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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. 1004516

14 **AMERICAN HARBOR COLLEGE;**
15 **LINNEA RAY; 51% OWNER, BRIAN**
16 **HAGGERTY 49% OWNER**
17 **2445 W. Chapman Ave. #260**
Orange, CA 92686

ACCUSATION

18 **Institution Code No. 1926311**

19 Respondent.

20 **PARTIES**

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

24 2. On or about January 1, 1996, the Bureau for Private Postsecondary Education issued
25 an Approval to Operate to American Harbor College; Linnea Ray, 51% owner; Brian Haggerty,
26 49% owner (Respondent), Institution Code Number 1926311. Respondent is approved to operate
27 non degree programs in advanced phlebotomy, clinical massage therapy, conversational English,
28 English as a second language, English for the business profession, English for the medical

1 profession, and intravenous therapy for licensed vocational nurses or registered nurses, massage
2 therapist, phlebotomist technician I, and TOEFL. The Institution Code was in full force and
3 effect at all times relevant to the charges brought herein and will expire on February 28, 2021
4 unless renewed.

5 **JURISDICTION**

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

9 4. Section 118 of the Bus. & Prof. Code states in pertinent part:

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11 (b) The suspension, expiration, or forfeiture by operation of law of a license
12 issued by a board in the department, or its suspension, forfeiture, or cancellation by
13 order of the board or by order of a court of law, or its surrender without the written
14 consent of the board, shall not, during any period in which it may be renewed,
15 restored, reissued, or reinstated, deprive the board of its authority to institute or
16 continue a disciplinary proceeding against the licensee upon any ground provided by
17 law or to enter an order suspending or revoking the license or otherwise taking
18 disciplinary action against the licensee on any such ground.

19 (c) As used in this section, board includes an individual who is authorized by
20 any provision of this code to issue, suspend, or revoke a license, and 'license'
21 includes 'certificate,' 'registration,' and 'permit.'

22 5. Section 94875 states:

23 The Bureau for Private Postsecondary Education, as established by Section 6 of
24 Chapter 635 of the Statutes of 2007, is continued in existence and shall commence
25 operations. This chapter establishes the functions and responsibilities of the bureau,
26 for the purposes of Section 6 of Chapter 635 of the Statutes of 2007. The bureau shall
27 regulate private postsecondary educational institutions through the powers granted,
28 and duties imposed, by this chapter. In exercising its powers, and performing its
duties, the protection of the public shall be the bureau's highest priority. If protection
of the public is inconsistent with other interests sought to be promoted, the protection
of the public shall be paramount.

6. 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.

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

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

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

8 (A) The nature and seriousness of the violation.

9 (B) The persistence of the violation.

10 (C) The good faith of the institution.

11 (D) The history of previous violations.

12 (E) The purposes of this chapter.

13 (F) The potential harm to students.

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

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

18 (3) If a hearing is requested, the bureau shall select an informal hearing
19 pursuant to Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part I
20 of Division 3 of Title 2 of the Government Code or a formal hearing pursuant to
21 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
22 Government Code.

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

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

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

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

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1 **REGULATORY PROVISIONS**

2 7. California Code of Regulations, title 5, section 75020 states, in part:

3 (a) The Bureau Chief, or his or her designee, or the Director's designee, is
4 authorized to issue citations containing orders of abatement and/or administrative
5 fines pursuant to section 94936 of the Code against approved private, postsecondary
6 institutions that have committed any acts or omissions that are in violation of the Act
7 or any regulation adopted pursuant thereto.

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

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

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

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

19 (5) the Bureau may enforce the administrative fine as if it were a money
20 judgment pursuant to the California Code of Civil Procedure (beginning with section
21 680.010).

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

26 8. California Code of Regulations, title 5, section 75040 states, in part:

27 (a) Pursuant to section 94936(c)(2) of the Code, a cited institution or person
28 may, within 30 days of service of the citation, request a hearing in writing to the
Bureau, or it is waived. In addition to contesting a citation by requesting a hearing,
the cited institution or person may, within the same 30 days, submit a written request
to the Bureau for an informal conference.

(b) The Bureau Chief, or his or her designee, or the Director, or his or her
designee, shall within 30 days from the Bureau's receipt of a written request for an
informal conference, hold an informal conference with the cited institution or person.
The 30-day period may be extended by the Bureau Chief or the Director for good
cause. The informal conference may be by telephone.

(c) Following the informal conference, the Bureau Chief, or his or her designee,

1 or the Director, or his or her designee, will affirm, modify, or dismiss the citation,
2 including any fine assessed and/or order of abatement issued. A written order
3 affirming, modifying, or dismissing the original citation shall be served on the cited
4 institution or person within 30 days from the informal conference. If the order affirms
5 or modifies the original citation, said order shall fix a reasonable period of time for
6 abatement of the violation and/or payment of the fine of not more than 30 days.

7 (g) If a written request for a hearing pursuant to section 94936(c)(2) of the
8 Code, or for an informal conference as provided in subsection (a), or both, is not
9 submitted to the Bureau within 30 days from service of the citation, the cited
10 institution or person is deemed to have waived the right to an informal conference
11 and/or administrative hearing.

12 9. California Code of Regulations, title 5, section 75050 states, in part:

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

16 **COST RECOVERY**

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

23 **FACTUAL ALLEGATIONS**

24 11. On or about May 16, 2019, the Bureau issued Citation Number 1819199 to
25 Respondent, for failure to submit the 2018 third and fourth quarter Student Tuition Recovery
26 Fund (STRF) forms and for failure to pay the 2016, 2017, and 2019 annual fees. The Citation
27 included an Order of Abatement requiring Respondent submit the required documentation and
28 assessed a \$50.00 fine. The citation was confirmed as signed and received on or about May 23,
2019. On or about June 27, 2019, the Bureau issued a demand letter by certified mail, which was

1 confirmed as signed and received on July 1, 2019. The Bureau received the \$50.00 fee on or
2 about July 15, 2019.

3 12. On or about July 19, 2019, the Bureau mailed correspondence to Respondent
4 confirming receipt of the assessed fine but notified Respondent that the Bureau had not received
5 proof of compliance with the Order of Abatement. On or about August 22, 2019, the Bureau
6 issued a Demand for Abatement. The Bureau issued a second Demand for Abatement on or about
7 September 10, 2019, which was confirmed as signed and received on or about September 12,
8 2019. On or about October 10, 2019, the Bureau issued a final Demand for Abatement, which
9 was confirmed as signed and received on or about October 15, 2019. To date, Respondent has
10 failed to abate the citation.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Failure to Abate Citation)**

13 13. Respondent subjected its Accredited Institution Approval to Operate to disciplinary
14 action for failing to comply with an order of abatement in Citation Number 1819199, affirmed by
15 the Bureau on or about June 16, 2019 (Cal. Code of Regs., title 5, §§ 75020, subd. (c)(4) and
16 75050, subd. (b)). The circumstances are set forth in paragraphs 11 through 12, above.

17 **PRAYER**

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

21 1. Revoking or suspending Approval to Operate No. 1926311 issued to American
22 Harbor College; Ray Linnea; Brian Haggerty;

23 2. Ordering American Harbor College to pay the Bureau for Private Postsecondary
24 Education the reasonable costs of the investigation and enforcement of this case, pursuant to
25 Business and Professions Code section 125.3; and,

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3. Taking such other and further action as deemed necessary and proper.

DATED: “5/29/2020”

“Original signature on file”
DR. MICHAEL MARION, JR.
Chief
Bureau for Private Postsecondary
Education
Department of Consumer Affairs
State of California
Complainant

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