

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

In the Matter of the Citation Against:

**WELDING SKILLS AND TRAINING CENTER, INC.,**

**RANDY KEITH McCLURE**

9216 Center Ave.

Rancho Cucamonga, CA 91730

Citation No.: 1819187

Case No. 1003311

OAH Case No.: 2020030504

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 NOV 08 2020, 2020.

It is so ORDERED September 17, 2020.



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RYAN MARCROFT  
DEPUTY DIRECTOR, LEGAL AFFAIRS DIVISION  
DEPARTMENT OF CONSUMER AFFAIRS

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**OAH No. 2020030504**

**PROPOSED DECISION**

Eileen Cohn, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 20, 2020.

Michael Yi, Deputy Attorney General, represented complainant; Christina Villaneuva, Discipline Manager for the Bureau of Private Postsecondary Education (Bureau), Department of Consumer Affairs.

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Eric M. Davison, Attorney at Law, represented Welding Skills and Training Center, Inc. and Randy Keith McClure, its owner (respondent).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on June 20, 2020.

## FACTUAL FINDINGS

### Jurisdiction and Background

1. On May 2, 2019, complainant, acting in her official capacity, issued Citation Number 1819187 (Citation) to respondent. The Citation charged respondent with violating Education Code section 94866 (Approval to Operate Required), 94858 (Private Postsecondary Education Institution defined), 94817.5 (Approved to Operate Defined), 94868 (Offer to the public defined) and 94869 (to operate defined) for operating a private postsecondary educational institution and offering educational programs without Bureau approval. The Citation imposed an administrative fine of \$5,000 for the violation.

2. The Bureau made the following finding when it affirmed its citation on November 19, 2019 (Exhibit 10):

On January 8, 2019, Bureau staff found that the Institution was operating a private postsecondary educational institution and offering educational programs.

The Institution maintains an active website (<https://www.weldingclass.org/>) and advertises a collection of welding related educational programs ranging from \$35.00 for hourly sessions to \$7,495 for bundle packaged programs. The Institution issues welding certifications,

offers basic classes, and offers assistance to those needing help obtaining a job.

On October 18, 2016, the Bureau denied the Institution's application for a Verification of Exemption under CEC section 94874, subdivision (d)(2). The Institution was notified via mail. The letter stated in part that '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.'

3. The Citation also contained an Order of Abatement, ordering respondent to cease to operate as a private postsecondary educational (PPSE) institution unless it qualified for an exemption under Education Code section 94874. The Citation ordered respondent to pay the administrative fine and submit evidence of compliance with the Order of Abatement, including disconnecting telephone service numbers and submitting a school closure plan within thirty days of the Citation, June 1, 2019, unless respondent appealed. The Citation notified respondent of its appeal rights. (Exh. 1.)

4. Respondent is an active California domestic stock and agricultural corporation and has been registered with the Secretary of State since March 2014. Respondent is in good standing with the Franchise Tax Board. Mr. McClure is the owner and Chief Executive Officer. Elaine Carvalho is registered as the Secretary and Chief Financial Officer of the corporation. (Exhs. 5 and 6.)

5. Respondent is certified by the National Welding Society, the premier certification organization that governs the welding trades in the Northern Hemisphere. (McClure Testimony, Exh. E.) Respondent is registered with the City of Rancho

Cucamonga in that location as a "doing business as" under "Welding Service Company" with a license description of "welding and repair fabrication." (Exh. 2.) It is also licensed by the City of Los Angeles, Department of Building and Safety (LADBS) as a licensed welder and also was issued a Testing Agency Certificate of Approval by the LADBS for welding performance Testing. (Exh. D.) In addition to providing workshops, training and test only services, respondent provides welding fabrication and consulting services for companies. It was licensed as an approved fabricator by the City of Los Angeles. (Exh. G.)

6. On May 28, 2019, respondent, owner and Chief Executive Officer, Randy McClure submitted a Notice of Appeal to the Bureau, which requested an informal conference and administrative hearing to contest the Citation. (Exh. 1.)

7. An informal teleconference was held on August 26, 2019. On November 6, 2019, the Bureau affirmed its Citation on the ground that respondent did not provide any new evidence that it qualified for an exemption under Education Code sections 9487, subdivisions (d) (Exhs. 9 and 10.) On March 25, 2020, complainant served respondent with a Notice of Hearing and this hearing ensued.

### **Bureau's Investigation**

8. Lucy Castillo-Riley is a licensing analyst in the Bureau's Licensing Unit. She has been employed by the Bureau for six-and-a-half years. Before she was promoted to her current position between January and July 2019, Castillo-Riley was an investigator with the Bureau.

