

1 XAVIER BECERRA
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SUSANA A. GONZALES
Deputy Attorney General
4 State Bar No. 253027
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 879-0266
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

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

13 In the Matter of the Accusation Against:

Case No. 1001841

14 **THE COSMO FACTORY**
15 **COSMETOLOGY ACADEMY; JAMES**
16 **FISHER (OWNER)**
17 **131 B Front Street**
Santa Cruz, CA 95060

ACCUSATION

18 **Institution Code Number 98311708**

19 Respondent.

20
21 Complainant alleges:

22 **PARTIES**

23 1. Dr. Michael Marion, Jr. (Complainant) brings this Accusation solely in his official
24 capacity as the Chief of the Bureau for Private Postsecondary Education, Department of
25 Consumer Affairs.

26 ///

27 ///

1 RELEVANT STATUTES

2 6. Section 94897 of the Education Code states, in pertinent part:

3 "An institution shall not do any of the following:

4 ...

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

9 "(1) A financial report filed with the bureau.

10 "(2) Information or records relating to the student's eligibility for student financial aid at
11 the institution.

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

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

15 "(l) Use the terms "approval," "approved," "approval to operate," or "approved to operate"
16 without stating clearly and conspicuously that approval to operate means compliance with state
17 standards as set forth in this chapter. If the bureau has granted an institution approval to operate,
18 the institution may indicate that the institution is "licensed" or "licensed to operate," but may not
19 state or imply either of the following:

20 "(1) The institution or its educational programs are endorsed or recommended by the state
21 or by the bureau.

22 "(2) The approval to operate indicates that the institution exceeds minimum state standards
23 as set forth in this chapter.

24 "(m) Direct any individual to perform an act that violates this chapter, to refrain from
25 reporting unlawful conduct to the bureau or another government agency, or to engage in any
26 unfair act to persuade a student not to complain to the bureau or another government agency.

27 ..."

28 ///

1 7. Section 94900 of the Education Code states, in pertinent part:

2 ...

3 “(b) An institution shall maintain, for each student granted a degree or certificate by that
4 institution, permanent records of all of the following:

5 “(1) The degree or certificate granted and the date on which that degree or certificate was
6 granted.

7 “(2) The courses and units on which the certificate or degree was based.

8 “(3) The grades earned by the student in each of those courses.”

9 8. Section 94912 of the Education Code states:

10 “Prior to the execution of an enrollment agreement, the information required to be disclosed
11 pursuant to subdivisions (a) to (d), inclusive, of Section 94910 shall be signed and dated by the
12 institution and the student. Each of these items shall also be initialed and dated by the student.”

13 9. Section 94919 of the Education Code states, in pertinent part:

14 “(a) An institution that participates in the federal student financial aid programs complies
15 with this article by complying with applicable regulations of the federal student financial aid
16 programs under Title IV of the federal Higher Education Act of 1965.”

17 10. Section 94929, subdivision (a), of the Education Code states:

18 “(a) An institution shall annually report to the bureau, as part of the annual report, and
19 publish in its School Performance Fact Sheet, the completion rate for each program. Except as
20 provided in subdivision (b), the completion rate shall be calculated by dividing the number of
21 graduates by the number of students available for graduation.”

22 11. Section 94929.5, subdivision (a)(2), of the Education Code states:

23 “(a) An institution shall annually report to the bureau, as part of the annual report, and shall
24 publish in its School Performance Fact Sheet, all of the following:

25 ...

26 “(2) The license examination passage rates for the immediately preceding two years for
27 programs leading to employment for which passage of a state licensing examination is required,
28 calculated by dividing the number of graduates who pass the examination by the number of

1 graduates who take the licensing examination the first time that the examination is available after
2 completion of the educational program. The institution shall use state agency licensing data to
3 calculate license examination passage rates. If those data are unavailable, the institution shall
4 calculate the license examination passage rate in a manner consistent with regulations adopted by
5 the bureau.”

6 12. Section 94934, subdivision (a), of the Education Code states:

7 “(a) As part of the compliance program, an institution shall submit an annual report to the
8 bureau, under penalty of perjury, signed by a responsible corporate officer, by July 1 of each year,
9 or another date designated by the bureau, and it shall include the following information for
10 educational programs offered in the reporting period:

11 “(1) The total number of students enrolled by level of degree or for a diploma.

12 “(2) The number of degrees, by level, and diplomas awarded.

13 “(3) The degree levels and diplomas offered.

14 “(4) The Student Performance Fact Sheet, as required pursuant to Section 94910.

15 “(5) The school catalog, as required pursuant to Section 94909.

16 “(6) The total charges for each educational program by period of attendance.

