



**Bureau for Private Postsecondary Education**  
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**CITATION: ASSESSMENT OF FINE AND ORDER OF ABATEMENT**

To: Knute Berry, Owner  
Bakersfield Spa Institute  
3909 Stockdale Highway  
Bakersfield, CA 93309

**INSTITUTION CODE: 98311741**  
**CITATION NUMBER: 1516073**  
**CITATION ISSUANCE/SERVICE DATE: April 11, 2016**  
**DUE DATE: May 10, 2016**  
**FINE AMOUNT: \$ 8,001.00**  
**ORDER OF ABATEMENT INCLUDED: YES**

Elainea Shotwell issues this Citation: Assessment of Fine and Order of Abatement (Citation) in her official capacity as Enforcement Manager of the Bureau for Private Postsecondary Education (Bureau) of the California Department of Consumer Affairs.

CITATION

A Citation is hereby issued to Knute Berry, Owner of Bakersfield Spa Institute, 3909 Stockdale Highway, Bakersfield, CA 93309, pursuant to Business and Professions Code section 125.9; California Education Code (CEC) section 94936; and Title 5 of the California Code of Regulations (5 CCR) section 75020 for the violations described below.

VIOLATION

#	The California Education Code (CEC) and the California Code of Regulations (CCR). Below you will find the code section(s) of law you are charged with violating.
1.	<p><b><u>Violation:</u></b> CEC 94910(e) – Minimum Requirements for School Performance Fact Sheets <i>“Prior to enrollment, an institution shall provide a prospective student with a School Performance Fact Sheet containing, at a minimum, the following information, as it relates to the educational program: (e) If a program is too new to provide data for any of the categories listed in this subdivision, the institution shall state on its fact sheet: “This program is new. Therefore, the number of students who graduate, the number of students who are placed, or the starting salary you can earn after finishing the educational program are unknown at this time.</i></p>

*Information regarding general salary and placement statistics may be available from government sources or from the institution, but is not equivalent to actual performance data."*

Bureau staff conducted an announced compliance inspection on June 3, 2014. A review of the institution's School Performance Fact Sheets (SPFS) revealed the absence of required footnoted information. A Notice to Comply was issued and the institution's response, received July 22, 2014, included the submission of a revised SPFS containing required footnotes under *Definitions*. However, the SPFS for the 300-Hour Massage Practitioner Program contains the statement, "*This program is relatively new. Therefore, if you wish for more information regarding general salary and placement statistics, it may be available from government sources or from the institution, but is not equivalent to actual performance data. With respect to our relatively new program, our efforts to compile data is enclosed.*" This statement is not verbatim with what is required per CEC 94910(e), and should not be included on the SPFS, as the institution has also included information in the completion, placement, examination passage, and salary and wage data fields. The SPFS shall include either the information, or the required statement regarding the program being new, but not both.

**Order of Abatement:**

The Bureau orders the institution to submit corrected School Performance Fact Sheets for its programs that comply with the requirements of CEC 94910(e).

**Assessment of Fine**

The fine for this violation is \$501.00

2. **Violation:**

CEC 94929.7(a),(b)&(c) - Documentation of Performance Data

*"(a) The information used to substantiate the rates and information calculated pursuant to Sections 94929 and 94929.5 shall do both of the following:*

*(1) Be documented and maintained by the institution for five years from the date of the publication of the rates and information.*

*(2) Be retained in an electronic format and made available to the bureau upon request.*

*(b) An institution shall provide a list of employment positions used to determine the number of graduates employed in the field for purposes of calculating job placement rates pursuant to this article.*

*(c) The bureau shall identify the specific information that an institution is required to document and maintain to substantiate rates and information pursuant to this section."*

Bureau staff conducted an announced compliance inspection on June 3, 2014. The institution was unable to provide any data to support and substantiate the rates and information reported on its School Performance Fact Sheets. A Notice to Comply was issued and the institution's response to this violation included the statement, "*Institution will maintain required data to substantiate the School Performance Fact Sheet. Each student folder will have a Student Folder Checklist Form-----Exhibit#8.*" The institution's response, received July 22, 2014, failed to include any documentation to substantiate SPFS rates and information reported.



**Order of Abatement:**

The Bureau orders the institution to submit and provide the appropriate supporting documentation to substantiate the rates and information on its School Performance Fact Sheets, for all periods beginning January 1, 2015 to present.

**Assessment of Fine**

The fine for this violation is \$2,500.00

3. **Violation:**

5, CCR 76140 - Record-Keeping Requirements.

*“(a)A qualifying institution shall collect and maintain records of student information to substantiate the data reported on the STRF Assessment Reporting Form and records of the students' eligibility under the Fund. Such records shall include the following for each student:*

- (1)Student identification number,*
- (2)First and last names,*
- (3)Email address,*
- (4)Local or mailing address,*
- (5)Address at the time of enrollment,*
- (6)Home address,*
- (7)Date enrollment agreement signed,*
- (8)Courses and course costs,*
- (9)Amount of STRF assessment collected,*
- (10)Quarter in which the STRF assessment was remitted to the Bureau,*
- (11)Third-party payer identifying information,*
- (12)Total institutional charges charged, and*
- (13)Total institutional charges paid.*

*(b)The qualifying institution shall maintain the data required under this section in an electronic format that is readily available and open to inspection by the Bureau upon request. The institution shall make the records immediately available to a Bureau representative conducting a site inspection or, upon written request, shall provide a copy within 14 calendar days of the request. All records shall be provided to the Bureau in an intelligible and orderly manner and in an electronic format.”*

**Bureau staff conducted an announced compliance inspection on June 3, 2014. The institution failed to collect and maintain records of student information to substantiate the data reported on the STRF Assessment Reporting Form and records of the students' eligibility under the Fund as required by 5, CCR 76140 et seq. A Notice to Comply was issued but the institution did not submit the required records with its response, received on July 22, 2014.**

**Order of Abatement:**

The Bureau orders the institution to collect, maintain, and submit a copy of student information to substantiate the data reported on the STRF Assessment Reporting Form and records of the students' eligibility under the fund as required by 5, CCR 76140 et seq, for all students beginning January 1, 2015 to present.

