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

12
13 In the Matter of the Statement of Issues
Against:

Case No. 1004095

14 **DIANOVA FOUNDATION**
15 **d.b.a. DIANOVA INSTITUTE**

OAH No. 2019050827

16 **Application for Approval to Operate for an**
17 **Institution Non-Accredited**

FIRST AMENDED STATEMENT OF
ISSUES

18 Respondent.

19 **PARTIES**

20 1. Dr. Michael Marion, Jr. ("Complainant") brings this First Amended Statement of
21 Issues solely in his official capacity as the Chief of the Bureau for Private Postsecondary
22 Education, Department of Consumer Affairs.

23 2. On or about July 7, 2017, the Bureau for Private Postsecondary Education received an
24 Application for Approval to Operate for an Institution Non-Accredited. On or about November
25 14, 2018, the Bureau denied the application. On or about January 14, 2019, Respondent
26 requested an administrative hearing regarding the Bureau's denial of its application.

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28 //

1 JURISDICTION

2 3. This First Amended Statement of Issues is brought before the Director of the
3 Department of Consumer Affairs (“Director”) for the Bureau for Private Postsecondary
4 Education, under the authority of the following laws. All section references are to the California
5 Education Code unless otherwise indicated.

6 4. Section 94885, subdivision (a) states, in part:

7 “(a) The bureau shall adopt by regulation minimum operating standards for an institution
8 that shall reasonably ensure that all of the following occur:

9 “(1) The content of each educational program can achieve its stated objective.

10 “(2) The institution maintains specific written standards for student admissions for each
11 educational program and those standards are related to the particular educational program.

12 “(3) The facilities, instructional equipment, and materials are sufficient to enable students to
13 achieve the educational program's goals.

14 ...

15 “(5) The directors, administrators, and faculty are properly qualified.

16 “(6) The institution is financially sound and capable of fulfilling its commitments to
17 students.

18 ...

19 “(9) The institution is maintained and operated in compliance with this chapter and all other
20 applicable ordinances and laws.”

21 5. Section 94886 states:

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

26 6. Section 94887 states:

27 “An approval to operate shall be granted only after an applicant has presented sufficient
28 evidence to the bureau, and the bureau has independently verified the information provided by the

1 applicant through site visits or other methods deemed appropriate by the bureau, that the applicant
2 has the capacity to satisfy the minimum operating standards. The bureau shall deny an application
3 for an approval to operate if the application does not satisfy those standards.”

4 **STATUTES AND REGULATIONS**

5 7. Section 94817.5 states:

6 “‘Approved to operate’ or ‘approved’ means that an institution has received authorization
7 pursuant to this chapter to offer to the public and to provide postsecondary educational
8 programs.”

9 8. Section 94834 states:

10 “‘Distance education’ means transmission of instruction to students at a location separate
11 from the institution.”

12 9. Section 94841 states:

13 “‘Faculty’ means the instructional staff of an institution, whether these persons are
14 employees or independent contractors.”

15 10. Section 94868 states:

16 “‘To offer to the public’ means to advertise, publicize, solicit, or recruit.”

17 11. Section 94869 states:

18 “‘To operate’ means to establish, keep, or maintain any facility or location in this state
19 where, or from which, or through which, postsecondary educational programs are provided.”

20 12. Section 94885 states, in part:

21 “(a) The bureau shall adopt by regulation minimum operating standards for an institution
22 that shall reasonably ensure that all of the following occur:

23 ...

24 “(6) The institution is financially sound and capable of fulfilling its commitments to
25 students.

26”

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1 13. Section 94886 states:

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

6 14. Section 94887 states:

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

12 15. Section 94897 states, in part:

13 “An institution shall not do any of the following:

14 ...

15 “(b) Promise or guarantee employment, or otherwise overstate the availability of jobs upon
16 graduation.”

17 “(c) Advertise concerning job availability, degree of skill, or length of time required to
18 learn a trade or skill unless the information is accurate and not misleading.

19 ”

20 16. Section 94909, subdivision (a) states, in part:

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

24 ...

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

27 ...

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

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

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

9 ...

10 “(C) Probation and dismissal policies.

11 ...

12 “(11) A statement specifying that, if a student obtains a loan to pay for an educational
13 program, the student will have the responsibility to repay the full amount of the loan plus interest,
14 less the amount of any refund, and that, if the student has received federal student financial aid
15 funds, the student is entitled to a refund of the moneys not paid from federal student financial aid
16 program funds.

17 ...

