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

11
12 In the Matter of the First Amended Statement
of Issues Against:

Case No. 1000838

13
14 **NEWPORT PSYCHOANALYTIC**
INSTITUTE; NEWPORT CENTER FOR
15 **PSYCHOANALYTIC STUDIES, OWNER,**
16 **BARRY ROSS, CEO**

FIRST AMENDED

STATEMENT OF ISSUES

17 **School Code: 3008151**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Joanne Wenzel (Complainant) brings this First Amended Statement of Issues solely
23 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
12 postsecondary educational institution in this state without obtaining an approval
13 to operate under this chapter.

14 5. Education Code Section 94887 states:

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

21 STATUTORY AND REGULATORY PROVISIONS

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

25 7. Code section 94934 states in pertinent part:

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

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

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

(3) The degree levels and diplomas offered.

1 (4) The Student Performance Fact Sheet, as required pursuant to Section
2 94910.

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

4 (6) The total charges for each educational program by period of
5 attendance.

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

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

10 (9) Additional information deemed by the bureau to be reasonably
11 required to ascertain compliance with this chapter.

12 ...

13 8. Title 5, CCR, section 71475 states in pertinent part:

14 ...

15 (b) An institution seeking to renew its Approval to Operate pursuant to section
16 94891 of the Code shall, prior to its expiration, complete and submit to the
17 Bureau the "Application for Renewal of Approval to Operate and Offer
18 Educations Programs for Non-Accredited Institutions," Form Application
19 94891 (rev. 2/10).

20 (c) The application for renewal of approval to operate and offer educational
21 programs for non-accredited institutions shall include all of the following:

22 ...

23 (o) The institution shall include, with its application, exemplars of all student
24 enrollment agreements and instruments of indebtedness.

25 ...

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

...

9. Title 5, CCR, section 71700 states, "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."

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

(a) An Educational Program Leading to a Degree.

(1) An institution offering an educational program that leads to a degree

1 shall employ duly qualified faculty sufficient in number to provide the
2 instruction, student advisement, and learning outcomes evaluation necessary for
3 the institution to document its achievement of its stated mission and objectives,
4 and for students to achieve the specific learning objectives of each course
5 offered;

6 ...

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

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

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

21 2. a credential generally recognized in the field of
22 instruction.

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

26 (5) The institution's faculty as a whole shall possess a diverse educational
27 background which shall be demonstrated in part by earned degrees from a
28 variety of colleges and universities or by credentials generally recognized in the
field of instruction;

...

(9) The institution shall maintain records documenting that each faculty
member is duly qualified and was qualified to perform the duties to which the
faculty member was assigned, including providing instruction, evaluating
learning outcomes, evaluating graduate dissertations, theses, and student
projects, and participating on doctoral committees.

...

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

...

(c)(1) A Doctor of Philosophy degree (Ph.D.) is a research-oriented degree
requiring a minimum of three years of full-time graduate education or the
equivalent in part-time study. Such a doctoral program shall include substantial
instruction in both theory and research at an advanced level in a designated
field and specialty, and may only be awarded to a student who has completed a

1 program of study that includes research methodology and demonstrated
2 learning achievement through original research directly attributable to the
3 student. Each educational program leading to a Doctor of Philosophy degree
4 shall involve preparation for scholarship and systematic inquiry.

5 ...

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

8 ...

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

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

16 ...

17 12. Title 5, CCR, section 74112 states in pertinent part:

18 ...

19 (c) Reporting periods:

20 (1) An Annual Report shall include data for all educational programs as
21 defined in section 94837 of the Code for the previous one calendar year.

22 (2) A Performance Fact Sheet shall be current and available not later than
23 August 1st, and shall report data for the previous two calendar years based upon
24 the "number of students who began program" or the "number of graduates," as
25 defined in subdivision (b), for each reported calendar year.

26 (d) Completion Rates. Reporting of completion rates for an institution's Annual
27 Report and Performance Fact Sheet shall include, for each educational program,
28 the number of students who began program as defined in subdivision (b), the
number of students available for graduation, number of graduates, and
completion rate(s). An optional column may be added to include completion
rate data for students completing within 101-150% of the published program
length. For an institution reporting completion data pursuant to section
94929(b) of the Code, completion data shall be separately reported for each
program. The Performance Fact Sheet shall disclose, if true, that the completion
data is being reported for students completing within 150% of the published
program length, and that data is not being separately reported for students
completing the program within 100% of the published program length.

Completion rates shall be included in the Performance Fact Sheet in a format
substantially similar to the chart below, including the footnoted information
below (dates, numbers, and other data shown are for example only):

Completion Rates (includes data for the two calendar years prior to reporting).

1 **Name of Educational Program (Program Length)**

2		<i>Number of</i>	<i>Students</i>		
3	<i>Calendar</i>	<i>Students Who</i>	<i>Available for</i>	<i>Graduates³</i>	<i>Completion</i>
	<i>Year</i>	<i>Began Program¹</i>	<i>Graduation²</i>		<i>Rate⁴</i>
4	20XX	100	98	70	71%
5	20XY	80	80	55	69%

6 Students Completing After Published Program Length - 150% Completion Rate

7 **Name of Educational Program (Program Length)**

8		<i>Number of</i>	<i>Students</i>		<i>150%</i>
9	<i>Calendar</i>	<i>Students Who</i>	<i>Available for 150%</i>	<i>Graduates⁵</i>	<i>Completion</i>
	<i>Year</i>	<i>Began Program¹</i>	<i>Graduation²</i>		<i>Rate⁶</i>
10	20XX	100	98	25	26%
11	20XY	80	80	23	29%

12 ¹ “Number of Students Who Began Program” is the number of students who
 13 began the program who are scheduled to complete the program within the
 14 reporting calendar year.

