

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

In the Matter of the Second Amended Statement of Issues Against:)	
)	
YUIN UNIVERSITY;)	Case No. 998592
HENRY H. YU; RACHEL DE CHAVEZ-ZAYAS,)	
)	OAH No. 2014110216
Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institution)	
)	
Respondents.)	
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DECISION AFTER NON-ADOPTION OF PROPOSED DECISION

This matter was heard before John DeCure, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, in Los Angeles, California, on March 21-23, April 26, and May 16-17, 2016. Morgan Malek, Deputy Attorney General, represented complainant Joanne Wenzel, Chief of the Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs. James Stevens, Attorney at Law, represented respondents Yuin University and Christine Lee, as Yuin University's owner.¹

Attorney Stevens did not represent respondent Henry Yu, either as an individual client, or indirectly in connection with Mr. Stevens's representation of Yuin University. Respondent Henry Yu made no appearance at the hearing, was not represented, did not submit a notice of defense, and had no apparent contact with the Bureau during the course of pre-hearing procedure. Respondent Rachel De Chavez-Zayas was not present at the hearing, was not represented, did not submit a notice of defense, and had no apparent contact with the Bureau during the course of pre-hearing procedure.

The issue of Yuin University's ownership was contested at the hearing. The Bureau contends respondent Henry Yu is the owner of Yuin University for the purposes of approval to operate it. Christine Lee contends that she, not respondent Henry Yu, owns Yuin University. Complainant served the Second Amended Statement of Issues on Rachel De Chavez-Zayas by certified mail at Yuin University's business address. The Second Amended Statement of Issues makes no direct reference to Ms. De Chavez-Zayas.

Oral and documentary evidence was received at the hearing. The record was held open and

¹ Although Bureau parlance may refer to approved schools, the Bureau approves people to operate private postsecondary schools. (See, e.g., Ed. Code §§ 94816, 94851, 94855, 94886, 94887.) Because of the dispute regarding the approved ownership and control of Yuin University, for purposes of this decision, Yuin may be referred to as a respondent.

the parties submitted concurrent written closing arguments on June 3, 2016, and concurrent written rebuttals to closing arguments on June 27, 2016 (complainant's Exhibit 50, and respondent Yuin University's Exhibit FF). The record was closed and the matter submitted for decision on June 27, 2016. On or about July 22, 2016, the ALJ issued a proposed decision (PD) in this matter.

On or about November 1, 2016, the Director of the Department of Consumer Affairs (Department of DCA) via his designee issued a notice of non-adoption of the proposed decision. The Director requested briefing from the parties and invited argument as to whether 5 C.C.R. § 71401 requires the Bureau to wait a minimum of a year before it has the authority to deny an application that fails to demonstrate that it meets the minimum standards set by the Bureau; whether the Bureau is required to recognize a person as an owner of an institution without reviewing his or her appropriateness for ownership and control over an institution; whether and to what extent the Bureau is required as a matter of due process to notify an applicant as to the areas or standards in which the application is deficient; and whether an applicant can be granted a conditional approval to operate an institution where there are findings that deficiencies in its application exist, or whether it is necessary to issue an approval with a revocation stayed in order to protect the public. The transcript was ordered. Written argument having been submitted by both parties and such written argument, together with the record, having been read and considered pursuant to Government Code section 11517(c)(2)(E), the Director hereby makes the following decision:

FACTUAL FINDINGS

1. On December 22, 2015, Complainant filed the Second Amended Statement of Issues, case number 998592, in her official capacity.

2(a). In the Second Amended Statement of Issues, complainant sought to deny the May 7, 2012, Application for Renewal of Approval to Operate a Non-Accredited Institution from Yuin University (2012 renewal application), submitted by Andrew Kim and Christine Lee as co-owners, on grounds that Andrew Kim and Christine Lee are not registered with the Bureau as owners of Yuin University and hence, lacked standing.

2(b). Complainant further sought denial of the 2012 renewal application due to Yuin University's alleged: change of its form of business-organization without Bureau approval; offer of acupuncture and oriental medicine programs without Bureau approval; false advertisement that it was accredited by an accrediting agency when it was not so accredited, which amounted to dishonest, deceitful and misleading acts; submission of an "incomplete" 2012 renewal application because Andrew Kim and Christine Lee were not owners of record; failure to identify the chief executive officer (CEO) and Chief Academic Officer (CAO); failure to submit documentation regarding its governing board; failure to meet minimum requirements for its enrollment agreement; failure to provide relevant documentation reflecting its refund policy; failure to complete sections 13 (instruction and degrees offered), 14 (description of educational program), and 15 (instruction in languages other than English) of its 2012 renewal application; failure to provide required financial statements; failure to provide sufficient evidence that duly qualified faculty members were hired; failure to provide sufficient evidence as required by section 18 (facilities and equipment); failure to provide required financial statements; failure to provide sufficient evidence that duly qualified faculty members were hired; failure to provide sufficient evidence as required by section 19 (libraries and other learning resources); failure to meet minimum requirements for its catalog; and failure to provide sufficient evidence of self-monitoring.

2(c). In addition, complainant alleged Yuin University committed 15 violations based on a July 16, 2015, Bureau inspection of the school. These alleged violations were submitted as aggravating factors and were generally presented as compliance issues in which the school allegedly fell below minimum standards.

3. On September 10, 2014, the Bureau filed a Statement of Issues (original SOI).

4. On October 1, 2014, Andrew Kim filed a notice of defense on behalf of respondent Yuin University.

5. On April 12, 2015, Christine Lee submitted an Application for Approval to Operate an Institution Non-Accredited (2015 new application). Christine Lee submitted the 2015 new application, including a \$5,000 non-refundable application fee, in order to address each alleged deficiency contained in the Bureau's original SOI.

Prior History Between the Bureau's Predecessor Agency and Henry Yu

6. Although the Second Amended Statement of issues (Second Amended SOI) addresses a May 7, 2012, renewal application filed by Andrew Kim and Christine Lee, the Bureau alleged a past history regarding Henry Yu as owner of Yuin University, preceding the 2012 renewal application, as follows.

