

IN THE MATTER OF PAINTER'S COLLEGES, INC.,  
Respondent.

Docket No. 91-60-SP  
Student Financial Assistance Proceeding

## DECISION

Appearances: Dale E. Stratford, Esq., of Stratford & Stratford, Ogden, Utah, for the  
Respondent

Howard D. Sorensen, Esq., of the Office of the General Counsel, United States  
Department of Education, for the Office of Student Financial Assistance

Before: Judge Allan C. Lewis

This is an action initiated by the United States Department of Education (ED) to recover \$127,419.33 in Federal funds advanced to Painter's Colleges, Inc. (Painter) under the Pell Grant program and \$42,899.13 of interest and special allowances and to require the institution to repay or purchase \$292,168.64 in guaranteed student loans and related charges. This action was proposed following a program review which determined that Painter had disbursed Federal funds to students participating in ineligible programs. The program review concluded that several programs were ineligible due to the lack of appropriate accreditation by Painter's accrediting agency. The program review also included supplementary findings reflecting various regulatory violations of the Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219 (to be codified at 20 U.S.C. § 1001 et seq.), as amended.

Painter argues, in effect, that the purportedly ineligible programs were accredited by the National Accrediting Commission of Cosmetology Arts & Sciences (NACCAS). Accordingly, Painter asserts that its students were eligible to receive funds under the Guaranteed Student Loan and Pell Grant programs.

Based upon the findings of fact and conclusions of law, *infra*, ED may recover \$170,400.10 and Painter shall repay or purchase \$291,831.00 in outstanding guaranteed student loans and repay \$256.00 in additional guaranteed student loans.

### I. FINDINGS OF FACT

The pertinent findings of fact are set forth in the opinion. The detailed findings of fact are set forth in the appendix, *infra*. To the extent that proposed findings of fact or conclusions of law by a party have not been adopted in this decision, they are rejected as being inaccurate or unnecessary to the disposition of this case.

## II. OPINION

On July 17, 1991, ED issued a final program review to recover Federal funds advanced under the Pell Grant and Guaranteed Student Loan programs. On August 12, 1991, ED received, within the period specified by 34 C.F.R. § 668.113(b), Painter's request for review of the final program review determination. Accordingly, jurisdiction is proper before this tribunal.

The Guaranteed Student Loan program and the Pell Grant program are Federal programs which make funds available to eligible students through grants and loans and are designed to assist students financially by defraying the costs of postsecondary education.

In order to participate in the Guaranteed Student Loan and Pell Grant programs, a school must be an eligible institution under 20 U.S.C. § 1085 and 20 U.S.C. § 1088, respectively.

An eligible institution under the Guaranteed Student Loan program and the Pell Grant program is, among other things, an institution which is accredited by a nationally recognized accrediting agency. 20 U.S.C. §§ 1085(a)(1)(B), 1085(c)(4)(A), 1088(a)(1)(B), and 1088(b). See also 34 C.F.R. §§ 600.5(a)(6) and 600.7(a)(4)(i). Therefore, participation in the Guaranteed Student Loan and the Pell Grant programs is contingent upon receiving accreditation by a nationally recognized accrediting agency.

Under the Guaranteed Student Loan and the Pell Grant programs, accreditation is defined as "[t]he status of public recognition which a nationally recognized accrediting agency or association grants to an institution, school, or educational program which meets certain established qualifications and educational standards." 34 C.F.R. § 600.2 (emphasis added). Consequently, an accrediting agency may accredit an entire institution which would include all of its programs or it may accredit particular programs within an institution.

Initially, the parties dispute whether five programs, which were added by Painter to its curriculum after its original eligibility designation by ED, were accredited by the National Accrediting

Commission of Cosmetology Arts & Sciences (NACCAS), its accrediting agency. [See footnote 1](#)

Under NACCAS' Rules of Practice and Procedure, an institution must receive accreditation of a program before the institution offers the new program. Under NACCAS' rules, an institution may add other programs to the programs currently accredited under a procedure relating to re-accreditation or a change in its curriculum.

NACCAS grants accreditation for periods up to five years. As the period for accreditation reaches expiration, the institution may submit an application for renewal of its accreditation and include new programs. A favorable decision on the application for renewal constitutes accreditation of the new program and is effective on the date of the notice of approval.

Accreditation of new programs may also occur by virtue of a request for a change in the curriculum. In this instance, the institution submits an application and requests that accreditation be granted. If NACCAS approves the proposed change, the institution is informed by letter and the accreditation is effective as of the date of this notice.

In the instant case, ED asserts that NACCAS did not accredit the five disputed programs. The record discloses that the 1,000 clock hour Salon Management program, the 1,800 clock hour Salon Management program, and the 300 clock hour Nail Technician program were submitted to NACCAS for accreditation and accreditation was denied. The record also discloses that the other two programs, the 1,000 clock hour Barbering program and the 600 clock hour Brushup program, were never submitted to NACCAS for accreditation. Thus, the five disputed programs were not accredited.

Painter, however, asserts several arguments that these new programs should be treated as accredited programs.

Initially, Painter argues, in effect, that the purportedly unaccredited programs were derived, at least in part, from programs of Painter which had been previously accredited. Since these new programs were subsumed within programs previously accredited by NACCAS, Painter asserts that they should be treated

as accredited programs. [See footnote 2 2/](#)

It is of no consequence that the purportedly unaccredited programs were derived from previously accredited programs. Under NACCAS' rules, accreditation was granted on a program-by-program basis. Accordingly, any modification of a program, including, for example, an increase or a decrease in the number of hours required to complete a program, requires an independent accreditation of that program, as modified. Therefore, even if a program was subsumed within or derived from an existing accredited program, NACCAS' rules require that it be accredited as a change in Painter's curriculum or as part of re- accreditation. Therefore, the status of accreditation of these five programs may not be imputed or assigned to the five disputed programs. [See footnote 3 3/](#)

Next, Painter argues that its catalog, which was approved by NACCAS, included some of the purportedly unapproved courses and therefore, NACCAS implicitly accredited these additional programs.

The approval of Painter's catalog by NACCAS is not germane to whether the additional programs were accredited. Under NACCAS' rules, the accreditation of a program is determined as part of the accreditation process or the review of a proposed change in the curriculum. Under both procedures, accreditation is communicated to the institution by means of a letter. Hence, the approval of Painter's catalog represents neither an explicit or an implicit accreditation of the disputed programs.

Finally, Painter contends that it offered these programs after full disclosure of these programs to its accrediting agency and the Department and that this disclosure effectively operated as an

accreditation of these programs. This position is without merit. The statute and regulations require actual accreditation. 20 U.S.C. §§ 1085(a)(1)(B), 1085(c)(4)(A), 1088(a)(1)(B), and 1088(b). See also 34 C.F.R. §§ 600.2, 600.5(a)(6), and 600.7(a)(4)(i). Disclosure is simply not accreditation.

Accordingly, the five programs in question were not accredited by a nationally recognized accrediting agency as required by the applicable statutory and regulatory provisions. As a result, Painter must repay \$122,839 in Pell Grants to the Department and repay or purchase \$291,831 in guaranteed student loans. Painter must also reimburse ED the amount of \$42,899.13 for the subsidized interest and special allowance identified with the ineligible guaranteed student loans. [See footnote 4 4/](#)

### III. ORDER

On the basis of the foregoing findings of fact and conclusions of law and the proceedings herein, it is hereby--

ORDERED that Painter's Colleges, Inc. immediately and in the manner provided by law pay the United States Department of Education a sum of \$170,400.10; it is further--

ORDERED that Painter's Colleges, Inc. immediately and in the manner provided by law repay the guaranteed student loan amounts, in full, to the present holders of the loans or purchase the loan balances in the total amount of \$291,831.00 or such lesser amount as may be due and owing for the guaranteed student loans identified in the July 17, 1991 final program review determination; and it is further--

ORDERED that Painter's Colleges, Inc. immediately and in the manner provided by law repay the guaranteed student loan amounts, in full, to the present holders of the loans in the amount of \$256.00 for the guaranteed student loans identified in the July 17, 1991 final program review determination.

Allan C. Lewis  
Administrative Law Judge

Issued: July 13, 1993  
Washington, D.C.

### APPENDIX -- FINDINGS OF FACT

1. Painter's Colleges, Inc. is a proprietary institution and a vocational school offering programs in Ogden, Utah and Roy, Utah. Painter is accredited by the National Accrediting Commission of Cosmetology Arts & Sciences (NACCAS).

2. NACCAS is recognized by the Secretary of the United States Department of Education as a nationally recognized accrediting agency for the accreditation of postsecondary schools and departments of cosmetology, arts and sciences, and cognate areas.
3. Accreditation by NACCAS is institutional in nature and encompasses any program in cosmetology and its cognate areas which exceeds 150 clock hours in length and/or leads to State licensing. However, approval from NACCAS must be secured before an institution may offer a program under the auspices of its institutional accredited status.
4. An institution may obtain approval for a program to be included within its status as an accredited institution utilizing the accreditation process or a curriculum change process.
5. Under the accreditation process, accreditation may be granted for periods up to five years. As the period for accreditation reaches expiration, the institution may submit an application for renewal of its accreditation. The renewal application must provide a list of programs with their corresponding hours to be included within the scope of accreditation. The institution may also submit new programs for approval within its renewal application. The approval of such courses is not recognized until a favorable decision on the application for renewal has been issued by NACCAS.
6. Under the curriculum change process, when an institution seeks to add, delete, or make other changes in the curriculum approved by its institutional accreditation, and the institution is not near the end of the accreditation period, the institution must follow the curriculum change process for any program in excess of 150 clock hours or if such programs lead to State licensing. Any increase or decrease in the number of clock hours in a program must also be approved by NACCAS through this process. If NACCAS approves the proposed change, the institution is informed of such by letter and the accreditation for that program is effective on the date of the letter granting approval.
7. Painter's Colleges, Inc. was accredited by NACCAS in 1984 for a five year period. During the five year period commencing with accreditation, NACCAS approved the following Painter's programs--

| Program           | Effective Date |                    |
|-------------------|----------------|--------------------|
|                   | Hours          | of Accreditation   |
| Basic Cosmetology | 2,000          | September 21, 1984 |
| Instructor        | 960            | September 21, 1984 |
| Facial Operator   | 600            | September 21, 1984 |
| Barbering         | 2,000          | June 24, 1987      |
| Salon Management  | 2,000          | June 24, 1987      |

8. Pursuant to the addition of a new program process, in April 1987, Painter submitted to NACCAS an application for approval of a 2,000 clock hour program in Salon Management. On June 24, 1987, NACCAS approved the institution's application for the addition of a 2,000 clock hour Salon Management program. On August 24, 1987, NACCAS approved a revised school catalog dated March 1987 which listed the 2,000 clock hour Salon Management program.

9. Painter initially sought approval for a 1,800 clock hour Salon Management program utilizing the renewal of accreditation process in October 1988. While the action on Painter's renewal of accreditation was pending, the institution requested retroactive approval for a 1,800 and a 1,000 clock hour Salon Management program and a 300 clock hour Manicuring program. On October 19, 1990, NACCAS denied Painter's application for retroactive approval indicating that its accreditation decisions are prospective in nature.

10. NACCAS reviewed its original denial of accreditation for the additional programs as a result of the allegations by Painter that the additional Salon Management programs were accelerated versions of the previously accredited 2,000 clock hour Salon Management program designed to meet the ability of each student.

11. In a letter from NACCAS to Painter dated November 2, 1989, NACCAS deferred action on Painter's application for renewal of accreditation. This letter requested Painter to submit documentation regarding the additional programs.

12. Painter replied on January 30, 1990 to NACCAS' request by indicating that the 1,000 and the 1,800 clock hour Salon Management programs were designed for students with partially developed skills and, as such, less hours were required for completion of the program.

13. At a hearing on January 11, 1991 before NACCAS, Painter represented that the 1,800 clock hour and the 1,000 clock hour programs were condensed versions of the 2,000 clock hour program designed in a manner to avoid the duplication of subjects in which the students were knowledgeable. As a result of the hearing, NACCAS again deferred action on the appeal in order to verify information submitted by Painter. As a result of further inquiries, NACCAS concluded that Painter failed to use an educationally sound rationale for placing students in a 1,000 clock hour program as opposed to a 1,800 clock hour program or a 2,000 clock hour program. NACCAS found no evidence that the

1,000 clock hour and the 1,800 clock hour programs represented the accelerated placement of students in the 2,000 clock hour program based on prior training and experience. Accordingly, NACCAS determined that the 1,000 and the 1,800 clock hour Salon Management programs were distinct programs and not accelerated versions of the 2,000 clock hour Salon Management program.

14. NACCAS subsequently determined that the Salon Management programs were essentially business programs which were outside the parameters for accreditation. Thus, Painter's institutional accreditation was withdrawn.

15. ED conducted a program review of Painter during the period of April 16-20, 1990 covering the 1989 and 1990 award years.

16. The program review report was issued by ED on July 31, 1990. After Painter responded to the findings contained therein, ED informed Painter of the findings contained in the program review report which had been satisfactorily resolved.

17. During the 1989 and 1990 award years, Painter's students received guaranteed student loans in an amount of \$291,831 for the five programs which were unaccredited by NACCAS--

| Program          | Hours | GSL Amount |
|------------------|-------|------------|
| Salon Management | 1,800 | \$195,699  |
| Salon Management | 1,000 | \$ 38,062  |
| Nails Technician | 300   | \$ 47,383  |
| Brushup          | 600   | \$ 6,562   |
| Barbering        | 1,000 | \$ 4,125   |
| Total            |       | \$291,831  |

18. During the 1989 and 1990 award years, Painter's students received Pell Grants in an amount of \$122,839 for two of the five programs which were unaccredited by NACCAS--

| Program          | Hours | Pell Amount |
|------------------|-------|-------------|
| Salon Management | 1,800 | \$195,699   |
| Salon Management | 1,000 | \$ 38,062   |
| Total            |       | \$122,839   |

19. On July 17, 1991, ED issued its final program review determination letter in which ED assessed liability against Painter for various statutory and regulatory violations. ED sought to recover \$127,419.33 under the Pell Grant program and \$42,899.13 in interest and special allowances. ED also sought Painter to repay or purchase \$292,168.64 in guaranteed student loans and related charges.

20. On August 12, 1991, ED received Painter's appeal of the final program review determination.

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*Footnote: 1 1/ The disputed programs are as follows:*

*Salon Management ----- 1,800 clock hours*  
*Salon Management ----- 1,000 clock hours*  
*Barbering ----- 1,000 clock hours*  
*Brushup ----- 600 clock hours*  
*Nail Technician ----- 300 clock hours*

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*Footnote: 2 2/ Painter, in fact, asserts three separate arguments to establish that the additional programs were derived from accredited programs. Since the thrust of these arguments are similar, they are addressed together.*

*More specifically, Painter asserts that the purportedly unaccredited programs were subsumed within the programs accredited by NACCAS. According to Painter, the programs were condensed versions of other programs with certain courses deleted in which the students were already knowledgeable. Therefore, Painter asserts accreditation of these programs should be recognized. Painter also claims that one of its programs was derived from a more comprehensive program which was accredited by NACCAS and therefore, its accredited status should be carried over. Finally, Painter asserts that the programs in question were special*

*programs designed for students who had begun their studies in other schools and had received Title IV assistance at these other schools. In Painter's view, the prior receipt of Title IV funds indicates that accreditation for the new programs should be retained. As a result, Painter maintains that the accredited status of these programs should be attributed to its disputed programs.*

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*Footnote: 3 3/ The programs approved are as follows:*

*Basic Cosmetology ----- 2,000 clock hours*

*Barbering ----- 2,000 clock hours*

*Salon Management ----- 2,000 clock hours*

*Instructor ----- 960 clock hours*

*Facial Operator ----- 600 clock hours*

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*Footnote: 4 4/ The final program review determination also contains five additional findings in which ED determined that Painter was liable for other deficiencies. Painter's notice of appeal and all subsequent documents submitted as part of the record fail to address these findings. As a result, it is apparent that the scope of Painter's appeal does not include these findings. Accordingly, these findings are final and Painter is liable to ED in the amount of \$4,661.97 and must repay \$256.00 to the current holders of guaranteed student loans.*