18 “(15) The following statement:

19 ‘NOTICE CONCERNING TRANSFERABILITY OF CREDITS AND CREDENTIALS
20 EARNED AT OUR INSTITUTION

21 The transferability of credits you earn at (name of institution) is at the complete discretion
22 of an institution to which you may seek to transfer. Acceptance of the (degree, diploma, or
23 certificate) you earn in (name of educational program) is also at the complete discretion of the
24 institution to which you may seek to transfer. If the (credits or degree, diploma, or certificate) that
25 you earn at this institution are not accepted at the institution to which you seek to transfer, you
26 may be required to repeat some or all of your coursework at that institution. For this reason you
27 should make certain that your attendance at this institution will meet your educational goals. This
28

1 may include contacting an institution to which you may seek to transfer after attending (name of
2 institution) to determine if your (credits or degree, diploma, or certificate) will transfer.’

3 “(16) A statement specifying whether the institution, or any of its degree programs, are
4 accredited by an accrediting agency recognized by the United States Department of Education. If
5 the institution is unaccredited and offers an associate, baccalaureate, master's, or doctoral degree,
6 or is accredited and offers an unaccredited program for an associate, baccalaureate, master's, or
7 doctoral degree, the statement shall disclose the known limitations of the degree program,
8 including, but not limited to, all of the following:

9 “(A) Whether a graduate of the degree program will be eligible to sit for the applicable
10 licensure exam in California and other states or become certified or registered as required for the
11 applicable profession, occupation, trade, or career field in California.

12 “(B) A degree program that is unaccredited or a degree from an unaccredited institution is
13 not recognized for some employment positions, including, but not limited to, positions with the
14 State of California.

15 “(C) That a student enrolled in an unaccredited institution is not eligible for federal
16 financial aid programs.”

17 17. Section 94911 states, in part:

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

19 ...

20 “(c) In underlined capital letters on the same page of the enrollment agreement in which the
21 student's signature is required, the total charges for the current period of attendance, the estimated
22 total charges for the entire educational program, and the total charges the student is obligated to
23 pay upon enrollment.

24 ...

25 “(h) The transferability disclosure that is required to be included in the school catalog, as
26 specified in paragraph (15) of subdivision (a) of Section 94909.

27 ...”

28 ////

1 18. Section 94916 states:

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

6 'NOTICE'

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

10 19. California Code of Regulations, title 5, section 71140, subdivision (c), states:

11 "(c) The institution shall identify the chief executive officer, chief operating officer, and
12 chief academic officer and describe their education, experience, and qualifications to perform
13 their duties and responsibilities.”

14 20. California Code of Regulations, title 5, section 71210, subdivision (c) states, in part:

15 "(c) In addition, the institution shall list the following for each educational program offered:

16 ...

17 "(7) Whether the educational program is designed to fit or prepare students for employment
18 in any occupation. If so, the Form Application 94886 shall identify each occupation and job title
19 to which the institution represents the educational program will lead.”

20 21. California Code of Regulations, title 5, section 71400.5, subdivision (a) states:

21 "(a) The inclusion of false or misleading information, or the intentional or negligent
22 omission of pertinent information on any application may result in the denial of the application or
23 a delay in processing, and may be grounds for action pursuant to Article 18 of the Act.”

24 22. California Code of Regulations, title 5, section 71700 states:

25 "The Bureau may request that an institution document compliance with the standards set
26 forth in the Act and this Division to obtain and maintain an approval to operate.”

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28 ////

1 23. California Code of Regulations, title 5, section 71710, subdivision (c) states:

2 “In order to meet its mission and objectives, the educational program defined in section
3 94837 of the Code shall be comprised of a curriculum that includes:

4 ...

5 “(c) course or module materials that are designed or organized by duly qualified faculty.

6 For each course or module, each student shall be provided with a syllabus or course outline that
7 contains:

8 “(1) a short, descriptive title of the educational program;

9 “(2) a statement of educational objectives;

10 “(3) length of the educational program;

11 “(4) sequence and frequency of lessons or class sessions;

12 “(5) complete citations of textbooks and other required written materials;

13 “(6) sequential and detailed outline of subject matter to be addressed or a list of skills to be
14 learned and how those skills are to be measured;

15 “(7) instructional mode or methods.”