7. In December 1996 Henry Yu signed a Stipulation and Settlement Agreement (stipulation) with terms and conditions which restricted Yuin University, which is located in a single building in Compton, California, from enrolling new students in acupuncture and oriental medicine courses, to stop advertisement and recruitment efforts for such courses, to delete all references to such course work in its catalogs and brochures, and to "teach out" existing students enrolled in the acupuncture program. The Second Amended SOI alleges Henry Yu violated the stipulation sometime in 1997, when the Bureau's statutory predecessor agency, the Council for Private Postsecondary and Vocational Education (Council), "learned Yuin University was still offering the acupuncture program." However, the Council underwent a legislative sunset on January 1, 1998, ceasing all further operations, so no enforcement action was taken.

8(a). Jenni Jones, a former Yuin University student from 2003 until 2006, testified that from 2007 until 2010, she was also Yuin University's dean. According to Ms. Jones, in 2010 Henry Yu fired her after she refused, as dean, to sign the diplomas of 26 Yuin University students because she believed the students lacked the sufficient course credits to graduate. She further stated that some students received degrees without earning them. One student "never came to class" and another "never attended." (Testimony of Jenni Jones.) Ms. Jones is currently suing Henry Yu in civil court and is seeking money damages from him in her lawsuit. Ms. Jones once even "hated" Henry Yu, but now that he is an old man, Ms. Jones feels less angry toward him. Ms. Jones had no dealings with Christine Lee while Ms. Jones was at Yuin University and does not know her. (Testimony of Jenni Jones.)

8(b). None of Ms. Jones's allegations against Henry Yu or Yuin University were alleged in the Second Amended SOI.

Ownership of Yuin University

9. Lalu “Drew” Saetune, a Bureau Senior Education Specialist, was assigned to review Yuin University’s 2012 renewal application shortly after it was filed in May 2012. Although the Bureau’s primary mission is public protection, Mr. Saetune must also assist institutions who are applicants with navigating the regulatory and application processes which are governed by the Education Code and by regulations found in title 5, California Code of Regulations.²

10. Mr. Saetune stated when a renewal application for an educational institution is filed, the application must show the current owner, and the owner must be the owner-of- record according to the Bureau’s own records. If an institution intends to change owners or change its form of business, the Bureau must first authorize such a change, pursuant to Education Code section 94894. When the Yuin University 2012 renewal application was filed in May 2012, Henry Yu was the owner and sole proprietor according to the Bureau’s records. However, on the 2012 renewal application the institution’s form of business was listed as “AKCL Enterprises, Inc.,” which represented a change in business form the Bureau also had not authorized. For these reasons, Mr. Saetune believed the Bureau had a basis to deny the 2012 renewal application.

11. Christine Lee testified credibly that she and Andrew Kim, an attorney, bought Yuin University from Henry Yu in 2012. They paid \$150,000, with Ms. Lee and Mr. Kim paying equal shares toward the purchase price. Ms. Lee and Mr. Kim were then engaged to be married, so she referred to herself as “Christine Lee Kim,” but the marriage plans later fell through and she has since dropped the name Kim from her last name. The company she and Mr. Kim listed as Yuin University’s owner, AKCL Enterprises, Inc., was named by combining her initials and Mr. Kim’s initials.

12. After filing the 2012 renewal application, the Bureau asked Christine Lee to supply documentation of the change of ownership and sale of Yuin University. On October 23, 2012, she provided the Bureau with a copy of a one-page, signed letter from Henry Yu, dated June 4, 2012, which stated the following:

I am obliged to sell the Yuin (not included property).
Since you have top priority, I would like you to take over if you are interceded (sic). The cost for you [is] \$150,000 include (sic) all the school belongings such as books, furniture and computers etc. There were two buyers offering me a (sic) \$300,000. However, I have refused.

Once you purchased (sic), you don’t have to pay 10% gross. It is up to you to use my property or move out to any other place. If you continue to use my property, the lease will be available as it is now. You can buy even before the trial period is over. Please refer to an agreement outline of 2012.
(Exhibit 16.)

² More than 100 Education Code laws and more than 50 regulations from the California Code of Regulations apply to the regulatory and application process involving postsecondary institutions, and together, they form a complex web of overlapping rules and regulations.

Christine Lee also provided the Bureau with a copy of a signed letter from Henry Yu, sent via the internet on June 6, 2012, to Andrew Kim which stated:

Based on your email of June 4, 2012, I accept the following terms and conditions as you requested:

- a) The first \$50[,000], by the end of this year.
- b) The second \$50[,000], by the end of next May, 2013.
- c) The last \$50[000], by the end of September, 2013.
- d) Rental payment continues as is.

You should report [to] the BPPE and INS for owner-change when the last payment is made. However, allow (sic) you may act as new owner of Yuin University as of June 6, 201...³

Congratulations!

Lastly, Christine Lee submitted a copy of a Fictitious Business Name Statement, filed with the Los Angeles County Clerk's office and signed by Andrew Kim, declaring that AKCL Enterprises, Inc. was doing business as Yuin University. (Exhibit 16.) Christine Lee testified credibly that the sale of Yuin University from Henry Yu to herself and Andrew Lee, and the outlined payments, proceeded as planned.⁴

13. Mr. Saetune stated that although Christine Lee provided a copy of a sales contract between Andrew Kim and herself and Henry Yu along with other sale-related documents (see Factual Finding 12), Mr. Saetune and the Bureau considered the documentation to be insufficient because there did not appear to be a legal agreement constituting a sales contract. In order to demonstrate a change in ownership when they submitted the 2012 renewal application, Andrew Kim and Christine Lee should have submitted an application for change of ownership, but they did not. However, Mr. Saetune did not request that Christine Lee and Andrew Kim submit an application for change of ownership, and he did not forward a Bureau change-of-ownership form to either of them.

14. Christine Lee testified credibly that Henry Yu has had no involvement with running Yuin University since 2011, when he experienced health setbacks, including a stroke. From that time on, the school was run by a school administrator, respondent Rachel De Chavez-Zayas, until Christine Lee and Andrew Kim engaged Henry Yu in May 2012 to buy the school. Since then, Yuin University has honored Henry Yu's contributions to the school by referring to him as the school's founder and chancellor on its website, but that reference has been removed so as not to inaccurately indicate to the Bureau or the public that Henry Yu is still involved in the school's operation in any way.

