

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

In the Matter of the Statement of Issues

Case No. 999607

Against:

OAH No. 2015060041

ORDER OF DECISION

**UNIQUE DENTAL LAB COLLEGE;
ZHI YUN LUO, OWNER**

Application Number 24562
School Code 97715418

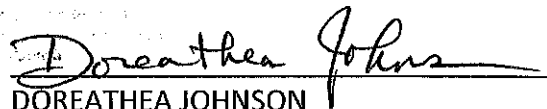
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above entitled matter.

The Decision shall become effective MAR - 3 2016.

DATED: JAN 26 2016


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
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YUN LUO, Owner,

Respondent.

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PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on December 10 and 11, 2015, in Los Angeles, California.

Geoffrey Ward, Deputy Attorney General, appeared on behalf of complainant Joanne Wenzel, Chief of the Bureau for Private Postsecondary Education (Bureau),¹ Department of Consumer Affairs, State of California.

Zhi Yun Luo, owner, appeared on behalf of respondent Unique Dental Lab College.

Oral and documentary evidence was received, the record was closed, and the matter was submitted on December 11, 2015.

FACTUAL FINDINGS

Jurisdiction and Parties

1. On April 3, 2015, complainant filed and served the Statement of Issues in this matter while acting in her official capacity. Respondent timely filed a notice of defense.

2. The Bureau issued an Approval to Operate to respondent and its owner on January 3, 2006, assigning respondent School Code 97715418. Respondent has operated the

¹ The former Bureau for Private Postsecondary Education and Vocational Education sunsetted on July 2, 2007. On October 11, 2009, the Bureau for Private Postsecondary Education Act of 2009 (Act) was signed into law; the Act became operative on January 1, 2010, establishing the Bureau for Private Postsecondary Education.

college as an unaccredited institution since that approval issued.² Respondent's Approval to Operate expired on January 2, 2012.

Respondent's Application for a Renewal of Approval to Operate from the Bureau

3. Leeza Rifredi, Licensing Chief at the Bureau, testified that unaccredited schools are largely vocational schools, not degree-awarding schools, and that renewal applications are required every five years. Ms. Rifredi testified that the primary goal of the Act and of the Bureau's regulations is to protect current and prospective students, to provide them with information relevant to their choice of schools, and to ensure that the regulated institutions are solvent and have the ability to provide quality educational services.

4. On March 12, 2012, the Bureau received respondent's Application for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions (Application). The Bureau assigned it Application Number 24562.

5. On April 27, 2012, respondent sent the Bureau additional documents. Respondent's documentation included an unaudited, unreviewed, one-page "Statement of Profit and Loss" for the year 2011.

6. Over 16 months passed, while respondent continued to operate. Then, on September 9, 2013, the Bureau wrote respondent a letter identifying multiple problems with respondent's Application, including problems with respondent's financial statements, School Performance Fact Sheet (SPFS), website, and catalog. The Bureau's letter gave respondent guidance on how to correct the problems.

7. On November 20, 2013, respondent resubmitted its Application. This second submittal also lacked a proper financial statement: instead, respondent submitted an unaudited, unreviewed, one-page "Statement of Profit and Loss" for the year 2012.

8. On November 21, 2013, the Bureau responded with a second letter identifying problems with the resubmitted Application, including problems with the financial statements.

9. On December 26, 2013, respondent again resubmitted its Application.

10. Ms. Rifredi testified that there were still many significant deficiencies in the Application. She testified, and the evidence demonstrated, that among the deficiencies still remaining in respondent's application after its December 2013 submittals were the following:

a. Respondent's financial statements were still incomplete and improper. They did not include a cash flow statement, they were not audited or reviewed by a certified public accountant (CPA), they were prepared on an income tax basis rather than in

² The institution has not been accredited by an accrediting agency recognized by the U.S. Department of Education.

accordance with generally accepted accounting principles (GAAP), and they failed to cover at least five months of 2013.

b. Respondent submitted an SPFS with its initial application in March 2012, with its November 2013 resubmittal, and with its December 2013 resubmittal. Each SPFS omitted required data and was not in the required format. The data respondent reported in these fact sheets changed with each submittal.