16 24. California Code of Regulations, title 5, section 71715, subdivision (d) states, in part:

17 “(d) Distance education as defined in section 94834 of the Code, does not require the
18 physical presence of students and faculty at the same location but provides for interaction
19 between students and faculty by such means as telecommunication, correspondence, electronic
20 and computer augmented educational services, postal service, and facsimile transmission. In
21 addition to the other requirements of this chapter and the Act, an institution offering distance
22 education shall:

23 “(1) ensure that the educational program offered through distance education is appropriate
24 for delivery through distance education methods;

25 “(2) assess each student, prior to admission, in order to determine whether each student has
26 the skills and competencies to succeed in a distance education environment;

27

28

1 “(3) ensure that the materials and programs are current, well organized, designed by faculty
2 competent in distance education techniques and delivered using readily available, reliable
3 technology;

4 “(4) provide for meaningful interaction with faculty who are qualified to teach using
5 distance education methods;

6 “(5) maintain clear standards for satisfactory academic progress;

7 “(6) timely complete student evaluations of learning outcomes by duly qualified faculty,
8 which are appropriate for use with the distance education methods used, and evaluated by duly
9 qualified faculty.

10 ...

11 “(8) shall maintain a record of the dates on which lessons, projects, and dissertations were
12 received and responses were returned to each student.”

13 25. California Code of Regulations, title 5, section 71716 states, in part:

14 ...

15 “(c)(1) An institution shall transmit all of the lessons and other materials to the student if
16 the student: (A) has fully paid for the educational program; and (B) after having received the first
17 lesson and initial materials, requests in writing that all of the material be sent.

18 “(2) If an institution transmits the balance of the material as the student requests, the
19 institution shall remain obligated to provide the other educational services it agreed to provide,
20 such as responses to student inquiries, student and faculty interaction, and evaluation and
21 comment on lessons submitted by the student, but shall not be obligated to pay any refund after
22 all of the lessons and material are transmitted.

23 “(d) The enrollment agreement shall disclose the institution's and student's rights and duties
24 under this section.”

25 26. California Code of Regulations, title 5, section 71720 states, in part:

26 ...

27 “(b) Instructors in an Educational Program Not Leading to a Degree.
28

1 “(1) An institution shall employ instructors who possess the academic, experiential and
2 professional qualifications to teach, including a minimum of three years of experience, education
3 and training in current practices of the subject area they are teaching. If an instructor does not
4 possess the required three years of experience, education and training in the subject area they are
5 teaching, the institution shall document the qualifications the instructor possesses that are
6 equivalent to the minimum qualifications.

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

9 “(3) The institution shall not employ or continue to employ an instructor who was
10 adjudicated in a judicial or administrative proceeding as having violated any provision of the Act
11 or this chapter, or as having committed any act that would constitute grounds for the denial of a
12 license under Section 480 of the Business and Professions Code.”

13 27. California Code of Regulations, title 5, section 71730, subdivision (f) states:

14 “(f) The institution shall employ administrative personnel who have the expertise to ensure
15 the achievement of the institution's mission and objectives and the operation of the educational
16 programs.”

17 28. California Code of Regulations, title 5, section 71770, subdivision (c) states:

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

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

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

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

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

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

27 “(3) Each college or university level learning experience shall be evaluated by faculty
28 qualified in that specific subject area who shall ascertain (1) to what college or university level

1 learning the student's prior experience is equivalent and (2) how many credits toward a degree
2 may be granted for that experience.

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

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

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

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

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

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

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

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

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

24 “(C) Of the first 30 semester credits awarded a student in a graduate program, no more than
25 6 semester credits may be awarded for prior experiential learning.

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

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

3 29. California Code of Regulations, title 5, section 71800, subdivision (e) states, in part:

4 “(e) Itemization of all institutional charges and fees including, as applicable:

5 ...

6 “(9) assessment fees for transfer of credits;

7 “(10) fees to transfer credits;

8 ”

9 30. California Code of Regulations, title 5, section 71810, subdivision (b) states, in part:

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

12 ...

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

16 ...

17 “(11) If the institution offers distance education, the approximate number of days that will
18 elapse between the institution's receipt of student lessons, projects, or dissertations and the
19 institution's mailing of its response or evaluation.

20 “(12) A description of all student services;

21 ”

22 31. California Code of Regulations, title 5, section 74112, subdivision (d) states, in part:

23 “(d) In addition to the definitions contained in section 94928 of the Code:

24 ...