17 “(7) A statement indicating whether the institution is, or is not, current in remitting Student
18 Tuition Recovery Fund assessments.

19 “(8) A statement indicating whether an accrediting agency has taken any final disciplinary
20 action against the institution.

21 “(9) Additional information deemed by the bureau to be reasonably required to ascertain
22 compliance with this chapter.”

23 13. Section 94902, subdivision (a), of the Education Code states:

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

27 ///

28 ///

1 14. Section 94909 of the Education Code states, in pertinent part:

2 “(a) Except as provided in subdivision (d), prior to enrollment, an institution shall provide a
3 prospective student, either in writing or electronically, with a school catalog containing, at a
4 minimum, all of the following:

5 ...

6 “(6) If the educational program is designed to lead to positions in a profession, occupation,
7 trade, or career field requiring licensure in this state, a notice to that effect and a list of the
8 requirements for eligibility for licensure.

9 “(7) Information regarding the faculty and their qualifications.

10 “(8) A detailed description of institutional policies in the following areas:

11 “(A) Admissions policies, including the institution's policies regarding the acceptance of
12 credits earned at other institutions or through challenge examinations and achievement tests,
13 admissions requirements for ability-to-benefit students, and a list describing any transfer or
14 articulation agreements between the institution and any other college or university that provides
15 for the transfer of credits earned in the program of instruction. If the institution has not entered
16 into an articulation or transfer agreement with any other college or university, the institution shall
17 disclose that fact.

18 ...

19 “(9) The schedule of total charges for a period of attendance and an estimated schedule of
20 total charges for the entire educational program.

21 ...

22 “(15) The following statement:

23 “NOTICE CONCERNING TRANSFERABILITY OF CREDITS AND CREDENTIALS
24 EARNED AT OUR INSTITUTION

25 “The transferability of credits you earn at (name of institution) is at the complete discretion
26 of an institution to which you may seek to transfer. Acceptance of the (degree, diploma, or
27 certificate) you earn in (name of educational program) is also at the complete discretion of the
28 institution to which you may seek to transfer. If the (credits or degree, diploma, or certificate) that

1 you earn at this institution are not accepted at the institution to which you seek to transfer, you
2 may be required to repeat some or all of your coursework at that institution. For this reason you
3 should make certain that your attendance at this institution will meet your educational goals. This
4 may include contacting an institution to which you may seek to transfer after attending (name of
5 institution) to determine if your (credits or degree, diploma, or certificate) will transfer.

6 ...”

7 15. Section 94900.5, subdivision (b), of the Education Code states:

8 “An institution shall maintain, for a period of not less than five years, at its principal place
9 of business in this state, complete and accurate records of all of the following information:

10 ...

11 “(b) The names and addresses of the members of the institution’s faculty and records of the
12 educational qualifications of each member of the faculty.”

13 16. Code section 94913 of the Education Code states, in relevant part:

14 “(a) An institution that maintains an Internet Web site shall provide on that Internet Web
15 site all of the following:

16 “(1) The school catalog.

17 “(2) A School Performance Fact Sheet for each educational program offered by the
18 institution.

19 “(3) Student brochures offered by the institution.

20 ...

21 “(5) The institution's most recent annual report submitted to the bureau.”

22 RELEVANT REGULATIONS

23 17. California Code of Regulations, title 5, section 71660, states:

24 “An institution shall notify the Bureau of a non-substantive change including: change of
25 location of less than 10 miles; addition of a program related to the approved programs offered by
26 the institution; addition of a new branch five miles or less from the main or branch campus;
27 addition of a satellite; and change of mailing address. All such notifications shall be made within
28 30 days of the change and sent to the Bureau, in writing, to the address listed in section 70020.”

1 18. California Code of Regulations, title 5, section 76120, subdivision (a):

2 “(a) Each qualifying institution shall collect an assessment of zero dollars (\$0) per one
3 thousand dollars (\$1,000) of institutional charges, rounded to the nearest thousand dollars, from
4 each student in an educational program who is a California resident or is enrolled in a residency
5 program. For institutional charges of one thousand dollars (\$1,000) or less, the assessment is zero
6 dollars (\$0).”

7 19. California Code of Regulations, title 5, section 71750

8 “(a) Every institution shall make refunds that are no less than the refunds required under the
9 Act and this Division.

10 “(b) An institution may not enforce any refund policy that is not specified in the catalog as
11 required pursuant to section 94909(a)(8)(B) of the Code, and must refund all institutional charges
12 upon a student's withdrawal. Withdrawal policy procedures pursuant to section 94909(a)((8)(B)
13 of the Code shall include, at a minimum: the acceptable methods of delivery of a notice to
14 withdraw; whether withdrawal can be accomplished by conduct, and if so, how; the position or
15 positions to whom the notice to withdraw must be delivered; and the date that the notice to
16 withdraw is considered effective, which shall be no later than the date received by the institution.

