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8 **BEFORE THE**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. BPPE22-515

13 **MILPITAS MASSAGE COLLEGE; NINH THI**  
14 **NGUYEN; OWNER**  
15 **106 South Abel Street**  
16 **Milpitas, CA 95035**

**ACCUSATION**

**Institution Code No. 60985589**

Respondents.

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18  
19 **PARTIES**

20 1. Deborah Cochrane (Complainant) brings this Accusation solely in her official  
21 capacity as the Chief of the Bureau for Private Postsecondary Education (Bureau), Department of  
22 Consumer Affairs.

23 2. On or about April 19, 2007, the Bureau granted Approval to Operate Institution Code  
24 No. 60985589 to Diana Nguyen Vuong d.b.a. Milpitas Massage College. An application for  
25 change of ownership was received by the Bureau on July 2, 2012, and according to Bureau  
26 records, Ninh Thi Nguyen (Respondent) began ownership of Milpitas Massage College on  
27 December 31, 2012. The Institution Approval to Operate was in full force and effect at all times  
28 relevant to the charges brought in this Accusation, and will expire on January 6, 2025. Pursuant

1 to the Approval to Operate, Respondent is permitted to teach the following programs: Barbering,  
2 Cosmetology, Electrology, Esthetics, Manicuring and Nail Technician, as well as Basic,  
3 Intermediate and Advanced Massage.

4 **JURISDICTION**

5 3. This Accusation is brought before the Director of the Department of Consumer  
6 Affairs (Director) for the Bureau under the authority of the following laws. All section references  
7 are to the Education Code unless otherwise indicated.

8 4. Business and Professions Code section 118 states, in part:

9 ...

10 (b) The suspension, expiration, or forfeiture by operation of law of a license issued by a  
11 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by  
12 order of a court of law, or its surrender without the written consent of the board, shall not, during  
13 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its  
14 authority to institute or continue a disciplinary proceeding against the licensee upon any ground  
15 provided by law or to enter an order suspending or revoking the license or otherwise taking  
16 disciplinary action against the licensee on any such ground.

15 (c) As used in this section, 'board' includes an individual who is authorized by any  
16 provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,'  
17 'registration,' and 'permit.'"

17 5. Business and Professions Code section 477 states:

18 As used in this division:

19 (a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,'  
20 'examining committee,' 'program,' and 'agency.'

21 (b) 'License' includes certificate, registration or other means to engage in a business or  
22 profession regulated by this code.

23 6. Section 94937 states, in part:

24 (a) As a consequence of an investigation, which may incorporate any materials obtained or  
25 produced in connection with a compliance inspection, and upon a finding that an institution has  
26 committed a violation, the bureau may place an institution on probation or may suspend or revoke  
27 an institution's approval to operate for:

27 ...

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1 (2) A material violation or repeated violations of this chapter or regulations adopted  
2 pursuant to this chapter that have resulted, or may result, in harm to students. For purposes  
3 of this paragraph, “material violation” includes, but is not limited to, misrepresentation,  
4 fraud in the inducement of a contract, and false or misleading claims or advertising, upon  
5 which a student reasonably relied in executing an enrollment agreement and that resulted,  
6 or may result, in harm to the student.

7 ...

8 (c) The bureau may seek reimbursement pursuant to Section 125.3 of the Business and  
9 Professions Code.

### 10 STATUTORY AND REGULATORY PROVISIONS

11 7. Section 94893 states:

12 If an institution intends to make a substantive change to its approval to operate, the  
13 institution shall receive prior authorization from the bureau. Except as provided in subdivision (a)  
14 of Section 94896, if the institution makes the substantive change without prior bureau  
15 authorization, the institution’s approval to operate may be suspended or revoked.

16 8. Section 94897 states, in part:

17 An institution shall not do any of the following:

18 ...

19 (j) In any manner make an untrue or misleading change in, or untrue or misleading  
20 statement related to, a test score, grade or record of grades, attendance record, record indicating  
21 student completion, placement, employment, salaries, or financial information, including any of  
22 the following:

23 (1) A financial report filed with the bureau.

24 (2) Information or records relating to the student's eligibility for student financial aid at the  
25 institution.