c. Respondent's website as of September 2013, during which its renewal application was pending, omitted its school catalog, SPFS, student brochures, and most recent annual report submitted to the Bureau, and a link to the Bureau's website. The website improperly stated that its dental technician and dental assistant programs had been approved by the Bureau.

d. Respondent's resubmitted school catalog did not list its internet web site address. The catalog stated that instruction would be in Chinese and English, but did not state the level of Chinese proficiency required and the kind of documentation of proficiency, such as the United States Foreign Service Language Rating System, that would be accepted. The admissions policies described in the catalog are silent as to whether a high school diploma, Certificate of Proficiency, or G.E.D. is required for applicants proficient in English. The catalog stated that a student might earn a degree, diploma, or certificate when, in fact, respondent does not grant degrees. The catalog did not list how many hours each course required.

11. The Bureau denied respondent's Application by letter dated March 19, 2014.

12. On April 10, 2014, respondent submitted a written response to the denial letter, and included additional documentation for review.

13. Respondent submitted an SPFS with its April 2014 resubmittal. The April 2014 SPFS was still defective. It did not include the completion rate, job placement, or salary and wage data in tables and footnotes that were "substantially similar" to the charts provided in CCR section 74112, subdivisions (d), (e), and (g): each table omitted the explanatory footnotes required by the regulation. The Salary and Wage information chart also omitted the data column for students not reporting salary information. There were also inconsistencies in reported data. For example, the April 2014 SPFS omitted data on respondent's dental technician students, failing to report their completion rates, placement rates, and job and salary data for the previous two calendar years. But in its November 2013 and December 2013 submittals, respondent had reported that it had 15 dental technicians enrolled in the period 2011 to 2012.

Respondent's Actions Since Denial

14. After the renewal application was denied, respondent hired a consultant, Chris Golden, to help bring it into compliance with Bureau regulations. With Mr. Golden's assistance, respondent has made significant efforts to come into compliance.

15. In June 2014, respondent submitted financial statements to the Bureau that had been reviewed by a CPA and that included a cash flow statement. Although the language used by the reviewing CPA is somewhat ambiguous, it appears that she intended to certify that the financial statements were prepared in accordance with GAAP.

16. Nevertheless, on November 24, 2014, the Bureau upheld its denial. Respondent timely appealed. Respondent has continued to operate as a school.

17. At hearing, Zhi Yun Luo, respondent's owner, a teacher at the school, and the person responsible for the school's finances, acknowledged making many mistakes in the application process due to a lack of familiarity with the Bureau's regulations. She testified, however, that she has been making great efforts to learn the regulations to comply with them, and to correct past mistakes. The school hired Mr. Golden, and she has attended workshops sponsored by the Bureau. Because it will take a good deal of time for her computer engineer to fix respondent's website, respondent no longer has a website, and relies on word-of-mouth for student referrals. Ms. Luo testified that respondent has received no complaints from current or former students, and that she welcomes any additional supervision and site visits from the Bureau.

18. Ms. Luo's son, Yang Lin, respondent's Chief Academic Officer and a teacher at the school on a volunteer basis, testified that respondent tries to help people who do not want to attend college but who want skills that will make them employable. He and his mother were overwhelmed by the regulatory requirements until they retained Mr. Golden. Now, the school is complying with those requirements. Mr. Lin testified that the school is financially sound, that it is reputable and helps place its students in jobs, and that it attracts students from across the country. Mr. Lin testified that instruction is in English and Mandarin Chinese; his understanding of the regulations regarding disclosures when languages other than English are used, and as to the required language proficiency of students in dental technician courses, requires improvement. Although Mr. Lin testified that language in the schools documents does not convey that respondent's dental assistant program does not prepare students for licensure, the language is, in fact, ambiguous, and must be corrected.

19. Respondent was given repeated opportunities to bring its application materials into compliance, and repeatedly received extensions to do so, raising serious concerns about the welfare of students and potential students who relied on the promotional and instructional material that did not comply with regulations intended to protect them. Respondent only hired a consultant after several years of efforts to comply and after its renewal application was finally denied.

20. On the other hand, the evidence reflects that respondent has made significant progress in bringing the school and the license renewal application into compliance with regulations. Because of respondent's efforts since the Bureau's denial letter, it is appropriate, and consistent with protection of current and potential students, that respondent be conditionally authorized to continue operation for six months while it brings itself into full compliance. It is highly recommended that respondent continue to retain a consultant to achieve that end.