17 “(c) A pro rata refund pursuant to section 94919(c) or 94920(d) or 94927 of the Code shall
18 be no less than the total amount owed by the student for the portion of the educational program
19 provided subtracted from the amount paid by the student, calculated as follows:

20 “(1) The amount owed equals the daily charge for the program (total institutional charge,
21 divided by the number of days or hours in the program), multiplied by the number of days student
22 attended, or was scheduled to attend, prior to withdrawal.

23 “(2) Except as provided for in subdivision (a)(3) of this section, all amounts paid by the
24 student in excess of what is owed as calculated in subdivision (a)(1) shall be refunded.

25 “(3) Except as provided herein, all amounts that the student has paid shall be subject to
26 refund unless the enrollment agreement and the refund policy outlined in the catalog specify
27 amounts paid for an application fee or deposit not more than \$250.00, books, supplies, or
28 equipment, and specify whether and under what circumstances those amounts are non-refundable.

1 Except when an institution provides a 100% refund pursuant to section 94919(d) or section
2 94920(b) of the Code, any assessment paid pursuant to section 94923 of the Code is non-
3 refundable.

4 “(4) For purposes of determining a refund under the Act and this section, a student shall be
5 considered to have withdrawn from an educational program when he or she withdraws or is
6 deemed withdrawn in accordance with the withdrawal policy stated in its catalog.

7 ...

8 “(f) The institution shall maintain a cancellation and withdrawal log, kept current on a
9 monthly basis, which shall include the names, addresses, telephone numbers, and dates of
10 cancellations or withdrawal of all students who have cancelled the enrollment agreement with, or
11 withdrawn from, the institution during the calendar year.”

12 20. California Code of Regulations, title 5, section 71770, states, in pertinent part:

13 “(a) The institution shall establish specific written standards for student admissions for each
14 educational program. These standards shall be related to the particular educational program. An
15 institution shall not admit any student who is obviously unqualified or who does not appear to
16 have a reasonable prospect of completing the program. In addition to any specific standards for an
17 educational program, the admissions standards must specify as applicable that:

18 “(1) Each student admitted to an undergraduate degree program, or a diploma program,
19 shall possess a high school diploma or its equivalent, or otherwise successfully take and pass the
20 relevant examination as required by section 94904 of the Code.

21 ...

22 “(c) If credit for prior experiential learning is to be granted, the policy for granting such
23 credit shall be included in the institution's catalog.

24 “(1) An institution may grant credit to a student for prior experiential learning only if:

25 “(A) The prior learning is equivalent to a college or university level of learning;

26 “(B) The learning experience demonstrates a balance between theory and practice and;

27 “(C) The credit awarded for the prior learning experience directly relates to the student's
28 degree program and is applied in satisfaction of some of the degree requirements.

1 “(2) Each college or university level learning experience for which credit is sought shall be
2 documented by the student in writing.

3 “(3) Each college or university level learning experience shall be evaluated by faculty
4 qualified in that specific subject area who shall ascertain (1) to what college or university level
5 learning the student's prior experience is equivalent and (2) how many credits toward a degree
6 may be granted for that experience.

7 “(4) The faculty evaluating the prior learning shall prepare a written report indicating all of
8 the following:

9 “(A) The documents in the student's record on which the faculty member relied in
10 determining the nature of the student's prior experience;

11 “(B) The bases for determining that the prior experience (i) is equivalent to college or
12 university level learning and (ii) demonstrates a balance between theory and practice; and

13 “(C) The bases for determining (i) to what college or university level the experience is
14 equivalent and (ii) the proper number of credits to be awarded toward the degree for that
15 experience.

16 “(5)(A) The institution shall designate at least one administrator to be responsible for the
17 review of faculty determinations regarding the award of credit for prior experiential learning.

18 “(B) The administrator shall document the institution's periodic review of faculty
19 evaluations to assure that the faculty written evaluations and awards of credit comply with this
20 section and the institution's policies and are consistent.

21 “(6) The amount of credit awarded for prior experiential learning shall not be related to the
22 amount charged the student for the assessment process.

23 “(7)(A) Of the first 60 semester credits awarded a student in an undergraduate program, no
24 more than 15 semester credits may be awarded for prior experiential learning.

25 “(B) Of the second 60 semester units (i.e., credits 61 to 120) awarded a student in an
26 undergraduate program, no more than 15 semester credits may be awarded for prior experiential
27 learning.

28

1 “(C) Of the first 30 semester credits awarded a student in a graduate program, no more than
2 6 semester credits may be awarded for prior experiential learning.

3 “(D) Of the second 30 semester credits (i.e., credits 31 to 60) awarded a student in a
4 graduate program, no more than 3 semester credits may be awarded for prior experiential
5 learning.

6 “(E) No credit for experiential learning may be awarded after a student has obtained 60
7 semester credits in a graduate program.”

8 21. California Code of Regulations, title 5, section 71720, subdivision (b)(2), states:

9 ...

10 “(b) Instructors in an Educational Program Not Leading to a Degree.

11 ...

12 “(2) Each instructor shall maintain their knowledge by completing continuing education
13 courses in his or her subject area, classroom management or other courses related to teaching.”

14 22. California Code of Regulations, title 5, section 71920, states, in pertinent part:

15 ...

16 “(b) In addition to the requirements of section 94900, the file shall contain all of the
17 following pertinent student records:

18 “(1) Written records and transcripts of any formal education or training, testing, or
19 experience that are relevant to the student's qualifications for admission to the institution or the
20 institution's award of credit or acceptance of transfer credits including the following:

21 “(A) Verification of high school completion or equivalency or other documentation
22 establishing the student's ability to do college level work, such as successful completion of an
23 ability-to-benefit test;

24 “(B) Records documenting units of credit earned at other institutions that have been
25 accepted and applied by the institution as transfer credits toward the student's completion of an
26 educational program;

27 ...

28

1 “(4) Records of the dates of enrollment and, if applicable, withdrawal from the institution,
2 leaves of absence, and graduation; and

3 “(5) In addition to the requirements of section 94900(b) of the Code, a transcript showing
4 all of the following:

5 “(A) The courses or other educational programs that were completed, or were attempted but
6 not completed, and the dates of completion or withdrawal;

7 ...

8 “(8) A copy of documents relating to student financial aid that are required to be
9 maintained by law or by a loan guarantee agency;

10 “(9) A document showing the total amount of money received from or on behalf of the
11 student and the date or dates on which the money was received;

12 “(10) A document specifying the amount of a refund, including the amount refunded for
13 tuition and the amount for other itemized charges, the method of calculating the refund, the date
14 the refund was made, and the name and address of the person or entity to which the refund was
15 sent...”

16 23. California Code of Regulations, title 5, section 71810, subdivision (b)(7), states:

17 “(b) The catalog shall contain the information prescribed by Section 94909 of the Code and
18 all of the following:

19 ...

20 “(7) The institution’s policies and procedures for the award of credit for prior experiential
21 learning, including assessment policies and procedures, provisions for appeal, and all charges that
22 a student may be required to pay;

23 ...”

24 24. California Code of Regulations, title 5, section 71930, states, in pertinent part:

25 “(a) An institution shall maintain all records required by the Act and this chapter. The
26 records shall be maintained in this state.

27

28

1 “(b)(1) In addition to permanently retaining a transcript as required by section 94900(b) of
2 the Code, the institution shall maintain for a period of 5 years the pertinent student records
3 described in Section 71920 from the student's date of completion or withdrawal.

4 ...

5 “(d) The institution shall maintain a second set of all academic and financial records
6 required by the Act and this chapter at a different location unless the original records, including
7 records stored pursuant to subdivision (b) of this section, are maintained in a manner secure from
8 damage or loss. An acceptable manner of storage under this subsection would include fire
9 resistant cabinets.

10 “(e) All records that the institution is required to maintain by the Act or this chapter shall be
11 made immediately available by the institution for inspection and copying during normal business
12 hours by the Bureau and any entity authorized to conduct investigations.”

13 25. California Code of Regulations, title 5, section 74112, subdivision (h), states:

14 “(h) Completion Rates. Reporting of completion rates for an institution's Annual Report and
15 Performance Fact Sheet shall include, for each educational program, the number of students who
16 began the program as defined in subdivision (d)(1) of this section, the number of students
17 available for graduation, number of on-time graduates, and completion rate(s). An optional table
18 may be added to include completion rate data for students completing within 150% of the
19 published program length. For an institution reporting completion data pursuant to section
20 94929(b) of the Code, completion data shall be separately reported for each program and the
21 Performance Fact Sheet shall disclose, if true, that the completion data is being reported for
22 students completing within 150% of the published program length, and that data is not being
23 separately reported for students completing the program within 100% of the published program
24 length. Programs that are more than one year in length which are reporting 150% Completion
25 Rate will provide four calendar years of data. . .”

26 ///

27 ///

28 ///

1 26. California Code of Regulations, title 5, section 74110 states, in pertinent part:

2 "...

3 "(b) In addition to the information required by section 94934 and this section provided
4 under penalty of perjury, the institution shall have annual financial statements prepared for the
5 institution's prior fiscal year and signed under penalty of perjury, and shall submit a hard copy
6 under separate cover of such statements in conjunction with its annual report. The form, content
7 and mode of preparation of financial statements shall comply with Section 74115 of this Division.
8 The Bureau may request that the institution immediately make available for inspection to a
9 representative of the Bureau, these financial statements at the offices of the institution.

10 "(c) An institution shall file its annual report by December 1st. The Bureau may extend the
11 period for filing if the institution demonstrates evidence of substantial need but in no case longer
12 than 60 days. The institution shall not change the date of its filing its annual report because of a
13 change in the fiscal year without the Bureau's approval.

14 ..."

15 COST RECOVERY

16 27. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
17 administrative law judge to direct a licentiate found to have committed a violation or violations of
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
20 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
21 included in a stipulated settlement.

22 FIRST CAUSE FOR DISCIPLINE

23 (Prohibited Business Practices)

(Educ. Code, § 94897)

24 28. Respondent has subjected its approval to operate to disciplinary action for engaging
25 in prohibited business practices, as set forth below. (Educ. Code, § 94897.)

26 ///

27 ///

28

1 a. Respondent made untrue or misleading statements related to test scores, grades or
2 records of grades, attendance records, and records indicating student completion, in violation of
3 Education Code, section 94897, subdivision (j), as follows:

4 i. Respondent's student files contain several untrue or misleading statements
5 related to student attendance and completion. Out of a random selection of records evaluated by
6 the Bureau, at least three students had incomplete attendance records. Furthermore, the students'
7 timecards contained numerous instances in which the students accumulated more hours on
8 curriculum work than hours attended in the day or week.

9 ii. Respondent's records of attendance credit student E.M. for hours that are not
10 accounted for in the curriculum work or the weekly tally of attendance. Student N.H.'s file
11 contained a financial aid calculation stating that N.H. was scheduled to complete 450 hours of a
12 course when she withdrew, however the attendance records indicated that N.H. was scheduled to
13 complete 273 hours upon her withdrawal. N.H.'s student file also contained federal financial aid
14 paperwork that inaccurately reflects N.H.'s attendance, and allowed Respondent to retain
15 \$2,247.75 in federal aid funds that he is not entitled to.

16 iii. Student S.K.'s records of attendance were incomplete and did not account for
17 the first 593 hours of curriculum work completed prior to her enrollment and credited to her.
18 S.K.'s records of attendance indicate credit for hours not accounted for in the curriculum work or
19 the weekly tally of attendance.

20 iv. Respondent did not accurately report completion rates on their 2013/2014
21 School Performance Fact Sheet (SPFS) for their Esthetics or Cosmetology program. There are
22 numerous inconsistencies in the withdrawal log and reports of completion. Respondent also did
23 not accurately report license exam passage rates on their 2013/2014 SPFS for their Cosmetology
24 program, resulting in an inflated passage rate being reported in the 2013/2014 SPFS.

25 b. Respondent willfully falsified an Enrollment Agreement and attendance records in
26 violation of Education Code section 94897, subdivision (k). The student file for N.H. indicated a
27 date of registration for the Cosmetology program of September 4, 2012. There are two sets of
28 timecards in the student file for the period of September 11, 2012, though October 26, 2012.

1 Both sets of timecards contain the same dates, however one is for the Esthetics Program and totals
2 107 hours of attendance, and the other is for the Cosmetology Program and totals 220.5 hours of
3 attendance. N.H. signed the Enrollment Agreement on September 10, 2012, and the Enrollment
4 Agreement reflects a start date of November 1, 2012. The tuition charges on the Enrollment
5 Agreement appear to have been altered, and do not match the total charges listed on the signature
6 page of the same Enrollment Agreement.

7 c. Respondent did not accurately define the term "approval" in its 2017 School Catalog,
8 in that it did not state clearly and conspicuously that approval to operate means compliance with
9 state standards. (Educ. Code § 94897, subd. (l).)

10 d. Respondent included language in its 2017 School Catalog that could persuade a
11 student not to report unlawful activity or complain to the Board. (Educ. Code § 94897, subd.
12 (m).)

13 SECOND CAUSE FOR DISCIPLINE
14 (Notification of Non-Substantive Changes)
15 (Cal. Code Regs., tit. 5, § 71660)

16 29. Respondent has subjected its approval to operate to disciplinary action in that it
17 advertises a class on its website that is not approved by the Bureau, it does not have an
18 application on file with Bureau to add the unapproved program, and it did not notify the Bureau
19 within 30 days of adding a program related to an approved program. (Cal. Code Regs., tit. 5, §
20 71660.)

21 THIRD CAUSE FOR DISCIPLINE
22 (Amount of STRF Assessment)
23 (Cal. Code Regs., tit. 5, § 76120, subd. (a))

24 30. Respondent has subjected its approval to operate to disciplinary action in that
25 Respondent did not accurately charge a student the Student Tuition Recovery Fund (STRF)
26 assessment fee when the student enrolled in 2012. (Cal. Code Regs., tit. 5, § 76120, subd. (a).)
27 The fee was \$2.50 per \$1,000 of total institutional charges when the student enrolled in 2012.
28 The student was charged \$17.25 for STRF fees, but should have been charged \$30.00 based on
total institutional charges of \$11,675.00.

1 FOURTH CAUSE FOR DISCIPLINE

2 (Institution Participating in Federal Student Financial Aid Programs)
3 (Educ. Code § 94919, subd. (a))

4 31. Respondent has subjected its approval to operate to disciplinary action in that it
5 provided an inaccurate refund calculation due to its miscalculation of attendance rates and a
6 noncompliant refund policy. (Educ. Code § 94919, subd. (a).)

7 FIFTH CAUSE FOR DISCIPLINE

8 (Withdrawals and Refunds)
9 (Cal. Code of Regs., tit. 5, § 71750)

10 32. Respondent has subjected its approval to operate to disciplinary action in that it
11 violated the refund requirements as set forth in California Code of Regulations, title 5, section
12 71750, as follows:

13 a. Respondent provided a refund calculation that is inaccurate due to its miscalculation
14 of attendance rates and a non-compliant refund policy. The documents collected by the Bureau
15 regarding student N.H. indicate that Respondent used incorrect information regarding N.H.'s
16 attendance rate to calculate her refund. Respondent did not provide a pro rata refund because it
17 charged N.H. a withdrawal fee that was above and beyond the deposit or application fee. (Cal.
18 Code of Regs., tit. 5, § 71750, subs. (a), (b), (c).)

19 b. Respondent's withdrawal log does not show the dates of N.H.'s withdrawal on
20 October 26, 2012, or April 5, 2013. (Cal. Code of Regs., tit. 5, § 71750, subd. (f).) N.H.'s file
21 contains timecards demonstrating attendance between September 11, 2012 and October 26, 2012,
22 and does not contain documentation reflecting N.H.'s withdrawal.

23 SIXTH CAUSE FOR DISCIPLINE

24 (Admissions Standards and Transferred Credits Policy)
25 (Cal. Code of Regs., tit. 5, § 71770, subs. (a)(1), (c))

26 33. Respondent has subjected its approval to operate to disciplinary action in that it failed
27 to collect documentation from students E.M., N.H., and S.K., establishing that these students
28 possessed a high school diploma or its equivalent, or otherwise successfully took and passed the
relevant examination as required under Education Code section 94904. (Cal. Code of Regs., tit.
5, § 71770, subd. (a)(1).) In addition, Respondent's school catalog does not contain information

1 regarding the policies and procedures related to accepting credit for prior experiential training.
2 (Cal. Code of Regs., tit. 5, § 71770, subd. (c).)

3 SEVENTH CAUSE FOR DISCIPLINE

4 (General Enrollment Requirements)
5 (Educ. Code, § 94902, subd. (a))

6 34. Respondent has subjected its approval to operate to disciplinary action in that it failed
7 to obtain Enrollment Agreements with the required signatures. (Educ. Code, § 94902, subd. (a).)
8 Specifically, students N.H. and S.K. did not enroll by executing the required Enrollment
9 Agreement.

10 EIGHTH CAUSE FOR DISCIPLINE

11 (Signature, Initials Required)
12 (Educ. Code, § 94912)

13 35. Respondent has subjected its approval to operate to disciplinary action in that the files
14 for students N.H., A.M., and S.K. do not include proof that the required information was
15 disclosed to the students and initialed and dated by the students and the institution prior to
16 executing their Enrollment Agreements. (Educ. Code, § 94912.)

17 NINTH CAUSE FOR DISCIPLINE

18 (Minimum Requirements for School Catalog)
19 (Educ. Code, § 94909, subd. (a); Cal. Code of Regs., tit. 5, § 71810, subd. (b)(7))

20 36. Respondent has subjected its approval to operate to disciplinary action in that its 2017
21 Catalog fails to meet the minimum requirements for a school catalog. (Educ. Code, § 94909,
22 subd. (a).) Specifically, Respondent's 2017 School Catalog: (1) does not contain the list of the
23 requirements to be eligible sit for licensure in either of the programs listed (Educ. Code, § 94909,
24 subd. (a)(6)); (2) does not contain the qualifications of current faculty (Educ. Code, § 94909, subd.
25 (a)(7)); (3) contains a statement that Respondent accepts credit based on challenge examinations
26 but does not contain the information regarding procedures or requirements for challenge
27 examinations (Educ. Code, § 94909, subd. (a)(8)(A)); (4) does not include the schedule of total
28 charges for a period of attendance (Educ. Code, § 94909, subd. (a)(9)); (5) does not include the
required verbatim statement concerning the transferability of credits, and is missing the "the
educational program" statement (Educ. Code, § 94909, subd. (a)(15)).

1 37. In addition, Respondent's 2017 school catalog does not contain information regarding
2 the policies and procedures related to accepting credit for prior experiential learning. (Cal. Code
3 of Regs., tit. 5, § 71810, subd. (b)(7).)

4 TENTH CAUSE FOR DISCIPLINE

5 (Faculty)

6 (Cal. Code of Regs., tit. 5, § 71720, subd. (b)(2))

7 38. Respondent has subjected its approval to operate to disciplinary action because it was
8 unable to provide proof that its faculty participated in continuing education. (Cal. Code of Regs.,
9 tit. 5, § 71720, subd. (b)(2).) The faculty files reviewed by the Bureau did not contain any
10 documentation regarding continuing education for faculty.

11 ELEVENTH CAUSE FOR DISCIPLINE

12 (Required Institutional Records)

13 (Educ. Code, § 94900.5, subd. (b))

14 39. Respondent has subjected its approval to operate to disciplinary action because it was
15 unable to provide faculty files or the names, addresses, and records of the educational
16 qualifications of each member of its faculty during the Bureau's on-site investigation on June 29,
17 2016. (Educ. Code, § 94900.5, subd. (b).)

18 TWELFTH CAUSE FOR DISCIPLINE

19 (Institutional Web Site Requirements)

20 (Educ. Code, § 94913; Cal. Code of Regs., tit. 5, § 74117)

21 40. Respondent has subjected its approval to operate to disciplinary action in that as of
22 March 8, 2017, its website did not contain a link to the Bureau's website, nor links to its most
23 recent annual report submitted to the Bureau, its catalog, or its most recent School Performance
24 Fact Sheet (SPFS). (Educ. Code, § 94913, subs. (a)(1)-(3), (5).) In addition, as of March 8,
25 2017, Respondent's website homepage did not contain clear and conspicuous links to the
26 information required under Education Code section 94913, subdivision (a). (Cal. Code of Regs.,
27 tit. 5, § 74117.)
28

///

///

///

1 THIRTEENTH CAUSE FOR DISCIPLINE

2 (Required Student Records)

3 (Educ. Code, § 94900, subd. (b)(1)(2), (3))

4 41. Respondent has subjected its approval to operate to disciplinary action in that its files
5 for graduated and withdrawn students did not contain a transcript reflecting the certificate
6 granted, the date on which the certificate was granted, the courses and units on which the
7 certificate was based, or the grades earned by the students. (Educ. Code, § 94900, subd. (b)(1)(2),
8 (3).)

9 FOURTEENTH CAUSE FOR DISCIPLINE

10 (Student Records)

11 (Cal. Code Regs., tit. 5, § 71920)

12 42. Respondent has subjected its approval to operate to disciplinary action because its
13 student records fail to comply with the Bureau's regulations as follows:

14 a. Respondent's files for students E.M., N.H., and S.K. did not contain proof of a High
15 School Diploma, GED, or ATB. (Cal. Code Regs., tit. 5, § 71920, subd. (b)(1)(A).)

16 b. The student file for N.H. did not contain records documenting hours of credit that
17 have been accepted and applied by Respondent as transfer credit. (Cal. Code Regs., tit. 5, §
18 71920, subd. (b)(1)(B).)

19 c. The student file for N.H. did not contain documentation for dates of N.H.'s leave of
20 absence or attendance, making it impossible for the Bureau to determine N.H.'s dates of
21 attendance or leave. N.H.'s student file also did not contain information regarding N.H.'s date of
22 withdrawal. (Cal. Code Regs., tit. 5, § 71920, subd. (b)(4).)

23 d. The student files for A.M., E.M., and N.H. do not contain a transcript showing the
24 courses that were completed or attempted and not completed. (Cal. Code Regs., tit. 5, § 71920,
25 subd. (b)(5)(A).)

26 e. The student file for N.H. did not contain financial aid documentation for
27 disbursements received by the institution. (Cal. Code Regs., tit. 5, § 71920, subd. (b)(8).)

28 f. The student file for N.H. did not contain a document showing the total amount of
money received by or on behalf of the student. (Cal. Code Regs., tit. 5, § 71920, subd. (b)(9).)

1 g. The student file for N.H. did not contain a document specifying the amount of refund,
2 including the method of calculating the refund provided to N.H.. (Cal. Code Regs., tit. 5, §
3 71920, subd. (b)(10).)

4 FIFTEENTH CAUSE FOR DISCIPLINE

5 (Maintenance of Records)
6 (Cal. Code Regs., tit. 5, § 71930)

7 43. Respondent has subjected its approval to operate to disciplinary action in that if failed
8 to maintain the required records as follows:

9 a. Respondent was unable to provide documentation that faculty members were
10 participating in continuing education. (Cal. Code Regs., tit. 5, § 71930, subd. (a).)

11 b. The student file for N.H. did not contain any documentation regarding the dates of
12 withdrawal. (Cal. Code Regs., tit. 5, § 71930, subd. (b)(1).)

13 c. Respondent is not maintaining a second set of academic records when the first set is
14 not stored in a manner that is secure from loss or damage. Respondent was storing student files in
15 cardboard boxes throughout its administrative offices. (Cal. Code Regs., tit. 5, § 71930, subd.
16 (d).)

17 d. During the Bureau's investigation, Respondent was unable to provide SPFS backup
18 documentation or the 2014 Annual Report. Respondent was unable to immediately provide all
19 records required to be maintained when requested by the Bureau. (Cal. Code Regs., tit. 5, §
20 71930, subd. (e).)

21 SIXTEENTH CAUSE FOR DISCIPLINE

22 (Uniform Data – Annual Report, Performance Fact Sheet)
23 (Cal. Code Regs., tit. 5, § 74112, subd. (h))

24 44. Respondent has subjected its approval to operate to disciplinary action in that the
25 documentation provided by Respondent in support of its 2013/2014 SPFS did not include the
26 address, phone number, email address, program start dates, place of employment and position,
27 salary, hours, and description of all attempts to contact each student. The documentation also did
28 not include the name, email address, phone number, and position or title of the institution's
representative who is primarily responsible for obtaining the students' completion, placement,

1 licensing, salary and wage data, the date the information was gathered, and copies of notes,
2 letters, or emails through which the information was requested and gathered. (Cal. Code Regs.,
3 tit. 5, § 74112, subd. (h.)

4 SEVENTEENTH CAUSE FOR DISCIPLINE

5 (Reporting of Completion Date)
6 (Educ. Code, § 94929, subd. (a))

7 45. Respondent has subjected its approval to operate to disciplinary action in that it is not
8 accurately reporting the completion rate for its programs on the 2013/2014 SPFS. The numbers
9 reported on the SPFS do not match the numbers provided in the SPFS backup documentation.
10 The SPFS backup documentation also does not account for the students listed on the withdrawal
11 log. (Educ. Code, § 94929, subd. (a).)

12 EIGHTEENTH CAUSE FOR DISCIPLINE

13 (Reporting of Student Performance Data)
14 (Educ. Code, § 94929.5, subd. (a)(2))

15 46. Respondent has subjected its approval to operate to disciplinary action in that it is not
16 accurately reporting the license exam passage rate for its programs on the 2013/2014 SPFS. The
17 numbers reported on the SPFS and the numbers provided on the SPFS backup documentation do
18 not match the information provided by the Board of Barbering and Cosmetology. (Educ. Code, §
19 94929.5, subd. (a)(2).)

20 NINETEENTH CAUSE FOR DISCIPLINE

21 (Annual Report)
22 (Educ. Code, § 94934, subd. (a); Cal. Code of Regs., tit. 5, § 74110, subd. (b), (c))

23 47. Respondent has subjected its approval to operate to disciplinary action in that it did
24 not submit documentation, including financial statements, for the 2015 Annual Report by the
25 December 1 deadline. (Educ. Code, § 94934, subd. (a); Cal. Code of Regs., tit. 5, § 74110, subd.
26 (b), (c).)

27 ///

28 ///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Director of the Department of Consumer Affairs issue a decision:

1. Revoking or suspending Institution Number 98311708, issued to The Cosmo Factory Cosmetology Academy; James Fisher, Owner;
2. Ordering The Cosmo Factory Cosmetology Academy; James Fisher, Owner to pay the Bureau for Private Postsecondary Education the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 1/10/19



DR. MICHAEL MARION, JR.
Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

OK2018900470
91034030.docx