25 “(3) ‘Gainfully Employed’ means:

26 “(A)(i) The graduate is employed in a job classification under the United States Department
27 of Labor's Standard Occupational Classification codes, using the Detailed Occupation (six-digit)

28

1 level, for which the institution has identified in its catalog and in its employment positions list
2 required by section 94910(f)(2) of the Code that the program prepares its graduates; and

3 “(i) The graduate is employed in a single position or concurrent aggregated positions
4 totaling at least 30 hours per week for 5 weeks (35 calendar days), or totaling at least 20 hours per
5 week for 5 weeks (35 calendar days) with a statement signed by the graduate stating that he or she
6 chose to seek part-time employment rather than fulltime employment after graduation; or

7 “(B) The graduate is employed by the same employer that employed the graduate before
8 enrollment, and any of the following conditions are met:

9 “(i) the graduate is employed in an occupation with a different Detailed Occupation (six-
10 digit) level Standard Occupational Classification code than applies to the position in which the
11 graduate was employed before enrollment; or

12 “(ii) the employer or the graduate provides a statement to the effect that the employment
13 after graduation was the result of a promotion with increased pay, due at least in part to
14 graduation from the program; or

15 “(iii) the employer or the graduate provides a statement to the effect that the degree or the
16 completed program was required as a condition of continued employment; or

17 “(C) The graduate is self-employed or working freelance as reasonably evidenced by, but
18 not limited to, a business license, fictitious business name statement, advertising (other than
19 business cards), website, or business receipts or other evidence of income from business; or an
20 attestation signed by the graduate of self-employment or freelance work and dated after
21 graduation.”

22 32. California Code of Regulations, title 5, section 74115, states, in part:

23 . . .

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

27 “(1) Audited and reviewed financial statements shall be conducted and prepared in
28 accordance with the generally accepted accounting principles established by the American

1 Institute of Certified Public Accountants by an independent certified public accountant who is not
2 an employee, officer, or corporate director or member of the governing board of the institution.

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

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

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

14 “(5) Any audits shall demonstrate that the accountant obtained an understanding of the
15 institution's internal financial control structure, assessed any risks, and has reported any material
16 deficiencies in the internal controls.

17 . . .

18 “(d) ‘Current’ with respect to financial statements means completed no sooner than 120
19 days prior to the time it is submitted to the Bureau, and covering no less than the most recent
20 complete fiscal year. If more than 8 months will have elapsed between the close of the most
21 recent complete fiscal year and the time it is submitted, the fiscal statements shall also cover no
22 less than five months of that current fiscal year.”

23 33. California Code of Regulations, title 5, section 76215 states:

24 “(a) A qualifying institution shall include the following statement on both its enrollment
25 agreement and school catalog:

26 ““The State of California established the Student Tuition Recovery Fund (STRF) to relieve
27 or mitigate economic loss suffered by a student in an educational program at a qualifying
28 institution, who is or was a California resident while enrolled, or was enrolled in a residency

1 program, if the student enrolled in the institution, prepaid tuition, and suffered an economic loss.
2 Unless relieved of the obligation to do so, you must pay the state-imposed assessment for the
3 STRF, or it must be paid on your behalf, if you are a student in an educational program, who is a
4 California resident, or are enrolled in a residency program, and prepay all or part of your tuition.

5 'You are not eligible for protection from the STRF and you are not required to pay the
6 STRF assessment, if you are not a California resident, or are not enrolled in a residency program.'

7 '(b) In addition to the statement required under subdivision (a) of this section, a qualifying
8 institution shall include the following statement in its school catalog:

9 'It is important that you keep copies of your enrollment agreement, financial aid
10 documents, receipts, or any other information that documents the amount paid to the school.
11 Questions regarding the STRF may be directed to the Bureau for Private Postsecondary
12 Education, 2535 Capitol Oaks Drive, Suite 400, Sacramento, CA 95833, (916) 431-6959 or (888)
13 370-7589.

14 'To be eligible for STRF, you must be a California resident or enrolled in a residency
15 program, prepaid tuition, paid or deemed to have paid the STRF assessment, and suffered an
16 economic loss as a result of any of the following:

17 '1. The institution, a location of the institution, or an educational program offered by the
18 institution was closed or discontinued, and you did not choose to participate in a teach-out plan
19 approved by the Bureau or did not complete a chosen teach-out plan approved by the Bureau.

20 '2. You were enrolled at an institution or a location of the institution within the 120 day
21 period before the closure of the institution or location of the institution, or were enrolled in an
22 educational program within the 120 day period before the program was discontinued.

23 '3. You were enrolled at an institution or a location of the institution more than 120 days
24 before the closure of the institution or location of the institution, in an educational program
25 offered by the institution as to which the Bureau determined there was a significant decline in the
26 quality or value of the program more than 120 days before closure.

27 '4. The institution has been ordered to pay a refund by the Bureau but has failed to do so.
28

1 '5. The institution has failed to pay or reimburse loan proceeds under a federal student loan
2 program as required by law, or has failed to pay or reimburse proceeds received by the institution
3 in excess of tuition and other costs.

