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**BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
STATE OF CALIFORNIA**

**In the Matter of the Statement of Issues
Against:**

Case No. 1000838

SECOND AMENDED

STATEMENT OF ISSUES

**NEWPORT PSYCHOANALYTIC
INSTITUTE; NEWPORT CENTER FOR
PSYCHOANALYTIC STUDIES, OWNER,
BARRY ROSS, CEO**

School Code: 3008151

Respondent.

Complainant alleges:

PARTIES

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

25 2. On or about April 2, 2012, the Bureau for Private Postsecondary Education
26 (hereinafter “Bureau”) received an Application for Renewal of Approval to Operate an Institution
27 Non-Accredited (Application # 24645) from Newport Psychoanalytic Institute, Newport Center
28 for Psychoanalytic Studies, Owner, Barry Ross, CEO (Respondent). On or about March 23,

1 2012, Barry Ross certified under penalty of perjury to the truthfulness of all statements, answers,
2 and representations in the application. The Bureau denied the application on June 5, 2015.

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 unless
7 otherwise indicated.

8 4. Education Code Section 94886 states:

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

12 5. Education Code Section 94887 states:

13 An approval to operate shall be granted only after an applicant has presented
14 sufficient evidence to the bureau, and the bureau has independently verified the
15 information provided by the applicant through site visits or other methods
deemed appropriate by the bureau, that the applicant has the capacity to satisfy
the minimum operating standards. The bureau shall deny an application for an
approval to operate if the application does not satisfy those standards.
16

17 **STATUTORY AND REGULATORY PROVISIONS**

18 6. Education Code (hereinafter "Code") section 94891, subdivision (b) stated that "[t]o
19 be granted a renewal of an approval to operate, the institution shall demonstrate its continued
20 capacity to meet the minimum operating standards."

21 7. Title 5, CCR, section 71475 states in pertinent part:

22 ...

23 (b) An institution seeking to renew its Approval to Operate pursuant to section
24 94891 of the Code shall, prior to its expiration, complete and submit to the
Bureau the "Application for Renewal of Approval to Operate and Offer
Educations Programs for Non-Accredited Institutions," Form Application
25 94891 (rev. 2/10).

26 ...

27 (bb) The application shall include a copy of the institution's catalog, in
published or proposed-to-be-published form. The catalog shall meet the
28 requirements of the Act and of section 71810. ...

1 8. Title 5, CCR, section 71700 states, "The Bureau may request that an institution
2 document compliance with the standards set forth in the Act and this Division to obtain and
3 maintain an approval to operate."

4 9. Title 5, CCR, section 71720 states in pertinent part:

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

6 (1) An institution offering an educational program that leads to a degree
7 shall employ duly qualified faculty sufficient in number to provide the
instruction, student advisement, and learning outcomes evaluation necessary for
the institution to document its achievement of its stated mission and objectives,
and for students to achieve the specific learning objectives of each course
offered;

9 ...

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

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

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

19 2. a credential generally recognized in the field of
20 instruction.

21 (B) The degree, professional license, or credential possessed by the
22 person shall be at least equivalent to the level of instruction being
taught or evaluated;

23 ...

24 10. Title 5, CCR, section 71865 states in pertinent part:

25 ...

26 (c) (2) (A) Each Doctor of Philosophy program shall include a minimum
27 of two formal evaluations of the student by a doctoral committee.
The doctoral committee shall be composed of at least three
members of the institution's own faculty who meet the
qualifications in subdivision (c)(3).

1 ...

2 (3) The faculty members who serve on each student's doctoral examining
3 committee shall meet the following qualifications:

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

15 (B) The chair and the majority of the committee shall have earned
16 degrees related to the student's field of investigation.

17 (C) A minimum of 50% of the faculty on the committee shall have
18 degrees conferred by an institution accredited by an accrediting
19 association recognized by the United States Department of
20 Education or the American Bar Association, unless the
21 accreditation does not exist.

22 (D) All of the faculty shall have three or more years of field or
23 research experience related to their degrees obtained after they
24 obtained their degrees.

25 (E) All of the faculty shall have been active in their field of
26 scholarship or profession during the five year period preceding
27 their participation on the committee.

28 ...

19 FACTS

20 11. On April 2, 2012, the Bureau received an Application for Renewal of Approval to
21 Operate a Non-Accredited Institution, Application Number 24645, from Respondent. Respondent
22 had been approved to offer the following degree programs: Doctor of Philosophy (Ph.D.) in
23 Psychoanalysis and Doctor of Psychiatry (Psy.D.) in Psychoanalysis. Respondent had also been
24 approved to offer non-degree educational programs in Psychoanalysis and Dynamic
25 Psychotherapy.