9. Castillo-Riley was assigned to conduct an investigation of an internal complaint the Bureau received on March 14, 2018, that respondent was operating and offering educational programs to the public without Bureau approval or a valid

exemption. There is no evidence that a member of the public filed a complaint regarding respondent. Castillo-Riley was assigned to conduct an investigation of an internal complaint the Bureau received on March 14, 2018, that respondent was operating and offering educational programs to the public without Bureau approval or a valid exemption. She also found from her search of the Database of Accredited Postsecondary Institutions and Programs (DAPIP) maintained by the United States Department of Education that there were accreditation records for respondent.

According to Castillo-Riley's research, the Bureau previously denied respondent an exemption under Education Code section 94874 subdivision (d)(2) on October 18, 2016. (Ex. 2.) Respondent does not dispute Castillo-Riley's research regarding its licensing and accreditation status, and the Bureau's previous rejection of its request for an exemption.

10. Castillo-Riley prepared a written report which summarized the findings of the investigation. (Ex. 2.) Castillo-Riley testified at the hearing regarding the investigation.

11. During the investigation, Castillo-Riley conducted an on-line research of respondent and found that respondent maintained an active website (<https://www.weldingclass.org/>).<sup>1</sup> From her review of the web-site, Castillo-Riley concluded that respondent "advertises a[] collection of welding related educational

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<sup>1</sup> Complainant included portions of respondent's web-site as part of Exhibit 3; the ALJ took official notice of the entire web-site without objection. The ALJ had intended to print and marked and admit the full web-site but on further review realized it had been updated and did not include it as Exhibit 11.

program ranging from \$35.00 for hourly sessions to \$7,495 for bundle packaged programs." (Ex. 2.)

12. Castillo-Riley printed course information with the prices from the website (Exh. 3.) and then organized the information about the courses and prices on a spreadsheet. (Ex. 4.) Castillo-Riley solely relied upon the information from the web-site to reach her conclusion that respondent was offering courses to the public at prices in excess of \$2500 dollars for coursework related to the welding profession, and as such, did not qualify for an exemption from the Bureau's oversight. Castillo-Riley admitted she knew little about the welding trade.

13. The web-site described a range of classes in the area of "Industrial Maintenance" for mechanics, industrial maintenance departments and automotive repairs, "Complete LA City Programs" in the area of certifications, oxy, cutting, blueprint reading, code book clinic and document submittal;" "union-construction programs, beginner through advanced; entry-level welder job prep; longshoreman programs, and professional services, which include custom-built training programs and consultations." (Exh. 3, pp. 29-32.)

14. Castillo-Riley found that respondent's website, as of January 2019, listed courses related to the welding trades that may have individually been under the threshold requirement of \$2500 dollars, but taken together as phases of related courses, i.e., courses that "feed off" one another, or require the completion of a previous course to advance to the next course, exceeded that amount. (Castillo-Riley testimony, and Exh. 4.) She grouped the courses as they were set out under a particular heading or profession; i.e., Longshoreman Program; Structural Steel 3G & 4G certifications (required for ports); Los Angeles Department of Building and Safety Licensed Certified Welder Program; Structural Steel, (Semi-Automatic) Los Angeles

Department of Building and Safety Licensed Certified Welder Program; Construction or Structural Welder for Job-Site Welder, 3G Only, 3G & 4G together, and MIG, 3G and 3G &4G; Production Structural Welder; and a variety of Entry Level Welder Programs. (Exh. 4.)<sup>2</sup>

15. A reading of the web-site appeared to promote the grouping identified by Castillo-Riley. For example, under the heading "Construction -- Welding Certification Classes," the courses include a "beginning" training and certification to AWS D.1 Structural Steel, referred to as "GMAW-101" and listed as \$1395 dollars, a "beginning" training, referred to as FCAW-101 for \$1595 dollars and a "vertical FRAW-102-G" for \$1195. After those courses, there is an offer to "pay in full on the first day to get up to 4-hours GMAW Aluminum extra training for free" and an explanation that the "entire program can be completed in 2 weeks (Monday-Friday)." A similar layout was provided for other groups of courses such as: certification to AWS in structural steel, 3G & 4G, which included five courses, a web-site special worth for payment in full on the first day, and optional additional add-on, and a statement that the "entire program" can be completed in 4 weeks (Monday-Friday); certification to AWS structural steel, 3G & 4G, the Longshoreman Program; "Entry Level Mid & Tig Welder" for an entry level welding job with a manufacturer or fabricator, included three beginner courses and options for additional courses with a website special for paying in full for "all options" the first day; and two courses for the "Entry Level Mig Welder," designed for the "novice welder on their 1st job." The "Certification to ASME IX Boiler and Pressure Vessel, Steel Pipe" provided three individual courses over \$2500 dollars.