4 '6. You have been awarded restitution, a refund, or other monetary award by an arbitrator
5 or court, based on a violation of this chapter by an institution or representative of an institution,
6 but have been unable to collect the award from the institution.

7 '7. You sought legal counsel that resulted in the cancellation of one or more of your student
8 loans and have an invoice for services rendered and evidence of the cancellation of the student
9 loan or loans.

10 'To qualify for STRF reimbursement, the application must be received within four (4) years
11 from the date of the action or event that made the student eligible for recovery from STRF.

12 'A student whose loan is revived by a loan holder or debt collector after a period of
13 noncollection may, at any time, file a written application for recovery from STRF for the debt that
14 would have otherwise been eligible for recovery. If it has been more than four (4) years since the
15 action or event that made the student eligible, the student must have filed a written application for
16 recovery within the original four (4) year period, unless the period has been extended by another
17 act of law.

18 'However, no claim can be paid to any student without a social security number or a
19 taxpayer identification number.'"

20
21 **FIRST CAUSE FOR DENIAL OF APPLICATION**

(Organization and Management)

(Educ. Code § 94887; and

22 Cal. Code Regs., title 5, §§ 71700; 71140, subd. (c); and 71730, subd. (f))

23 34. Respondent's application is subject to denial because Respondent failed to
24 demonstrate its Chief Executive Officer and Chief Operating Officer, D.F., has the expertise to
25 ensure the achievement of the institution's mission and objectives and the operation of the
26 educational programs. (Educ. Code § 94887; and Cal. Code Regs., title 5, §§ 71700; 71140,
27 subd. (c); and 71730, subd. (f)).

28 ////

1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 (Enrollment Agreement)

3 (Educ. Code §§ 94887; 94911, subs. (c) and (h); and 94916; and
4 Cal. Code Regs., title 5, §§ 71700; 71716, subs. (c)(1) and (c)(2); 71800, subs. (e)(9) and
5 (e)(10); and 76215, subd. (a))

6 35. Respondent's application is subject to denial because Respondent failed to offer
7 compliant enrollment agreements. (Educ. Code §§ 94887; 94911, subs. (c) and (h); and 94916;
8 and Cal. Code Regs., title 5, §§ 71700; 71716, subs. (c)(1) and (c)(2); 71800, subs. (e)(9) and
9 (e)(10); and 76215, subd. (a)). In particular:

10 a. Respondent's proposed enrollment agreement for its Health and Intimacy
11 Studies Certificate Program and Respondent's proposed catalog contain conflicting information
12 related to the assessment fees for transfer of credits. (Cal. Code Regs., title 5, § 71800, subd.
13 (e)(9)).

14 b. Respondent's proposed enrollment agreement for its Clinical Health and
15 Intimacy Studies Certificate Program and Respondent's proposed catalog contain conflicting
16 information related to the assessment fees for transfer of credits. (Cal. Code Regs., title 5, §
17 71800, subd. (e)(9)).

18 c. Respondent's proposed enrollment agreement for its Health and Intimacy
19 Studies Certificate Program and Respondent's proposed catalog contain conflicting information
20 related to fees to transfer credits. (Cal. Code Regs., title 5, § 71800, subd. (e)(10)).

21 d. Respondent's proposed enrollment agreement for its Clinical Health and
22 Intimacy Studies Certificate Program and Respondent's proposed catalog contain conflicting
23 information related to fees to transfer credits. (Cal. Code Regs., title 5, § 71800, subd. (e)(10)).

24 e. Respondent's proposed enrollment agreement for its Health and Intimacy
25 Studies Certificate Program fails to include, in underlined capital letters on the same page of the
26 enrollment agreement in which the student's signature is required, "the estimated total charges for
27 the entire educational program" and "the total charges the student is obligated to pay upon
28 enrollment." (Educ. Code § 94911, subd. (c)).

 f. Respondent's proposed enrollment agreement for its Clinical Health and
Intimacy Studies Certificate Program fails to include, in underlined capital letters on the same

1 page of the enrollment agreement in which the student's signature is required, "the estimated total
2 charges for the entire educational program" and "the total charges the student is obligated to pay
3 upon enrollment." (Educ. Code § 94911, subd. (c)).

4 g. Respondent's proposed enrollment agreement for its Health and Intimacy
5 Studies Certificate Program fails to include requisite, verbatim language regarding the Student
6 Tuition Recovery Fund ("STRF"). (Cal. Code Regs., title 5, § 76215, subd. (a)).