15 ² “Students available for graduation” is the number of students who began
 16 program minus the number of “Students unavailable for graduation,” which
 17 means those students who have died, been incarcerated, or called to active
 18 military duty.

19 ³ “Graduates” is the number of students who completed the program within
 20 100% of the published program length.

21 ⁴ “Completion Rate” is the number of Graduates divided by the Number of
 22 Students Available for Graduation.

23 ⁵ “150% Graduates” is the number of students who completed the program
 24 within 101-150% of the published program length.

25 ⁶ “150% Completion Rate” is the number of students who completed the
 26 program in the reported calendar year within 101-150% of the published
 27 program length divided by the Number of Students Available for Graduation in
 28 the published program length period.

...

FACTS

13. On April 2, 2012, the Bureau received an Application for Renewal of Approval to
 Operate a Non-Accredited Institution, Application Number 24645, from Respondent. Respondent

1 had been approved to offer the following degree programs: Doctor of Philosophy (Ph.D.) in
2 Psychoanalysis and Doctor of Psychiatry (Psy.D.) in Psychoanalysis. Respondent had also been
3 approved to offer non-degree educational programs in Psychoanalysis and Dynamic
4 Psychotherapy.

5 14. On November 4, 2013, the Bureau sent Respondent a letter advising that the Bureau
6 could not grant Respondent a renewal of approval to operate because of deficiencies in the
7 application, including deficiencies pertaining to the institution's enrollment agreement, school
8 catalog, and financial statements and resources. On February 4, 2014, the Bureau received
9 Respondent's response to the deficiency letter.

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

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

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

24 18. On February 2, 2016, the Bureau received additional documents from Respondent.

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1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Failure to Demonstrate Continued Capacity to Satisfy Minimum Operating Standards**
3 **- Qualifications of Faculty)**

4 19. Respondent's application is subject to denial under Education Code section 94891,
5 subdivision (b), and title 5, CCR, section 71720, subdivisions (a)(1), (4), (5) and (9), and title 5,
6 CCR, section 71865, subdivision (c)(3)(C) and (D) in that Respondent failed to demonstrate that
7 the faculty members identified are duly qualified and of sufficient expertise to provide the
8 instruction and learning outcomes necessary for the institution to achieve its stated mission and
9 objectives, as follows:

10 a. Respondent failed to submit evidence of qualifications such as resumes/curriculum
11 vitae and transcripts for J. S.

12 b. Respondent failed to submit transcripts for A.D.

13 c. Respondent failed to submit course assignments and employment contracts to
14 demonstrate that its faculty members are employed by Respondent and that they possess the
15 degree, professional license, or credential, at least equivalent to the level of instruction being
16 taught or evaluated.

17 **SECOND CAUSE FOR DENIAL OF APPLICATION**

18 **(Failure to Demonstrate Continued Capacity to Satisfy Minimum Operating Standards**
19 **- School Performance Fact Sheets and Annual Report)**

20 20. Respondent's application is subject to denial under Education Code section 94891,
21 subdivision (b), and section 94934, subdivision (a) and title 5, CCR, Section 74112, subdivisions
22 (c) and (d) in that the institution's website failed to provide correct School Performance Fact
23 Sheet ("SPFS") and annual report information as follows:

24 a. The institution's 2013-2014 SPFS for its main campus was inconsistent with the data
25 provided in its 2013 Annual Report. Examples are as follows:

26 i. Doctor of Philosophy in Psychoanalysis: For the reporting category labeled
27 "Number of Students Who Began Program," the institution reported "2" in its 2013 Annual
28

1 Report, but reported "0" in its 2013 SPFS and failed to provide an explanation for the
2 inconsistency.

3 ii. Doctor of Psychology in Psychoanalysis: For the reporting category labeled
4 "Number of Students Who Began Program," the institution reported "22" in its 2013 Annual
5 Report, but reported "2" in its 2013 SPFS. This inconsistency also resulted in inconsistent data
6 for the category labeled "Student Available for Graduation," which is defined as the number of
7 students who began the program minus the number of students unavailable for graduation.¹
8 Respondent failed to provide an explanation for the inconsistency.

9 iii. Certificate in Psychodynamics: For the reporting category labeled "Number of
10 Students Who Began Program," the institution reported "4" in its 2013 Annual Report, but
11 reported "8" in its 2013 SPFS. This inconsistency also resulted in inconsistent data for the
12 category labeled "Student Available for Graduation," which is defined as the number of students
13 who began the program minus the number of students unavailable for graduation. Respondent
14 failed to provide an explanation for the inconsistency.

15 iv. Certificate in Psychoanalysis: The institution did not submit the required
16 reporting data for this educational program in its 2013 Annual Report. Therefore, the Bureau is
17 unable to confirm the information that is contained in the 2013 SPFS.

18 b. Respondent failed to provide SPFS data for the branch campus.

19 **PRAYER**

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

23 1. Denying the application of Newport Psychoanalytic Institute, Newport Center for
24 Psychoanalytic Studies, Owner, Barry Ross, CEO, for a Renewal of Approval to Operate and
25 Offer Educational Programs for Non-Accredited Institutions; and,

26 ///

27 ¹ The "number of students unavailable for graduation" is the number of students who have
28 died, been incarcerated, or called to active military duty.

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2. Taking such other and further action as deemed necessary and proper.

DATED: 4/8/16



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

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