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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 Statement of Issues
Against:

14 **THE PROFESSIONAL SCHOOL OF**
15 **PSYCHOLOGY**

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

18 **Institution Code: 3404931**

Respondent.

Case No. 1005193

AMENDED STATEMENT OF ISSUES

20
21 **PARTIES**

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

25 2. On or about September 11, 2017, the Bureau received an Application for Renewal of
26 Approval to Operate and Offer Educational Programs for Non-Accredited Institutions from The
27 Professional School of Psychology (Respondent). On or about September 11, 2017, William
28 Bergquist, Chief Executive Officer of The Professional School of Psychology certified under

1 penalty of perjury to the truthfulness of all statements, answers, and representations in the
2 application. The Bureau denied the application on August 22, 2019.

3 **JURISDICTION**

4 3. This Statement of Issues is brought before the Director of the Department of
5 Consumer Affairs (Director) for the Bureau for Private Postsecondary Education, under the
6 authority of the following laws. All section references are to the Education Code (Code) and the
7 California Code of Regulations, title 5 (Regulation), unless otherwise indicated.

8 4. Section 94891¹ of the Code states, in pertinent part: “(b) To be granted a renewal of
9 an approval to operate, the institution shall demonstrate its continued capacity to meet the
10 minimum operating standards.”

11 5. Regulation section 71700 states: “The Bureau may request that an institution
12 document compliance with the standards set forth in the Act and this Division to maintain an
13 approval to operate.”

14 **STATUTORY PROVISIONS**

15 6. Code section 94885, subdivision (a) states, in pertinent part:

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

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

19 (2) The institution maintains specific written standards for student admissions for each
20 educational program and those standards are related to the particular educational
21 program.

22 (3) The facilities, instructional equipment, and materials are sufficient to enable
23 students to achieve the educational program’s goals.

24 (4) The institution maintains a withdrawal policy and provides refunds.

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

26 (6) The institution is financially sound and capable of fulfilling its commitments to
27 students.

28 (7) That, upon satisfactory completion of an educational program, the institution gives

¹ The California Private Postsecondary Education Act of 2009 was amended effective
January 1, 2017. All quoted sections from the Education Code are from the current version of the
Act.

1 students a document signifying the degree or diploma awarded.

2 (8) Adequate records and standard transcripts are maintained and are available to
3 students.

4 (9) The institution is maintained and operated in compliance with this chapter and all
5 other applicable ordinances and laws.

6 7. Code section 94887 states:

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

13 8. Code section 94891 states:

14 (a) The bureau shall adopt by regulation the process and procedures whereby an
15 institution may obtain a renewal of an approval to operate.

16 (b) To be granted a renewal of an approval to operate, the institution shall demonstrate
17 its continued capacity to meet the minimum operating standards.

18 (c)

19 (1) An institution that is denied renewal of an approval to operate may file an appeal
20 in accordance with the procedures established by the bureau pursuant to Section
21 94888.

22 (2) An institution that has filed an appeal of a denial of a renewal application may
23 continue to operate during the appeal process, but must disclose in a written
24 statement, approved by the bureau, to all current and prospective students, that the
25 institution's application for renewal of approval to operate was denied by the bureau
26 because the bureau determined the application did not satisfy the requirements to
27 operate in California, that the institution is appealing the bureau's decision, and that
28 the loss of the appeal may result in the institution's closure.

(3) If the bureau determines that the continued operation of the institution during the
appeal process poses a significant risk of harm to students, the bureau shall make an
emergency decision pursuant to its authority provided in Section 94938.

REGULATORY PROVISIONS

9. Regulation section 70000, subdivision (w), states:

"Quarter unit" means either of the following:

(1) At least ten (10) hours of college or university level instruction during a quarter
plus a reasonable period of time outside of instruction which an institution requires a
student to devote to preparation for planned learning experiences, such as preparation
for instruction, study of course material, or completion of educational projects; or

1 (2)Planned learning experiences equivalent to the learning and preparation described
2 in paragraph (1) as determined by duly qualified faculty responsible for evaluating
3 learning outcomes for the award of unit credits.

4 10. Regulation section 71475, subdivision (e), states:

5 The institution shall submit at the time it applies for renewal current financial
6 statements that meet the requirements of section 74115 as follows: (1) for an
7 institution with annual gross revenues of \$ 500,000 and over, statements shall be
8 audited; (2) for an institution with annual gross revenues less than \$ 500,000,
9 statements shall be reviewed.

10 11. Regulation section 71710, states in pertinent part:

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

13

14 (f) evaluation by duly qualified faculty of those learning outcomes.

15 12. Regulation section 71715, states in pertinent part:

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

18

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

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

. . . .

(5) maintain clear standards for satisfactory academic progress;

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

. . . .

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

1 13. Regulation section 71720, states in pertinent part:

2 (a)An Educational Program Leading to a Degree.

3

4 (4)The faculty shall have sufficient expertise to support the institution's awarding of a
5 degree identifying a specialty or major field of emphasis, demonstrated by, at a
6 minimum:

6 (A)That the person possesses one of the following:

7 1. a degree from: an institution approved by the Bureau or previously approved by a
8 predecessor agency of the Bureau; or an accredited institution in the United States or
9 Canada; or other state approved institution that documents that the institution at
10 which the faculty member earned his or her degree is equivalent to an institution that
11 is approved by the Bureau; or an institution outside the United States or Canada and
12 in addition provides a comprehensive evaluation of the degree performed by a foreign
13 credential evaluation service that is a member of the National Association of
14 Credential Evaluation Services (NACES).

11 2. a credential generally recognized in the field of instruction.

13 14. Regulation section 71745, states:

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

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

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

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

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

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

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

(b)At an institution's request, the Bureau may consider the financial resources of a
parent company if the parent company, as defined by section 94853 of the Code,

meets and maintains all of the following provisions:

- (1) consents in writing to be sued in California;
- (2) consents in writing to be subject to the jurisdiction of the Bureau with 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.

15. Regulation section 71865, subdivision (b), states:

(b) A professional Doctoral degree may only be awarded to a student who has completed a prescribed level of study normally requiring a minimum of three academic years of full-time graduate study or the equivalent in part-time study; or, if the program leads to a profession or occupation requiring state licensure, which satisfies the requirements of the state agency. The degree shall include the name of the field in which it is offered (e.g., Juris Doctor or Doctor of Music).

17. Regulation section 74115, states:

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

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

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

(2) Financial statements prepared on an annual basis as required by 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.

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

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

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

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

15 **FACTUAL BACKGROUND**

16 18. Respondent's "Application for Renewal of Approval to Operate an Institution Non-
17 Accredited" was received on September 11, 2017. The Bureau issued a deficiency letter on July
18 9, 2018. On August 10, 2018, the Bureau received a response. The Bureau issued a second
19 deficiency letter on October 31, 2018. On November 28, 2018, the Bureau received a response.
20 The Bureau issued a third deficiency letter on December 31, 2018. On January 25, 2019, the
21 Bureau received a response. On April 23, 2019, Bureau Senior Education Specialists
22 accompanied the Bureau's Compliance Unit on a routine inspection of the institution and
23 obtained a copy of the institution's catalog (revised as of April 12, 2019).

24 19. On August 22, 2019, the Bureau sent Respondent a "Notice of Denial" letter. On
25 October 17, 2019, Respondent appealed the denial and submitted mitigation to the Bureau for
26 review. On November 4, 2019, the Bureau completed its review. Respondent's application is
27 subject to denial for the following reasons:

28 **FIRST CAUSE FOR DENIAL OF APPLICATION**

29 (Failure to Meet Minimum Operating Standards – Instruction and Degrees Offered)

30 20. Respondent's application is subject to denial under Code section 94891, subdivision
31 (b), and Regulation section 71715, subdivision (d)(3), in that Respondent failed to demonstrate
32 how online instruction is taking place, and that distance education is being delivered using readily

1 available, reliable technology. In particular, Respondent failed to provide the Bureau with
2 information and log-in credentials for the online learning management system utilized by the
3 institution.

4 **SECOND CAUSE FOR DENIAL OF APPLICATION**

5 (Failure to Meet Minimum Operating Standards - Records of Online Projects)

6 21. Respondent's application is subject to denial under Code section 94891, subdivision
7 (b), and Regulation section 71715, subdivision (d)(8), in that Respondent failed to maintain a
8 record of the dates on which lessons, projects, and dissertations were received and responses were
9 returned to each student. In particular, Respondent reported to the Bureau that there is no record
10 of when lessons, projects and dissertations were received and returned to students.

11 **THIRD CAUSE FOR DENIAL OF APPLICATION**

12 (Failure to Meet Minimum Operating Standards - Timely Evaluations of Students' Work)

13 22. Respondent's application is subject to denial under Code section 94891, subdivision
14 (b), and Regulation section 71715, subdivision (d)(6), in that Respondent failed to demonstrate
15 timely evaluation of student work. In particular, Respondent did not have a standard time frame
16 for when students' submitted work is graded and returned.

17 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

18 (Failure to Meet Minimum Operating Standards - Standards for Satisfactory Academic Progress)

19 23. Respondent's application is subject to denial under Code section 94891, subdivision
20 (b), and Regulation sections 71710, subdivision (f), and section 71715, subdivisions (d)(5) and
21 (d)(8), in that Respondent failed to demonstrate that it maintains clear standards for satisfactory
22 academic progress, a record of the dates on which lessons, projects, and dissertations are received
23 and responses returned to students, and that duly qualified faculty evaluate the programs' learning
24 outcomes. In particular, the Bureau was unable to review any gradebooks, reports or copies of
25 graded work, as Respondent reported that this information was currently not accessible or readily
26 available to students.

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FIFTH CAUSE FOR DENIAL OF APPLICATION

(Failure to Meet Minimum Operating Standards - Compliance with Course Requirements)

24. Respondent's application is subject to denial under Code section 94891, subdivision (b), and Regulation section 70000, subdivision (w), section 71715, subdivision (b), and section 71865, subdivision (b), in that Respondent failed to demonstrate that its course requirements correlate with the units granted and that the instruction offered leads to the achievement of the learning objectives of each course and the level of study for the degree program. In particular, a review of the course syllabi submitted reveals that the coursework required does not appear to correlate with the units granted as required by Regulation section 70000, subdivision (w).

SIXTH CAUSE FOR DENIAL OF APPLICATION

(Failure to Meet Minimum Operating Standards - Financial Resources and Statements)

25. Respondent's application is subject to denial under Code section 94891, subdivision (b), and Regulation section 71475, subdivision (e), section 71745, and section 74115 in that Respondent failed to provide current and compliant financial statements. In particular:

a. Respondent failed to provide current audited financial statements as required for an institution with annual gross revenues of \$500,000 and over. On or about January 25, 2019, the Bureau received audited financial statements for the years ending July 31, 2016 and July 31, 2017, but failed to include audited financial statements for the year ending July 31, 2018, which was the most recent complete fiscal year at the time of submittal.

b. Respondent failed to document that it is maintaining the Bureau requirement of a ratio of current assets to current liabilities of 1.25 to 1.00 or greater at the end of the most recent fiscal year. Respondent failed to provide financial statements for 2018, the most recent fiscal year, and the documents provided reflect a 2017 ratio of 0.96 to 1.00, and a 2016 ratio was 0.81 to 1.00.

SEVENTH CAUSE FOR DENIAL OF APPLICATION

(Failure to Meet Minimum Operating Standards – Faculty)

26. Respondent's application is subject to denial under Code section 94891, subdivision (b), and Regulation section 71720, subdivision (a)(4)(A), in that Respondent failed to maintain

1 documentation that it has contracted with duly qualified faculty members to deliver instruction
2 and meet the educational objectives of the program. In particular, on or about April 23, 2019,
3 while accompanying a Bureau Compliance Inspector on a routine inspection of the institution, the
4 Bureau requested to review a selection of current faculty files. Upon review, it was discovered
5 that the files did not contain faculty transcripts, resumes, or Curriculum Vitae. Respondent could
6 not verify that the faculty who have been contracted with are qualified and meet the standards of
7 Regulation section 71720, subdivision (a).

8 **PRAYER**

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

- 12 1. Denying the application of The Professional School of Psychology for a Renewal of
- 13 Approval to Operate and Offer Educational Programs for Non-Accredited Institutions;
- 14 2. Taking such other and further action as deemed necessary and proper.

15 DATED: "6/6/2020"

"Original signature on file"
DR. MICHAEL MARION, JR.
Chief
Bureau for Private Postsecondary
Education
Department of Consumer Affairs
State of California
Complainant

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