

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

In the Matter of the Accusation Against:

**INSTITUTE OF MEDICAL EDUCATION
BINDU BABURAJAN, a.k.a. BINDU
VETHODY, Owner**

130 S. Almaden Blvd.
San Jose, CA 95113
Institution Code No. 69608217,

7901 Oakport Street
Oakland, CA 94621
School Code No. 81701347,

Respondent.

Bureau Case No. 997952

OAH No. 2012030566

DECISION


Pursuant to subdivision (c)(2)(C) of section 11517 of the Government Code, the attached Corrected Proposed Decision (dated September 20, 2013) of the Administrative Law Judge is hereby adopted by the Director of Consumer Affairs as the Decision and Order in the above-entitled matter with the following minor changes:

1. On page 2, first full paragraph, the comma is deleted after the word Respondent in the fourth sentence.
2. On page 2, third full paragraph, the word "bureau" is replaced with the word "department."
3. On page 4, paragraph 7.f., the last word of the paragraph is modified to read "programs" (plural).
4. On page 5, paragraph 8.a., the word "nursing" is modified to make the whole word lower case.
5. On page 5, paragraph 13, the beginning of the second sentence is modified to read, "However, because IME's approval to operate an MRI technology program was fraudulently obtained, students in the MRI technology program ..."
6. On page 7, paragraph 19, in the first sentence, a comma is added after the word "website."

7. On page 7, paragraph 20, in the last sentence, the apostrophe is deleted from the word "externship's."
8. On page 8, paragraph 26, in the second sentence, a comma is added after the year "2007."
9. On page 8, paragraph 27, in the first sentence, a comma is added after the year "2007."
10. On page 8, paragraph 27, in the second sentence, a comma is added after the year "2010."
11. On page 8, paragraph 28, in the last sentence, a comma is added after the year "2010."
12. On page 8, paragraph 31, first sentence, the word "hygiene" is modified to make the whole word lower case.
13. On page 8, paragraph 33, in the second to last sentence, the word "intuition" is replaced with the word "institutions."
14. On page 14, paragraph 59, in the first sentence, a comma is added after the year "2011."
15. On page 14, paragraph 60, in the first sentence, the word "will" is replaced with the word "with."
16. On page 17, paragraph 13, in the last sentence, the apostrophe is deleted from the word "program's."
17. On page 17, after the paragraph number "14," the comma is replaced with a period.
18. On page 17, paragraph 16, in the first sentence, a comma is added after the second reference to "(a)."
19. On page 19, paragraph 21, in the second sentence, the word "failed" is modified to the word "failure."
20. On page 20, paragraph 23, in the last sentence, the word "institutions" is modified to "institution's" (possessive).
21. On page 20, paragraph 25, in the second sentence, a comma is added after the year "2011."
22. On page 21, paragraph 27, in the second sentence, a comma is added after the phrase, "but not limited to."

This Decision shall become effective on JAN 02 2014.

IT IS SO ORDERED NOV 25 2013.


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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NOTICE TO THE PARTIES

Please be advised that, on behalf of the Director of the Department of Consumer Affairs, on August 23, 2013, the Office of Administrative Hearings was requested to make minor typographical changes to the August 5, 2013, Proposed Decision in this matter. On September 20, 2013, the administrative law judge issued a Corrected Proposed Decision. A copy of both the request for correction and the Corrected Proposed Decision are being provided with this Notice.

Dated _____

10/2/13



LAURA FREEDMAN

Attorney III, Legal Affairs
Department of Consumer Affairs

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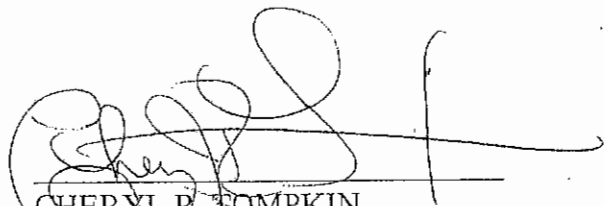
OAH No. 2012030566

ORDER CORRECTING PROPOSED
DECISION

On August 5, 2013, Administrative Law Judge Dianna L. Albin of the Office of Administrative Hearings issued a proposed decision in the above-captioned case. On August 23, 2013, Laura Freedman, from the Legal Division of the Department of Consumer Affairs filed an application to correct the proposed decision. No opposition to the application was filed.

GOOD CAUSE appearing, the Corrected Proposed Decision is attached to this Order.

Dated: September 20, 2013



CHERYL R. TOMPKIN
Presiding Administrative Law Judge
Office of Administrative Hearings

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

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Respondent.

Case No. 997952

OAH No. 2012030566

CORRECTED PROPOSED DECISION

Administrative Law Judge Dianna L. Albini, State of California, Office of Administrative Hearings, heard this matter on June 21 through 29, 2012, August 2, 3, 7, 24, 30, 2012, and September 19, 2012, in Oakland, California.

Nicholas Tsukamaki, Deputy Attorney General, represented complainant Laura Metune.

Kimberly C. Culp, Colt & Wallerstein LLP, Attorneys at Law, represented respondent Institute of Medical Education Inc., Bindu Baburajan, owner.

On August 2, 2012, Nicholas Tsukamaki, attorney for complainant, appeared at hearing. Neither Kimberly I. Culp, attorney for respondent, nor respondent appeared on August 2, 2012. Culp confirmed by phone that her firm was still the attorney of record for respondent and that pursuant to respondent's instruction no attorney would be appearing for the hearing. Culp confirmed that respondent was aware that the complainant intended to proceed with the hearing and that respondent had notice of the August 2, 2012 hearing. The hearing proceeded on August 2 and 3, 2012, without respondent's attendance. Respondent was ordered to appear on August 13, 2012, and produce all Institute of Medical Education Inc. (IME) student records, including but not limited to, payments and disbursements regarding the Student Tuition Recovery Fund, student transcripts, enrollment contracts, and all other student records. Respondent agreed to produce the documents to the bureau on September 17, 2012, and the hearing was scheduled to resume on September 28, 2012. The complainant requested additional time to review the voluminous documents produced by respondent on September 17, 2012, and if necessary, schedule additional hearing time on the

evidence. On October 29, 2012, complainant produced the following documents which were marked for identification as follows:

Exhibit 87	52 page list of IME students
Exhibit 88	Declaration and summary of the identify of IME students seeking restitution for tuition payments to IME in the amount of \$2,116.180.86
Exhibit 89	Declaration of investigative costs
Exhibit 90	Declaration of prosecution costs
Exhibit 91	Amended certification of investigative costs

Additional information was necessary regarding the restitution amount requested by complainant in Exhibit 88. On January 7, 2013, the additional information was received and attached to what was previously marked as Exhibit 88. Respondent was provided with an opportunity to respond to Exhibits 87 through 91. Respondent, failed to object or otherwise respond to Exhibits 88 through 91. Exhibits 88 through 91 were admitted into evidence. On January 7, 2013, the record was closed and the matter was deemed submitted. The proposed decision was issued on August 5, 2013.