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<sup>2</sup> The acronyms used for the different courses and skills were not explained during the hearing and are not material to this decision.



16. The web-site also describes respondent's training and classes as open to both businesses and individual clients. Under the section "Fast Track Training" the web-site explains: "Our training programs are geared for businesses and individuals who want knowledgeable, fast-track training. Our programs are 75% hands-on training and 25% lecture and include welder safety, your training, and all materials. We specialize in training for manufacturers and industrial maintenance departments." (Ex. 3, p. 28.) In the "About Us" section, respondent states: "We are the premier welding school in Southern California. Whether you need welding certifications, basic classes, or need help getting the job, we're here to serve you." (Ex. 3, p. 33.)

17. Pursuant to Education Code section 94874, certain institutions are exempt from the Bureau's laws and regulations. Castillo-Riley reviewed the Bureau's in-house database (referred to as SAIL) to determine if respondent was an exempt institution. Castillo-Riley found that respondent previously filed a Verification of Exempt Status Application (Exempt Status Application) seeking an exemption under Education Code section 94874, subdivision (d)(2), which allows an exemption for institutions which offer continuing education or license examination preparation if the institution or the program is approved, certified, or sponsored by either (a) a government agency that licenses persons in the trade; (b) a state-recognized professional licensing body, that licenses persons in a particular trade or profession, like the State Bar of California; and a bona fide trade, business or professional organization. The Bureau's records showed that the Bureau denied respondent's

Exempt Status Application on October 18, 2016. Respondent did not appeal the Bureau's 2016 denial.<sup>3</sup>

18. Marina O'Connor was the Licensing Chief for the Bureau at the time of Castillo-Riley's investigation and the informal conference. O'Connor was responsible for managing the licensing division, including the decisions denying licensure, and was responsible for making the final determination on behalf of the Bureau that respondent did not qualify for an exemption. O'Connor had the necessary experience to understand the application of the governing law. She provided straightforward and candid testimony during the hearing about the Bureau's decision. O'Connor met with McClure, Carvalho and respondent's counsel, in an informal telephonic conference after which she concluded no additional information was provided that would change the Bureau's determination that respondent was not exempt.

19. In the informal hearing respondent limited his request for exemption to Education Code section 94874, subdivision (d).

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<sup>3</sup> Respondent provided testimony through Ms. Carvalho of its determination not to challenge the Bureau's decision because of information Ms. Carvalho received at a conference sponsored by the Bureau where a representative purportedly stated with a laugh, no one wins an appeal. Ms. Castillo-Riley, currently in charge of such conferences testified in rebuttal that the record for reversals is high, 75 percent. Regardless of respondent's reasons for not challenging the 2016 denial, and the Bureau's protestation about its track record, the reasons are irrelevant. The only relevant evidence, which is undisputed, is that respondent failed to timely appeal the Bureau's denial, and let the decision stand until this hearing.

(A) During examination at the hearing, O'Connor reviewed the various exemptions under that section. The Bureau determined that the respondent failed to show that the courses and programs constituted "test preparation" under Education Code section 94874, subdivision (d)(1), because test preparation focuses on mechanics of test preparation, not the substantive courses related to a successful outcome. Respondent's courses did not qualify under Education Code section 94874, subdivision (d)(2), as continuing education or license examination preparation, because they were not offered solely to advance the skills of currently licensed individuals, but were offered to the public.

(B) Additionally, the Bureau concluded that respondent did not qualify for an exemption under Education Code section 94874, subdivision (f), which allows an exemption for "[a]n 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." Due to the relationship between the courses, the tuition charged by respondent, in many instances, exceeded the \$2,500 limit for an exemption under section 94874, subdivision (f).

20. During cross-examination, O'Connor candidly offered that respondent would be entitled to continue operations, in part at least, if respondent was offering programs solely to businesses for the advancement of their employees. In that case, the Bureau would require corrective action, and those services could continue to operate even if others did not qualify for the exemption.

## **Respondent's Evidence**

21. McClure testified candidly at hearing. It is undisputed that respondent is a legitimate provider of courses and testing services to the welding trade, and that McClure has been in the trade for many decades and enjoys a strong relationship with local governments and businesses. Respondent is an approved testing sight for the City of Los Angeles and most companies are required to be licensed by the City or County of Los Angeles. McClure's position was consistent with what he presented to the Bureau at the informal conference. At the informal conference, respondent claimed an exemption under Education Code section 94874, subdivision (d), principally because his business mainly focuses on training employees of companies which contract with his company and that the companies pay for the training with the goal of their employees passing the necessary exams to certify the employees' welding and related skills. McClure admitted he did not provide additional documentation to O'Connor as part of the informal conference.