7 h. Respondent's proposed enrollment agreement for its Clinical Health and
8 Intimacy Studies Certificate Program fails to include requisite, verbatim language regarding
9 STRF. (Cal. Code Regs., title 5, § 76215, subd. (a)).

10 i. Respondent's proposed enrollment agreement for its Health and Intimacy
11 Studies Certificate Program fails to include requisite, verbatim language regarding the "Notice
12 Concerning Transferability of Credits and Credentials Earned at our Institution." (Educ. Code §
13 94911, subd. (h)).

14 j. Respondent's proposed enrollment agreement for its Clinical Health and
15 Intimacy Studies Certificate Program fails to include requisite, verbatim language regarding the
16 "Notice Concerning Transferability of Credits and Credentials Earned at our Institution." (Educ.
17 Code § 94911, subd. (h)).

18 k. Respondent's proposed enrollment agreements for its Health and Intimacy
19 Studies Certificate Program and Clinical Health and Intimacy Studies Certificate Program fail to
20 contain the header "NOTICE" prior to the language required by Education Code section 94916.

21 l. Respondent's proposed enrollment agreement for its Clinical Health and
22 Intimacy Studies Certificate Program includes information on distance education, but does not
23 include disclosures to students regarding transmittal of lessons and other materials and the
24 institution's obligation to provide other educational services. (Cal. Code Regs., title 5, §§ 71716,
25 subds. (c)(1) and (c)(2)).

26 m. Respondent's proposed enrollment agreement for its Health and Intimacy
27 Studies Certificate Program includes information on distance education, but does not include
28 disclosures to students regarding transmittal of lessons and other materials and the institution's

1 obligation to provide other educational services. (Cal. Code Regs., title 5, §§ 71716, subs. (c)(1)
2 and (c)(2)).

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**

4 (Instruction – Distance Education)
5 (Educ. Code §§ 94834 and 94887; and
6 Cal. Code Regs., title 5, §§ 71700 and 71715, subs. (d)(1), (d)(2), (d)(3), (d)(4)-(d)(6),
7 and (d)(8))

8 36. Respondent's application is subject to denial because Respondent failed to
9 demonstrate it is able to offer a compliant distance education program. (Educ. Code §§ 94834
10 and 94887; and Cal. Code Regs., title 5, §§ 71700 and 71715, subs. (d)(1), (d)(2), (d)(3), (d)(4)-
11 (d)(6), and (d)(8)). In particular:

12 a. Respondent's application fails to demonstrate it is able to assess each student,
13 prior to admission, in order to determine whether each student has the skills and competencies to
14 succeed in a distance education environment. (Cal. Code Regs., title 5, § 71715, subd. (d)(2)).

15 b. Respondent's application fails to demonstrate that its distance education
16 materials and programs are designed by faculty competent in distance education techniques and
17 delivered using readily available, reliable technology. (Cal. Code Regs., title 5, § 71715, subd.
18 (d)(3)).

19 c. Respondent's application fails to demonstrate that Respondent will ensure that
20 the educational program offered through distance education is appropriate for delivery through
21 distance education methods. (Cal. Code Regs., title 5, § 71715, subd. (d)(1)).

22 d. Respondent's application fails to demonstrate that Respondent will provide for
23 meaningful interaction with faculty who are qualified to teach using distance education methods.
24 (Cal. Code Regs., title 5, § 71715, subd. (d)(4)).

25 e. Respondent's application fails to demonstrate that Respondent will maintain
26 clear standards for satisfactory academic progress. (Cal. Code Regs., title 5, § 71715, subd.
27 (d)(5)).

28 f. Respondent's application fails to demonstrate that Respondent will timely
complete student evaluations of learning outcomes by duly qualified faculty, which are

1 appropriate for use with the distance education methods used, and evaluated by duly qualified
2 faculty. (Cal. Code Regs., title 5, § 71715, subd. (d)(6)).

3 g. Respondent's application fails to demonstrate that Respondent will maintain a
4 record of the dates on which lessons, projects, and dissertations were received and responses were
5 returned to each student. (Cal. Code Regs., title 5, § 71715, subd. (d)(8)).