26 (3) Any other record or document required by this chapter or by the bureau.

27 (k) Willfully falsify, destroy, or conceal any document of record while that document of  
28 record is required to be maintained by this chapter.

...

9. Section 94902 states, in part:

(a) A student shall enroll solely by means of executing an enrollment agreement. The  
enrollment agreement shall be signed by the student and by an authorized employee of the  
institution.

1 (b) An enrollment agreement is not enforceable unless all of the following requirements are  
met:

2 (1) The student has received the institution's catalog and School Performance Fact Sheet  
3 prior to signing the enrollment agreement.

4 . . .

5 (3) Prior to the execution of the enrollment agreement, the student and the institution have  
6 signed and dated the information required to be disclosed in the Student Performance Fact  
7 Sheet pursuant to subdivisions (a) to (d), inclusive, of Section 94910. Each of these items in  
the Student Performance Fact Sheet shall include a line for the student to initial and shall be  
8 initialed and dated by the student.

9 (c) A student shall receive a copy of the signed enrollment agreement, in writing or  
electronically, regardless of whether total charges are paid by the student.

10 10. California Code of Regulations, title 5, section 71715 states, in part:

11 (a) Instruction shall be the central focus of the resources and services of the institution.

12 (b) The institution shall document that the instruction offered leads to the achievement of  
13 the learning objectives of each course.

14 (c) Direct instruction requires the physical presence of one or more students and one or  
15 more faculty members at the same location. Direct instruction includes instruction presented in a  
classroom, seminar, workshop, lecture, colloquium, laboratory, tutorial, or other physical learning  
16 settings consistent with the mission, purposes, and objectives of the institution.

17 11. California Code of Regulations, title 5, section 71735 states, in part:  
18

19 (a) An institution shall have sufficient facilities and necessary equipment to support the  
achievement of the educational objectives of all of the courses and educational programs in which  
20 students are enrolled. If an institution represents that the educational service will fit or prepare a  
student for employment in a particular occupation or as described in particular job titles, either of  
21 the following conditions shall be met:

22 (1) The equipment used for instruction or provided to the student shall be comparable  
23 in model type or features to equipment generally used in those occupations or job titles at  
the time the instruction is offered.

24 (2) The institution shall establish that the equipment used for instruction or provided  
to a student is not obsolete and is sufficient for instructional purposes to reasonably assure  
25 that a student acquires the necessary level of education, training, skill, and experience to  
26 obtain employment in the field of training and to perform the tasks associated with the  
occupation or job title to which the educational program was represented to lead.

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1 (b) An institution's facilities, including heating and cooling, ventilation, lighting,  
2 classrooms, laboratories, and campus environs, shall be well-maintained. The institution shall  
3 maintain all valid permits required by any public agencies relating to the health and safety of the  
4 institution's facilities and equipment on file, and such permits shall be available to the Bureau  
5 upon request.

6 12. California Code of Regulations, title 5, section 71745 states, in part:

7 (a) The institution shall document that it has at all times sufficient assets and financial  
8 resources to do all of the following:

9 (1) Provide all of the educational programs that the institution represented it would  
10 provide.

11 (2) Ensure that all students admitted to its educational programs have a reasonable  
12 opportunity to complete the programs and obtain their degrees or diplomas.

13 (3) Maintain the minimum standards required by the Act and this chapter.

14 (4) Pay timely refunds as required by Article 13 of the Act.

15 (5) Pay all operating expenses due within 30 days.

16 (6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or greater at  
17 the end of the most recent fiscal year when using generally accepted accounting principles,  
18 or for an institution participating in Title IV of the federal Higher Education Act of 1965,  
19 meet the composite score requirements of the U.S. Department of Education. For the  
20 purposes of this section, current assets does not include: intangible assets, including  
21 goodwill, going concern value, organization expense, startup costs, long-term prepayment  
22 of deferred charges, and non-returnable deposits, or state or federal grant or loan funds that  
23 are not the property of the institution but are held for future disbursement for the benefit of  
24 students. Unearned tuition shall be accounted for in accordance with general accepted  
25 accounting principles. . .

26 13. California Code of Regulations, title 5, section 76140 states:

27 (a) A qualifying institution shall collect and maintain records of student information to  
28 substantiate the data reported on the STRF Assessment Reporting Form and records of the  
students' eligibility under the Fund. Such records shall include the following for each student:

(1) Student identification number,

(2) First and last names,

(3) Email address,

(4) Local or mailing address,

(5) Address at the time of enrollment,

(6) Home address,

(7) Date enrollment agreement signed,

(8) Courses and course costs,

(9) Amount of STRF assessment collected,

(10) Quarter in which the STRF assessment was remitted to the Bureau,

(11) Third-party payer identifying information,

(12) Total institutional charges charged, and

(13) Total institutional charges paid.

1 (b) The qualifying institution shall maintain the data required under this section in an  
2 electronic format that is readily available and open to inspection by the Bureau upon request. The  
3 institution shall make the records immediately available to a Bureau representative conducting a  
4 site inspection or, upon written request, shall provide a copy within 14 calendar days of the  
5 request. All records shall be provided to the Bureau in an intelligible and orderly manner and in  
6 an electronic format.

7 14. California Code of Regulations, title 5, section 71760 states:

8 Each institution shall develop and maintain adequate procedures used by the institution to  
9 assure that it is maintained and operated in compliance with the Act and this Division.

10 15. California Code of Regulations, title 16, section 940, states:

11 a) The minimum equipment for a school of cosmetology shall be as follows:

12 ...

13 (8) Thermal hair straighteners

14 (A) Non-electric comb: 3

15 (B) Stove (for non-electric combs): 1

16 (C) Electric curling iron: 1

17 (D) Non-electric curling iron (at least two sizes): 3

18 (E) Stove (for non-electric curling irons): 1

19 ...

20 16. California Code of Regulations, title 16, section 961, states:

21 (a) An approved school shall provide a printed or electronic copy of the following to  
22 each student within the first week of instruction:

23 (1) At least one textbook in the course of instruction that the student is enrolled in  
24 (e.g. cosmetology, barbering, electrology, esthetics, manicuring).

(2) A current version of the California Barbering and Cosmetology Act (Chapter 10  
of Division 3 of the California Business and Professions Code, commencing with  
section 7301);

(3) A current copy of the Barbering and Cosmetology Regulations (Title 16, Division  
9 of the California Code of Regulations, commencing with section 904);

(4) A current version of any licensing examination translation guide prepared by the  
licensing exam vendor to assist exam candidates in the language in which the student  
intends to take the examination, if the student intends to take the examination in one  
of the non-English languages offered by the board.

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1 **COST RECOVERY**

2 17. Business and Professions Code section 125.3 provides, in part, that the Bureau may  
3 request the administrative law judge to direct a licensee found to have committed a violation or  
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
5 and enforcement of the case, with failure of the licensee to comply subjecting the license to not  
6 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs  
7 may be included in a stipulated settlement.

8 **FACTUAL ALLEGATIONS**

9 18. On or about December 14, 2021, the State Board of Barbering and Cosmetology  
10 (BBC) notified all schools, including Respondent, by email that any new 1,000-hour course must  
11 be approved by both the Bureau and the BBC.

12 19. On or about December 22, 2021, Respondent applied for approval of a 1,000-hour  
13 course from the BBC.

14 20. On or about December 27, 2021, the BBC sent an email to Respondent that the  
15 curriculum was not provided with its application. Respondent’s application for a 1,000-hour  
16 course was never approved by the BBC.

17 21. On or about January 12, 2022, the BBC notified all schools by email that the schools  
18 must have approval from both the Bureau and the BBC to enroll students.

19 22. A representative of the BBC attempted to inspect Milpitas Massage College and  
20 found it to be closed, locked, and empty on or about the following dates and times:

- 21 a. April 13, 2022 at 10:00 AM;
- 22 b. April 18, 2022 at 1:30 PM;
- 23 c. May 10, 2022 at 9:50 AM and;
- 24 d. May 12, 2022 at 10:00 AM.

25 On these dates the “open” sign was not lit. The BBC representative called the phone number on  
26 the window on each date and no one answered.

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1 23. On or about April 6, 2022, Respondent submitted an application to the Bureau for a  
2 “Change of Educational Objective” with a request for approval to offer a 1000-hour Cosmetology  
3 program. This application was not granted. Respondent has never applied to the Bureau for  
4 approval to instruct in the Vietnamese language.

5 24. On or about July 7, 2022, the Bureau received a complaint against Respondent and  
6 opened an investigation.

7 **AUGUST 23, 2022 –SITE INSPECTION/INVESTIGATION**

8 25. On or about August 23, 2022, representatives of the Bureau and the BBC conducted a  
9 joint inspection and investigation of Milpitas Massage College.

10 26. Respondent stated that the College does not provide School Performance Fact Sheets  
11 (SPFS) to students and that sometimes student enrollment agreements are not signed.

12 27. Only 1,500 of the approximate 3,000 square feet of the College location was  
13 dedicated to working, practice, and classroom areas. Other parts appeared to be used as  
14 residential space, and two of Respondent’s California Driver’s Licenses had the College address  
15 on them.

16 28. On or about August 23, 2022, no non-electric combs, non-electric curling irons, or  
17 any stoves for non-electric curling irons were visible anywhere on Respondent’s premises. An  
18 employee of Respondent stated that he did not know where these items were.

19 29. No textbooks were visible anywhere on Respondent’s premises. An employee of  
20 Respondent stated that textbooks are only online and the students do not have textbooks.

21 30. Respondent had the 2013 version of the Barbering and Cosmetology Act and the  
22 Rules and Regulations of the Board of Barbering and Cosmetology on site, but not the current  
23 2022 version.

24 31. Respondent did not have the Board of Barbering and Cosmetology's Health and  
25 Safety Course Textbook, Student Exam Booklet, or the Instructor Guide.

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1           36. Respondent stated that most of the students are Vietnamese, and her advertisements  
2 are in the Vietnamese language. There is a different phone number on the Vietnamese  
3 advertisement. Respondent stated it is her cell phone number. This is a different number than the  
4 number posted outside the workplace, which was called by the BBC inspector.

5           37. Respondent has not received authorization to teach in the Vietnamese language.

6           38. When asked how student grades were documented, Respondent stated that students'  
7 grades were not tracked, and that the instructor advises the students on how they perform on  
8 different topics until the students understand and improve.

9           39. When asked if there were repercussions for failing grades, Respondent stated that  
10 there are no repercussions.

11           40. Some students' residential addresses were over 100 miles away from the College.

12           41. Student records omitted key dates such as the date of enrollment agreements.

13           42. Students attended the school in unusual patterns and frequency that demonstrate the  
14 timecard records are inaccurate.

15           **REVIEW OF STUDENT TUITION RECOVERY FUND AND FINANCIAL RECORDS**

16           43. Respondent did not provide a copy of the Student Tuition Recovery Fund (STRF)  
17 Records within 14 calendar days of September 27, 2022, in an intelligible and orderly manner and  
18 in an electronic format as requested. The STRF Records provided were scanned and in a PDF  
19 format.

20           44. Respondent's Balance Sheet Statement reflects \$50,496.18 in assets and  
21 \$110,728.54 in liabilities. Respondent is not solvent. Furthermore, Respondent's assets to  
22 liabilities ratio is .46. The California Code of Regulations requires that the ratio be 1.25 to 1 or  
23 greater.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Insufficient Facilities and Equipment)**

3 45. Respondent has subjected its approval to operate to disciplinary action under  
4 California Code of Regulations, title 5, section 71735, subdivisions (a) and (b), title 16, sections  
5 940 and 961, and/or California Building Code section 1253.1.1, for insufficient facilities and  
6 equipment, as described in paragraphs 25-32.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Failure to Provide Requisite Instruction)**

9 46. Respondent has subjected its approval to operate to disciplinary action under  
10 California Code of Regulations, title 5, section 71715, subdivisions (a) and/or (b), for instruction  
11 not being the central focus of the institution and/or failing to provide the requisite direct  
12 instruction, as described in paragraphs 18-42.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Prohibited Business Practices)**

15 47. Respondent has subjected its approval to operate to disciplinary action under Code  
16 section 94897, subdivisions (j) and/or (k) for committing prohibited business practices, including  
17 making untrue or misleading changes in, and/or making untrue or misleading statements related  
18 to, a record indicating student completion or other document required by the Bureau, and/or  
19 willfully falsifying, destroying, or concealing any document of record, by allowing inconsistent  
20 and false documenting of student training hours, as described in paragraphs 18-42.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Failure to Meet Minimum Operating Standards)**

23 48. Respondent has subjected its approval to operate to disciplinary action under  
24 California Code of Regulations, title 5, section 71760, in that Respondent failed to develop and  
25 maintain adequate procedures used by the institution to assure that it is maintained and operated  
26 in compliance with the Act and the Bureau's regulations, when Respondent failed to document  
27 student training hours, as described in paragraphs 18-42.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Insufficient Assets and Financial Resources)**

3 49. Respondent has subjected its approval to operate to disciplinary action under  
4 California Code of Regulations, title 5, section 71745(a)(6), for failing have sufficient assets and  
5 financial resources, and failing to maintain a ratio of current assets to current liabilities of 1.25 to  
6 1.00 or greater, as described in paragraph 44.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 **(Failure to Comply with Enrollment Requirements)**

9 50. Respondent has subjected its approval to operate to disciplinary action under Code  
10 section 94902 subdivisions (a) and/or (b), for failing to comply with enrollment requirements, as  
11 described in paragraphs 25 and 35.

12 **SEVENTH CAUSE FOR DISCIPLINE**

13 **(Failure to Comply with Student Tuition Recovery Fund Record-Keeping Requirements)**

14 51. Respondent has subjected its approval to operate to disciplinary action under Code  
15 section 76140(b), for failing to provide the requisite Student Tuition Recovery Fund (STRF)  
16 records as requested by the Bureau, as described in paragraph 43.

17 **EIGHTH CAUSE FOR DISCIPLINE**

18 **(Substantive Change)**

19 52. Respondent has subjected its approval to operate to disciplinary action under Code  
20 section 94893, for making a substantive change not in accordance with its accreditation standards,  
21 by providing instruction in Vietnamese and providing a 1000-hour cosmetology course, as  
22 described in paragraphs 18-37.

23 **DISCIPLINARY CONSIDERATIONS**

24 53. To determine the degree of discipline, if any, to be imposed on Respondent,  
25 Complainant alleges that on or about July 29, 2021, Bureau staff conducted an announced  
26 compliance inspection at the Institution. Bureau staff reviewed student files. Respondent was  
27 unable to provide all the requested documents for inspection and copying during normal business  
28 hours. The Bureau issued Administrative Citation No. 2223011 on August 8, 2022 to

1 Respondent, resulting in the issuance of a \$5,000.00 fine and Order of Abatement, based on the  
2 following:

| Laws/Regulations Violated  | Description  |
|--|--|
| 3<br>4<br>5 CCR title 5, section 71920(a)(b)(3),<br>6 CCR title 5, section 71800 (c) and<br>7 Code section 94902(a)(b)(1)(3) | Bureau staff reviewed student files and found that the files did not contain a copy of the SPFS document as required. In addition, Bureau staff found that the Enrollment Agreement was not complete, as the financial section, program start date, and scheduled completion date sections were missing. |
| 8 CCR title 5, section 71930(e)  | 9 Respondent did not have faculty files for the Bureau staff to review. Respondent stated that faculty information could be found in the catalog. Bureau staff informed Respondent that the Institution must keep faculty records to show proof of education requirements.                               |

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11 The Order of Abatement is under review but has not been deemed compliant.

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14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein further  
16 alleged, and that following the hearing, the Director of the Department of Consumer Affairs issue  
17 a decision:

- 18 1. Revoking or suspending Approval to Operate Institution Code No. 60985589, issued  
19 to Ninh Thi Nguyen dba Milpitas Massage College (Respondent);
- 20 2. Ordering Respondent to pay the Bureau for Private Postsecondary Education the  
21 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
22 Professions Code section 125.3; and,
- 23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: 2 / 2 4 / 2 0 2 3

25 “Original Signature on File”

26 DEBORAH COCHRANE  
27 Chief

28 Bureau for Private Postsecondary Education  
Department of Consumer Affairs

State of California

*Complainant*