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

10
11 In the Matter of the Accusation Against:

Case No. 1001405

12 **DAVID'S ACADEMY OF BEAUTY**
13 **8652 East Whittier Boulevard**
Pico Rivera, CA 90660

A C C U S A T I O N

14 **Institution Code: 1937111**

15 Respondent.
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18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about April 21, 2012, the Bureau for Private Postsecondary Education issued
24 Approval to Operate Institution Number 1937111 to David's Academy of Beauty ("Respondent").
25 On or about September 30, 2016, the approval to operate expired. The approval to operate was in
26 full force and effect at all times relevant to the charges brought herein.

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JURISDICTION

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3. This Accusation is brought before the Director of the Department of Consumer Affairs ("Director") for the Bureau for Private Postsecondary Education, under the authority of the following laws. All section references are to the Education Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Business and Professions Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 94932 of the Education Code states:
"The bureau shall determine an institution's compliance with the requirements of this chapter. The bureau shall have the power to require reports that institutions shall file with the bureau in addition to the annual report, to send staff to an institution's sites, and to require documents and responses from an institution to monitor compliance. When the bureau has reason to believe that an institution may be out of compliance, it shall conduct an investigation of the institution. If the bureau determines, after completing an investigation, that an institution has violated any applicable law or regulation, the bureau shall take appropriate action pursuant to this article."

6. Section 94937 of the Education Code states:
"(a) As a consequence of an investigation, and upon a finding that an institution has committed a violation, the bureau may place an institution on probation or may suspend or revoke an institution's approval to operate for:

- "(1) Obtaining an approval to operate by fraud.
- "(2) A material violation or repeated violations of this chapter or regulations adopted pursuant to this chapter that have resulted in harm to students. For purposes of this paragraph, "material violation" includes, but is not limited to, misrepresentation, fraud in the inducement of a contract, and false or misleading claims or advertising, upon which a student reasonably relied in executing an enrollment agreement and that resulted in harm to the student.

1 (b) The institution shall notify the bureau of the substantive change on a form provided by
2 the bureau.

3 9. Section 94906 states:

4 (a) An enrollment agreement shall be written in language that is easily understood. If
5 English is not the student's primary language, and the student is unable to understand the terms
6 and conditions of the enrollment agreement, the student shall have the right to obtain a clear
7 explanation of the terms and conditions and all cancellation and refund policies in his or her
8 primary language.

9 (b) If the recruitment leading to enrollment was conducted in a language other than English,
10 the enrollment agreement, disclosures, and statements shall be in that language.

11 **REGULATORY PROVISIONS**

12 10. California Code of Regulations, Title 5, section 71720, subdivision (b)(1), states:

13 (b) Instructors in an Educational Program Not Leading to a Degree.

14 (1) An institution shall employ instructors who possess the academic, experiential and
15 professional qualifications to teach, including a minimum of three years of experience, education
16 and training in current practices of the subject area they are teaching. If an instructor does not
17 possess the required three years of experience, education and training in the subject area they are
18 teaching, the institution shall document the qualifications the instructor possesses that are
19 equivalent to the minimum qualifications.

20 11. California Code of Regulations, Title 5, section 71650, subdivision (d), states:

21 (d) An institution that has been granted an approval to operate by means of accreditation
22 shall notify the Bureau of the substantive change within 30 days of that change on the Change in
23 Educational Objectives form, by providing the information required by (c)(1) and (c)(10), and
24 shall attach certification from the institution's accreditation agency demonstrating that the
25 substantive change was made in accordance with the institution's accreditation standards, and
26 complies with the Act and this Division.

27 12. California Code of Regulations, Title 5, section 71745, subdivisions (a)(1), (a)(2),
28 (a)(3) and (a)(5), state:

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

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

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

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

7 ...

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

9 13. California Code of Regulations, Title 5, section 71920, subdivisions (a) and (b)(3),
10 state:

11 (a) The institution shall maintain a file for each student who enrolls in the institution
12 whether or not the student completes the educational service.

13 (b) In addition to the requirements of section 94900, the file shall contain all of the
14 following pertinent student records:

15 ...

16 (3) Copies of all documents signed by the student, including contracts, instruments of
17 indebtedness, and documents relating to financial aid;

18 ...

19 14. California Code of Regulations, Title 5, section 74112, subdivision (m), states:

20 (m) Documentation supporting all data reported shall be maintained electronically by the
21 institution for at least five years from the last time the data was included in either an Annual
22 Report or a Performance Fact Sheet and shall be provided to the Bureau upon request; the data for
23 each program shall include at a minimum:

24 (1) the list of job classifications determined to be considered gainful employment for the
25 educational program;

26 (2) student name(s), address, phone number, email address, program completed, program
27 start date, scheduled completion date, and actual completion date;

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1 (3) graduate's place of employment and position, date employment began, date employment
2 ended, if applicable, actual salary, hours per week, and the date employment was verified;

3 (4) for each employer from which employment or salary information was obtained, the
4 employer name(s) address and general phone number, the contact person at the employer and the
5 contact's phone number and email address, and all written communication with employer
6 verifying student's employment or salary;

7 (5) for students who become self-employed, all documentation necessary to demonstrate
8 self-employment;

9 (6) a description of all attempts to contact each student or employer;

10 (7) any and all documentation used to provide data regarding license examinations and
11 examination results;

12 (8) for each student determined to be unavailable for graduation or unavailable for
13 employment, the identity of the student, the type of unavailability, the dates of unavailability, and
14 the documentation of the unavailability; and

15 (9) the name, email address, phone number, and position or title of the institution's
16 representative who was primarily responsible for obtaining the students' completion, placement,
17 licensing, and salary and wage data, the date that the information was gathered, and copies of
18 notes, letters or emails through which the information was requested and gathered.