On August 13, 2013, complainant submitted a request to the Office of Administrative Hearings seeking to have Exhibit 88 (declaration and summary of the identity of IME students seeking restitution for tuition payments to IME in the amount of \$2,116.180.86) withdrawn and substituted in its place an amended Exhibit 88 (documents supporting a corrected restitution amount of \$1,614,150, and limiting the restitution to only those students identified in amended Exhibit 88). Additionally, complainant requested that Exhibit 92 (declaration of Joanne Wenzel dated July 22, 2013, in support of amended Exhibit 88), be marked for identification and admitted into evidence. The amended Exhibit 88 and Exhibit 92 were neither marked for identification nor admitted into evidence due to the Office of Administrative Hearings' lack of jurisdiction following the issuance of the proposed decision. (Govt. Code § 11521.)

On August 23, 2013, a letter was received from the bureau requesting a correction of clerical errors.

FACTUAL FINDINGS

Legislative history

1. A private postsecondary educational institution is defined as a private entity with a physical presence in California that offers postsecondary education to the public for an institutional charge. (Ed. Code, § 94858). A postsecondary education is defined as a formal

institutional educational program whose curriculum is designed primarily for students who have completed or terminated their secondary education or are beyond the age of compulsory high school, including programs whose purpose is academic, vocational, or continuing professional education. (Ed. Code, § 94857). In order to operate, a private postsecondary education institution must obtain an "approval to operate" from the Bureau of Private Postsecondary Education.

2. The Private Postsecondary and Vocational Education Reform Act of 1989, created the Bureau of Private Postsecondary and Vocational Education (BPPVE). The BPPVE's responsibilities included regulatory oversight of private postsecondary and vocational education institutions. In 2007, more than 400,000 Californians attended more than 1,500 private postsecondary and vocational schools in California. On June 30, 2007, the laws and regulatory oversight of private postsecondary and vocational schools expired and the BPPVE sunsetted. On October 11, 2009, the Private Postsecondary Education Act of 2009 (AB 48) was enacted and became operative on January 1, 2010. This Act established the Bureau for Private Postsecondary Education (bureau).

There was no regulatory oversight in California for private postsecondary education institutions from July 1, 2007 through December 31, 2009.

Jurisdiction and procedural background

3. Complainant Laura Metune, Bureau Chief of the Bureau for Private Postsecondary Education, Department of Consumer Affairs, filed the first amended accusation against respondent Bindu Baburajan, also known as Bindu Vethody, licensee of the Institute of Medical Education, Inc., (IME). Complainant seeks to suspend or revoke the approval of IME to operate, to recover reasonable costs to the bureau, and to recover restitution for IME's former students. Respondent denies any wrong doing.

4. At hearing complainant amended the first amended accusation by adding the following paragraph to page 6, line 14:

28.5. California Code of Regulations Title 5, Section 71655, Subdivision (a), provides: An institution that made a substantive change as defined in Section 94894 of the Code between July 1, 2007, and December 31, 2009, may continue to operate, but shall comply with, and is subject to, the Code and this Division, and shall submit an application for a substantive change for approval to operate to the bureau pursuant to this article within six months of that application becoming available.

5. Respondent's husband and IME Chief Executive Officer, Sunil Vethody, directed, managed and oversaw the day-to-day operations at IME. Respondent Bindu Baburajan acted as the chief financial officer for IME.

IME is a Delaware Corporation that was established in March 2003 to do business in California as a healthcare training institute.

Former Bureau of Private Postsecondary and Vocational Education (BPPVE)

6. On November 1, 2004, BPPVE issued IME a temporary approval to operate (Institution Code number 69608217) a private postsecondary-institution.¹ On October 27, 2005, BPPVE issued IME a full approval to operate an educational institution at 130 Almaden Avenue in San Jose, California.

Authorized educational programs

7. The BPPVE authorized IME to offer the following educational programs:

a. On November 1, 2004, a medical assistant program; this non-degree granting program was discontinued on April 11, 2007.

b. On February 8, 2005, a phlebotomy program and an electrocardiogram (EKG) technician program. These programs were non-degree granting programs;

c. On October 9, 2005, an occupational therapy aide/physical therapy aide program that was discontinued on March 21, 2007. This was a non-degree granting program;

d. On May 16, 2006, a non-degree granting vocational nursing program ; and,

e. On March 22, 2007, the BPPVE granted full approval for IME to operate a satellite location² at 2235 Polvorosa Avenue, Suite 200, San Leandro, California (School Code number 81701347). The evidence did not establish that IME opened a satellite location in San Leandro, California. However, the evidence did establish that IME operated a satellite location in Oakland, California. There was no evidence submitted that established IME was granted approval to operate a satellite location in Oakland, California.

f. On March 22, 2007, IME was also granted approval to operate a physical therapy aide program and a nursing assistant program. These programs were non-degree granting program.

¹ Pursuant to Education Code section 94802, an institution that had a valid approval to operate on June 30, 2007, issued by BPPVE, maintains that approval to operate for three calendar years after the expiration date of the approval.

² Pursuant to Education Code section 94862, a satellite location means an auxiliary classroom or teaching site within 50 miles of the institution's main location.

8. The current bureau approved IME to offer the following programs:
- a. On May 7, 2010, an Associate of Science degree program in Nursing and an Associate of Arts degree program in dental hygiene.
 - b. On May 11, 2010, an Associate of Applied Science degree program in physical therapy.