26 12. On November 4, 2013, the Bureau sent Respondent a letter advising that the Bureau
27 could not grant Respondent a renewal of approval to operate because of deficiencies in the
28 application, including deficiencies pertaining to the institution's enrollment agreement, school

1 catalog, and financial statements and resources. On February 4, 2014, the Bureau received
2 Respondent's response to the deficiency letter.

3 13. On November 4, 2014, the Bureau sent Respondent a second letter advising that the
4 Bureau could not grant Respondent a renewal of approval to operate because of deficiencies in
5 the application, including deficiencies pertaining to the institution's enrollment agreement, school
6 catalog, and financial statements and resources. On November 13, 2014, the Bureau received
7 Respondent's response to the deficiency letter.

8 14. On February 23, 2015, the Bureau sent Respondent a third letter advising that the
9 Bureau could not grant Respondent a renewal of approval to operate because of deficiencies in
10 the application, including deficiencies pertaining to the institution's organization and
11 management, enrollment agreement, the instruction and degrees offered, the description of the
12 educational programs, school catalog, financial statements and resources, faculty, and graduation
13 or completion document. On March 27, 2015, the Bureau received Respondent's response to the
14 deficiency letter.

15 15. On June 5, 2015, the Bureau denied Respondent's Application for Renewal of
16 Approval to Operate a Non-Accredited Institution and sent Respondent a "Notice of Denial."

17 16. On February 2, 2016, the Bureau received additional documents from Respondent,
18 however deficiencies remained in the application.

19 17. On or about August 4, 2016, the Bureau received additional documents from
20 Respondent, however deficiencies remained in the application.

21 18. On or about October 10, 2016, the Bureau received additional documents from
22 Respondent, however deficiencies remained in the application.

23 19. On or about November 4, 2016, the Bureau received additional documents from
24 Respondent, however deficiencies remained in the application.

25 ///

26 ///

27 ///

28 ///

FIRST CAUSE FOR DENIAL OF APPLICATION

**(Failure to Demonstrate Continued Capacity to Satisfy Minimum Operating Standards
To Award Graduate Degree)**

19. Respondent's application is subject to denial under Education Code section 94891, subdivision (b), and title 5, CCR, section 71720, subdivisions (a)(4) and title 5, CCR, sections 71865, subdivision (c)(2)(A) and (c)(3) in that Respondent failed to demonstrate that the doctoral committee members include at least three members of the institution's own faculty who meet the qualifications of title 5, CCR, sectin 71865(c)(3), as follows:

20. Respondent's catalog states that membership in Respondent institution is available for psychoanalysts and adult lay individuals "who are interested in actively participating in the activities and growth of the Newport Psychoanalytic Institute [NPI].” Members of NPI are not faculty.

21. Respondent's catalog also references a "Training Committee." Membership in the Training Committee is open to NPI's "members," and is not limited to Respondent's faculty. However, the Training Committee performs the duties of faculty in directing a candidate's curriculum, providing instruction, and evaluating candidate learning outcomes in order to determine advancement and approve matriculation. Respondent must demonstrate that members of the Training Committee are faculty duly qualified to perform these duties. The institution's policies permitting "adult lay individuals" to obtain membership, permitting members to serve on committees and then allowing the Training Committee to perform the functions of faculty duties do not demonstrate Respondent's continued capacity to satisfy minimum operating standards to award a graduate degree.

22. While members of Dissertation Committees are required to be faculty members, the institution permits the Training Committee to serve as the committee of record in the hearing of a dissertation defense. The institution also permits the “Committee of Two,” to support, advise, and offer a preliminary evaluation of the doctoral candidate’s dissertation paper prior to the submission of the paper to the Training Committee, which are faculty duties that require individuals to be duly qualified pursuant to title 5, CCR, 71865(c)(2)(A).

PRAYER

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

- 5 1. Denying the application of Newport Psychoanalytic Institute, Newport Center for
6 Psychoanalytic Studies, Owner, Barry Ross, CEO, for a Renewal of Approval to Operate and
7 Offer Educational Programs for Non-Accredited Institutions; and,
8 2. Taking such other and further action as deemed necessary and proper.

10 DATED: 11/18/16

JOANNE WENZEL
Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

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