22. McClure insists the Bureau misunderstands his business which is "primarily" focused on businesses or government, does not produce a degree, does not certify anyone as competent to work in a trade, and is geared toward test preparation, based on a model of preparation which requires hands-on work, no textbooks and primarily oral instruction using the "code books" applicable to the examination related to that trade.

23. There are a wide variety of certifications required for different trades and respondent must first assess each individual's skill level before determining what course-level and courses are required for them to pass the relevant test. There is no requirement that each course be taken. Respondent provides an estimate for each

employee based on the certification requirements and level of training. The estimates are done based on hours of training. (Ex. C.)

24. Respondent primarily contracts with businesses who send their employees for training and testing. McClure insisted there is no requirement that any individual take more than one course. Businesses have a lot of money invested in these employees because generally their salaries are paid while they are training for the tests, and the test requirements are stringent such that if an employee fails the test there is a waiting period before the employee can take the course again. The certifications are exclusive to the employees work with a particular company. If they leave the company, the certifications are void.

25. McClure provided samples of some invoices with these businesses who pay for individual courses for one or more employees with the goal of them passing the exams required for certification. (Ex. B.) None of the invoices identified the individuals who were registered for one course or more than one course but did show that each individual course was under \$2500 dollars. Respondent also provides training to government agencies, such as the County of Los Angeles.

26. Respondent provides courses for "weekend warriors" who want to learn how to do work around the house. Other than these courses McClure does not admit to providing courses to individuals not sponsored by their businesses.

27. Respondent provided a course and price list on a chart which McClure established included the same course costs reviewed by Castillo-Riley. The chart is included in an application form dated 2020. The courses are grouped by subject matter, but absent from the chart is any narrative which might suggest that the

courses are taken in phases or reference to discounts as provided in the web-site Castillo-Riley reviewed. (Ex. F.)

28. Respondent continued to operate after its appeal from the Bureau's denial of its October 2016 Exempt Status Application.

## LEGAL CONCLUSIONS

1. This matter is governed by the California Private Postsecondary Education Act of 2009 (Act), set forth at Education Code section 94800 et seq., and the implementing regulations set forth at California Code of Regulations, title 5, section 75010 et seq. The Bureau is the state agency responsible for regulating private postsecondary educational institutions in accordance with the Act. "In exercising its powers, and performing its duties, the protection of the public shall be the bureau's highest priority." (Ed. Code, § 94875.)

2. The Bureau is authorized to issue a citation to a person (defined as a natural person or business organization) for committing any acts or omissions that are in violation of the Act or the Regulations. (Ed. Code, §§ 94936, 94855; Cal. Code Regs., tit. 5, § 75020; Bus. & Prof. Code, §§ 125.9, 149.) A citation may contain an order of abatement and impose administrative fines. (*Ibid.*) An administrative fine and an order of abatement may be ordered as part of a citation for operating a private postsecondary institution without proper approval. (Ed. Code § 94944; Cal. Code Regs., tit. 5, § 75020, subd. (b).) An order of abatement may include an order to cease operations as a private postsecondary educational institution. (Bus & Prof. Code § 149.)

3. Education Code section 94886 provides, in pertinent part:

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.

4. Cause exists to affirm the Citation, in part, pursuant to Education Code ~~section 94944, California Code of Regulations, title 5, section 75020, and Business and Professions Code sections 125.9 and 149,~~ in that respondent operated as a private postsecondary institution without Bureau approval, in violation of Education Code section 94886, with respect to respondent's offer of courses of instruction to the public. Respondent's website clearly invited individuals to take courses, not just companies, and although respondent's contracts with businesses are its "primary" source of business, there is no evidence that business contracts, or its consulting or fabrication services, are its only source of business.

5. Respondent does not qualify for a blanket exemption to Board approval for both its individual clients and business clients, pursuant to Education Code section 94874, subdivision (d).

(A) Respondent's courses did not constitute continuing education or license examination by an institution sponsored by a government agency that licenses persons in a particular profession, occupation, trade or career field (subdivision (d)(1)). O'Connor established that respondent did not provide sufficient evidence that its ~~courses were limited to continuing education for those who were advancing their skills~~ and knowledge of currently licensed individuals, but were instead offered to anyone, licensed or not. Respondent's offered a variety of courses and advertises those courses to individuals who want to get a job in the profession.

(B) Respondent's courses do not qualify for a blanket exemption under subdivision (d)(2), as license exam preparation, as established by O'Connor, because respondent's courses do not merely prepare clients by showing them how to take a test, but provide training in the trades not only to business employees, but to the public. Although the ultimate purpose of respondent's primary business is to provide courses to the employees of companies focused on their successful passage of certification tests, which it administers, the website displays a rich variety of coursework, not testing skills, also available to those seeking a job.

(C) Respondent did provide sufficient evidence, however, for an exemption under Education Code section 94874, subdivision (d)(2), as license exam preparation, if its programs were limited to providing courses to clients who are referred by employers for the purpose of obtaining certification in a trade required by the employer. O'Connor's testimony about test taking in general was not persuasive about the methods used to prepare business employees in the trades for the test. McClure provided persuasive testimony that respondent's method of teaching and the courses provided are necessary for the certification tests in the welding trades. The courses are grouped by profession and trade. Based upon respondent's initial assessment, the clients are placed in the appropriate course of study with the goal of them acquiring the skills needed to pass the tests. Respondent is certified as an institution by the American Welding Society, and for welding performance testing by the City of Los Angeles.

(D) Respondent does not qualify for an exemption under Education Code section 94874, subdivision (f) which provides: "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." Respondent's claim that no course "feeds" on another course, is not supported by the original website or other evidence. McClure testified that an assessment was required before placement and a determination was made as to where the student should be placed. However, the assessment was provided in terms of the number of hours, and the sample invoices did not identify the student or establish that at no time were students provided with more than one course. Even respondent's most recent chart of prices has the courses grouped by topic and there is nothing in the old website or the new chart that expressly limits the "total charges" for one student's educational program to \$2500 dollars.

6. Cause was established in part, and not established in part, to issue the Order of Abatement as part of the Citation. Education Code 94858 defines a "private postsecondary educational institution" as a private entity with a physical presence in this state that offers postsecondary education to the public for an institutional charge. Respondent demonstrated his business is not limited to course offerings to the public, but that his "primary" business was contracting with businesses for training their employees in the welding trades with the goal of taking and passing certification examinations, and that the businesses were directly responsible for payment. As part of respondent's services to business employees, respondent also qualifies for an exemption under Education Code section 94874, subdivision (d)(2), for exam preparation. Respondent also established that he provides other business services, including fabrication, and consulting services, which are not under the jurisdiction of the Bureau. As such, Respondent is ordered to cease operation and solicitation of his training and testing services to the public, and to restrict his services to business and government agencies who require their employees to enroll with respondent for the

purpose of test-taking and or test preparation. Respondent shall modify the web-site to be consistent with this decision within 30 days of the final decision.

(A) Education Code section 94944 provides: "Notwithstanding any other provision of law, the bureau shall cite any person, and that person shall be subject to a fine not to exceed one hundred thousand dollars (\$100,000), for operating an institution without proper approval to operate issued by the bureau pursuant to this chapter." Education Code section 94936, subdivision (b)(1), provides that a citation may include "[a]n order of abatement that may require an institution to demonstrate how future compliance with this chapter or regulations adopted pursuant to this chapter will be accomplished."

(B) Here, the Citation imposed a \$5,000 administrative fine and included an Order of Abatement requiring respondent to cease operating as a private postsecondary institution unless it qualified for an exemption under Education Code section 94874. The administrative fine is reasonable based on the record of this case.

7. Respondent shall pay the \$5,000 administrative fine within 30 days of the effective date of this Decision. (Ed. Code, § 94936, subd. (c)(5).)

## **ORDER**

1. Citation Number 1819187 and Order of Abatement are affirmed in part and denied in part.

2. Respondent shall pay the administrative fine of \$5,000 within 30 days of the effective date of this Decision and Order.

3. Respondent shall comply with the Order of Abatement with the exception that respondent may continue to recruit and enroll students and provide instructional services and advertising in any form of media, including <https://www.weldingclass.org> and any other websites not identified here that are associated with respondent solely with respect to its direct contracts with businesses or government agencies for exam preparation or continuing education.

~~4. Respondent's consulting and fabrication services and other services unrelated to recruitment, enrollment and providing instructional services, are exempt from the Order of Abatement.~~

5. Respondent shall comply and shall provide evidence of compliance with the Order of Abatement contained in Citation Number 1819187, as modified by this Order, within 30 days of the effective date of this Decision and Order.

DATE: August 19, 2020

DocuSigned by:  
*Eileen Cohn*  
EILEEN COHN

Administrative Law Judge  
Office of Administrative Hearings