6
7 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

(Description of Educational Programs)

8 (Educ. Code §§ 94887 and 94897, subd. (b); and
9 Cal. Code Regs., title 5, §§ 71700; 71210, subd. (c)(7); and 71710, subd. (c))

10 37. Respondent's application is subject to denial because Respondent failed to offer
11 sufficient information regarding its proposed courses. (Educ. Code §§ 94887 and 94897, subd.
12 (b); and Cal. Code Regs., title 5, §§ 71700; 71210, subd. (c)(7); and 71710, subd. (c)). In
13 particular:

14 a. Respondent fails to offer syllabi or course outlines for the following courses:
15 SYL110, SYCS210, SYD110, SYM110, SYPSC110, SYB110, SYLE110, SYETH110,
16 SYPHL110, SYTHE110, SYART110, SYSE110, SYGS110, SYHT110, SYHS110, SYDM110,
17 SHST110, SHSE110, SHSR110, CSIAD211, CSCS211, CSADM210, CSSE210, CSSP210,
18 CSET210, CSCT210, CSAR210, CSGP210, and CSDM21. (Cal. Code Regs., title 5, § 71710,
19 subd. (c)).

20 b. Respondent provided the following statement regarding its Clinical Health and
21 Intimacy Specialist Program: "the designation will allow the recipient to work in conjunction
22 with and/or under the supervision of any related profession in the Health, Mental Health, Social
23 Services, and other related professions." However, Respondent failed to offer any information
24 demonstrating that this statement is correct. (Educ. Code § 94897, subd. (b) and Cal. Code Regs.,
25 title 5, § 71210, subd. (c)(7)).

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1
2 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

(Financial Statements)

(Educ. Code § 94887; and

3 Cal. Code of Regs., title 5, §§ 71700 and 74115, subs. (b) and (d))

4 38. Respondent's application is subject to denial because Respondent failed to provide
5 compliant financial statements. (Educ. Code §§ 94885, subd. (a)(6) and 94887; and Cal. Code of
6 Regs., title 5, §§ 71700 and 74115, subs. (b) and (d)). In particular, the financial statements
7 offered by Respondent do not include a balance sheet, income statement, and cash flow statement.

8
9 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

(School Catalog)

(Educ. Code §§ 94841, 94887, and 94909, subs. (a)(2), (a)(7), (a)(8)(A),

10 (a)(8)(C), (a)(11), (a)(15), and (a)(16); and

11 Cal. Code Regs., title 5, §§ 71700; 71720, subd. (b); 71770, subd. (c); 71810, subs. (b)(7),
12 (b)(11), (b)(12); 74112, subd. (d)(3); and 76215, subs. (a) and (b))

13 39. Respondent's application is subject to denial because Respondent failed to offer a
14 compliant school catalog. (Educ. Code §§ 94841, 94887, and 94909, subs. (a)(2), (a)(7),
15 (a)(8)(A), (a)(8)(C), (a)(11), (a)(15), and (a)(16); and Cal. Code Regs., title 5, §§ 71700; 71720,
16 subd. (b); 71770, subd. (c); 71810, subs. (b)(7), (b)(11), (b)(12); 74112, subd. (d)(3); and 76215,
17 subs. (a) and (b)). In particular:

18 a. Respondent's proposed catalog fails to contain a consistent statement that the
19 institution is a private institution and that it is approved to operate by the Bureau. (Educ. Code §
20 94909, subd. (a)(2)).

21 b. Respondent's proposed catalog's "Notice Concerning Transferability of Credits
22 and Credentials Earned at Our Institution" fails to contain the language required by Education
23 Code section 94909, subdivision (a)(15).

24 c. Respondent's proposed catalog refers to Ability-to-Benefit exams, with regard
25 to Respondent's admission policies, but fails to specify which Ability-to-Benefit exams apply or
26 Respondent will otherwise accept. (Educ. Code § 94909, subd. (a)(8)(A)).

27 d. Respondent's proposed catalog fails to include its policies or procedures for the
28 award of credit for prior experiential learning. (Cal. Code Regs., title 5, §§ 71770, subd. (c) and
71810, subd. (b)(7)).

1 e. Respondent's proposed catalog fails to contain a statement specifying whether
2 the institution, or any of its degree programs, are accredited by an accrediting agency recognized
3 by the United States Department of Education. (Educ. Code § 94909, subd. (a)(16)).

4 f. Respondent's proposed catalog fails to include the language regarding the
5 Student Tuition Recovery Fund ("STRF") required by California Code of Regulations, title 5,
6 section 76215, subdivisions (a) and (b).

7 g. Information in Respondent's proposed catalog regarding its faculty conflicts
8 with other information Respondent provided the Bureau as part of its application. (Educ. Code §§
9 94841 and 94909, subd. (a)(7); Cal. Code Regs., title 5, § 71720, subd. (b)).

10 h. Respondent's proposed catalog fails to contain a statement specifying that, if a
11 student obtains a loan to pay for an educational program, the student will have the responsibility
12 to repay the full amount of the loan plus interest, less the amount of any refund, and that, if the
13 student has received federal student financial aid funds, the student is entitled to a refund of the
14 moneys not paid from federal student financial aid program funds. (Educ. Code § 94909, subd.
15 (a)(11)).

16 i. Respondent's proposed catalog fails to include the institution's probation and
17 dismissal policies. (Educ. Code § 94909, subd. (a)(8)(C)).

18 j. Respondent's proposed catalog fails to include a description of all student
19 services. (Cal. Code Regs., title 5, § 71810, subd. (b)(12)).

20 k. Respondent's proposed catalog fails to include the standard occupational
21 classification ("SOC") codes related to the employment positions identified in Respondent's
22 application. (Cal. Code Regs., title 5, § 74112, subd. (d)(3)).

23 l. Respondent's proposed catalog includes information regarding distance
24 education, but fails to provide details regarding the approximate number of days that will elapse
25 between the institution's receipt of student lessons, projects, or dissertations and the institution's
26 mailing of its response or evaluation. (Cal. Code Regs., title 5, § 71810, subd. (b)(11)).

27 m. In a catalog (dated September 24, 2018 - September 20, 2019) on Respondent's
28 website, Respondent references as part of its faculty an individual (T.M.) who, according to

1 another part of Respondent's website, died on August 22, 2018. (Educ. Code § 94909, subd.
2 (a)(7) and Cal. Code Regs., title 5, § 71720, subd. (b)(1)).

3 n. Respondent's proposed catalog does not reference to as faculty an individual
4 (S.K.) who, according to Respondent's website (<http://www.dianovainstitute.org/>), is a "Founding
5 Medical Director and Faculty of Dianova Institute." Accordingly, Respondent's proposed catalog
6 fails to contain information regarding Respondent's faculty and their qualifications, and
7 Respondent has failed to establish that it will employ instructors who possess the academic,
8 experiential and professional qualifications to teach. (Educ. Code § 94909, subd. (a)(7) and Cal.
9 Code Regs., title 5, § 71720, subd. (b)(1)).

10
11 **SEVENTH CAUSE FOR DENIAL OF APPLICATION**

(Representations Regarding Educational Outcomes)

(Educ. Code § 94897, subds. (b) and (c); and

12 Cal. Code Regs., title 5, §§ 71400.5, subd. (a) and 71700)

13 40. Respondent's application is subject to denial because Respondent makes unwarranted
14 statements regarding educational outcomes. (Educ. Code § 94897, subds. (b) and (c); and Cal.
15 Code Regs., title 5, § 71700). In particular, in a catalog (dated September 24, 2018 - September
16 20, 2019) on Respondent's website, Respondent makes the following representations:

17 a. "The DiaNova Institute educates, trains and develops mentors and therapists
18 with the skills necessary to successfully apply these spiritual and practice methodologies."

19 b. "... [students] are also given the tools to develop a spiritually and financially
20 rewarding career"

21 c. "Additionally, students learn how and gain the ability to provide treatment to
22 suffering individuals who are experiencing dysfunction and dissatisfaction due to injury or trauma
23 to the physical body, hormonal issues, aging, physical and/or mental disability, or sexually-
24 transmitted infections or diseases."

25 41. In making these representations, Respondent improperly:

26 a. Promised or guaranteed employment, or otherwise overstated the availability of
27 jobs upon graduation. (Educ. Code § 94897, subds. (b)).

28

1 b. Inaccurately and misleadingly advertised concerning job availability, degree of
2 skill, or length of time required to learn a trade or skill. (Educ. Code § 94897, subs. (c)).

3
4 **EIGHTH CAUSE FOR DENIAL OF APPLICATION**

5 (Operating Without Approval)
6 (Educ. Code §§ 94817.5, 94868, 94869, and 94886; and
7 Cal. Code Regs., title 5, § 71700)

8 42. Respondent's application is subject to denial because Respondent operated and
9 operates its institution, as a private postsecondary education institution, without obtaining
10 approval to operate pursuant to the California Private Postsecondary Education Act of 2009
11 (Education Code section 94800 *et seq.*). (Educ. Code §§ 94817.5, 94868, 94869, 94885, and
12 94886).

13 **PRAYER**

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

- 16 1. Denying Respondent's Application for an Approval to Operate an Institution Non-
17 Accredited; and
18 2. Taking such other and further action as deemed necessary and proper.

19 DATED: 6/6/19 

20 DR. MICHAEL MARION, JR.
21 Chief
22 Bureau for Private Postsecondary Education
23 Department of Consumer Affairs
24 State of California
25 *Complainant*

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