LEGAL CONCLUSIONS

1. Education Code section 94875³ authorizes the Bureau to regulate private postsecondary educational institutions under the California Private Postsecondary Education Act of 2009 (Act), sections 94800 through 94950.

2. Section 94885 requires the Bureau to adopt by regulation certain minimum operating standards for institutions, including facilities and materials “sufficient to enable students to achieve the educational program’s goals,” financial solvency, maintenance of adequate records and transcripts, and operation in compliance with the Act and other applicable laws.

3. The Bureau may grant an application to operate:

only after an applicant has presented sufficient evidence to the bureau, and the bureau has independently verified the 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. (§ 94887.)

4. Institutions that have been operating with the Bureau’s approval must periodically apply to the Bureau for a renewal of their approval to operate. “To be granted a renewal of an approval to operate, the institution shall demonstrate its continued capacity to meet the minimum operating standards.” (§ 94891.)

5. California Code of Regulations (CCR), title 5, section 71475⁴ implements section 94891 by specifying requirements for renewal applications. Among other things, it requires institutions to submit an “Application for Renewal of Approval to Operate and Offer Education Programs for Non-Accredited Institutions,” Form Application 94891 (rev.2/10). (CCR, § 71475, subd. (b).) It requires applicants for renewal to submit current financial statements that meet the requirements of section 74115, i.e., financial statements must be either audited or reviewed, depending on the institution’s gross revenues. (CCR, § 71475, subd. (e).) It requires exemplars of student enrollment agreements (CCR, § 71475, subd. (o)); identification of occupations and job titles to which the education program will lead (CCR, § 71475, subd. (t)(7)); a description of each educational program, the skills to be taught and, if licensure is a

³ All further statutory references are to the Education Code, except as otherwise stated. The statutes and regulations referenced herein are those in effect from January 1, 2010, to December 31, 2014, the period when respondent’s application was submitted, considered, and denied. There have since been amendments, effective January 2015, to portions of the Act and to the Bureau’s regulations.

⁴ All further references to the CCR are to title 5 thereof.

goal, a copy of approval from the appropriate licensing agency (CCR, § 71475, subd. (u)(1), (5), & (6)); identification of the languages in which the programs will be offered and of the textbooks and materials to be used, and a statement that the institution has contracted with qualified faculty to teach in those languages (CCR, § 71475, subd. (v)(1), (2), & (3)); a description of learning resources and facilities at the institution (CCR, § 71475, subd. (z)); and a copy of the institution's catalog, which must meet the requirements of the Act and CCR section 71810 (CCR, § 71475, subd. (bb)). "An incomplete application filed under this section will render the institution ineligible for renewal." (CCR, § 71475, subd. (kk).)

6. Audited or reviewed financial statements must comply with numerous requirements set forth in CCR section 74115. Financial statements must include a balance sheet, an income statement, and a cash flow statement. They must be audited or reviewed, and prepared on an annual basis by an independent CPA in accordance with GAAP. They must demonstrate that the institution meets certain financial resources requirements. They must be current, i.e., completed no sooner than 120 days prior to submission to the Bureau, and covering no less than the most recent complete fiscal year. If more than eight months will have elapsed from fiscal year end to the time of submission, the statements shall also cover no less than five months of the current fiscal year.

7. School Performance Fact Sheets (SPFS) must be provided to each student prior to the student's signing an enrollment agreement with the institution. (§§ 94902, 94910.) The SPFS must include specified information regarding students' completion rates, placement rates for each educational program, license examination passage rates for programs leading to employment for which passage of a state licensing examination is required, salary or wage information, and calculation methodology used. (§ 94910.) The institution must report annually to the Bureau the information published in its SPFS. (§ 94929.5.) The Bureau has the authority to ensure that the information and the manner in which it is collected and reported is useful to students and policymakers and is based on credible and verifiable data, while not imposing undue compliance burdens on an institution. (§ 94929.5, subd. (b).) Detailed formatting requirements for, and instructions for calculating the figures that appear in, the SPFS are set forth at CCR section 74112.

