

Agenda Item: I.C.

DATE: November 17, 2005

SUBJECT: Status of University of Phoenix Appeal of Civil Penalty

ACTION RECOMMENDED: Information

BACKGROUND INFORMATION: The General Assembly has stated that the purpose of the Postsecondary Education Authorization Act of 1974 is “to provide for the protection, education and welfare of the citizens of this state, its postsecondary educational institutions, and its students...” [T.C.A. 49-7-2002.] The General Assembly gave this authority to the Commission and authorized the promulgation of rules to implement the provisions of the statute, “which rules and regulations shall have the force of law...” [T.C.A. § 49-7-2005(a)(6).]

The University of Phoenix placed an advertisement insert in the June 9 edition of *The City Paper*, in Nashville. The ad was approximately 8 ½ by 11 inches with color printing on both sides of the sturdy card stock. Included in the advertisement was a statement that the University of Phoenix had “over 170 campuses nationwide!” and a toll free telephone number, web site, as well as a reply postcard that listed all of the programs offered by the University of Phoenix nationwide.

By letter dated July 22, 2005, from Dr. Rhoda to Ms. Shousha, the University of Phoenix was notified that the advertisement was in violation of Rule 1540-1-2-.04(1), Determination For Required Authorization. The letter also cited a violation of Rule 1540-1-2-.18(1), Prohibited Acts. In essence, these rules prohibit recruiting Tennessee students by advertising out-of-state institutions unless the institution is authorized for that purpose.

Finally, the letter included notice of a civil penalty of \$11,000 pursuant to Rule 1540-1-2-.22(1), which authorizes a civil penalty of \$500 per each day of the violation. The civil penalty reflected a 22 day anticipated life of the advertisement. The letter further advised the University of Phoenix that it could appeal the civil penalty pursuant to Rule 1540-1-2-.02(2)(e).

The University of Phoenix did appeal this matter to Dr. Rhoda in a letter from Ms. Shousha dated August 10, 2005. In response to this appeal, Dr. Rhoda reduced the civil penalty to \$3,500 reflecting a seven day anticipated life of the advertisement. This was communicated to the University of Phoenix in a letter dated August 29, 2005.

The basis for the civil penalty is that an insert of this size and quality is meant to have a circulation life beyond the one day of the newspaper. The original civil penalty notwithstanding, there is certainly every reason to believe that the advertisement would have a circulation life of a minimum of seven days. Had the advertisement been printed as part of the newspaper, then certainly a one day civil penalty would have been appropriate.

The essence of Dr. Rhoda's August 29 letter in response to the appeal is that the advertisement is, in effect, an advertisement for all University of Phoenix programs and campuses. Dr. Rhoda points out that the University of Phoenix admitted as much in its August 10 appeal letter.

Specifically, Ms. Shousha acknowledges that the advertisement includes "an email address and prepaid postcard (for the prospective student) to find out more information and which degrees are offered at each campus around the nation." Therefore, the University of Phoenix has acknowledged that each of its institutions have effectively established a physical presence in Tennessee as that term is defined in the statute and rules, and thus making each institution subject to regulation.

The actions of the University of Phoenix in seeking and obtaining authorization to advertise and recruit for their on-line programs in Tennessee is clear acknowledgement of the authority of the Commission to regulate institutions that, through advertisement and recruitment of students, establishes a physical presence in the state and are subject to regulation. Dr. Rhoda pointed out that the Commission could have issued a civil penalty of \$500 for each of the approximately 156 locations not authorized in Tennessee, which would have far exceeded even the initial \$11,000 civil penalty.

The appeal will be heard by an administrative law judge at a date not yet determined. Staff will keep you apprised on the progress on this matter.