19 COST RECOVERY

20 15. Code section 94937, subdivision (c), authorizes the Bureau to seek reimbursement
21 under Business and Professions Code section 125.3. Code section 94937, subdivision (d),
22 provides that an institution shall not be required to pay more than one agency's investigation
23 costs.

24 16. Business and Professions Code section 125.3 provides, in pertinent part, that the
25 Bureau may request the administrative law judge to direct a licentiate found to have committed a
26 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
27 investigation and enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Failure to Employ Qualified Faculty)**

3 17. Respondent is subject to disciplinary action under section 94937, for violating
4 California Code of Regulations, Title 5, section 71720, subdivision (b)(1). The circumstances are
5 as follows:

6 18. On or about September 1, 2016, Respondent confirmed that Respondent's massage
7 instructor, P.N., was no longer part of Respondent's faculty and that Respondent's massage
8 program had zero students at that time. However, Respondent continued to advertise massage
9 programs on its website and in its catalog without having qualified staff employed.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Failure to Notify Bureau of Change in Educational Objectives)**

12 19. Respondent is subject to disciplinary action under section 94937, for violating section
13 94896 and California Code of Regulations, Title 5, section 71650, subdivision (d). The
14 circumstances are as follows:

15 20. On or about November 10, 2015, a Bureau investigator conducted a field
16 investigation at Respondent's institution and confirmed through classroom observations and
17 conversations with Respondent's staff that Respondent was enrolling Spanish and Chinese-
18 speaking students with limited or no English proficiency and providing classroom instruction in
19 Chinese. When the Bureau investigator asked whether Respondent had approval from its
20 accreditor to teach in a language other than English, Respondent's staff stated they provided
21 translation of classroom instruction in languages other than English only for assistance in
22 understanding. Respondent's staff stated that they did not have approval from their accreditor to
23 teach in any languages other than English.

24 21. On or about August 25, 2016, a Bureau investigator verified that Respondent had not
25 notified the Bureau in writing within thirty days of the substantive change of enrolling students
26 whose primary language was not English and providing instruction to them in a language other
27 than English. Further, Respondent had not provided the Bureau with documentation showing that
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1 Respondent had approval from its accreditor to provide instruction in a language other than
2 English.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Failure to Maintain Sufficient Financial Resources)**

5 22. Respondent is subject to disciplinary action under section 94937, for violating
6 California Code of Regulations, Title 5, section 71745, subdivisions (a)(1), (a)(2), (a)(3) and
7 (a)(5). The circumstances are as follows:

8 23. On or about May 24, 2016, the Bureau received a copy of Respondent's Financial
9 Statement dated December 31, 2015. A Bureau investigator reviewed Respondent's Financial
10 Statement and determined that Respondent failed the "Thirty Day Operating Expense Test."
11 Respondent had only \$12,815.00 in cash or assets converted to cash in seven days, yet
12 Respondent's monthly operating expenses amounted to \$64,470.33.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 **(Failure to Maintain Student Records)**

15 24. Respondent is subject to disciplinary action under section 94937, for violating section
16 94902 and California Code of Regulations, Title 5, section 71920, subdivisions (a) and (b)(3).
17 The circumstances are as follows:

18 25. On or about May 24, 2016, a Bureau investigator reviewed certain student files on site
19 at Respondent institution and determined that copies of School Performance Fact Sheets were not
20 maintained in all student files. Specifically, no School Performance Fact Sheets were contained
21 in the files for students J.T.G., D.C., or J.R. In addition, student S.W. received a School
22 Performance Fact Sheet for the Cosmetology Program, yet he was enrolled in the Massage
23 Therapy Program as indicated in his Enrollment Agreement.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Failure to Provide Back-Up Documentation Supporting Annual Data Reported)**

26 26. Respondent is subject to disciplinary action under section 94937, for violating
27 California Code of Regulations, Title 5, section 74112, subdivision (m). The circumstances are as
28 follows:

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Provide Enrollment Agreement in Appropriate Language)

32. Respondent is subject to disciplinary action under section 94937, for violating section 94906 The circumstances are as follows:

33. On or about November 10, 2015, a Bureau investigator conducted a field investigation at Respondent's institution and found that Respondent had enrolled students whose primary language was not English. The Bureau's investigator observed student surveys being conducted by a Bureau Compliance Inspector in the Massage Therapy class and observed students using their phones to translate the document and then providing the information to other students. The Bureau's investigator concluded that the majority of the class did not speak, read or understand English and therefore, were recruited in languages other than English. The Bureau investigator's review of Respondent's documents revealed that Respondent's Enrollment Agreement and required disclosures were provided in English only. Further, one of Respondent's administrators admitted to the Bureau's investigator that Respondent does not provide written translation for students who do not speak English as their primary language and that Respondent's staff participated in recruitment activities by translating the terms of the Enrollment Agreement and required disclosures to prospective students in languages other than English.

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PRAYER

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

1. Revoking or suspending Approval to Operate Institution Code 1937111, issued to David's Academy of Beauty;
2. Ordering Respondent to pay the Bureau for Private Postsecondary Education the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 2/16/17



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

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