8. The Act governs the content of an institution's website, if the institution maintains a website. Websites must, for instance, include the school catalog, an SPFS for each educational program, student brochures, and a link to the Bureau's website. (§ 94913.) An institution may not claim on its website that it has Bureau approval without stating that such approval means compliance with standards set forth in the Act; it may not state that the Bureau endorses or recommends its programs. (§ 94897, subd. (l).)

9. An institution's catalog must describe programs offered, requirements for completion, requirements for eligibility for licensure if applicable, a detailed description of the institution's policies, and information regarding the transferability of credits. (§ 94909.) Catalogs must be updated annually, and must include information regarding required English language proficiency and proficiency required in any other language. (CCR, § 71810.)

10. Cause exists to deny respondent's application for renewal of approval to operate, under sections 94885, 94887, 94891, and CCR section 71475, subdivision (kk), on the grounds that respondent failed to include financial statements that met the statutory and regulatory requirements, based on Factual Findings 3 through 13.

11. Cause exists to deny respondent's application for renewal of approval to operate, under sections 94885, 94887, 94891, and CCR section 71475, subdivision (kk), on the grounds that respondent failed to include an accurate and complete School Performance Fact Sheet that met the statutory and regulatory requirements, based on Factual Findings 3 through 13.

12. Cause exists to deny respondent's application for renewal of approval to operate, under sections 94885, 94887, 94891, and CCR section 71475, subdivision (kk), on the grounds that respondent's website omitted information required by section 94913 and made prohibited assertions regarding Bureau approval of the institution and its programs, based on Factual Findings 3 through 13.

13. Cause exists to deny respondent's application for renewal of approval to operate, under sections 94885, 94887, 94891, and CCR section 71475, subdivision (kk), on the grounds that respondent's catalog failed to meet the statutory and regulatory requirements, based on Factual Findings 3 through 13.

14. The Bureau's regulations provide that conditional authorization to continue to operate while bringing the institution into full compliance is available under certain circumstances:

(d) Pursuant to section 94887 of the Code, the Bureau will either grant or deny an application.

(1) When specific minor deficiencies are identified during processing but the institution is substantially in compliance with the requirements of the Code and this Division, a conditional authorization to operate may be granted for a period not to exceed six (6) months, to permit the institution to correct those deficiencies identified. If those deficiencies are not corrected after the first period of conditional approval, or the condition upon which an approval may be granted is not satisfied, the conditional authorization to operate may be extended for a period not to exceed six (6) months if the program demonstrates to the Bureau a good faith effort and ability to correct the deficiencies. A conditional authorization to operate shall expire at the end of its stated period and the application shall be deemed denied, unless the deficiencies are removed prior to its expiration and an approval to operate has been granted before that date. (CCR, § 71400, subd. (d)(1).)

15. Here, the Bureau repeatedly identified deficiencies both major and minor during the processing of respondent's application for renewal, repeatedly granting extensions of time to allow respondent to bring itself into compliance. The Bureau was fully justified in finally denying respondent's still-deficient application. (Factual Findings 1-13, 19.)

16. Nevertheless, at long last, after its renewal application was denied, respondent hired a consultant, educated itself as to the basic regulatory requirements for continued operation, and substantially corrected most of the noted deficiencies. (Factual Findings 14-18, 20.) Because respondent is making a great effort to comply with the laws governing the operation of the institution, and has come into substantial compliance with those laws, some remaining deficiencies notwithstanding, a conditional authorization to operate for six months is warranted. During that six-month period, respondent must bring itself into full compliance, not merely substantial compliance, with the current statutes and regulations governing continued licensure. Respondent may wish to continue to employ the services of their current consultant, or of another consultant knowledgeable and experienced in this area, at least until the Bureau confirms that respondent is in compliance.

ORDER

Respondent's application for renewal of the Bureau's approval to operate is granted conditionally for a period of six months from the effective date of this Order. Within that six-month period, respondent shall take all actions necessary to demonstrate to the Bureau's satisfaction that it fully complies with the statutes and regulations governing its continued operation.

If the deficiencies are not removed prior to the expiration of the six-month period, and an approval to operate has not been granted before that date, the conditional authorization to operate shall expire and the application shall be deemed denied.

DATED: December 30, 2015

DocuSigned by:

Howard W. Cohen

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HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings