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7
8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
9 **FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION**
STATE OF CALIFORNIA
10

11 In the Matter of the Statement of Issues
Against:

Case No. 1000959

12 **EMS TRAINING INSTITUTE, Inc.;**
13 **MARK KOMINS, 50% Owner; RONA**
KOMINS, 50% Owner

STATEMENT OF ISSUES

14 **Application for Renewal of Approval to**
15 **Operate an Institution Non-Accredited**

16 Respondent.

17 **Institution Code 41500904**
18

19 Complainant alleges:

20 **PARTIES**

21 1. Joanne Wenzel (Complainant) brings this Statement of Issues solely in her official
22 capacity as the Chief of the Bureau for Private Postsecondary Education, Department of
23 Consumer Affairs.

24 **APPLICANT'S LICENSE HISTORY**

25 2. On or about September 28, 2006, the Bureau for Private Postsecondary Education
26 (Bureau) issued approval to operate Institution Code No. 41500904 to EMS Training Institute,
27 Inc., Mark Komins, 50% owner, and Rona Komins, 50% owner (Respondent and/or the
28

1 Institution). Said approval to operate was in full force and effect at all times alleged herein and
2 was scheduled to expire on January 23, 2013, unless renewed.

3 3. On or about August 1, 2012, the Bureau sent Respondent a Renewal of An Approval
4 to Operate letter, informing the Institution that their approval will expire on January 23, 2012. On
5 or about August 31, 2012, the Bureau sent the Institution a receipt for the Application for
6 Renewal for Approval to Operate an Accredited Institution, Application No. 25292. The letter
7 also provided that the Institution must resubmit the Application for Renewal of Approval to
8 Operate an Institution Non-Accredited and the required fees to continue the application process.

9 4. On or about September 19, 2012, the Bureau received a letter from the Institution,
10 requesting that Application No. 25292, the Application for Renewal for An Approval to Operate
11 an Accredited Institution be withdrawn, and that the fees in the amount of \$500 be transferred to
12 the Application for Renewal for an Approval to Operate an Institution Non-Accredited. On or
13 about September 21, 2012, the Bureau received an Application for Renewal of Approval to
14 Operate an Institution Non-Accredited, Application No. 25368, from Respondent.

15 5. On or about October 17, 2012, the Bureau sent Respondent a deficiency letter. On or
16 about October 25, 2012, the Bureau received a response to the deficiency letter from Respondent.

17 6. On or about February 25, 2015, the Bureau sent a deficiency letter to Respondent. On
18 or about March 25, 2015, the Bureau received a response to the deficiency letter. On or about
19 June 18, 2015, the Bureau received another response to the deficiency letter.

20 7. On or about July 31, 2015, the Bureau sent Respondent a "Notice of Denial" letter.

21 8. On or about August 17, 2015, Respondent sent the Bureau a letter requesting an
22 administrative hearing to appeal the denial of his application for a renewal of its license. On or
23 about August 31, 2015, the Bureau received additional documents from Respondent for review,
24 which were not reviewed by the Bureau.

25 JURISDICTION

26 9. This Statement of Issues is brought before the Director of the Department of
27 Consumer Affairs (Director) for the Bureau for Private Postsecondary Education, under the
28

1 authority of the following laws. All section references are to the Education Code unless
2 otherwise indicated.

3 **STATUTORY PROVISIONS¹**

4 10. Code section 94891, subdivision (b) states: "To be granted a renewal of an approval
5 to operate, the institution shall demonstrate its continued capacity to meet the minimum operating
6 standards."

7 11. Code section 94897 states, in pertinent part:

8 An institution shall not do any of the following:

9 * * * *

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

16 (1) The institution or its educational programs are endorsed or
17 recommended by the state or by the bureau.

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

20 * * * *

21 12. Code section 94909, subdivisions (a)(1), (a)(2) & (a)(15), state in pertinent part, as
22 follows:

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

26 (1) The name, address, telephone number, and, if applicable, Internet
27 Web site address of the institution.

28 (2) Except as specified in Article 2 (commencing with Section 94802), a
statement that the institution is a private institution and that it is approved to operate
by the bureau.

* * * *

¹ The California Private Postsecondary Education Act of 2009 was recently amended, effective January 1, 2015. See Senate Bill No. 1247. This Statement of Issues is based on the post-amendment version of the Act.

1 (15) The following statement:

2 "NOTICE CONCERNING TRANSFERABILITY OF CREDITS AND
3 CREDENTIALS EARNED AT OUR INSTITUTION

4 The transferability of credits you earn at (name of institution) is at the
5 complete discretion of an institution to which you may seek to transfer. Acceptance of
6 the (degree, diploma, or certificate) you earn in (name of educational program) is also
7 at the complete discretion of the institution to which you may seek to transfer. If the
8 (credits or degree, diploma, or certificate) that you earn at this institution are not
9 accepted at the institution to which you seek to transfer, you may be required to
10 repeat some or all of your coursework at that institution. For this reason you should
11 make certain that your attendance at this institution will meet your educational goals.
12 This may include contacting an institution to which you may seek to transfer after
13 attending (name of institution) to determine if your (credits or degree, diploma, or
14 certificate) will transfer.

15 * * * *

16 13. Code section 94911 states, in pertinent part:

17 An enrollment agreement shall include, at a minimum, all of the following:

18 * * * *

19 (i)(2) Immediately following the statement required by paragraph (1), a
20 line for the student to initial, including the following statement: "I certify that I have
21 received the catalog, School Performance Fact Sheet, and information regarding
22 completion rates, placement rates, license examination passage rates, and salary or
23 wage information, and the most recent three year cohort default rates, if applicable,
24 included in the School Performance Fact sheet, and have signed, initialed, and dated
25 the information provided in the School Performance Fact Sheet.

26 14. Code section 94916 states as follows:

27 An institution extending credit or lending money to an individual for
28 institutional and noninstitutional charges for an educational program shall cause any
note, instrument, or other evidence of indebtedness taken in connection with that
extension of credit or loan to be conspicuously marked on its face in at least 12-point
type with the following notice:

"NOTICE"

"You may assert against the holder of the promissory note you signed in
order to finance the cost of the educational program all of the claims and defenses
that you could assert against this institution, up to the amount you have already paid
under the promissory note."

REGULATORY PROVISIONS

15. California Code of Regulations, title 5, section 71700 states that "The Bureau may
request that an institution document compliance with the standards set forth in the Act and this
Division to obtain and maintain an approval to operate."

1 16. California Code of Regulations, title 5, section 71745, states, in pertinent part:

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

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

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

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

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

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

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

23 (b) At an institution's request, the Bureau may consider the financial
24 resources of a parent company if the parent company, as defined by section 94853 of
25 the Code, meets and maintains all of the following provisions:

26 (1) consents in writing to be sued in California;

27 (2) consents in writing to be subject to the jurisdiction of the Bureau with
28 respect to the institution's regulation under the Act and this Chapter;

(3) designates and maintains an agent for service of process, consistent
with section 74190;

(4) agrees in writing to pay any refund, claim, penalty, or judgment that
the institution is obligated to pay; and

(5) files financial reports, maintains financial records, and consents in
writing to permit the inspection and copying of financial records to the same extent as
is required of the institution.

(c) An institution shall provide to the Bureau its most current financial
statements upon request.

17. California Code of Regulations, title 5, section 71810, subdivision (b)(1), states in
pertinent part:

1 * * * *

2 (b) The catalog shall contain the information prescribed by Section 94909
3 of the Code and all of the following:

4 (1) The specific beginning and ending dates defining the time period
5 covered by the catalog;

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

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

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

13 (2) Notwithstanding (b)(1), the institution shall maintain records relating
14 to federal financial aid programs as provided by federal law.

15 * * * *

16 19. California Code of Regulations, title 5, section 74115, states:

17 (a) This section applies to every set of financial statements required to be
18 prepared or filed by the Act or by this chapter.

19 (b) A set of financial statements shall contain, at a minimum, a balance
20 sheet, an income statement, and a cash flow statement, and the preparation of
21 financial statements, shall comply with all of the following:

22 (1) Audited and reviewed financial statements shall be conducted and
23 prepared in accordance with the generally accepted accounting principles established
24 by the American Institute of Certified Public Accountants by an independent certified
25 public accountant who is not an employee, officer, or corporate director or member of
26 the governing board of the institution.

27 (2) Financial statements prepared on an annual basis as required by
28 section 74110(b) shall be prepared in accordance with the generally accepted
accounting principles established by the American Institute of Certified Public
Accountants. Nonprofit institutions shall provide annual financial statements as
required under generally accepted accounting principles for nonprofit organizations.

(3) The financial statements shall establish that the institution meets the
requirements for financial resources required by Section 71745.

(4) If an audit performed to determine compliance with any federal or
state student financial aid program reveals any failure to comply with the
requirements of the program and the noncompliance creates any liability or potential
liability for the institution, the financial statements shall reflect the liability or
potential liability.

(5) Any audits shall demonstrate that the accountant obtained an

1 understanding of the institution's internal financial control structure, assessed any
2 risks, and has reported any material deficiencies in the internal controls.

3 (c) Work papers for the financial statements shall be retained for five
4 years from the date of the statements and shall be made available to the Bureau upon
5 request.

6 (d) "Current" with respect to financial statements means completed no
7 sooner than 120 days prior to the time it is submitted to the Bureau, and covering no
8 less than the most recent complete fiscal year. If more than 8 months will have
9 elapsed between the close of the most recent complete fiscal year and the time it is
10 submitted, the fiscal statements shall also cover no less than five months of that
11 current fiscal year.

12 20. California Code of Regulations, title 5, section 76215, subdivision (a), states in
13 relevant part:

14 (a) A qualifying institution shall include the following statement on both
15 its enrollment agreement for an educational program and its current schedule of
16 student charges:

17 "You must pay the state-imposed assessment for the Student Tuition
18 Recovery Fund (STRF) if all of the following applies to you:

19 1. You are a student in an educational program, who is a California
20 resident, or are enrolled in a residency program, and prepay all or part of your tuition
21 either by cash, guaranteed student loans, or personal loans, and

22 2. Your total charges are not paid by any third-party payer such as an
23 employer, government program or other payer unless you have a separate agreement
24 to repay the third party.

25 You are not eligible for protection from the STRF and you are not
26 required to pay the STRF assessment, if either of the following applies:

27 1. You are not a California resident, or are not enrolled in a residency
28 program, or

2. Your total charges are paid by a third party, such as an employer,
government program or other payer, and you have no separate agreement to repay the
third party."

FIRST CAUSE FOR DENIAL OF APPLICATION

(Failed to Include Required Provisions in Student Enrollment Agreements)

21. Respondent's application is subject to denial under Code section 94891, subdivision
(b), in that:

22. Page two of the Institution's Enrollment Agreements for the EMT Refresher, EMT
Initial, and Paramedic Refresher courses did not contain the verbatim, specific required language

1 related to the Student Tuition Recovery Fund (STRF) and it is missing the words “in an
2 educational program” and “or are enrolled in a residency program”, in violation of California
3 Code of Regulations, title 5, division 7.5, section 76215, subdivision (a).

4 23. Although page two of the Institution's Enrollment Agreements for the EMT
5 Refresher, EMT Initial, and Paramedic Refresher courses contained the specific statement prior to
6 signing the enrollment agreement, it did not contain a line for the student's initials immediately
7 after the statement, in violation of Code section 94911, subdivision (i)(2).

8 24. Page three of the Institution's Enrollment Agreements for the EMT Refresher, EMT
9 Initial, and Paramedic Refresher courses failed to reference the required “Notice” related to
10 extending credit or lending money, and is not in capital letters, in violation of California Code of
11 Regulations, title 5, section 94916.

12 **SECOND CAUSE FOR DENIAL OF APPLICATION**

13 **(Failed to Submit Adequate Financial Statements)**

14 25. Respondent's application is subject to denial under Code section 94891, subdivision
15 (b), in that the Institution submitted a balance sheet and profit and loss statement for the year
16 ending December 31, 2014, which is not a financial statement reviewed by a Certified Public
17 Accountant in accordance with the generally accepted accounting principles established by the
18 American Institute of Certified Public Accountants, in violation of California Code of
19 Regulations, title 5, sections 71745 and 74115.

20 **THIRD CAUSE FOR DENIAL OF APPLICATION**

21 **(Violated Catalog Requirements)**

22 26. Respondent's application is subject to denial under Code section 94891, subdivision
23 (b), in that:

24 27. Respondent violated Code section 94909, subdivision (a)(1), as the Institution's
25 catalog did not include the internet website address of the Institution.

26 28. Respondent violated California Code of Regulations, title 5, section 71810,
27 subdivision (b)(1), in that the Institution's catalog failed to include the specific beginning and
28 ending dates which include the month, day and year covered by the catalog.