9. On February 16, 2012, following a hearing before the Department of Consumer Affairs, the bureau issued an amended emergency decision ordering respondent Bindu Baburajan to cease IME's enrollment of new students at all of its locations, to cease all instruction and to cease collection of tuition and fees.

10. On February 16, 2012, IME ceased operating its private postsecondary educational institution in San Jose, California, and the Oakland, California, satellite location. On July 19, 2012, respondent surrendered IME's approval to operate to the bureau.

Unauthorized substantive change to IME's approval to operate

11. On November 17, 2010, respondent provided the bureau with copies of 2006 approval to operate documents, purportedly from the BPPVE, that authorized IME to operate an MRI technology program and an ultrasound technology program. These documents were in fact documents issued to another institution that were intentionally altered by IME representatives. At no time did the BPPVE or the current bureau issue IME an approval to operate an MRI technology or ultrasound technology program. IME never paid the bureau approval to operate fees for an MRI technology program or an ultrasound technology program.

MAGNETIC RESONANCE IMAGING (MRI) PROGRAM

12. The evidence established that in approximately 2006 and 2007 IME's employees acting on behalf of respondent, fraudulently altered bureau documents to present the appearance that IME was approved to operate an MRI technology program. Thereafter, IME used these fraudulent documents to secure accreditation for the MRI technology program from the American Registry of Magnetic Resonance Imaging Technologists and the Western Association of Schools and Colleges (WASC). IME solicited students for the MRI technology program knowing that IME's accreditation was fraudulently obtained.

13. IME's 2009 – 2010 website solicited students for the MRI technology program by representing to potential students that graduates from the MRI technology program would be eligible to sit for the American Registry of Magnetic Resonance Imaging Technologists National Certification Examination. However, because IME's approval to operate an MRI Technology program was fraudulently obtained, student's in the MRI Technology program were precluded from sitting for the American Registry of Magnetic Resonance Imaging

Technologists National Certification Examination due to IME's unaccredited and unapproved status.

14. IME's 2010 – 2011 school catalog and student handbook identified the cost of the MRI technology program as \$27,000, with approximately \$400 in additional incidental expenses. Completion of the MRI technology program required completion of 1972 hours (972 theory and lab hours and 1000 clinical hours) of course work.

15. IME enrolled students in the MRI technology program in 2008, 2009, 2010, 2011 and 2012. During that five year period, approximately 120 students enrolled and participated in the MRI technology program at IME.

16. Gary De Lozier paid \$14,665.20 to enroll in respondent's MRI technology program. The MRI technology program consisted of a classroom education and an externship. IME was responsible for locating healthcare professionals that would allow IME students to earn hands on experience while fulfilling the requisite externship hours necessary for the student to take the state and national examinations. After completing the classroom hours De Lozier was cleared by IME's financial aid office to attend a clinical externship.³ IME did not offer De Lozier an externship program. Without completing an externship, De Lozier could not sit for the national exam nor obtain employment in California as an MRI technologist.

17. Blessilia Quioambao attended IME's 2009 - 2010 MRI technology program. Quioambao completed all classroom hours and was cleared by IME's financial aid office to attend a clinical externship. IME did not provide an externship to Quioambao. Without completing an externship, Quioambao could not sit for the national exam nor obtain employment as an MRI technologist.

18. IME enrolled 120 MRI technology students in its non-accredited program. These 120 students paid tuition and incidental fees to IME, relied on respondent's fraudulent advertisement and representations that the MRI program was accredited. These 120 MRI technology students were unable to complete their program due to respondent's closure of the institution. As a result of respondent's intentional misrepresentations, these 120 students enrolled in respondent's MRI technology program. In addition, the 120 students do not qualify to take the state and national examinations, nor are they eligible for employment as an MRI technologist in the State of California. Consequently, these 120 students were harmed.

³ IME would not allow students to attend externships or off-site clinics unless the student's tuition was paid in full.

ULTRASOUND TECHNOLOGY PROGRAM

19. IME's website copyrighted in 2009 – 2010, solicited students for the ultrasound technology program. IME's website advertised the ultrasound program as a certificate program that allowed those graduates with a bachelor's degree to sit for the American Registry of Diagnostic Sonography exam. IME solicited students for the ultrasound technology program knowing that IME's accreditation was fraudulently obtained.

20. The 2010 – 2011 IME catalog and student handbook identified the cost of the ultrasound technologist program as \$29,900 and approximately \$400 in incidental expenses. In order to receive IME's ultrasound technology certification, a student was required to complete a 25 month program that included 960 hours of clinical externship hours. IME was responsible for locating externship's for the students to complete the required 960 hours.

21. IME enrolled students in the ultrasound technology program in 2009-2010, and 2011. During that three year period, approximately 254 students enrolled and participated in the unaccredited ultrasound technology program.

22. Arthur Chen was present and testified at hearing. Chen, a student in IME's August 2008 ultrasound technology program, paid \$22,105 to IME. Chen completed the coursework in November 2009 and in December 2009 started the 300 hours of clinical study at the IME San Jose location. Prior to Chen's ultrasound technology program, IME did not have an on-campus ultrasound technology clinic. The IME program on-campus clinic was started because of IME's difficulty placing its students in an ultrasound externship. Approximately 40 percent of the on-campus ultrasound clinic Chen attended consisted of practicing ultrasound techniques without patients to examine. The remaining clinical time was spent without instruction. After completing IME's on-campus clinic, Chen was given the opportunity to attend an offsite externship at a chiropractic office in Livermore. The clinic consisted of approximately five ultrasound students observing the chiropractor perform an ultrasound procedure on one patient. Chen was frustrated by the poor quality of instruction at the offsite clinic and concerned that the clinical hours would not meet the minimum standards required for licensure by the California Department of Public Health. Based on IME's failure to provide appropriate externship opportunities for IME's ultrasound students, Chen was unable to obtain his ultrasound certification and employment as an ultrasound technologist in California.

23. Another IME ultrasound student received a certificate of completion from IME for the ultrasound program. In approximately 2011, the student learned that the 51 credits (units) earned for the IME certificate of completion did not meet the 60 semester units or 84 quarterly credits necessary for the student to sit for the American Registry for Diagnostic Medical Sonography (national) exam.