**Assessment of Fine**

The fine for this violation is \$2,500.00

<p>4. <b>Violation:</b>  3, CEC 94913 - Institutional Web Site Maintenance  “(a) An institution that maintains an Internet Web site shall provide on that Internet Web site all of the following:  (1) The school catalog.  (2) A School Performance Fact Sheet for each educational program offered by the institution.  (3) Student brochures offered by the institution.  (4) A link to the bureau’s Internet Web site.  (5) The institution’s most recent annual report submitted to the bureau.  (b) An institution shall include information concerning where students may access the bureau’s Internet Web site anywhere the institution identifies itself as being approved by the bureau.”</p> <p>Bureau staff conducted an announced compliance inspection on June 3, 2014. The institution’s Web site, <a href="http://www.bakersfieldspainstitute.com">www.bakersfieldspainstitute.com</a>, did not contain a link to the institution’s catalog, School Performance Fact Sheets, most recent annual report, or a link to the Bureau’s Web site as required by CEC 94913. A Notice to Comply was issued and the institution’s response to this violation, received July 22, 2014, included the statement, “website has been taken down at this time....Exhibit #2,” along with a screenshot of the institution’s Web site, taken 7/20/2014, showing the Web site was under construction. On 2/24/2016, Bureau staff again reviewed the institution’s Web site and found the site to be back up and contained school name but still lacking all the elements required by CEC 94913.</p> <p><b>Order of Abatement:</b>  The Bureau orders the institution to include, on its Web site, a link to the institution’s catalog, School Performance Fact Sheets, most recent annual report, and a link to the Bureau’s Web site, as required by CEC 94913(a)&amp;(b).</p> <p><b>Assessment of Fine</b>  The fine for this violation is <u>\$2,500.00</u></p>
<p><b>TOTAL ADMINISTRATIVE FINE DUE: \$8,001.00</b></p>

ASSESSMENT OF A FINE

In accordance with CEC section 94936; and 5 CCR Sections 75020 and 75030, the Bureau hereby orders this assessment of fine in the amount of **\$8,001.00** for the violations described above. **Payment must be made, to the Bureau, within 30 days from the date of service of the Citation.**

ORDER OF ABATEMENT

In accordance with the provisions of CEC Section 94936 and 5 CCR Section 75020 the Bureau hereby issues the order(s) of abatement described above. **Evidence of compliance with the order(s) of abatement must be submitted, to the Bureau, within 30 days from the date of service of the Citation.**



## BACKGROUND

Bakersfield Spa Institute, Institution Code 98311741, was issued a Notice to Comply #CA 98311741 0614 (NTC) on June 3, 2014 as a result of 14 minor violations detected during the desk review and on-site announced compliance inspection. The institution was given 30 days from the date of the inspection to either remedy the violations or submit a written notice of disagreement. The Bureau received responses and documents from the institution to remedy some of the violations listed on the NTC. However, the institution's responses were not sufficient to clear all violations, as four outstanding violations remain.

## APPEAL OF CITATION

You have the right to contest this Citation through an informal conference with the Bureau; and/or through an administrative hearing in accordance with Chapter 5 (Commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

If you wish to contest this Citation, you must submit the 'Notice of Appeal of Citation – Request for Informal Conference and/or Administrative Hearing' form (enclosed) within 30 days from the date of service of the Citation. *If you do not request an informal conference and/or an administrative hearing within 30 days from the service of the Citation, you will not be able to request one at a later time.*

Unless a written request for an informal conference and/or an administrative hearing is signed by you and delivered to the Bureau by **May 10, 2016**, you will be deemed to have waived or forfeited your right to appeal this matter.

## EFFECTIVE DATE OF CITATION

If you do not request an informal conference and/or an administrative hearing, this Citation shall become effective on **April 11, 2016**. Payment of the administrative fine and evidence of compliance with the order(s) of abatement shall be due by **May 10, 2016**. Your payment of the administrative fine shall not constitute an admission of the violation(s) charged.

If a hearing is requested, you will not be required to comply with this Citation until 30 days after a final order is entered against you.

### **Payment of the administrative fine and/or written request for appeal must be mailed to:**

Jody Wright, Discipline Citation Program  
Bureau for Private Postsecondary Education  
2535 Capitol Oaks Drive, Suite 400  
Sacramento, CA 95833

Failure for an applicant or institution to abate the violation(s) listed above or to pay the administrative fine within the time allowed may result in denial of an application for an approval or renewal to operate; disciplinary action, and/or collection action. The Bureau will promptly take all appropriate action to enforce this Citation and recover the civil penalties prescribed therein or found to be due after a hearing.

CONTACT INFORMATION

If you have any questions regarding this Citation, or desire further information, please contact Jody Wright, Enforcement Analyst, at 916-431-6940 or Jody.Wright@dca.ca.gov.



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**Elainea Shotwell**  
**Enforcement Manager**

April 11, 2016  
**Date**

Enclosures

- Applicable Laws Violated
- Statement of Rights: Appeal Process Information Sheet
- Notice of Appeal of Citation: Request for Informal Conference and/or Administrative Hearing
- Payment of Fine – Waiver of Appeal
- Declaration of Service by Certified and First Class Mail