

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

In the Matter of the Accusation Against:

HORISONS UNLIMITED SCHOOL OF
CLINICAL MEDICINE,
SANDRA HAAR, PRESIDENT,

Approval to Operate an Institution Non-
Accredited No. 12682651,

Respondent.

Case No. 999091

OAH No. 2016031008

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on August 9, 2016, in Sacramento, California.

David E. Brice, Deputy Attorney General, represented Joanne Wenzel (complainant), Chief, Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs.

Donald O. Spaulding, Attorney at Law, represented Horisons Unlimited School of Clinical Medicine (respondent), Sandra Haar, President. Neither Ms. Haar nor any other representative from respondent appeared to testify at the hearing.

Evidence was received, the record was closed, and this matter was submitted for decision on August 9, 2016.

FACTUAL FINDINGS

1. On October 18, 2012, the Bureau issued Approval to Operate No. 12682651 (Approval) to respondent. The Approval authorized respondent to provide three educational programs: dental assistant, medical assistant, and phlebotomy at its location at 1743 Ashby Road, Merced. The Approval was in full force and effect at all times relevant to the

allegations in the Accusation and will expire on October 18, 2017, unless renewed or revoked.

2. Complainant seeks to revoke respondent's Approval, alleging that respondent: (1) failed to obtain prior approval from the Bureau before adding a Vocational Nursing program; (2) offered a Vocational Nursing program that was not approved by the Board of Vocational Nursing and Psychiatric Technicians (BVNPT); (3) falsified documents of record by operating at an address different from the approved address; (4) failed to notify the Bureau of a change of address; (5) failed to maintain student records; and (6) failed to produce student records upon request.

Respondent's March 2011 Application for Approval to Operate

3. In March 2011, the Bureau received an Application for Approval to Operate for an Institution Non Accredited (Application) from respondent. In its Application, respondent stated that the "Physical Address of the Primary Administrative Location in California" was "1743 Ashby Road" in Merced. Although the Application indicated that a description of the educational programs to be offered by respondent was attached, the copy of the Application offered at the hearing did not include any attachments. The Certification of Institutional and Program Approvals offered at hearing established that respondent was approved to offer the following educational programs: dental assistant, medical assistant, and phlebotomy at its location at 1743 Ashby Road in Merced.

Bureau Investigation

4. On July 15, 2014, Bureau Investigators Latricia Leach and Jennifer Jones made an unannounced visit to 1743 Ashby Road, Merced, respondent's designated address of record. They found that there was no indication that respondent was operating out of that location. They thereafter discovered that respondent was located at 936 Main Street, Merced. Ms. Leach spoke to Ms. Haar at the 936 Main Street address. Ms. Haar told Ms. Leach that respondent had not operated at the 1743 Ashby Road, Merced address. Ms. Haar stated that respondent had submitted an address change to the Bureau, but could not say when and to whom that change was submitted.

5. Ms. Leach asked to review both student and faculty files. Ms. Haar stated that she did not know the location of the files. Ms. Leach also asked whether respondent was offering a Vocational Nursing program. Ms. Haar stated that respondent was not offering a Vocational Nursing program because of all the "red tape" to get such a program up and running.

6. Ms. Leach asked Ms. Haar for respondent's catalogue and copies of the letters respondent sent advising the Bureau of an address change. Ms. Leach thereafter received a catalogue from respondent. The catalogue indicated that the address of respondent's main campus was "936 W Main St" in Merced. The catalogue listed "Vocational Nursing" as one

of the certificate programs that respondent offered and included four full pages describing in significant detail the program, including the following:

Program Description:

The Licensed Vocational Nursing (LVN) Curriculum was developed to prepare entry-level licensed vocational nurses as providers of care across the health/illness continuum and as members within the profession. The curriculum model is designed to be taught in four levels. Courses are designed to be sequential. The complete curriculum is made up of 11 courses.

The Licensed Vocational Nursing (LVN) Curriculum is comprised of eleven courses. Each of the courses contains several modules. Each module consists of objectives, suggested learning activities, PowerPoint presentations, and sample practice test questions. The modules are structured so students should have completed all the reading and media assignments before attending the theory classes. Each course is designed to stand alone.

A module is defined as a self-contained unit of instruction. In contrast with traditional learning methods (i.e., lectures and examinations), the modular approach to learning incorporates the use of specific behavioral objectives, various media and learning activities, teaching strategies and tailored evaluation procedures. Individual modules vary in instruction time. Ample time is provided to discuss and review objectives and class materials with the instructor and other class members. Individuals in the health profession, recipients of health care and health care settings in the community are also useful as resources for learning. This approach provides freedom in learning and encourages the development of a creative, enthusiastic, self-motivated learners [*sic*] recognizing students come with different life experiences and have different learning styles.

7. Respondent's catalogue described the Vocational Nursing program's admission requirements, course prerequisites, course outline, graduation requirements, and examinations students must pass for licensure as vocational nurses. The catalogue also described in detail the 11 Vocational Nursing courses that respondent offered, including Foundations of Nursing, Pharmacology Nursing, Medical Surgical Nursing I, Medical Surgical Nursing II, Nursing During the Childbearing Cycle – Pediatrics, Mental Health Psychiatric Nursing, Medical Surgical Nursing III, Nursing Care of Children and Families – Pediatrics, Medical Surgical Nursing IV, Gerontology Community Nursing, and Leadership and Supervision.

8. In addition to describing the Vocational Nursing program in significant detail, respondent's catalogue also included references to its Vocational Nursing program when discussing respondent's general admissions policies. For example, the catalogue stated that, "Please note that applicants for the Phlebotomy Technician and the Licensed Vocational Nurse programs must have High School transcript of records sealed and sent by the school or GED certificate to enroll." (Bolding and underlining in original.) In addition, the general admissions policies included the score that a student had to attain to pass all the educational programs offered by respondent including the Vocational Nursing program.

9. The catalogue further discussed respondent's retention of records policies and, in relevant part, stated:

[Respondent] will maintain student records for five years, as required by state law. Student transcripts will be maintained permanently. Students have a right to access their records anytime that the institution is open and during normal business hours. Students desiring to view their records may request to see their records in the school office during normal business hours or may schedule a time to review records that is convenient to both the student and the school administration. ...

Student academic records and transcripts of completed courses for [respondent's] certificate programs are electronically maintained (computer copy) and hard copies maintained in the student's file. In addition, Program Directors and the institution's Registration Coordinator maintain student academic records. The Chief Academic Officer maintains academic records throughout the student's period of study. (Underlining in original.)

10. Ms. Leach went onto respondent's website and saw that respondent was offering a Vocational Nursing program. Ms. Leach contacted the BVNPT and was informed that the BVNPT had not approved respondent to offer such a program. Ms. Leach also reviewed the BVNPT website and found that respondent was not listed as a school approved by the BVNPT to offer a Vocational Nursing program. Ms. Leach did not, however, observe during her investigation that respondent was actually conducting any Vocational Nursing classes.

11. In late July or early August 2014, Ms. Leach received copies of two letters from respondent regarding its request for an address change. The first letter bore a date of "July 17, 2014" (*sic*). The second letter bore a date of "September 10, 2013." The first letter was addressed to the Bureau, and in relevant part stated, "We are writing this letter to add the following location as a didactic site to our school." The address included in the letter was "936 West Main St" in Merced. The second letter was also addressed to the Bureau, and

in relevant part stated, "We are writing this letter to remove the following site from our school." The address included in the letter was "1743 Ashby Rd."

12. Ms. Leach left the Bureau prior to completing her investigation in this matter. In December 2014, Ms. Jones assumed responsibility as the principle investigator. In or about January 2015, Ms. Jones found two ads for respondent in the online Valley Yellow Pages on myyp.com. The first ad included "936 W. Main, Merced" as one of respondent's addresses and described the certifications that respondent provided as "Licensed Vocational Nursing (LVN)." The second ad also included references to "Licensed Vocational Nursing (LVN)" and "936 W. Main, Merced."

13. Ms. Jones requested copies of the original and existing leases from respondent. In response, Ms. Jones received a copy of a lease, which indicated that respondent was leasing the premises at 936 W. Main Street in Merced for the term of January 2, 2013, to January 2, 2019, for the purpose of a "school."

14. Ms. Jones also reviewed the Bureau's file with regard to respondent. She did not find in the file any indication that respondent had sent to the Bureau the two letters regarding an address change described in Finding 11, other than the copies of the letters Ms. Leach received in July 2014. There was no indication in the Bureau's file regarding respondent that respondent had ever notified the Bureau of its address change prior to Ms. Leach's receipt of the letters described in Finding 11 in July 2014.

15. At the hearing, respondent did not call any witnesses or offer any exhibits into evidence.

Discussion

16. Vocational Nursing Program. Complainant alleged two violations against respondent with regard to the Vocational Nursing program: (1) respondent made a substantive change to its Approval without the prior authorization of the Bureau by *adding* a new diploma or degree program unrelated to its previously approved programs in violation of Education Code sections 94893 and 94894, subdivision (a); and (2) respondent *offered* a Vocational Nursing program without the prior approval of the BVNPT in violation of Education Code section 94899.¹ Complainant argued that respondent's Approval should be revoked in light of these violations. Respondent argued that respondent's Approval should not be revoked because complainant did not establish that respondent added or offered a Vocational Nursing program since there was no evidence that students ever registered for or attended Vocational Nursing classes at respondent's institution. Respondent pointed to Ms. Haar's statement to Ms. Leach in July 2014 about the "red tape" that was required to get the program up and running as proving that respondent had not added or offered a Vocational Nursing program.

¹ These statutes are quoted in the Legal Conclusions below.

17. Complainant's arguments were persuasive with regard to the issue of whether respondent *added* a Vocational Nursing program. Although complainant may not have offered evidence that respondent was actually conducting Vocational Nursing classes at its institution at the time of the July 2014 site visit, the detailed and extensive description of respondent's Vocational Nursing program included in respondent's catalogue and the incorporation of the program into the catalogue's description of its general admissions policies established respondent's *addition* of Vocational Nursing as one of its educational programs as that term is used in Education Code section 94894, subdivision (a). The fact that respondent was still advertising its Vocational Nursing program in the online yellow pages in January 2015 supports that respondent had added a Vocational Nursing program to its list of educational programs. The purpose of the statute is to ensure that an institution seeks and obtains Bureau approval before it includes a new educational program in its catalogue and offers it to students. In order to ensure that the public is adequately protected, respondent's including a detailed and extensive description of a Vocational Nursing program in its catalogue and advertising that program in the online yellow pages are sufficient to constitute *adding* a program for the purposes of triggering the Bureau's public protection authority under Education Code sections 94893 and 94894, subdivision (a). Ms. Haar did not appear or testify at the hearing. Her cryptic statement to Ms. Leach in July 2014 cannot be given any credence in the absence of testimony from her as to its meaning.

18. As described in respondent's catalogue, the Vocational Nursing program was unrelated to respondent's existing programs approved by the Bureau. Respondent's Vocational Nursing program also evidenced a change in respondent's prior education objectives when compared to the dental assistant, medical assistant, and phlebotomy programs respondent had been approved to provide. Respondent did not obtain the Bureau's authorization before adding a Vocational Nursing program to its catalogue of educational programs.

19. In addition, by including a Vocational Nursing program in its catalogue and online yellow page ads, respondent advertised to potential students and the public that it was *offering* a Vocational Nursing program. Respondent did not dispute that the BVNPT, the licensing agency for Vocational Nursing, had not approved respondent's offering Vocational Nursing as one of its educational programs. Respondent's catalogue and yellow page ads constitute respondent's *offers* to the public of its Vocational Nursing program without the prior approval of the BVNPT

20. Respondent's Address. In its Application, respondent notified the Bureau that the address of its institution was 1743 Ashby Road in Merced. The Bureau approved respondent operating at this address. In July 2014, when Ms. Leach and Ms. Jones conducted their site visit, respondent was not located at 1743 Ashby Road. Instead, it was located at 936 West Main Street. The lease that respondent provided to Ms. Jones indicated that respondent began occupying the premises at 936 West Main Street as early as February 2, 2013. Although respondent later provided Ms. Leach with letters that described respondent's address change, there was no evidence that these letters were ever received by the Bureau prior to July 2014, when respondent provided them to Ms. Leach. Ms. Jones's

testimony that the Bureau's file with regard to respondent did not contain any indication that respondent had notified the Bureau earlier of an address change was credible. The ambiguous date of "July 17, 2014¹³" in one of the letters casts doubt on whether respondent ever sent that letter to the Bureau prior to July 2014. Complainant established that respondent failed to notify the Bureau of an address change at least 30 days before it began operating at the 936 West Main Street location.

21. But complainant did not offer sufficient evidence at the hearing to establish that respondent's occupying an address different from the one originally approved by the Bureau constituted the willful falsification of a document of record as alleged in the Accusation. There was no evidence to establish when respondent changed its location or why. Consequently, complainant did not establish that respondent willfully falsified a document of record when it occupied an address that was different from the one included in its Application and Approval.

22. Student Records. On July 15, 2014, Ms. Leach asked to review student files. Ms. Haar stated that she did not know the location of the files. As a result, Ms. Haar did not provide the requested files to Ms. Leach. Ms. Leach's testimony was credible. Consequently, complainant established that respondent failed to produce its student records upon request by a Bureau investigator.

23. But complainant did not offer sufficient evidence to establish that respondent did not maintain student files. Ms. Haar's statement that she did not know the location of respondent's student files was not tantamount to an admission that respondent did not keep any student files. Consequently, complainant did not establish that respondent failed to maintain student files.

Appropriate Discipline

24. As set forth in the Legal Conclusions below, complainant established that, by adding a Vocational Nursing program without prior Bureau approval, respondent violated Education Code sections 94893 and 94894, subdivision (a). Complainant also established that respondent violated applicable statutes and regulations when it: (1) offered a Vocational Nursing program without the prior approval of the BVNPT; and (2) failed to produce to Bureau investigators student records, and that these violations were "material" as that term is used in Education Code section 94937, subdivision (a)(2). The Bureau has adopted Disciplinary Guidelines to be used when determining the appropriate discipline for violations. (Cal. Code Regs., tit. 5, § 75500.) The Disciplinary Guidelines provide that for violations of Education Code sections 94893 and 94894, the maximum recommended discipline is revocation, and the minimum recommended discipline is stayed revocation and three years' probation. The Disciplinary Guidelines provide further that the maximum recommended discipline for material violations under Education Code section 94937 is revocation, and the minimum recommended discipline is stayed revocation and five years' probation.

25. The Bureau's Disciplinary Guidelines set forth the following factors to be considered when deciding whether an approval to operate should be revoked or suspended, or an institution should be placed on probation:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to any consumer, student or the general public.
3. Prior record of discipline, citations, or notices to comply.
4. Number and/or variety of current violations.
5. Mitigation and aggravation evidence.
6. Rehabilitation evidence.
7. In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
8. Overall criminal record.
9. Time passed since the act(s) or offense(s) occurred.
10. Whether or not the respondent cooperated with the Bureau's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by respondent of its wrongdoing and demonstration of corrective action to prevent recurrence.

26. Respondent's actions in adding and offering a Vocational Nursing program without the prior approval of the Bureau and BVNPT were serious. Both students and the public are put at significant risk if an institution adds or offers educational programs that have not been approved and may not meet the quality standards required by the Bureau and applicable licensing agency. Respondent's failure to produce student records to Bureau investigators was also serious, especially in the context of adding and offering a program without prior approval. By failing to produce student records upon the request of a Bureau investigator, respondent prevented the Bureau from investigating whether respondent was complying with applicable statutes and regulations in offering its educational programs to students. These violations put students, consumers and the public at risk for significant potential harm.

27. There was no evidence that respondent had a prior record of discipline, citations or notices to comply. But complainant established that respondent committed multiple violations of Bureau statutes and regulations. At the hearing, respondent did not offer any evidence of mitigation or rehabilitation. There was no evidence that respondent attempted to cooperate with the Bureau by finding and producing the requested student records. There was also no evidence that respondent recognized that it had engaged in wrongdoing. Respondent did not demonstrate that it has put in place any corrective actions to prevent recurrence. The public is put at risk when an institution adds or offers programs that are not authorized by the Bureau or applicable licensing agency. Respondent did both, without the authorizations required to protect the public. In light of respondent's failure to recognize its wrongdoing and put in place adequate safeguards to ensure that such wrongdoing will not be repeated, respondent should not be allowed to continue as an approved institution. When all the evidence is considered, complainant established that, in order to protect the public interest, safety and welfare, respondent's Approval must be revoked.

Costs

28. At the hearing, complainant requested that respondent be ordered to pay a total of \$4,869.57 in costs. In support of this request, complainant submitted: (1) a Certification of Costs of Investigation, seeking investigation costs in the amount of \$644.57; and (2) a Certification of Prosecution Costs; Declaration of David E. Brice, seeking costs of prosecution incurred by the Office of the Attorney General in the amount of \$4,225. Attached to the Certification of Prosecution Costs; Declaration of David E. Brice was a computer printout entitled "Matter Time Activity By Professional Type," which described the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. When all the information submitted in support of the requested costs is considered, complainant established that these costs in the total amount of \$4,869.57 are reasonable in light of the allegations set forth in the Accusation.

29. Respondent did not object to the costs complainant requested or offer evidence of its ability to pay. Complainant's request for costs is further addressed in the Legal Conclusions below.

LEGAL CONCLUSIONS

1. Education Code section 94893 provides:

If an institution intends to make a substantive change to its approval to operate, the institution shall receive prior authorization from the bureau. Except as provided in subdivision (a) of Section 94896, if the institution makes the substantive change without prior bureau authorization, the institution's approval to operate may be suspended or revoked.

2. Education Code section 94894, subdivision (a), provides:

The following changes to an approval to operate are considered substantive changes and require prior authorization:

(a) A change in educational objectives, including an addition of a new diploma or a degree educational program unrelated to the approved educational programs offered by the institution.

3. As set forth in Findings 17 and 18, respondent added a Vocational Nursing program to the list of its educational programs without the prior approval of the Bureau. This addition constituted a “substantive change” as that term is defined in Education Code section 94894, subdivision (a). Complainant therefore established cause to suspend or revoke respondent’s Approval under Education Code section 94893.

4. Education Code section 94899 provides:

If an institution offers an educational program in a profession, occupation, trade, or career field that requires licensure in this state, the institution shall have an educational program approval from the appropriate state licensing agency to conduct that educational program in order that a student who completes the educational program, except as provided in Section 94905, is eligible to sit for any required licensure examination.

5. As set forth in Finding 19, respondent offered a Vocational Nursing program without the prior approval of the BVNPT, the licensing agency which governs such programs. Consequently, complainant established that respondent violated Education Code section 94899.

6. Education Code section 94897, subdivision (k), provides:

An institution shall not do any of the following:

[¶] ... [¶]

(k) Willfully falsify, destroy, or conceal any document of record while that document of record is required to be maintained by this chapter.

7. As set forth in Finding 21, complainant did not establish that respondent willfully falsified a document of record with the Bureau. Consequently, complainant failed to establish cause to suspend or revoke respondent’s Approval for violating Education Code section 94897, subdivision (k).

8. California Code of Regulations, title 5, section 71660 provides:

An institution shall notify the Bureau of a non-substantive change including: change of location of less than 10 miles; addition of a program related to the approved programs offered by the institution; addition of a new branch five miles or less from the main or branch campus; addition of a satellite; and change of mailing address. All such notifications shall be made within 30 days of the change and sent to the Bureau, in writing, to the address listed in section 70020.

9. As set forth in Finding 20, complainant established that respondent failed to notify the Bureau of an address change at least 30 days before it began operating at the 936 West Main Street location in violation of California Code of Regulations, title 5, section 71660.

10. California Code of Regulations, title 5, section 71920 provides:

(a) The institution shall maintain a file for each student who enrolls in the institution whether or not the student completes the educational service.

11. As set forth in Finding 23, complainant did not establish that respondent failed to maintain student files in violation of California Code of Regulations, title 5, section 71920. Consequently, complainant did not establish cause to suspend or revoke respondent's Approval for violating California Code of Regulations, title 5, section 71920.

12. California Code of Regulations, title 5, subdivision 71930, in relevant part provides:

(e) All records that the institution is required to maintain by the Act or this chapter shall be made immediately available by the institution for inspection and copying during normal business hours by the Bureau and any entity authorized to conduct investigations.

13. As set forth in Finding 22, complainant established that respondent failed to produce student records that it was required to maintain to the Bureau investigator upon request in violation of California Code of Regulations, title 5, subdivision 71930.

14. In the Accusation, complainant alleged that respondent's violations of Education Code section 94899 (Legal Conclusion 5), and California Code of Regulations, title 5, sections 71660 (Legal Conclusion 9), and 71930 (Legal Conclusion 13) established cause to suspend or revoke respondent's Approval under Education Code section 94937, subdivision (a), which provides:

(a) As a consequence of an investigation, and upon a finding that an institution has committed a violation, the bureau may place an institution on probation or may suspend or revoke an institution's approval to operate for:

(1) Obtaining an approval to operate by fraud.

(2) A material violation or repeated violations of this chapter or regulations adopted pursuant to this chapter that have resulted in harm to students. For purposes of this paragraph, "material violation" includes, but is not limited to, misrepresentation, fraud in the inducement of a contract, and false or misleading claims or advertising, upon which a student reasonably relied in executing an enrollment agreement and that resulted in harm to the student.

15. Complainant did not allege or establish that respondent obtained its Approval by fraud. Thus, the question for determination is whether respondent's violations of Education Code section 94899, and California Code of Regulations, title 5, sections 71660, and 71930 were: (1) material violations; or (2) repeated violations of the Bureau's statutes or regulations that have resulted in harm to students. At the hearing, complainant did not present evidence that students were harmed by respondent's violations of Bureau statutes or regulations. Thus respondent did not establish that respondent's Approval is subject to revocation or suspension for repeated violations that have resulted in harm to students.

16. Therefore, in order to suspend or revoke respondent's Approval, complainant had to establish that respondent's violations were "material." In describing what is meant by a "material violation," Education Code section 94937, subdivision (a)(2), uses the term "includes, but is not limited to." By using this term, the statute makes clear that violations may be found to be "material" even if they do not fall within one of the examples listed in the subdivision.

17. Government Code section 94875 provides that, "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." Respondent's offering a Vocational Nursing program without the prior approval of the BVNPT is a very serious violation of the law. Prior approval ensures that institutions offer educational programs that are of sufficient quality to ensure that their students will attain the knowledge, skills and ability they need to be licensed and to provide adequate health care to ill, injured and vulnerable populations. Students and the public are put at significant risk if an institution offers educational programs that have not been approved and may not meet the quality standards required by the BVNPT for public protection. Complainant therefore established that respondent's violation of Education Code section 94899 was material and constitutes cause to suspend or revoke its Approval under Education Code section 94937, subdivision (a)(2).

18. Respondent's failure to provide student records to a Bureau investigator upon request was also a very serious violation. While respondent claimed that it had not actually offered any Vocational Nursing classes to students, by failing to produce student records to the Bureau investigator, respondent effectively prevented the Bureau from verifying its claim. In addition, by failing to produce student records upon request, respondent prevented the Bureau from investigating whether respondent is complying with applicable statutes and regulations when offering its educational programs to students. Thus, by its actions, respondent effectively prevented the Bureau from determining whether students had been harmed by its violations. Complainant therefore established that respondent's failure to provide student records to a Bureau investigator upon request constituted a material violation as that term is used in Education Code section 94937, subdivision (a)(2), and establishes cause to suspend or revoke its Approval.

19. Complainant failed to establish that respondent's failure to notify the Bureau within 30 days after changing its address constituted a material violation. Consequently, complainant failed to establish cause to suspend or revoke respondent's Approval for violating California Code of Regulations, title 5, section 71660 under Education Code section 94937, subdivision (a)(2).

20. As set forth in Findings 26 and 27, when all the evidence is considered, complainant established that, in order to protect the public interest, safety and welfare, respondent's Approval must be revoked.

21. Education Code section 94937, subdivision (c), authorizes the Bureau to seek reimbursement of its costs pursuant to Business and Professions Code section 125.3, which provides that a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and enforcement of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: (1) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (2) the licensee's subjective good faith belief in the merits of his or her position; (3) whether the licensee has raised a colorable challenge to the proposed discipline; (4) the financial ability of the licensee to pay; and (5) whether the scope of the investigation was appropriate in light of the alleged misconduct.

22. As set forth in Finding 28, complainant sought costs in the total amount of \$4,869.57. Complainant established that these costs are reasonable in light of the allegations set forth in the Accusation.

23. At the hearing, respondent did not object to the requested costs or offer any evidence of its ability to pay. (Finding 29.) When all the *Zuckerman* factors are considered respondent did not show that the \$4,869.57 in costs should be reduced.

ORDER

1. Approval to Operate No. 12682651 issued to respondent Horisons Unlimited School of Clinical Medicine is REVOKED pursuant to Legal Conclusions 3, 5, 13, 17, 18, and 20 separately and for all of them.

2. Within 30 days after the effective date of this decision, respondent shall pay to the Bureau costs associated with its investigation and enforcement pursuant to Education Code section 94937, subdivision (c), and Business and Professions Code section 125.3 in the amount of \$4,869.57. Respondent may pay these costs in a payment plan approved by the Bureau.

DATED: August 24, 2016

DocuSigned by:

Karen J. Brandt

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KAREN J. BRANDT

Administrative Law Judge

Office of Administrative Hearings

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

In the Matter of the Accusation Against:

Case No. 999091

HORISONS UNLIMITED SCHOOL OF CLINICAL
MEDICINE

OAH No. 2016031008

ORDER OF DECISION

Respondent.

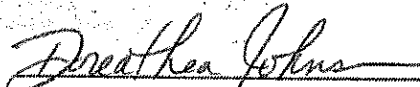
DECISION

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.

JAN - 2 2017

The Decision shall become effective _____.

DATED: 12-2-16



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