24. In September 2010, two additional IME ultrasound technology students enrolled in and paid for IME's ultrasound technology program. These two students completed their classroom courses, but IME did not provide the students with externships.

25. IME enrolled 254 ultrasound technology students in its non-accredited program. These 254 students paid tuition and incidental fees to IME. Each of the 254 students relied on respondent's fraudulent advertisement and representations that the ultrasound program was accredited. As a result of IME's non-accredited program status, the 254 students did not qualify to take the state and national examinations, nor were they eligible for employment as an ultrasound technologist in the State of California. And these 254 ultrasound technology students were unable to complete their program due to respondent's closure of the institution. Consequently, these 254 students were harmed.

False advertising of accreditation

26. In order for a private postsecondary education institution to receive federal financial aid funding for its students, the institution must be credentialed by an accrediting agency recognized by the United States Department of Education. In 2007 Western Association of Schools and Colleges (WASC) was recognized by the United States Department of Education as an accrediting agency.

27. In April 2007 IME received initial accreditation from the Accrediting Commission for Schools of the Western Association of Schools and Colleges (ACS-WASC). In May 2010 ACS-WASC granted IME full accreditation for six-years. ACS-WASC is a division of WASC that is responsible for accrediting vocational non-profit educational institutions. ASC-WASC's accreditation of IME allowed IME students to obtain federal financial aid funding.

28. ACS-WASC does not accredit "for profit" educational institutions or degree granting institutions. In 2010, Vethody misrepresented to ASC-WASC that IME was a not-for-profit organization that provided non-degree granting programs, knowing that ASC-WASC would not provide accreditation to for-profit institutions or degree granting programs. In May 2010, IME notified ACS-WASC that the bureau issued IME approval to operate two degree programs. In August 2010, WASC notified IME that IME needed to find another accrediting agency based on IME's failure to acknowledge their "for-profit" status and IME's degree granting programs. On October 26, 2010, ACS-WASC withdrew from the Department of Education. In October 2010 IME was notified by the Department of Education that IME had 18 months (until April 2012) to transition to a recognized accrediting agency in order for IME to continue its ability to provide its students with federal financial aid funding.

29. Commencing in November 2010 through January 2012, IME's website contained the following fraudulent representations:

IME is approved and accredited by the following:

Western Association of Schools and Colleges (WASC) accrediting
Commission of Schools and Colleges: <http://www.acswasc.org/>.

The State of California Bureau for Private Postsecondary and Vocational
Education.

[¶]

American Registry of MRI Technologists.

Defaulting on student enrollment agreements and failure to pay student refunds

30. In October 2011, IME had approximately 500 students enrolled at its institution.

31. On February 3, 2012, Sunil Vethody sent a letter to IME's dental Hygiene program students informing them that IME would be closing the dental hygiene program on February 3, 2012.

32. On February 16, 2012, the bureau closed IME's San Jose facility and IME's Oakland satellite location.

33. The 112 IME students set forth in complainant's exhibit 88 paid tuition and fees to IME in varying amounts for a total tuition payment of \$2,116,180.86. The identity and amount of tuition paid by each of the 112 students entitled to restitution are set forth in complainant's exhibit 88 and incorporated herein by reference. These 112 students were unable to complete their education due to IME's lack of proper accreditation and its closure. IME has not refunded any money to these 112 former students. The coursework these 112 students completed at IME is not transferable to other intuition. Consequently, if these students want to complete the educational program commenced at IME, the students will have to start a new program from the beginning and incur the additional expense of paying for that new program.

Maintenance of permanent student records at a satellite location

34. On October 27, 2011, Sunil Vethody informed a bureau investigator that all student records for students enrolled at IME's Oakland campus were maintained at the Oakland IME campus. Sunil Vethody acknowledged to the bureau investigator that he was aware that maintaining student records at a satellite location was "a violation".

35. In December 2011, the bureau's investigator determined that the student files for the MRI and ultrasound programs were not maintained at IME's San Jose facility, but were stored at IME's satellite facility in Oakland, California.

36. The bureau did not approve IME to operate a satellite facility in Oakland, California.

Failure to employ sufficient number of qualified faculty

37. In 2011 and 2012, IME had a large turnover rate of employees in the financial aid office.

38. Respondent admitted IME staff was not sufficiently trained to properly administer financial aid at its institution. Respondent also admitted IME had a high employee turnover of "most of the trained staff in the financial aid department".

39. In September 2011, IME's school director left the institution and had not been replaced as of October 27, 2011. The Dental Hygiene Director at IME was terminated in October 2011 and was not replaced. Instructors in the dental hygiene program quit because of concerns over IME's lack of accreditation. The loss of instructors resulted in three dental hygiene class cancellations.

Failure to document sufficient assets and financial resources

40. On May 14, 2011, respondent was notified by the United States Department of Education that since IME was no longer accredited by a nationally recognized accrediting agency that IME was no longer qualified as an "eligible institution" for purposes of participation in federal financial aid programs. However, the United States Department of Education allowed IME to participate in the financial aid programs under provisional certification for a period of 18 months, until April 26, 2012. The United States Department of Education informed IME that the failure to secure accreditation from a nationally recognized accrediting agency prior to April 26, 2012, would preclude IME students from participating in federal financial aid programs.

41. In order for a private postsecondary institution to participate in the federal financial aid program, an institution must maintain the standards of financial responsibility set forth in section 498, subdivision (c), of the Higher Education Act of 1965 (ACT). The financial responsibility of an institution is determined through a composite score of three ratios derived from an institution's audited financial statements. The three ratios are a primary reserve ratio, an equity ratio, and a net income ratio. The composite score of these three ratios reflect the overall financial health of an institution.

On November 2, 2011, respondent was notified by the United States Department of Education, that following an audit of IME's 2010 financial statements, the Department determined that IME failed to meet the minimum standards of financial responsibility

necessary for an institution to participate in federal financial aid funding. In other words, IME's composite scores reflected the institution was not operating in a financially responsible manner. As a result, in order for IME to continue to participate in the federal financial aid programs, IME had to submit an irrevocable letter of credit in the amount of \$2,759,420 (50 percent of the financial aid program funds received by IME during the 2010 fiscal year), or in the alternative, post a letter of credit in the amount of \$551,884, to be provisionally certified for three years and comply with all of the provisional certification requirements.

42. Effective January 12, 2012, the United States Department of Education altered the method by which IME disbursed federal financial aid to its students. IME was transferred from an advance method of payment to a "heightened cash monitoring" method of payment. Under the cash monitoring payment method, IME had to first make a fund disbursement to eligible students and parents prior to requesting or receiving reimbursement of those funds from the United States Department of Education.

43. On January 13, 2012, the United States Department of Education suspended IME's ability to access financial aid funds based on IME's unsubstantiated cash draws and unreconciled records for federal financial aid (Title IV) expenditures. IME is responsible for reconciling Title IV expenditures (drawdowns and disbursements to students) on a monthly basis. IME is also required to have such records available for review upon request. IME failed to produce the Title IV expenditure documents to United States Department of Education investigators on January 7, 2012. Respondent did not explain the \$800,000 loan to shareholders or the \$159,938.67 loan to "AAS" entries on IME's 2010 profit and loss statement.

44. On February 7, 2012, IME lost its eligibility to participation in the Title IV Federal Student Aid Programs based on respondent's voluntary relinquishment of its participation in the federal financial aid programs.

45. On February 3, 2012, Sunil Vethody sent a letter informing IME's dental hygiene program students that IME was no longer financially viable and that the February 3, 2012 letter served as notice that the dental hygiene program would immediately close.

46. IME did not notify the bureau prior to February 3, 2012, that IME would be closing its dental hygiene program.

Failure to make records available for inspection and copying

47. On December 7, 2011, Sunil Vethody refused to provide the bureau analysts access to requested student records unless the enforcement analyst agreed in writing that IME was exempt from bureau regulation during the time the bureau sunsetted, from July 1, 2007 through October 26, 2010.

48. Numerous students requested copies of their files, transcripts and related school records. IME refused to provide these records to students.

Failure to pay annual institution fee to the bureau

49. Private postsecondary education institutions are required to pay the bureau annual fees. The annual institutional fee is calculated based on an amount equal to three-quarters of one percent of the institution's annual revenues derived from students in California, but not to exceed \$25,000. Respondent reported IME's gross annual revenue as \$1,235,554.66 on the 2010 annual fee report to the bureau. Based on IME's reported annual revenues of \$1,235,554.66, IME's annual fee was \$9,266.66, for its San Jose facility and \$1,000 for its satellite location. However, IME's actual annual revenue for 2010, as reflected on IME's 2010 profit and loss statement, was \$6,648,844.87. Consequently, the 2010 annual fees⁴ IME was required to pay the bureau are \$25,000 for its main facility and \$1,000 for its satellite location.

50. In November 2010, Heidi Formoso (Formoso), respondent's accounts manager, was in charge of preparing the IME's Annual Institutional Fee Reporting Form. Formoso determined that based on the Institute's annual gross revenue for 2010, which exceeded \$6,000,000, IME owed \$25,000 in annual institutional fees for the San Jose facility and \$1,000 in annual fees for the satellite location to the bureau for 2010. In June 2011, Sunil Vethody directed Formoso to write the bureau a check for \$10,266.66 for IME's 2010 annual institutional fee, despite Vethody's knowledge that the 2010 institutional fee was \$25,000. The outstanding balance of \$14,733.34 for 2010 institutional fees and the bureau's assessment of a 35 percent penalty fee remain outstanding.

51. IME did not pay the 2011 annual fee of \$25,000, or the 2011 satellite fee of \$1,000, to the bureau.

Failure to collect and remit student tuition recovery fund assessments

52. The Student Tuition Recovery Fund (STRF) exists to mitigate economic losses suffered by a student in a qualified educational program. IME is a qualified educational program. STRF requires IME to collect an assessment from each student in the amount of \$2.50 per \$1,000 of institutional charges. IME was required to then pay that STRF assessment to the bureau.

53. IME did not collect STRF funds from IME students in 2010. IME collected STRF assessments from some, but not all of its students in 2011. However, IME did not remit any of the collected STRF funds to the bureau.

⁴ Application of the bureau's annual fee calculation (.0075% of the institution's annual revenue) to IME's annual revenue (\$6,648,844.87) results in a fee of \$49,866.34. However, the bureau's annual institution fee is not to exceed \$25,000.

Committing a dishonest and/or deceitful act

54. The United States Department of Education approves private postsecondary institutions to participate in the United States Department of Education's Financial Aid Program. The United States Department of Education provides federal financial aid to both degree-granting and non-degree granting programs. In order for a private postsecondary institution that offers degree-granting programs to obtain approval to offer students federal financial aid, that institution must first obtain accreditation from a United States Department of Education degree-granting accrediting agency. If an institution is not accredited to offer degree-granting programs, that institution cannot participate in the United States Department of Education's Financial Aid Program for its degree-granting programs.

55. There are different agencies that accredit private postsecondary institution for degree granting institutions and non-degree granting institutions. A private postsecondary institution that provides both degree-granting and non-degree granting programs must have accreditation from the proper accrediting agency that is recognized by the United States Department of Education. Consequently, a private postsecondary institution only accredited to offer non-degree granting programs, cannot receive United States Department of Education financial aid for students enrolled in the institution's degree-granting programs.

56. In May 2008, respondent applied to the United States Department of Education to participate in the United States Department of Education's Financial Aid Program. At the time of application, respondent represented to the United States Department of Education that IME only offered non-degree granting programs. Based on respondent's representations and IME's accreditation from ASC-WASC, the United States Department of Education approved respondent's application to participate in the federal financial aid program for non-degree granting programs.

57. In 2009, respondent notified ASC-WASC that IME intended to offer a non-degree granting dental hygiene program. On June 26, 2009, respondent applied to BPPVE to add a degree-granting program and paid an application fee in the amount of \$2,375. In 2010, IME started its first associate degree-granting program in dental hygiene. Additionally, in 2010 the bureau granted IME an approval to operate two other degree granting programs (physical therapy and nursing).