15. Mr. Saetune monitored the Yuin University website in 2016 and found that the reference to Henry Yu as its founder and chancellor was still present. This was of concern to the Bureau

³ The final digit for the year was obliterated in the copy of the exhibit complainant submitted. However, because the letter was sent on June 6, 2012, it is reasonable to presume the reference to a "June 6" date to act as new owner was also for June 6, 2012.

⁴ Although Henry Yu's two letters to Christine Lee and Andrew Kim were sent in June 2012, shortly after the filing date of the 2012 renewal application, four more months passed before copies of the letters were offered, in October 2012, as verification of Christine Lee and Andrew Kim's ownership.

because a chancellor is like a school president and can be very much involved with a school's operation. During the hearing process in this matter, Mr. Saetune revisited the Yuin University website and confirmed that Henry Yu's name no longer appears as the school's founder or chancellor.

16. Christine Lee admitted that in 2012 she was ignorant of the requirement that she had to obtain prior Bureau approval to change ownership or the form of business for Yuin University. She has attempted to comply with any and all requests the Bureau has regarding compliance with requirements, provision of information, and the 2012 renewal application process. Twice she and Andrew Kim traveled to Sacramento to meet with the Bureau in attempts to provide full compliance and be responsive to the Bureau, but to no avail. No one at the Bureau has ever requested that she submit a change of ownership form, but during the hearing process, she visited Henry Yu at his home and had him sign a blank change of ownership form, in the event the Bureau might still require the form to be completed. (Exhibit DD.)

17. On February 23, 2015, Andrew Kim and Christine Lee filed a Statement of Information with the Secretary of State, State of California, containing a Fictitious Name Statement form which listed AKCL Enterprises, Inc., as a corporation doing business as Yuin University at the institution's address of record in Compton. (Exhibit 107.)

18. Andrew Kim managed Yuin University's business until August 2015, but by then he had grown discouraged with the long history of licensing problems Yuin University experienced with the Bureau. In August 2015 he relinquished his part-ownership interest in Yuin University to Christine Lee as sole owner. On September 1, 2015, Christine Lee filed Articles of Incorporation with the State of California, naming herself as president and chief executive officer of Yuin, Incorporated, a nonprofit public benefit corporation pursuant to title 26, United States Code, section 501(c)(3). (Exhibit 43.)

19. On July 16, 2015, Michelle Loo, a Bureau Compliance Inspector, conducted a visual inspection of Yuin University and interviewed three of the school's staff members, including Christine Lee. The inspection was extensive, consisted of two phases, and covered multiple compliance issues, records reviews, and visual inspections. Henry Yu was not present. Before her inspection, Michelle Loo was aware the Bureau's records listed Henry Yu as the owner of record of Yuin University. During her inspection she found no evidence indicating Henry Yu was involved in the school's operations.

20. Kevin Grant, Ph.D., Yuin University's Chief Academic Officer since September 2015, testified credibly that he has never seen, met, or spoken with Henry Yu, nor has he seen any indication that Henry Yu is involved with the institution in any way.

21. The sum of the evidence showed that since the 2012 renewal application had been filed with the Bureau, Henry Yu has not been affiliated with Yuin University either as its owner or in its operation, nor did he play any role in the 2012 renewal application process. Despite naming Henry Yu as a respondent in this matter, complainant did not call him as a witness, nor did he make any appearances during the hearing, nor did complainant enter any direct evidence against him.

The Bureau's Denial of the 2012 renewal application

22. On June 29, 2012, 53 days after the Bureau received the 2012 renewal application, it notified Christine Lee in writing that the application was incomplete because Yuin University: failed to clearly identify its chief executive officer (CEO), chief academic officer (CAO), and chief operational officer (COO); and failed to provide identifying information for its governing board. The Bureau further cited to California Code of Regulations, title 5 (Regulation), section 71401,⁵ advising Christine Lee that if the application was not completed within one year after the date the Bureau notified her it was incomplete, the application would be deemed abandoned.

23. Pursuant to Regulation section 71401, if the 2012 renewal application was not corrected and therefore was not completed, it would be deemed abandoned on June 29, 2013, one year after the Bureau notified Christine Lee of the 2012 renewal application's deficiencies.

24. On October 19, 2012, complainant, the Bureau's then Deputy Chief, sent an email to Christine Lee seeking further information about the sale of Yuin University. On October 23, 2012, Christine Lee responded by email, providing the documents described above in Factual Finding 12.

25. On November 16, 2012, the Bureau mailed to Yuin University a Notice of Denial of Yuin University's 2012 renewal application, stating the 2012 renewal application was incomplete and ineligible for renewal. In addition to the two deficiencies described in Factual Finding 22, the letter identified 20 additional bases for denial. Those alleged bases for denial are enumerated in Factual Finding 2.

26. Andrew Kim, as president of Yuin University, appealed the denial and requested a hearing.

27. Drew Saetune has worked on over 30 applications for educational institutions. One of his functions is to assist institutions in navigating the regulatory process associated with new applications and renewal applications filed with the Bureau. In his view, the regulations are complex and numerous, as they have gone through overhauls and multiple revisions from 1989 to the present. Mr. Saetune was a knowledgeable witness regarding minimum standards and requirements educational institutions must meet to operate within the law.

28. Mr. Saetune believed the document Christine Lee submitted to show ownership of Yuin University was inadequate to show an agreement for sale, as to him, there appeared to be no legal document of sale. However, he did not inform Christine Lee or Andrew Kim of this perceived deficiency. Mr. Saetune also believed Christine Lee and Andrew Kim should have submitted a completed application for a change of ownership to the Bureau with the 2012 renewal application, yet he did not advise Christine Lee or Andrew Kim of this requirement, nor did he provide them with an application. (Factual Finding 10.) In his testimony, Mr. Saetune detailed the additional 20 deficiencies the Bureau alleged in its denial letter, as further described below. Yet, he provided no notice of any of these perceived deficiencies to Christine Lee or Andrew Kim prior to the Bureau's

⁵ California Code of Regulations, title 5, section 71401 states: "An application shall be deemed abandoned and the fee forfeited when the application has not been completed by the applicant in accordance with the Act and this chapter within one year after the date that the application was initially received by the Bureau, or the date that the Bureau notified the applicant that it was incomplete, whichever is later. If an application has been abandoned, the applicant shall submit a new application and fee in order to seek an approval to operate."

issuance of its denial letter.

29. Mr. Saetune stated because he and the Bureau did not recognize Christine Lee as the owner of Yuin University, he could not communicate with her due to confidentiality concerns, as she was not a recognized representative of the institution. Mr. Saetune was aware complainant had communicated with Christine Lee as the reported new owner of Yuin University. As the only Senior Education Specialist assigned to the 2012 renewal application, he also knew Christine Lee was directly involved with the 2012 renewal application, and that Henry Yu took no part in that process. But Christine Lee's ownership of Yuin University, as well as her approval as an owner to operate Yuin University, was disputed.

30(a). To date, complainant's position is to continue not to recognize Christine Lee as Yuin University's current owner, and to continue not to recognize Andrew Kim and Christine Lee as the current owners. There is no dispute that the Bureau did not confer approval on the new ownership arrangements, or on the institution's change of business organization form from Henry Yu's individually owned sole proprietorship to a corporation owned by Christine Lee and Andrew Kim. Nor is there a dispute that no application for a change in either ownership or control was filed when Andrew Kim apparently withdrew from any involvement in Yuin University.

30(b). The evidence did not show either Andrew Kim or Christine Lee were appropriate people as owners to operate Yuin University, as is their burden.

Additional Alleged Bases for Denial

Acupuncture and Oriental Medicine Programs

31 (a). Complainant alleged Yuin University offered acupuncture and oriental medicine programs, including masters in science and Ph.D. degrees, without approval of the Bureau and the California Board of Acupuncture. On March 16, 1995, Henry Yu reached a stipulated settlement refraining from offering any and all acupuncture programs. (Exhibit 2.) A Bureau certified record of approved programs for Yuin University, dated November 28, 2012, shows that at that time, Yuin University was approved to administer six individual programs, none of which included acupuncture or oriental medicine. (Exhibit 2.)

31 (b). On June 8, 2011, nearly one year prior to the 2012 renewal application's filing Respondent Rachel De Chavez-Zayas, as "Administrator" of Yuin University, submitted a letter with attachments in support of a previously filed application for a change in educational objectives. One attachment was a three-page Bureau "Approved Educational Program List," signed by complainant. The first and third pages state "Printed : 8/8/2011," appear genuine, are marked as pages "1 of 2" and "2 of 2" in that order, and lists six approved programs, making no reference to acupuncture or oriental medicine course work. The second page states "Printed 4/20/2011," is marked as page "2 of 2," and lists "Bachelor, Master and Ph.D. and D.Ac in Acupuncture Oriental Medicine." This second page appears altered and not genuine, as it is dated and page-numbered out of sequence with the rest of the document, and it references acupuncture and oriental medicine in direct contradiction of the list of six other approved programs appearing elsewhere in the document. (Exhibit 3.) On October 27, 2011, Mr. Saetune responded to Rachel De Chavez-Zayas by a letter dated the same, informing her that upon his review of Yuin University's June 8, 2011 letter, the Bureau was denying the request to "add four programs in Acupuncture and Oriental Medicine . . ." In response to Mr.

Saetune's letter, Ms. De Chavez-Zayas sent a letter, dated November 9, 2011, in which she stated that Yuin University had never been denied approval until now, and warned the Bureau that "[i]f you denied these programs, Yuin University Alumni will sue your office." (Exhibit 7.)

31(c). On June 2, 2015, Mr. Saetune visited Yuin University's website and reviewed its contents. The website contained descriptions for "School of Acupuncture & Oriental Medicine" programs for a bachelor of science, master of science, doctor of medicine, and doctor of philosophy degrees in acupuncture. (Exhibit 22.)

31(d). Yuin University's 2015 new application sets forth components of instruction it offers in its "School of Acupuncture and Oriental Medicine." (Exhibit G.)

31(e). Christine Lee testified⁶ that when she and Andrew Lee bought Yuin University from Henry Yu in 2012, Mr. Yu showed her the altered "Approved Educational Program List" from 2011 and represented that Yuin University could continue to offer acupuncture and oriental medicine courses as a result of this approval. Christine Lee believed the documents were genuine based on their official appearance, and she further relied on Henry Yu's representations as being truthful. On this basis, Christine Lee continued to offer acupuncture and oriental medicine programs at Yuin University. Because the Bureau has alleged Yuin University has no authority to offer these programs, the institution no longer offers them as of 2015.

False Advertising and Accreditation

32(a). Complainant alleged Yuin University falsely advertised it was accredited by an accrediting agency when in fact it had had not been accredited by an accrediting agency recognized by the United States Department of Education, as defined in Education Code section 94814. Complainant further alleged that this false advertising misled the public, which posed a significant risk of harm to students and the public, and thus, this is one of the reasons that the Bureau made the decision to. Complainant further alleged that the alleged false advertising amounted to dishonest, deceitful, and misleading acts.

32(b). Yuin University's website contents, downloaded on June 2, 2015, contain the statement: "Yuin University has been accredited by the ASIC (Accreditation Service for International Schools, Colleges & Universities)." A stylized "ASIC" logo appears on another website page. (Exhibit 22.) ASIC is an educational accreditation agency located in Great Britain and recognized by the British government as an accreditation agency in the United Kingdom since 2007. (Exhibit 30.) ASIC is not recognized by the United States Department of Education as an accreditation agency. (Exhibit 31.)

32(c). Christine Lee testified that when she learned of the Bureau's allegations that ASIC was not an approved accreditation agency, she removed any reference to ASIC accreditation from Yuin University's website. Her intention is to provide more value to students through accreditation

⁶ The PD found that Ms. Lee testified "credibly." Government Code section 11425.50 provides in part: "If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the statement shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination, and on judicial review the court shall give great weight to the determination to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it." The PD did not include any such specific evidence.

processes. To that end, Yuin University has joined the California Association of Private Postsecondary Schools (CAPPS). CAPPS offers information workshops and educational support for institutions in order to help them know Bureau requirements better and maintain full compliance.

32(d). Complainant did not offer evidence to show any students were actually misled or harmed by Yuin University's advertisement that it held an ASIC accreditation. Respondent also made the point that the Bureau was unaware of any members of the public who had been harmed by a graduate of Yuin. The Bureau, however, is not the agency that regulates the licenses of acupuncturists; that function belongs to the California Board of Acupuncture. No evidence was presented to show any of its students, which the school enrolls at an average of approximately 140 students per year, were induced to enroll at Yuin University based on the use of ASIC accreditation. It remains respondent's burden, however, to establish that it meets the requirements for renewal, and not the Complainant's burden to establish harm.

Incomplete 2012 renewal application

33. Complainant alleged respondent submitted an incomplete 2012 renewal application because the Bureau does not recognize Christine Lee and Andrew Kim as its owners. However, there is evidence that indicated Christine Lee and Andrew Kim had bought Yuin University from Henry Yu. (Factual Findings 9-20.) There is also evidence that Henry Yu informed Christine Lee that she should "report" the change to the Bureau. (Factual Finding 12.)

Failure to Identify CEO and CAO

34. Complainant alleged the 2012 renewal application failed to clearly identify the institution's CEO and CAO, and failed to provide documentation in support of its governing board. These allegations were not supported by the evidence. Christine Lee provided this information to the Bureau by a letter dated July 11, 2012. (Exhibit 14.) Upon review of this letter, Mr. Saetune testified that the required information was provided.

Insufficient Student Enrollment Agreements

35. Complainant alleged the 2012 renewal application failed to meet minimum requirements governing student enrollment agreements. The evidence did not support this allegation. On July 16, 2015, the Bureau performed a visual inspection of Yuin University, during which its inspector reviewed the institution's enrollment agreement and found it to "meet the minimum requirements of the Education Code and Regulations. No violations detected." (Exhibit 23.)

Relevant Documentation

36. Complainant alleged the 2012 renewal application "failed to provide relevant documentation." (Second Amended SOI, Eleventh Cause for Denial.), in violation of California Code of Regulations, title 5, section 71475, subdivision (p), which states:

If an institution receives financial aid because its students qualify for it under any state or federal financial aid program, the application shall include a statement of its policies, practices, and disclosures regarding financial aid. If there have been no substantive

changes since the last submission, the institution may so state and is not required to submit documentation.

Complainant further alleged “[t]he document provided by the Respondent was the catalog’s refund policy.” (Second Amended SOI, Eleventh Cause for Denial.) Mr. Saetune noted that the 2012 renewal application indicated “see catalog” as support for its financial aid policies, yet a student catalog provides student rights regarding financial aid for only one school year. According to Mr. Saetune, the student catalog thereby provided insufficient documentation regarding financial aid policies. Mr. Saetune specified that the information should be separate from the catalog and why.

Responsive Documentation to Sections 13, 14, and 15 of Application

37. Complainant alleged the 2012 renewal application failed to provide the responsive documentation to Sections 13, 14, and 15 of the application form, which required information relevant to Yuin University’s school of oriental medicine and acupuncture. The 2015 new application contains a substantial volume of documents regarding many aspects of the institution’s school of oriental medicine and acupuncture. Christine Lee submitted that documentation in an effort to comply with this requirement. Mr. Saetune testified that he has not considered any documents contained in the 2015 new application because the Bureau has not processed the 2015 new application.⁷

Provision of Financial Statements

38(a). Complainant alleged the 2012 renewal application failed to provide the required financial statements. Mr. Saetune testified that corporate bylaws should have been included with the 2012 renewal application, but they were not. He criticized the financial documents submitted with the renewal as old because they reflected information from the years 2009 and 2010. Audited or reviewed financial statements from 2011 should have been included. (RT, Vol. II, p. 26-27.)

38(b). On July 16, 2015, the Bureau performed a visual inspection of Yuin University, during which Bureau inspector Michelle Loo reviewed the institution’s financial resources. Ms. Loo testified that the documents Yuin University provided showed the institution had insufficient assets and cash on hand to cover its operating expenses in May 2015. In particular, she noted the institution’s checking account balance to be \$3,165 and compared it with what she believed were monthly operating expenses of \$91,905. However, the institution had a bank account with a balance of \$57,180.65, including \$3,165 in checking. (Exhibit 23B.) The evidence showed Ms. Loo misread the bank statements in question, assuming the institution’s monthly operating expenses were \$91,905, when in fact that figure represented five months of operating expenses, or an operating-expenses obligation that averaged \$18,380 per month. The evidence shows Yuin University possesses sufficient financial resources and the corresponding documentation to detail its 30-day operating expenses. Evidence is lacking regarding Yuin’s other financial resources required under 5 C.C.R. § 71745, however, including the provision of current audited or reviewed financial statements.

⁷ There was no evidence to suggest the 2015 new application could supersede the 2012 renewal application, and the Second Amended SOI deals only with the issue of the Bureau’s denial of the 2012 renewal application. While the 2015 new application may have been Ms. Lee’s attempts to establish compliance, except in specific circumstances (see Ed. Code § 94809; 5 C.C.R. § 70040(b)), the Bureau cannot process an application for a “new” school to continue the operation of an existing one.

Duly Qualified Faculty Members

39. Complainant alleged the 2012 renewal application failed to provide sufficient evidence that duly qualified faculty members were hired to deliver the educational program, and that the documentation provided instead described Yuin University's faculty appointment process.

Facilities and Equipment Available to Students

40. Complainant alleged the 2012 renewal application failed to provide sufficient evidence required by section 18 of the application form, which calls for a description of facilities and equipment available for use by the students.

Libraries and Learning Resources Available to Students

41. Complainant alleged the 2012 renewal application failed to provide sufficient evidence required by section 19 of the application form, which calls for a description of libraries and learning resources available for use by the students.

Insufficient Catalog

42. Complainant alleged the 2012 renewal application failed to provide sufficient evidence that the institution's catalog meets minimum requirements. On July 16, 2015, the Bureau performed a visual inspection of Yuin University, during which its inspector reviewed the institution's catalog and found minor violations. The inspector later reported that "[t]he institution provided an updated Catalog that is now in compliance" (Exhibit 23.)

Insufficient Recordkeeping Policy and Procedures

43. Complainant alleged the 2012 renewal application failed to provide sufficient recordkeeping policy and procedures evidence that the institution's catalog meets minimum requirements.

Insufficient Self-Monitoring

44. Complainant alleged the 2012 renewal application failed to provide sufficient self-monitoring evidence.

Additional Relevant Evidence

45. There was no evidence that Christine Lee or Andrew Kim intentionally failed to submit adequate documentation in compliance with the Bureau's regulations in support of the 2012 renewal application. By all accounts, they showed consistent readiness to comply with the Bureau's inquiries and concerns. Ms. Lee testified that her primary desire is to prove to the Bureau that through her management of Yuin University, she will provide excellent service to students and the community in a way that will "make the Bureau proud" of her work. She is deeply disappointed that the Bureau has not maintained contact with her to solve the problems between the Bureau and Yuin University. Ms. Lee regretted the previous problems involving the Bureau and Henry Yu, but she is intent on maintaining full compliance for Yuin University and wants the Bureau to recognize that "I am not

Henry Yu.” (Testimony of Christine Lee.)

46(a). Yvette Johnson, the Bureau’s Enforcement Chief, manages and oversees its Complainant Investigations Unit and has in-depth knowledge of the statutes and regulations governing institutional compliance issues.

46(b). Ms. Johnson had no knowledge as to why the Bureau has not acted upon the 2015 new application or whether its contents meet minimum requirements, stating that this issue is “not my side of the house.” (Testimony of Yvette Johnson.) She is aware the Bureau currently has a 600-to-700-application backlog. She had no knowledge as to whether anyone at the Bureau has been in contact with Christine Lee regarding the 2015 new application.

46(c). Ms. Johnson was present throughout the hearing and observed the presentation of complainant’s case in chief. She agreed that the Tenth Cause for Denial in the Second Amended SOI, alleging failure of the enrollment agreement to meet minimum requirements, and the Nineteenth Cause for Denial in the Second Amended SOI, alleging failure to submit a catalog that meets minimum requirements, had had been found in Ms. Loo’s compliance report as meeting the Bureau’s requirements. She stated the Bureau wants the institution to be in full compliance. If Yuin University no longer advertises that it is accredited and no longer offers oriental medicine and acupuncture courses without Bureau approval, then, in Ms. Johnson’s view, those particular problems will be solved.

46(d). Ms. Johnson knew of no laws or regulations which would prohibit the Bureau from considering the information presented in the 2015 new application. However, she believed the 2015 new application could not remedy the 2012 renewal application as if to replace it completely. This limitation necessitated the statement-of-issues process the Bureau followed in this case. Ms. Johnson still considered Henry Yu to be the present owner of Yuin University.

47. Kevin Grant, Ph.D., has been Yuin University’s Chief Academic Officer since September 2015. He oversees its programs, policies, compliance issues, and faculty hiring. Dr. Grant has 17 years of teaching experience and holds a Doctorate in Organizational Leadership. His professional experience includes private academic consulting for various institutions since 2011, and acting as Dean of Graduate Studies at Keller Graduate School from 2009 until 2011. (Exhibit V.) Dr. Grant testified credibly that since he has worked with Yuin University, he has never seen, met, or spoken with Henry Yu, nor has he seen any indication that Henry Yu is involved with the institution in any way. He attested that the institution is not holding itself out as accredited, but it is currently in the process of becoming accredited through the Transnational Association of Christian Colleges and Schools (TRACS), a national accreditation agency based in Virginia which is recognized by the United States Department of Education. The institution is also not offering any programs in oriental medicine or acupuncture because it has not obtained Bureau approval to offer these programs. Dr. Grant’s primary intention is for Yuin University to maintain full compliance with all laws and regulations, in cooperation with the Bureau.

Breakdown in Application Process

48. The evidence showed that a breakdown in communication occurred between the Bureau, Yuin University, and Christine Lee during the 2012 renewal application process. This failure is partly due to the Bureau maintaining that Christine Lee was not the owner of Yuin University and not

recognizing her as such. The Bureau's lack of communication with Christine Lee or Andrew Kim restricted the applicants from providing further documentation, which would bring their application into compliance, which made it impossible for Mr. Saetune, the Bureau's specialist assigned to evaluate the application and facilitate the process, to resolve his concerns about issues of non-compliance. At the hearing, Mr. Saetune presented as a patient, reasonable, very experienced Bureau employee comfortable with the give-and-take of the application process. Christine Lee presented as a compliant owner respectful of the Bureau's authority. Neither displayed any enmity toward the other, and both appeared capable of communicating effectively regarding issues of compliance and regulation, given the opportunity. There was no evidence to suggest the Bureau and Yuin University could not have effectively communicated during the 2012 renewal application process.

49. The evidence supports a reasonable inference that the Bureau harbored a deep mistrust of Henry Yu. This is primarily due to the fact that in 2011, while under the direction of then owner Henry Yu, Yuin University provided false documentation to the Bureau, claiming it was previously approved by the Bureau to offer oriental medicine and acupuncture programs. (See Factual Finding 31) In short, Henry Yu attempted to mislead the Bureau into believing it had issued an approval when it had not. When challenged on this point, Henry Yu warned the Bureau of impending lawsuits: Additionally, Henry Yu had previously stipulated with the Bureau that Yuin University would not offer oriental medicine and acupuncture programs. In 2011, Henry Yu would have known the Bureau had conferred no such approval for these courses. Based on this history, it is understandable that the Bureau would be guarded and skeptical toward Henry Yu.

50. The evidence did not suggest, however, that the Bureau would have reason to mistrust Christine Lee. There is no evidence that she had any involvement with the false documentation in 2011. Instead, in 2012 Christine Lee reasonably relied on Henry Yu's false representations to her and Andrew Kim that the school was approved to teach oriental medicine and acupuncture. Unlike the Bureau, she relied upon Mr. Yu's false assertions, and Yuin University continued to offer these programs. It no longer does.

Alleged Aggravation

51. The alleged aggravation stems from an on-site compliance inspection of Yuin University the Bureau conducted in July 2015, approximately ten months after the original SOI was filed in this matter, unrelated to the SOI. The Bureau's inspector, Michelle Loo, testified that the compliance issues she raised with Yuin University staff during her inspection were reflected in a Notice to Comply she issued on that date, which was initialed by herself and Christine Lee. (Exhibit 23B, p. 134.) Yuin University responded to these issues by a letter dated August 11, 2015, with 18 pages of attached documentation Yuin University believed would show compliance. (Exhibit 23B, p. 136.) The evidence showed Yuin University's response was appropriate. Thereafter, Yuin University received no further communication from the Bureau and assumed the Bureau's compliance issues had been resolved.

52. In December 2015, complainant filed the Second Amended SOI, containing 15 alleged aggravating factors, all resulting from the July 2015 inspection.

53. Several Bureau witnesses attested that the Bureau's primary mission is to protect students against fraud and misrepresentation while establishing and enforcing minimum standards for postsecondary educational institutions to follow. Education Code section 94935 also sets forth a

process in which Bureau staff, during an inspection, shall issue a notice to comply before leaving the institution, just as Ms. Loo did. (Ed. Code § 94935(f).) Yet, section 94935, subdivision (f), further states the Bureau “shall not take any other enforcement action . . . against an institution that has received a notice to comply if the institution remedies the violation within 30 days from the date of the inspection.”

54. Education Section 94935 anticipates that the Bureau, during a compliance inspection, will attempt to resolve quickly the violations found. A reasonable inference may be made that the Bureau’s mission to protect students and enforce minimum standards cannot be achieved with any efficiency if the Bureau does not timely notify an institution of alleged violations of minimum standards and encourage prompt compliance. The Bureau’s inability to communicate with an approved owner of Yuin University, because of a failure to comply with the Bureau’s statutes and regulations, regarding the alleged violations did not help this process.

LEGAL CONCLUSIONS

1. An applicant for a license must prove that he should be granted a license. (*Martin v. Alcohol Beverage Control Appeals Board* (1959) 52 Cal.2d 238.) At a hearing regarding the denial of an application, the respondent “must show compliance” with the statutes and regulations outlined in the Statement of Issues. (Gov. Code § 11504.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Evid. Code § 115.)
2. Education Code section 94887 provides that an approval to operate shall be granted only after an applicant has presented sufficient evidence to the Bureau that the applicant has the capacity to satisfy the minimum operating standards. An application that does not satisfy those standards shall be denied.

3. Education Code section 94886 states:

Except as exempted in Article 4 (commencing with section 94874) or in compliance with the transition provisions in Article 2 (commencing with Section 94802), a person shall not open, conduct, or do business as a private postsecondary educational institution in this state without obtaining an approval to operate under this chapter.

4. Education Code section 94885 states:
 - (a) The bureau shall adopt by regulation minimum operating standards for an institution that shall reasonably ensure that all of the following occur:
 - (1) The content of each educational program can achieve its stated objective.
 - (2) The institution maintains specific written standards for student admissions for each educational program and those standards are related to the particular educational program.
 - (3) The facilities, instructional equipment, and materials are sufficient to enable students to achieve the educational program’s goals.
 - (4) The institution maintains a withdrawal policy and provides refunds.
 - (5) The directors, administrators, and faculty are properly qualified.
 - (6) The institution is financially sound and capable of fulfilling its commitments to students.

- (7) That, upon satisfactory completion of an educational program, the institution gives students a document signifying the degree or diploma awarded.
- (8) Adequate records and standard transcripts are maintained and are available to students.
- (9) The institution is maintained and operated in compliance with this chapter and all other applicable ordinances and laws.
- (b) Except as provided in Section 94855.1, an institution offering a degree must satisfy one of the following requirements:
 - (i) Accreditation by an accrediting agency recognized by the United States Department of Education, with the scope of that accreditation covering the offering of at least one degree program by the institution.
 - (ii) An accreditation plan, approved by the bureau, for the institution to become fully accredited within five years of the bureau's issuance of a provisional approval to operate to the institution. The provisional approval to operate to an unaccredited degree-offering institution shall be in compliance with Section 94885.5.

5. Education Code section 94887 states:

An approval to operate shall be granted only after an applicant has presented sufficient evidence to the bureau, and the bureau has independently verified the information provided by the applicant through site visits or other methods deemed appropriate by the bureau, that the applicant has the capacity to satisfy the minimum operating standards. The bureau shall deny an application for an approval to operate if the application does not satisfy those standards.

6. Education Code section 94891 states:

- (a) The bureau shall adopt by regulation the process and procedures whereby an institution may obtain a renewal of an approval to operate.
- (b) To be granted a renewal of an approval to operate, the institution shall demonstrate its continued capacity to meet the minimum operating standards.
- (c)(1) An institution that is denied renewal of an approval to operate may file an appeal in accordance with the procedures established by the bureau pursuant to Section 94888.
- (2) An institution that has filed an appeal of a denial of a ~~2012~~ renewal application may continue to operate during the appeal process, but must disclose in a written statement, approved by the bureau, to all current and prospective students, that the institution's application for renewal of approval to operate was denied by the bureau because the bureau determined the application did not satisfy the requirements to operate in California, that the institution is appealing the bureau's decision, and that the loss of the appeal may result in the institution's closure.
- (3) If the bureau determines that the continued operation of the institution during the appeal process poses a significant risk of harm to students, the bureau shall make an emergency decision pursuant to its authority provided in Section 94938.

7. Education Code section 94894 states:

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

- (a) A change in educational objectives, including an addition of a new diploma or a degree educational program unrelated to the approved educational programs offered by the institution.
- (b) A change in ownership.
- (c) A change in control.
- (d) A change in business organization form.
- (e) A change of location.
- (f) A change of name.
- (g) A significant change in the method of instructional delivery.
- (h) An addition of a separate branch more than five miles from the main or branch campus.

8. California Code of Regulations, title 5, section 71401 states:

An application shall be deemed abandoned and the fee forfeited when the application has not been completed by the applicant in accordance with the Act and this chapter within one year after the date that the application was initially received by the Bureau, or the date that the Bureau notified the applicant that it was incomplete, whichever is later. If an application has been abandoned, the applicant shall submit a new application and fee in order to seek an approval to operate.

This section does not require the Bureau to provide an applicant with a year to complete its application prior to determining that it is subject to denial. It merely permits the Bureau to deem that an application has been abandoned by the applicant after the passage of time without completion, so as to not have created a situation of perpetual limbo for applicants who fail to submit required documents. The argument that the Bureau prematurely denied respondents' application for renewal is contrary to public policy, since the Bureau has the responsibility to deny an application that clearly fails to establish that the applicant has demonstrated his or her right to an approval to operate. The Bureau's denial of an application upon its determination that the standards are not met do not constitute a denial of due process.

9. Cause exists to deny respondents' 2012 renewal application under Education Code sections 94893 and 94894, due to lack of standing and failure to file an application for change of business (First and Second bases for denial), as set forth in Factual Findings 10 through 16, 28-30, 33. The Bureau denied the 2012 renewal application filed by Yuin University's ostensible new owners, Christine Lee and Andrew Kim, based on its records that Henry Yu was still the owner of Yuin University for purposes of approval to operate by the Bureau.

10. Cause exists to deny respondents' 2012 renewal application under Education Code sections 94893 and 94894, for offering oriental medicine and acupuncture programs without prior approval by the Bureau (Third basis for denial), as set forth in Factual Finding 31. In mitigation, Christine Lee reasonably relied on Henry Yu's false representations, which he supported with false documentation he had submitted to the Bureau the year before, purportedly showing that Yuin University was authorized to offer those programs. In further mitigation, Yuin University no longer offers those programs.

11. Cause exists to deny respondents' 2012 renewal application under Education Code sections 94893 and 94894 for advertising its accreditation status (Fourth, Fifth, Sixth bases for denial alleged) as set forth in Factual Findings 32(a)-32(d).

12. Cause exists to deny respondents' 2012 renewal application under Education Code sections 94893 and 94894 for submitting an incomplete application (Seventh basis for denial alleged) as set forth in Factual Findings 36 and 38(a)-(b).

13. Cause does not exist to deny respondents' 2012 renewal application under Education Code sections 94893 and 94894 for the allegations contained in the Eighth, Ninth, Tenth, and Nineteenth Causes for Denial. As set forth in Factual Findings 34, 35, and 42, the alleged deficiencies were corrected.

14. Cause exists to deny respondents' 2012 renewal application under Education Code sections 94893 and 94894 for failure to provide information regarding its refund policy (Eleventh basis for denial alleged), as set forth in Factual Finding 36.

15. Cause does not exist to deny respondents' 2012 renewal application under Education Code sections 94893 and 94894 for the allegations contained in the Twelfth, Thirteenth, and Fourteenth Causes for Denial as they appear to be moot, as set forth in Factual Findings 31(a), (e).

16. Cause exists to deny respondents' 2012 renewal application under Education Code sections 94893 and 94894 for failure to provide financial statements (Fifteenth basis for denial alleged), as set forth in Factual Finding 38(a)-(b).

17. With respect to the allegations contained in the Sixteenth, Seventeenth, Eighteenth, Twentieth, and Twenty-first bases for denial, there is insufficient evidence in the record to conclude that respondents have met their burden.

18. Issues of compliance remain unresolved, and at this point in time there is insufficient evidence to conclude that the operators of Yuin University have shown it has the capacity to satisfy all relevant minimum operating standards of concern to the Bureau. The record presents evidence that communication broke down between the Bureau and those interested in the renewal of the approval of Yuin University. The Proposed Decision pointed out that Education Code section 94933.5 implies litigation should be a last resort when it states "[a]s much as is practicable, the bureau shall seek to resolve instances of noncompliance . . ." This section, however, applies to issues of enforcement, not licensing. In this case, however, Yuin University's apparent owner appeared motivated to work with the Bureau toward achieving full compliance.

19. The following order is necessary for student and public protection and to ensure that Christine Lee, solely,⁸ owns and controls Yuin University, and can be evaluated by the Bureau to meet the requirements of ownership in her sole capacity, and Yuin University meets minimum standards, and also affords the operators of Yuin University an opportunity to prove it can meet these important objectives.

ORDER


1. The 2012 Application for Renewal of Approval to Operate and Offer Educational Programs

⁸ There is evidence to support ownership and control by both Christine Lee and Andrew Kim. Accordingly, Ms. Lee must be able to establish her sole ownership and control, as well as her qualifications to operate Yuin University.

for Yuin University, a non-accredited institution is granted, and a conditional authorization to operate shall issue for six months, upon the following terms and conditions:

2. Within 30 days of the effective date of this order, Christine Lee shall file with the Bureau the appropriate application(s) for substantive change, for a change in ownership and/or control and/or business organization form, with required documentation, as determined necessary by the Bureau. The application(s) must be granted in order to satisfy the terms and conditions of this conditional authorization, and allow the renewal application to be fully approved.
3. Within 60 days of the effective date of this order, or 30 days of the granting of the application required in term #1 above, whichever is later, Christine Lee shall file with the Bureau the required documentation to complete and update the 2012 Renewal Application as set out in the Statement of Issues and in this decision, specifically;
 - a. **current** financial statements and documents establishing sufficient financial resources, as required by 5 C.C.R. §§ 71475(w), 71745, and 74115; and
 - b. documentation to establish refund policy, qualified faculty, library and learning resources, recordkeeping policies, and self-monitoring procedures.
4. Failure to timely comply with these requirements shall result in the expiration of the conditional authorization to operate and the renewal application shall be deemed denied, and no further administrative appeals shall be permitted.
5. If the documentation submitted does not correct the deficiencies noted after the first six months of the conditional approval granted, or the conditions upon which an approval may be granted are not satisfied, pursuant to 5 C.C.R. § 71400(d)(1), the conditional authorization to operate may be extended for a period not to exceed six (6) months if the program demonstrates to the Bureau a good faith effort and ability to correct the deficiencies. A conditional authorization to operate shall expire at the end of its stated period and the application shall be deemed denied, and no further administrative appeals shall be permitted, unless the deficiencies are removed prior to its expiration and an approval to operate has been granted before that date.
6. Upon completion of the terms and conditions to the satisfaction of the Bureau, respondents' 2012 renewal application shall be granted as of the effective date of this decision.
7. Respondents shall comply with any and all other provisions of law applicable to the operation of a private postsecondary institution, including accreditation standards. The Bureau has continuing jurisdiction to investigate compliance with the laws and bring any enforcement action it deems necessary, regardless of the status of the conditional authorization or granting of the renewal application.

Dated: April 21, 2017



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs