class, and a 32-month \$50,000 Cisco Certification Course, to veterans." The citation also alleges that NCE advertised such courses on the Internet in September,¹ October, and December 2017. The modified citation states that NCE has complied with the Bureau's order (in the original citation)

¹ The citation states that some such advertising occurred in September 2018, rather than in September 2017. The reference to 2018 is a typographical error,

to "cease to operate as a private postsecondary educational institution," and to "cease all instructional services and advertising in any form or type of media." The modified citation assesses 11 \$25,000 fine.

Respondent's Major Business Activities

5. Using the business name "NC Expert," NCE's chief business activities are consulting services to other businesses, NCI: assists its business clients in establishing, operating, and maintaining computer networking systems, and in maintaining network security. In addition, NCE trains its clients' staff members in these activities,

6. Several prominent vendors of computer networking hardware and software offer certification to individuals who complete training regarding the vendors' products and who pass examinations the vendors develop. Through "learning partner" agreements, these vendors approve training companies to provide courses explaining the vendors' products and preparing students for the vendors' certification examinations. The vendors equip their learning partners with texts and other materials for use in such courses, and allow their learning partners to state in advertising that they offer training the vendors have approved. Several vendors, including Cisco Systems, have approved NCE as a learning partner to provide such courses.

7. Except on rare occasions, NCE does not provide networking certification training courses to the general public. Rather, NCE's business clients engage NCE to provide these courses to the businesses' staff members, along with other training services as described above in Finding 5. In unusual circumstances, when space is available and a business client approves, NCE permits individuals who do not work for a business to join a class NCE's instructors are teaching for that business client. Since 2017, fewer than five people have taken NCE classes in this manner. No one who has

taken an NCE class independently rather than through an employer has paid NC:E more than \$2,500 for that class,

Respondent's Business Expansion Efforts

8, In approximately 2016, NC:E began considering expanding its business. In mid-March 2017, NC:E hired Terry Jenkins to lead its business expansion and its marketing activities,

9, NCE contemplated developing an apprenticeship program, through which an employer would hire an inexperienced person and pay NCE to train that person over several months or years to become a skilled computer networking engineer. In addition, although Annrnarie Morgan disagreed, Jenkins believed that NCE should expand its direct-to-student interactive courses, and should market self-study courses directly to individual students as well,

10, NCE developed a description and plan for a 32-month computer networking apprenticeship program, and received approval from the United States Department of Labor to offer that program as a "Registered Apprenticeship."

'11, NCE initially had contemplated that an apprentice's employer would pay NCE to train the apprentice. In developing the program, however, NCE's staff members realized that the program might be more successful if the United States Department of Veterans' Affairs approved it as one for which military veterans could use their post-discharge educational benefits. NCE sought, and received, this approval,

12, Jenkins developed extensive promotional literature for the new apprenticeship program, emphasizing its value to individual potential apprentices (rather than to their potential employers) and especially to veterans. He also

developed promotional literature describing NCE courses that students might take on their own, rather than as part of an employee's in-house training, including self-study programs.

13. Jenkins caused this promotional literature to be available to the public through NCE's Internet website during September, October, November, and December 2017, Although Brian Lauth, a Bureau employee, viewed this promotional literature, the evidence did not establish whether any members of the general public ever viewed it. The promotional website pages Jenkins prepared included a form through which a person could request further information about the apprenticeship program; the evidence did not establish what information a person who submitted the form would have received in response, or when, or from whom", ..

14, Jenkins also described and promoted NCE apprenticeship and individual training programs through other methods, such as through articles and announcements on social media websites,

15, Neither Annmarie nor Philip Morgan were aware in late 2017 of the extent to which Jenkins had begun to promote NCE's apprenticeship and individual training programs, They testified credibly that if they had realized that Jenkins had begun marketing these programs before NCE was fully ready to provide them, they would have directed him to stop,

16, Jenkins left NCE in late 2017, He departed on bad terms with Annmarie and Philip Morgan, who struggled after his departure to understand what he had done to expand and promote NCE's business and to undo some of the harm they believed he had caused NCE,

17. Despite Jenkins's marketing efforts, the evidence did not establish that NCE ever has enrolled any person in any apprenticeship program or any self-study course, The evidence did not establish that NCE ever has taken any payment from anyone for an apprenticeship program or self-study course, has told any person that such a program or course will begin on any specific date, or has acknowledged or accepted an application from anyone for such a program or course, Except for the rare occasions described above in Finding 7, the evidence did not establish that NCE ever has provided instruction to any person other than its business clients' staff members,

Respondent's Contacts With the Bureau

18. In late September 2017, Kauth received an email from Jenkins asking for information about how NCE could obtain Bureau approval for its apprenticeship program. Jenkins's email alluded to the approvals described above in Findings 10 and 11, but stated that Jenkins had learned only recently that Bureau approval also might be necessary. The email stated that NCE had been in business already for about seven years, doing "high-end certification training such as with Cisco,"

19. Kauth misunderstood Jenkins's email. He understood Jenkins to have told him that NCE already was providing courses and an apprenticeship program to the public, and had been for several years, Rather than explaining to Jenkins how NCE should apply for Bureau approval, or cautioning him that NCE should not advertise or announce its programs before the Bureau had approved them, Kauth opened an investigation,

20. By telephone and email, Kauth asked Jenkins several questions about NCE's activities, Jenkins reiterated in his responses to Kauth that NCE had not yet begun offering apprenticeships (to veterans or others) or individual classes, but rather

was attempting to understand "what this would look like if we could extend the same training we offer corporations to individuals,"

21. In January 2018, NCE applied to the Bureau for confirmation that its business was exempt from licensure as a private postsecondary school. This application, and its description of NCE's business, was not in evidence. In March 2018, the Bureau confirmed this exemption through March 2020, as long as NCE continued to operate in accordance with its application. The letter stated specifically that NCE's business would not be exempt if "any part of the total charges are paid from state or federal student aid programs" or from "veteran's financial aid programs," or if NCE began awarding "a degree."

22. The evidence did not establish that Jerilins, or anyone else representing NCE, communicated further with Ikauth after October 2, 2017. Ikauth continued his investigation, however, although he never reviewed the exemption application described in Finding 21. Kauth prepared a report recommending that the Bureau issue a citation to NCE for operating an unapproved private postsecondary educational institution. More than 14 months after Ikauth concluded his investigation, his report caused the Bureau to issue the original citation described above in Finding 3.

LEGAL CONCLUSIONS

1. The Bureau may issue citations for violations of the laws governing private postsecondary educational institutions in California, including for operating a private postsecondary educational institution without Bureau approval. (Eel. Code, §§ 94936, 94944.) If the recipient of a citation contests it by requesting a hearing, the Bureau must prove facts justifying the citation by a preponderance of the evidence.

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." (Ed. Code, § 94858.) In light of the matters stated in Finding 1, the programs described in Findings 9 through 11 would have qualified respondent as a private postsecondary educational institution if respondent had offered them to the public.²

3. Under Education Code section 94868, to offer postsecondary education to the public means to advertise or publicize such education, or to solicit or recruit students for it. The matters stated in Findings 12 through 14 establish that respondent did advertise and publicize postsecondary education to the public. By doing so, respondent acted as a private postsecondary educational institution,

4. "Except as exempted in Article 4 (commencing with Section 94874) . . . , a person shall not open, conduct, or do business as a private postsecondary educational institution in this state without obtaining an approval to operate under this chapter." (Ed. Code, § 94886.)

5. The matters stated in Findings 11 and 12 demonstrate that respondent's promotional literature described programs that would not have satisfied any of the exemption criteria stated in Education Code section 94874,

² The allegations in Citation No. 18'19139 relate only to the programs described in Findings 9 through 11, and to advertising for those programs. Citation No: 1819139 does not allege that the incidental individual instruction described in Finding 7 violated any laws governing private postsecondary education,

6. The matters stated in Finding 17 confirm that respondent never opened or conducted a private postsecondary educational institution, The matters stated In Legal Conclusion 3, however, establish that by advertising courses that would have qualified as private postsecondary education, respondent did business as a private postsecondary educational institution. Moreover, the matters stated in Finding 2 confirm that respondent advertised these courses without having received Bureau approval to do business as a private postsecondary educational institution, Complainant established cause for Citation No, 1819139, as modified.

7. Education Code section 94944 authorizes a penalty of up to \$100,000 for operating an unapproved private postsecondary educational institution, This statute states no minimum penalty, however,

8. For other administrative citations, Education Code section 94936, subdivision (b)(2), identifies factors the Bureau should consider in setting the amount of any fine. These factors are:

- (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.
- (F) The potential harm to students,

9. Despite the matters stated in Findings 15 and 16, the matters stated in Findings 12 through 14 show that Jenkins caused respondent to advertise in multiple forums for programs that respondent could not have provided without Bureau approval. This violation is serious. The matters stated in Findings 13, 14, and 17 do not

show this advertising to have been persistent or repeated, or to have harmed any actual or potential students, however. Moreover, as stated in Finding 18, respondent's activities came to the Bureau's attention only because Jenkins asked the Bureau for advice about how to comply with the law; and as stated in Findings 4 and 21, respondent modified its advertising and other business activities to satisfy, rather than to violate, the law. A fine of \$5,000 is reasonable for respondent's unapproved advertising.

ORDER

Citation No. 1819139, issued to respondent NextCertExpert, Inc., is further modified to assess an administrative penalty of \$5,000. As further modified, Citation No. 1819139 is affirmed. Respondent shall pay the administrative fine of \$5,000 to the Bureau within 30 days after the date of this order.

DATE: October 8, 2020

DocuSigned by:
Juliet E. Cox
#409C8FCA87C4CE...

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings