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**Department of Consumer Affairs
Bureau for Private Postsecondary Education**

DISCIPLINARY GUIDELINES

December 2010

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BUREAU FOR PRIVATE POSTSECONDARY EDUCATION

DISCIPLINARY GUIDELINES

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Bureau for Private Postsecondary Education

DISCIPLINARY GUIDELINES

Chapter 5. Enforcement and Discipline.

§ 75500. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code section 11400 et seq.), the Bureau shall comply with the “Disciplinary Guidelines” [December 2010], which are hereby incorporated by reference. Deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Bureau in its sole discretion determines that the facts of the particular case warrant such deviation, e.g., the presence of aggravating or mitigating factors; age of the case; discipline history; evidentiary issues.

NOTE: Authority cited: Sections 94877 and 94937, Education Code. Reference: Section 480, Business & Professions Code; Sections 94933, 94935, 94936, 94937, and 94940, Education Code.

DISCIPLINARY GUIDELINES

I. INTRODUCTION

Pursuant to California Education Code section 94875, included in the California Private Postsecondary Education Act of 2009 (Act), the highest priority of the Bureau for Private Postsecondary Education is consumer protection. The Bureau believes that in disciplinary matters where probation has been imposed, conditions should be established to provide for consumer protection and to allow the probationer to demonstrate rehabilitation.

Consistency in conditions of probation and mechanisms to monitor the rehabilitation progress of a probationer help provide for consumer protection. To establish consistency in disciplinary penalties for similar offenses on a statewide basis, the Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs (DCA or Department) has adopted these uniform disciplinary guidelines for particular violations. This document, designed for use by attorneys, administrative law judges, institutions and their owners, others involved in the disciplinary process, and ultimately the Bureau and the Director of the Department, may be revised from time to time, and distributed to interested parties upon request.

These guidelines include general factors to be considered, probationary terms, and guidelines for specific offenses. The guidelines for specific offenses reference the applicable statutory and regulatory provision(s).

For purposes of this document, the term “respondent” means the person, as defined in 94855 of the Code, who has been issued an approval to operate a private postsecondary institution, and the institution that has been issued the approval, and includes each owner of the institution, or if the institution is incorporated, the chief executive officer of the corporation and each person who owns or controls 25 percent or more of the stock or interest in the institution, or each member of the governing body of a nonprofit corporation. The terms and conditions of probation are divided into two general categories:

- (1) Standard Conditions are those conditions of probation which will generally appear in all cases involving probation as a standard term and condition; and
- (2) Optional Conditions are those conditions which address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of a particular case.

The Department recognizes that these recommended penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances and other factors may necessitate deviations, as discussed herein. If there are deviations from the guidelines, the Bureau requests that the Administrative Law Judge hearing the matter include an explanation in the Proposed Decision so that the circumstances can be better understood and evaluated by the Department upon review of the Proposed Decision and before final action is taken.

II. GENERAL CONSIDERATIONS

The Bureau requests that a Proposed Decision following an administrative hearing include the following:

- a. Specific code sections violated with their definitions.
- b. Clear description of the violation.
- c. Respondent's explanation of the violation if a representative is present at the hearing.
- d. Findings regarding aggravation, mitigation, and rehabilitation where appropriate.
- e. When suspension or probation is ordered, the Bureau requests that the disciplinary order include terms within the recommended guidelines for that offense unless the reason for departure from the recommended terms is clearly set forth in the findings and supported by the evidence.

Pursuant to section 94937 of the Code, 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 the Act or regulations adopted pursuant to the Act that have resulted in harm to students.

Factors to be Considered - In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

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.

III. DEFINITION OF PENALTIES

Revocation: Loss of an approval to operate as the result of any one (1) or more violations of the California Private Postsecondary Education Act of 2009 (Act), or of other appropriate grounds for discipline. Revocation of an approval to operate is permanent, unless the respondent takes affirmative action to petition the Bureau for reinstatement of his or her approval to operate and demonstrates to the Bureau's satisfaction that he or she is rehabilitated.

Suspension: Invalidation of an approval to operate for a fixed period of time, not to exceed one

(1) year, during which respondent shall engage in no activities for which an approval to operate is required. It is the policy of the Bureau that a suspension of longer than one year is not effective, and a violation or violations warranting a longer suspension should result in revocation, not stayed.

Stayed Revocation: Revocation of an approval to operate, held in abeyance pending respondent's compliance with the terms of his or her probation.

Stayed Suspension: Suspension of an approval to operate, held in abeyance pending respondent's compliance with the terms of his or her probation.

Probation: A period during which a respondent's discipline is stayed in exchange for respondent's compliance with specified conditions relating to improving his or her conduct or preventing the likelihood of a recurrence of the violation.

IV. DISCIPLINARY GUIDELINES

The offenses are listed by statute number in the California Education Code. (References to Code sections are to this Code unless otherwise specified.) All Code references include the regulations promulgated there under. The standard terms of probation as stated herein shall be included for all probations. The optional conditions of probation as stated herein are to be considered and imposed along with any other optional conditions if facts and circumstances warrant. The number(s) in brackets listed after each condition of probation refers to the conditions listed on pages 9-16.

EDUCATION CODE SECTIONS – California Private Postsecondary Education Act of 2009

Section 94802:

Transition Period Disclosure Violations

- Maximum: Denial of application for an approval to operate (applicant) / Revocation
- Minimum: Thirty (30) days actual suspension and three (3) years probation on the following conditions (applicant) / Stayed revocation, and three (3) years probation on the following conditions:
 - a. Standard conditions [#1-#15]

Section 94886:

Violation of 94886 – Opening, Conducting, or Doing Business as a Private, Postsecondary Institution Without an Approval to Operate

- Applicant Maximum: Denial of application for an approval to operate
- Applicant Minimum: Thirty (30) days actual suspension and five (5) years probation on the following conditions:
 - a. Standard conditions [#1-#15]

b. Optional conditions [#21, #25, #26, #28]

Sections 94893/94896:

Substantive Changes Without Prior Bureau Approval or Notification

Maximum: Revocation
Minimum: Stayed revocation, and three (3) years probation on the following conditions:
a. Standard conditions [#1-#15]
b. Optional conditions [#23, #26, #27, #28]

Section 94897:

Unfair Business Practices –

Maximum: Revocation
Minimum: Stayed revocation, and five (5) years probation on the following conditions:
a. Standard conditions [#1-#15]
b. Optional conditions [#21, #25, #26, #27, #28]

Section 94898:

Prohibitions in Instruction – Merging, or Suspending Classes, or Changing Class Schedules, Changing Method of Delivery, or Changing Location

Maximum: Revocation
Minimum: Stayed revocation and three (3) years probation on the following conditions:
a. Standard conditions [#1-#15]
b. Optional conditions [#21, #25, #26, #27, #28]

Section 94899.5:

Requiring Wrongful Advance Payment of Tuition

Maximum: Revocation
Minimum: Stayed revocation, and three (3) years probation on the following conditions:
a. Standard conditions [#1-#15]
b. Optional conditions [#21, #25, #26, #27, #28]

Sections 94900/94900.5:

Insufficient Recordkeeping

Maximum: Revocation
Minimum: Stayed revocation and three (3) years probation on the following conditions:
a. Standard conditions [#1-#15]

b. Optional conditions [#18 and #20]

Section 94901:

Recruiter Violations

Maximum: Revocation
Minimum: Stayed revocation, and three (3) years probation on the following conditions:
a. Standard conditions [#1-#15]
b. Optional conditions [#18]

**Sections 94902/94903/94904/94905/94906/
94907/94908/94909/94910/94911/94912:**

Enrollment Violations

Maximum: Revocation
Minimum: Stayed revocation and five (5) years probation on the following conditions:
a. Standard conditions [#1-#15]
b. Optional conditions [#17, #18, #21, #25]

Sections 94916/94917/94918:

Consumer Loan Violations

Maximum: Revocation
Minimum: Stayed revocation, and three (3) years probation on the following conditions:
a. Standard conditions [#1-#15]
b. Optional conditions [#18, #21, #25]

Sections 94919/94920/94922:

Cancellation, Withdrawal, and Refund Violations

Maximum: Revocation
Minimum: Stayed revocation, and three (3) years probation on the following conditions:
a. Standard conditions [#1-#15]
b. Optional conditions [#18, #21, #25]

Sections 94926/94927/94927.5:

Closure and Teach-out Violations

Maximum: Revocation
Minimum: Stayed revocation, and five (5) years probation on the following conditions:
a. Standard conditions [#1-#15]
b. Optional Conditions [#18, #21, #25, #26, #27, #28]

Sections 94929/94929.5/94929.7: Completion, Placement, Licensure, and Salary Disclosure Violations

Maximum: Revocation
Minimum: Stayed revocation, and five (5) years probation on the following conditions:
a. Standard conditions [#1-#15]
b. Optional Conditions [#18, #21, #25]

Section 94937: Obtaining an Approval to Operate by Fraud

Maximum: Revocation
Minimum: Stayed revocation and five (5) years probation on the following conditions:
a. Standard conditions [#1-#15]
b. Optional Conditions [#21, #22, #23, #24]

Section 94943.5: Agent for Service of Process Violations

Maximum: Revocation
Minimum: Stayed revocation and three (3) years probation on the following conditions:
a. Standard conditions [#1-#15]

Sections 71400.5/75060, Title 5, California Code of Regulations: Committing Act that would be Grounds for Denial under Business & Professions Code Section 480

Maximum: Denial of application for an approval to operate (applicant) / Revocation
Minimum: Thirty (30) days actual suspension and three (3) years probation on the following conditions (applicant) / Stayed revocation, and three (3) years probation on the following conditions:
a. Standard conditions [#1-#15]
b. Optional Conditions [#21, #22, #23, #24, #25, #26]

Sections 71700-71930, Title 5, California Code of Regulations: Failing to Maintain Minimum Institutional Operating Standards

Maximum: Revocation
Minimum: Stayed revocation and three (3) years probation on

the following conditions:

- a. Standard conditions [#1-#15]

Section 74000, Title 5, California Code of Regulations:

Failure to Pay Fees

- Maximum: Revocation
- Minimum: Stayed revocation and three (3) years probation on the following conditions:
 - a. Standard conditions [#1-#15]
 - b. Optional Conditions [#16 and #18]

Section 76120/76130/76140, Title 5, California Code of Regulations:

STRF Assessments Violations

- Maximum: Revocation
- Minimum: Stayed revocation and three (3) years probation on the following conditions:
 - a. Standard conditions [#1-#15]
 - b. Optional Conditions [#16 and #18]

V. STANDARD CONDITIONS OF PROBATION (SCOP)
(to be included in all cases of probation)

1. Obey All Laws

Respondent shall obey all federal, state and local laws and regulations governing the operation of a private postsecondary educational institution in California. Respondent shall submit, in writing, a full detailed account of any and all violations of the law to the Bureau within five (5) days of discovery.

CRIMINAL COURT ORDERS: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an Accusation and/or Petition to Revoke Probation.

NOTE: All institutions are responsible for “abiding by the law,” and complying with court orders should the respondent be subject to court ordered parole or probation. This condition emphasizes the respondent’s responsibility and it provides the Bureau with a means to take more immediate and severe action if another violation occurs.

2. Compliance with Probation and Quarterly Reporting

Respondent shall fully comply with the terms and conditions of probation established by the Bureau and shall cooperate with representatives of the Bureau in its monitoring and investigation of the respondent’s compliance with probation. Respondent, within ten (10) days of completion of the quarter, shall submit quarterly written reports to the Bureau on a Quarterly Report of Compliance form obtained from the Bureau.

NOTE: Full compliance with conditions of probation demonstrates the respondent's commitment to correcting the problems that led to the disciplinary action.

3. Personal Appearances

Upon reasonable notice by the Bureau, respondent shall report to and make personal appearances at times and locations as the Bureau may direct.

NOTE: This provides a means for the Bureau to make periodic personal assessments of the respondent, to give guidance and direction and to require the respondent to appear before the Bureau, if necessary.

4. Notification of Address and Telephone Number Change(s)

Respondent shall notify the Bureau, in writing, within five (5) days of a change of name, title, physical home address, email address, or telephone number of each person, as defined in section 94855 of the Code, who owns or controls 25% or more of the stock or an interest in of the institution and, to the extent applicable, each general partner, officer, corporate director, corporate member or any other person who exercises substantial control over the institution's management or policies.

5. Notification to Prospective Students

When currently soliciting or enrolling (or re-enrolling) a student for any program, respondent shall provide notification of this action to each current or prospective student prior to accepting their enrollment, and to those students who were enrolled at the time of the conduct that is the subject of this action as directed by the Bureau. This notification shall include a copy of the Accusation, Statement of Issues, Stipulated Settlement, or Disciplinary Decision (whichever applies).

6. Student Roster

Within 15 days of the effective date of this Decision, and with the Quarterly Reports thereafter, provide to the Bureau the names, addresses, phone numbers, email addresses, and the programs in which they are or were enrolled, of all persons who are currently or were students of the institution within 60 days prior to the effective date of the Decision, and those students who were enrolled at the time of the conduct that is the subject of this action.

7. Instruction Requirements and Limitations

During probation, Respondent shall provide approved instruction in the State of California. If respondent is not providing instruction, the period of probation shall be tolled during that time.

NOTE: This provides the Bureau with an opportunity to monitor the respondent and determine if he or she can appropriately operate a private, postsecondary institution. It also prevents the respondent from merely "sitting out" the probation and avoiding the necessity of demonstrating compliance with the probation conditions.

8. Record Storage

Within 5 days of the effective date of this Decision, provide the Bureau with the location of the

repository for all records as they are required to be maintained pursuant to Title 5, California Code of Regulations, section 71930.

9. Maintenance of Current and Active Approval to Operate

Respondent shall, at all times while on probation, maintain a current and active approval to operate with the Bureau including any period during which approval is suspended or probation is tolled.

NOTE: Similar to #7, this provides the Bureau with an opportunity to monitor the respondent and determine if he or she can appropriately operate a private, postsecondary institution.

10. Comply With Citations

Respondent shall comply with all final orders resulting from citations issued by the Bureau.

11. Cost Recovery Requirements

Respondent shall pay to the Bureau its costs of investigation and enforcement in the amount of \$_____ no later than one year before the termination of probation. Such costs shall be payable to the Bureau and are to be paid regardless of whether the probation is tolled. Failure to pay such costs shall be considered a violation of probation.

Except as provided above, the Bureau shall not renew or reinstate the approval to operate of any respondent who has failed to pay all the costs as directed in a Decision.

12. Violation of Probation

If respondent violates probation in any respect, the Bureau, after giving respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an Accusation or a Petition to Revoke Probation is filed against respondent during probation, the Bureau shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended, and respondent shall comply with all probation conditions, until the matter is final.

13. Future Approvals to Operate

If respondent subsequently obtains other approvals to operate during the course of this probationary order, this Decision shall remain in full force and effect until the probationary period is successfully terminated. Future approvals shall not be granted, however, unless respondent is currently in compliance with all of the terms and conditions of probation.

14. Comply with All Accreditation Standards

As applicable, respondent shall comply with all standards set by its accreditor in order to maintain its accreditation. Respondent shall submit to the Bureau, in writing, a full detailed account of any and all actions taken by any accrediting agency against respondent regarding any institution operated by respondent, including an order to show cause, or conditions or restrictions placed on accreditation, within five (5) days of occurrence.

15. Completion of Probation

Upon successful completion of probation, respondent's approval to operate will be fully restored.

VI. OPTIONAL CONDITIONS OF PROBATION (OCOP)

16. Filing of Annual Report(s)/STRF Report(s)

Within 30 days of the effective date of this Decision, respondent shall submit to the Bureau any and all [new or amended] Annual Reports/STRF Reports for [relevant years], and shall remit \$_____ in annual fees/STRF assessments to the Bureau. Respondent shall also provide to the Bureau verifiable documentation that it has refunded STRF assessments incorrectly assessed or calculated to each student, if applicable.

NOTE: In disciplinary proceedings involving non- or under-payment of STRF assessments or annual fees, remitting those amounts and submitting or amending reporting documents is a necessary term of probation. Evidence relating to the amount of fees or assessments owed would have to be introduced at the Administrative hearing.

17. Amending School/Student Performance Fact Sheet

Within 30 days of the effective date of this decision, respondent shall amend its School/Student Performance Fact Sheet to reflect accurate information as required by section 94910 of the Code and the regulations promulgated there under, and provide the amended Fact Sheet to the Bureau for prior approval. Respondent shall also provide to the Bureau upon request verifiable documentation supporting the information contained on the Fact Sheet. Within 45 days of the effective date of this Decision, respondent shall provide the amended Fact Sheet as required by the California Private Postsecondary Education Act of 2009, as well as to all current and prospective students who received the prior Fact Sheet. The amended School/Student Performance Fact Sheet shall contain a paragraph at the top containing the following disclosure:

“This amended School/Student Performance Fact Sheet replaces the Fact Sheet previously provided by this institution dated [date], which contained incorrect information, and is being provided pursuant to a Decision and Order of the Department of Consumer Affairs. For more information, you may contact the [contact name] at the Bureau for Private Postsecondary Education at [phone number].”

NOTE: An amended School/Student Performance Fact Sheet shall be required where the disciplinary proceeding involved an intentional or unintentional error or omission in the Fact Sheet as required by the Code. Because the California Private Postsecondary Education Act of 2009 achieves consumer protection primarily through disclosure of information rather than the ability to enforce a minimum quality of education, a necessary term of probation must be the dissemination or re-dissemination of accurate information.

18. Operations Auditor/Billing Auditor

Within 45 days of the effective date of this Decision, respondent shall submit to the Bureau for prior approval, the name and qualifications of an auditor who is experienced in operations or accounting practices for educational institutions, who has agreed to serve as an operations auditor /billing auditor. The auditor shall (1) be a California-licensed certified public accountant

or public accountant with a clear and current license; and (2) have no prior or current business, professional, personal or other relationship with respondent, or any former owner, director, or officer of respondent institution.

Once approved, the auditor shall submit to the Bureau or its designee a plan by which respondent's operations shall be audited. Auditing shall consist of at least one hour per month of face to face meetings with respondent and shall continue during the entire probationary period. While such face to face meetings may include a director or employee of the institution not listed as having ownership or control, at least one person listed as having ownership or control shall participate in each such meeting. The respondent shall provide the auditor with a copy of this Decision and access to respondent's fiscal and/or student records. Respondent shall obtain any necessary student releases to enable the auditor to review records and to make direct contact with students. Respondent shall execute a release authorizing the auditor to divulge any information that the Bureau may request. It shall be respondent's responsibility to assure that the auditor submits written reports to the Bureau on a quarterly basis verifying that auditing has taken place and providing an evaluation of respondent's performance.

Respondent shall notify all current and potential students of any term or condition of probation that will affect the confidentiality of their records (such as this condition, which requires an operations auditor /billing auditor). Such notifications shall be signed by each student prior to continuing or beginning enrollment.

If the auditor quits or is otherwise no longer available, respondent shall notify the Bureau within 10 days and get approval from the Bureau for a new auditor within 30 days. If no new auditor is approved within 30 days, respondent shall not operate until a new auditor has been approved by the Bureau. During this period of non-operation, probation will be tolled and will not commence again until the period of non-operation is completed. Respondent shall pay all costs associated with this auditing requirement. Failure to pay these costs shall be considered a violation of probation.

NOTE: Auditing shall be utilized when respondent's ability to operate independently is in doubt or when fiscal improprieties have occurred, as a result of a deficiency in knowledge or skills, or as a result of questionable judgment.

19. Suspension

Respondent is suspended from operating a private, postsecondary educational institution for _____ days beginning on the effective date of this Decision.

20. Records Maintenance

With 45 days of the effective date of this Decision, provide for and secure a second set of all academic and financial records as required by Title 5, California Code of Regulations, section 71930, and provide to the Bureau the location of these records, and access to them upon request.

NOTE: Records maintenance shall be used when respondent has engaged in inappropriate or improper records retention and maintenance procedures.

21. Restitution

Within _____ days of the effective date of this Decision, respondent shall make restitution to _____ in the amount of \$_____ and shall provide the Bureau with proof from _____ attesting that the full restitution has been paid. Restitution shall be made regardless of whether the probation is tolled. In all cases, restitution shall be made before the termination of probation.

NOTE: In disciplinary proceedings involving economic harm to students, restitution is a necessary term of probation. For example, restitution would be a desired term in any case involving fraud in enrollment, inappropriate refund calculation or other tuition fraud. The amount of restitution shall be at a minimum the amount of money that was fraudulently obtained by the respondent. Evidence relating to the amount of restitution, and recipients (or category(ies) of recipients) of the restitution, would have to be introduced at the Administrative hearing. Restitution should not be a reason to reduce, eliminate, or stay full recovery of all reasonable costs of investigation and enforcement, or of an administrative penalty.

22. Criminal Probation Reports

Respondent shall provide the Bureau with a copy of the standard conditions of the criminal probation, copies of all criminal probation reports and the name of his or her probation officer.

23. Replace Owner or Person in Control

Within 15 days of the effective date of this Decision, respondent shall no longer permit [the name of the person whose acts provided the basis for discipline] to have any ownership interest in or control over the stock or other interest in the assets of the institution during the term of probation.

NOTE: Divesting the ownership interest or control of an owner or person in control shall be a necessary term of probation where the grounds for discipline involved the acts of a single owner or person in control without the knowledge of other owners or persons in control, and where revocation of the institution’s approval to operate is not required to protect the public.

24. Relinquish Approval to Operate and Wall Certificate

Respondent shall relinquish and shall forward or deliver the wall certificate to the Bureau within ten (10) days of the effective date of the Decision and order.

NOTE: Only to be included in stipulations and proposed decisions for surrender or revocation of an approval that is not stayed.

25. Cease Enrollment

Respondent shall cease enrollment of new students in [all or specific educational programs or at a specific branch or location] for a period of ____ days beginning on the effective date of the Decision.

NOTE: Cease enrollment shall be used when recruiting and enrollment improprieties have

occurred, as a result of a deficiency in knowledge or skills, or as a result of questionable judgment, or where a new branch or location was operating without approval, and cannot be approved. This provision should be used in conjunction with the provision for an operations or billing auditor who can ensure that enrollment is accomplished pursuant to permissible recruitment, enrollment, and billing statutes and regulations.

26. Notification to Student/Cessation of Operation

In orders that provide for a cessation or suspension of operation, respondent shall comply with procedures provided by the Bureau regarding notification to, and management of, students.

27. Notification of Rights under STRF

Notify all persons who were students of the institution within 60 days prior to closure of their rights under the Student Tuition Recovery Fund, and how to apply for payment pursuant to Title 5, section 76200, et seq. of the California Code of Regulations.

NOTE: In offenses involving closure of an institution or a program, notification of rights under STRF may be a necessary term of probation prior to closure.

28. Teach-Out Plan

Within 30 days of the effective date of this Decision, propose a plan to teach-out student of [branch/satellite/program at issue] pursuant to Title 5, section 76240, of the California Code of Regulations for approval by the Bureau.

NOTE: In offenses involving closure of an institution, branch, satellite, or a program, a teach-out plan may be a necessary term of probation prior to closure. This provision should also be used in conjunction with the provision for cessation of enrollment to provide for an orderly closure with appropriate student protection.

29. Administrative Penalty

Respondent shall pay to the Bureau an administrative penalty in the amount of \$_____ for violation of Section(s) _____ of the Act. The payment shall be made within _____ days/months of the date the Decision is final.

NOTE: An administrative penalty should not be a reason to reduce, eliminate, or stay full recovery of all reasonable costs of investigation and enforcement, or of restitution.

VII. REHABILITATION CRITERIA

When considering the denial of an approval to operate under section 480 of the Business and Professions Code, the Bureau, in evaluating the rehabilitation of the applicant and his or her present eligibility for an approval will consider the following criteria:

- (a) The nature and severity of the acts or crimes under consideration as grounds for denial;
- (b) Evidence of any act committed after the acts or crimes under consideration as grounds for denial that also could be considered grounds for denial;
- (c) The time that has elapsed since commission of the acts or crimes described in subdivisions

- (a) and (b) of this section;
- (d) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant;
- (e) Evidence of any rehabilitation submitted by the applicant;
- (f) Total criminal record;
- (g) Evidence, if any, of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

When considering the suspension or revocation of an approval to operate on the grounds that the owner, person in control, or board member has been convicted of a crime, the Bureau, in evaluating the rehabilitation of such person and his or her present eligibility for an approval to operate, shall consider the following criteria:

- (1) The nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) The extent to which the person holding the approval to operate has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the person holding the approval to operate.
- (5) If applicable, evidence of expungement proceedings pursuant to section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the person holding the approval to operate.

VIII. PETITION FOR REINSTATEMENT/REDUCTION IN PENALTY

When considering a petition for reinstatement of an approval to operate or a petition for reduction in penalty, the Bureau shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in section VII. above.

IX. INTRODUCTORY LANGUAGE AND STANDARD PROBATION CONDITIONS

The following introductory language and all standard probation conditions are to be included in decisions and orders placing an institution on probation. Unless by stipulation, for applicants Condition 11, Cost Recovery, does not apply. For persons who hold an approval to operate, all standard probation conditions apply.

INTRODUCTORY LANGUAGE FOR ALL ORDERS –

IT IS HEREBY ORDERED that Approval to Operate for Institution Code # _____ issued to Respondent _____ is revoked. However, the revocation is stayed and respondent is placed on probation for _____ years on the following conditions.

Alternative introductory language for applicants and petitioners for reinstatement:

IT IS HEREBY ORDERED that the application of _____ for [Reinstatement of] Approval to Operate is GRANTED. However, the approval to operate is REVOKED pursuant to

the Findings #s _____, and Legal Conclusions # _____ reached as to the causes for denial. However, the order of revocation is STAYED, and respondent is placed on probation for _____ years upon the following terms and conditions.

SEVERABILITY CLAUSE –

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

NOTE: The severability clause is required for all decisions and stipulated agreements where there are Conditions of Probation, in order to avoid the possibility of all probation conditions being repealed upon appeal.