58. In 2010, respondent fraudulently reported to the United States Department of Education that respondent's dental hygiene program was non-degree-granting. Based on respondent's intentional misrepresentation, the United States Department of Education approved respondent's participation in the non-degree granting financial aid program for students enrolled in IME's dental hygiene program. The United States Department of Education would not have approved IME's dental hygiene program participation in the financial aid program had respondent truthfully disclosed the degree granting status of the dental hygiene program. IME allowed its degree-granting dental hygiene program students to receive financial aid reserved for non-degree granting programs.

Making an unscheduled suspension of a class

59. In October 2011 respondent made an unscheduled suspension of an oral biology class, offered as part of the dental hygiene program. The oral biology class was suspended because respondent did not employ a sufficient number of instructors to teach the course. The suspension of the oral biology class delayed the education of dental hygiene students. This class was paid for by the students. The class was not rescheduled and the students were not provided with a refund for the suspended class.

Failure to provide school catalog

60. Respondent was required to provide all IME students with a school catalog prior to enrolling in the institution. Respondent failed to provide some students with a school catalog prior to the students' enrollment.

Failure to make records and/or transcripts available to students

61. Following the February 2012 closure of IME, respondent failed to provide students with their records or transcripts. As a result of respondent's conduct, students were precluded from enrolling in other institutions because they lacked their transcripts. Additionally, other institutions did not give IME student's credit for IME courses the students paid for and completed. Consequently, students were required to either pay for and retake the courses at the other institutions, or not continue their education and achieve their career goal.

Costs

62. Complainant submitted a certification of investigative costs in the amount of \$39,974.38, and attorneys' fees in the amount of \$99,292.50. These costs and fees were not disputed and are deemed reasonable.

LEGAL CONCLUSIONS

Unauthorized substantive change to approval to operate

1. Pursuant to Education Code section 94893, 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 Education Code section 94896, subdivision (a), if the institution makes a substantive change without prior bureau authorization, the institution's approval to operate may be suspended or revoked.

2. Pursuant to Education Code section 94894, subdivision (a), a change in the educational objectives of a private postsecondary educational institution, including the addition of a new diploma or a degree educational program unrelated to the approved

educational program offered by the institution, constitutes a substantive change that requires the bureau's authorization.

3. Pursuant to Education Code section 94937, subdivision (a), the bureau may place an institution on probation or may suspend or revoke an institution's approval to operate for a material violation or repeated violations that have resulted in harm to students. A 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.

4. California Code of Regulations, title 5, section 75100, subdivision (a), authorizes the bureau to discipline a licensee, including license suspension, license revocation or placing a private postsecondary education institution on probation with terms and conditions on its approval to operate.

5. By reason of the matters set forth in Findings 11 through 27, pursuant to Education Code sections 94893, 94894, subdivision (a), 94937, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, cause exists to suspend or revoke respondent's approval to operate a private postsecondary educational institution due to respondent's actions of adding programs in MRI technology and ultrasound technology without obtaining prior authorization from the bureau.

False advertising of accreditation

6. Pursuant to Education Code section 94813, "accredited" means an institution is recognized or approved by an "accrediting agency". Education Code section 94814, defines "accrediting agency" as an agency recognized by the United States Department of Education.

7. Education Code section 94897, subdivision (e), prohibits an institution from advertising or indicating in promotional material that the institution is accredited, unless the institution has been accredited by an accrediting agency. Education Code section 94937, subdivision (a)(2), authorizes the bureau to discipline an institution's approval to operate for an institution's 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.

8. California Code of Regulations, title 5, section 75100, subdivision (a), authorizes the bureau to discipline a licensee, including license suspension, license revocation or placing a private postsecondary education institution on probation with terms and conditions on its approval to operate.

9. Respondent used false and misleading advertising to entice students to their institution. Respondent's website falsely claimed that the MRI technology and ultrasound technology programs were accredited by the bureau and ASC-WASC. Respondent's use of the false and misleading advertisement induced students to enroll in these programs. Respondent knew or should have known that students would reasonably rely on IME's representations about the quality and accreditation of these programs. As a result of respondent's false and misleading advertisement, 120 students enrolled in and paid for the MRI technology program and 254 students enrolled in and paid for the ultrasound technology program. Students that attended the MRI and ultrasound technology programs were harmed due to respondent's fraudulent advertisement and inducement to enroll in these IME programs and the students' inability to complete the programs due to the closure of the institution.

By reason of the matters set forth in Findings 11 through 14, and 18 through 27, pursuant to Education Code sections 94813, 94814, 94897, subdivision (e), 94937, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, cause exists to suspend or revoke respondent's approval to operate a private postsecondary educational institution.

Defaulting on student enrollment agreements and failure to pay student refunds

10. Pursuant to Education Code section 94927, an institution shall be considered in default of the enrollment agreement when an educational program is discontinued or canceled or the institution closes prior to completion of the educational program. When an institution is in default, unless the institution has made provisions for students enrolled at the time of default to complete a comparable educational program at another institution at no additional charge to the students beyond the amount of the total charges in the original enrollment agreement, the institution shall refund all institutional charges to the students.

11. Respondent canceled its dental hygiene program as to its 2013 junior and senior class prior to completion of the program and failed to refund to those students the institutional charges they incurred. As a result of respondent's conduct, these dental hygiene students paid for a dental hygiene education they were unable to complete due to IME's closure. The coursework these students completed at IME is not transferable to another institution and consequently, these students are required to retake and pay for the same classes previously completed at IME. By reason of the matters set forth in Findings 30 through 33, pursuant to Education Code sections 94927, and 94937, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, subdivision (a), cause exists to suspend or revoke respondent's approval to operate a private postsecondary educational institution.

Maintenance of permanent student records at a satellite location

12. California Code of Regulations, title 5, section 71717, subdivision (b), provides that an institution shall not maintain any permanent student records at a satellite location. Respondent maintained student records at the IME satellite facility in Oakland,

California. By reason of the matters set forth in Findings 34 through 36, cause exists pursuant to Education Code section 94937, subdivision (a)(2), California Code of Regulations, title 5, sections 71717, subdivision (b), and 75100, subdivision (a), to discipline respondent's approval to operate a private postsecondary educational institution.

Failure to employ sufficient number of qualified faculty and administrative staff

13. California Code of Regulations, title 5, section 71720, subdivision (a)(1), requires an institution offering a degree granting program to employ a sufficient number of qualified faculty, to provide the instruction, student advisement, and learning outcome objectives necessary for the student's achievement of the institution's stated mission and objectives. IME failed to document the dental hygiene and ultrasound programs' student achievements of specific learning objectives. As a result, IME could not establish that the dental hygiene and ultrasound programs' met its stated mission and objectives.

IME failed to provide adequate educational materials for the students enrolled in the dental hygiene program and several dental hygiene program instructors left IME. As a result, dental hygiene classes had to be cancelled and respondent's students were harmed.

14. California Code of Regulations, title 5, section 71730, subdivision (f), requires the institution to employ administrative personnel who have the expertise to ensure the achievement of the institution's mission and objectives and the operation of the educational programs. Respondent also failed to employ sufficient numbers of qualified and trained administrative personnel to assist IME students in the financial aid office.

By reason of the matters set forth in Findings 37 through 39, pursuant to Education Code section 94937, subdivision (a)(2), and California Code of Regulations, title 5, sections 71717, subdivision (b), 75100, subdivision (a), 71720, subdivision (a)(1), and 71730, subdivision (f), cause exists to discipline respondent's approval to operate a private postsecondary educational institution.

Failure to document sufficient assets and financial resources

15. California Code of Regulations, title 5, section 71745, subdivision (a), requires respondent to document sufficient assets and financial resources to provide all of the educational programs the institution represented it would provide and to ensure that all students admitted to its educational programs have a reasonable opportunity to complete the programs and obtain their degrees or diplomas. In order for IME to participate in the federal financial aid program, IME has to meet the composite score requirement set by the United States Department of Education (Cal. Code Regs., tit. 5 § 71745, subd. (a)(6)).

16. Respondent is subject to disciplinary action pursuant to Education Code section 94937, subdivision (a)(2), and California Code of Regulations, title 5, sections 71745, subdivision (a) and 75100, subdivision (a), due to respondent's failure to document and maintain sufficient assets and financial resources. Specifically, in 2012, respondent

failed to secure accreditation from a nationally recognized accrediting agency for its participation in the federal financial aid programs. As a result, IME students were precluded from participating in any federal financial aid programs. On February 3, 2012, dental hygiene students were notified that their program was immediately closing because IME was no longer financially viable. IME students were harmed based on respondent's failure to maintain sufficient assets and financial resources. By reason of the matters set forth in Findings 40 through 46, and 54 through 56, pursuant to Education Code section 94937, subdivision (a)(2), and California Code of Regulations, title 5, sections 71745, subdivision (a), and 75100, subdivision (a), cause exists to discipline respondent's approval to operate a private postsecondary educational institution.

Failure to make records available for inspection and copying

17. Pursuant to California Code of Regulations, title 5, section 71920, subdivision (a), an institution must maintain a file for each student who enrolls in the institution whether or not the student completes the educational service. Pursuant to California Code of Regulations, title 5, section 71930, subdivision (e), IME is required to immediately make all student records available to the bureau for inspection and copying. Respondent failed to make student records available to the bureau and IME students despite requests for records to be produced. By reason of the matters set forth in Findings 47 and 48, pursuant to Education Code section 94937, subdivision (a)(2), and California Code of Regulations, title 5, sections 71920, subdivision (a), 71930, subdivision (e), and 75100, subdivision (a), cause exists to discipline respondent's approval to operate a private postsecondary educational institution.

Failure to pay annual institution fee to the bureau

18. Pursuant to Education Code section 94930.5, subdivision (d)(1)(A), respondent was required to pay the bureau an annual institution fee in the amount of \$25,000. In 2010, respondent paid an annual institution fee of \$10,266.66 to the bureau, less than the required \$25,000 required fee. Respondent did not pay the 2011 annual institution fee. Respondent did not pay the bureau the \$39,733.34 institution fee,⁵ and a 35 percent penalty fee, and a 2011 satellite fee of \$1,000.

California Code of Regulations, title 5, section 74000, subdivision (e)(1), authorizes the bureau to revoke an institution's approval to operate for failure to pay its annual fees. By reason of the matters set forth in Findings 49 and 51, pursuant to Education Code section 94930.5, subdivision (d)(1)(A), and California Code of Regulations, title 5, sections 74000, subdivisions (a) and (e)(1), and 75100, subdivision (a), cause exists to discipline respondent's approval to operate a private postsecondary educational institution.

⁵ In 2010 respondent paid an institution fee of \$10,266.66. There is a remaining unpaid balance owed in 2010 of \$14,733.33. In 2011 respondent failed to pay the \$25,000 fee. The total fee amount owed by respondent for 2010 and 2011 is \$39,733.34.

Failure to collect and remit student tuition recovery fund assessments

19. Pursuant to California Code of Regulations, title 5, section 76120, subdivision (a), the Student Tuition Recovery Fund (STRF) exists to relieve or mitigate economic losses suffered by a student attending an educational program, if the student enrolled in the institution, prepaid tuition, paid the STRF assessment, and suffered loss. California Code of Regulations, title 5, section 76120, subdivision (a) requires respondent to collect an assessment of two dollars and fifty cents (\$2.50) per one thousand dollars (\$1,000) of institutional charges. California Code of Regulations, title 5, section 76130, subdivision (a), requires IME to collect a STRF assessment from each student at the time IME collects the first payment from or on behalf of the student upon enrollment. IME is required to complete a STRF assessment report that is remitted with the STRF assessments collected from students and submitted to the bureau. (Cal. Code Regs., tit. 5 § 76130, subd. (b).)

20. IME failed collect STRF assessments from IME students in 2010. IME collected STRF assessments from some, but not all of its students in 2011; however, IME did not turn over any of the collected STRF funds to the bureau. By reason of the matters set forth in Findings 52 and 53, pursuant to Education Code section 94937, subdivision (a)(2), and California Code of Regulations, title 5, sections 76120, subdivision (a), 76130, subdivision (a) and (b), and 75100, subdivision (a), cause exists to discipline respondent's approval to operate a private postsecondary educational institution.

Failure to notify bureau of educational program closure

21. Pursuant to California Code of Regulations, title 5, section 74200, IME is required to notify the bureau in writing at least 30 days prior to ceasing to offer an education program. Respondent's failed to notify the bureau prior to IME closing its facilities in February 2012. By reason of the matters set forth in 45 and 46, pursuant to Education Code section 94937, subdivision (a)(2), and California Code of Regulations, title 5, sections 74200, and 75100, subdivision (a), cause exists to discipline respondent's approval to operate a private postsecondary educational institution.

Committing a dishonest and/or deceitful act

22. Pursuant to Business and Professions Code section 480, subdivision (a)(2), the bureau can discipline respondent for committing acts involving dishonesty, fraud, or deceit with the intent to substantially benefit respondent or substantially injure another. Sunil Vethody, acting on behalf of respondent, presented fraudulent documents purporting to show the bureau's approval to operate an IME technology program and an ultrasound technology program in order to obtain accreditation and access to federal financial aid funds. In 2010, Vethody misrepresented to ASC-WASC that IME was a not-for-profit organization that provided non-degree granting programs, knowing that ASC-WASC would not provide accreditation to for-profit institutions or degree granting programs. In 2010, respondent misrepresented to the United States Department of Education that IME's dental hygiene program was a non-degree granting program knowing this representation was false. In 2010

the bureau granted IME an approval to operate three degree granting programs (dental hygiene, physical therapy and nursing). As a result of the dishonest representations made by respondent's agent, IME was able to obtain ASC-WASC accreditation which allowed IME to obtain federally funded financial aid, not otherwise available to IME's students. By reason of the matters set forth in Findings 54 through 58, pursuant to Education Code section 94937, subdivision (a)(2), Business and Professions Code section 480, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, subdivisions (a) and (b), cause exists to discipline respondent's approval to operate a private postsecondary educational institution.

Directing an Individual to Perform an Act that Violates the California Private Postsecondary Education Act of 2009

23. Pursuant to Education Code section 94897, subdivision (m), an institution shall not direct any individual to perform an act that violates the California Private Postsecondary Education Act of 2009, or direct an individual to refrain from reporting to the bureau or another governmental agency, a private postsecondary educational institutions unlawful conduct.

24. Acting on behalf of respondent, Sunil Vethody, respondent's chief executive officer, instructed an employee in the IME financial aid staff to pay less than the amount owed for the 2010 annual institutional fee. By reason of the matters set forth in Findings 50 and 51, pursuant to Education Code sections 94897, subdivision (m), 94930.5, subdivision (d)(1)(A), 94937, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, subdivision (a), cause exists to discipline respondent's approval to operate a private postsecondary educational institution.

Making an unscheduled suspension of a class

25. Pursuant to Education Code section 94898, after a student has enrolled in an educational program, an institution shall not make an unscheduled suspension of any class unless caused by circumstances beyond the institution's control. In October 2011 respondent made an unscheduled suspension of an oral biology class, offered as part of the dental hygiene program. The oral biology class was suspended because respondent did not employ a sufficient number of instructors to teach the course. The suspension of the oral biology class delayed the education of dental hygiene students. By reason of the matters set forth in Finding 59, pursuant to Education Code sections 94898, subdivision (b)(1) and 94937, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, subdivision (a), cause exists to discipline respondent's approval to operate a private postsecondary educational institution.

Failure to provide students with a school catalog

26. By reason of the matters set forth in Finding 60, pursuant to Education Code sections 94909, subdivision (a), 94937, subdivision (a)(2), and California Code of Regulations, title 5, sections 71810, subdivision (a) and 75100, subdivision (a), cause exists

to discipline respondent for failing to provide prospective IME students with a school catalog prior to enrollment.

Failure to make records and/or transcripts available to students

27. Education Code section 94885, subdivision (h), requires an institution to maintain adequate records and provide students with standard transcripts. Respondent failed to provide numerous IME students with standard transcripts which resulted in harm to the student, including, but not limited to preventing students from continuing their education and requiring students to pay for and complete similar classes at other institutions that were previously successfully completed at IME. By reason of the matters set forth in Finding 61, pursuant to Education Code sections 94885, subdivision (h) 94937, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, subdivision (a), cause exists to discipline respondent's approval to operate a private postsecondary educational institution for failing to provide IME students with copies of their standard transcripts.

Restitution

28. Education Code section 94941, subdivision (d), authorizes the bureau to order the institution to provide appropriate restitution to the student or group of students caused damage or loss as a result of the institution's violation of the California Private Postsecondary Education Act of 2009. By reason of the matters set forth in Findings 30 through 33, respondent shall pay restitution to the 112 students identified in Exhibit 88, in a total amount of \$2,116,180.86.

Costs

29. Business and Professions Code section 125.3 provides that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth the factors to be considered in determining the reasonableness of costs. Those factors include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. Having considered all of the evidence and after applying the *Zuckerman* factors, it is determined that there are no mitigating factors that would warrant a reduction in costs. Consequently, by reason of the matters set forth in Finding 62, respondent shall pay the bureau investigative costs of \$39,974.38, and attorneys' fees in the total amount of \$99,292.50.

ORDER

1. The approval to operate the Institute of Medical Education, issued to respondent Bindu Baburajan, also known as Bindu Vethody, (Institution Code No. 69608217, and School Code No. 81701347), is revoked.
2. Respondent shall provide official Institute of Medical Education transcripts to all students that completed a course at IME, including, but not limited to the students who are listed in Exhibit 87.
3. Respondent shall pay restitution in the amount set forth in Exhibit 88 to the 112 students listed therein.
4. Respondent shall pay to the bureau investigative costs in the amount of \$39,974.38, and attorneys' fees in the amount of \$99,292.50.
5. Respondent Bindu Baburajan, also known as Bindu Vethody, or any current or former Institute of Medical Education officer, agent or administrative personnel shall not be eligible to apply for an approval to operate a private postsecondary educational institution or be a member of the board of directors or an officer in a postsecondary educational institution in California, until such time that respondent Bindu Baburajan fully complies with the terms and conditions set forth in this Order.

DATED: September 20, 2013



DIANNA L. ALBINI
Administrative Law Judge
Office of Administrative Hearings