BEFORE THE DIRECTOR

BUREAU FOR PRIVATE POSTSECONDARY EDUCATION

DEPARTMENT OF CONSUMER AFFAIRS

STATE OF CALIFORNIA

In the Matter of the Emergency Decision Against:	)
	)
NORTHERN CALIFORNIA INSTITUTE FOR COSMETOLOGY;	)
	)
Institution Code: 0107101	)
	)
Rodrigo Solis and Rosalinda Solis, Owners	)
	)
Respondents.	)
	)

Decision after Opportunity to be Heard

On April 14, 2016, the Bureau for Private Postsecondary Education (Bureau or BPPE), Department of Consumer Affairs (DCA or Department) served an Amended Emergency Decision (Decision) on the Northern California Institute for Cosmetology (NCIC) pursuant to its authority contained in Education Code section 94937 and 5 California Code of Regulations (C.C.R.) section 75150. That Decision ordered NCIC to:

(1) Cease enrollment of new students in all of NCIC's programs; and
(2) Cease collection of tuition or fees for all of NCIC's programs.

Pursuant to 5 C.C.R. section 75150(d), NCIC requested an opportunity to be heard before the effective date of the Decision on April 19, 2016, at COB. That opportunity to be heard was before DCA's Chief Deputy Director Tracy Rhine on April 18, 2016, at about 10:30 a.m. NCIC appeared through co-owners Rosalinda Solis and Rodrigo Solis. Also present from NCIC was administrator Carlita Marquez. Present for the Bureau was Yvette Johnson, Enforcement Chief and Mina Hamilton, Attorney.

The Bureau made the Decision upon a determination of an immediate danger to the public health, safety, or welfare, based upon the following most pertinent factual allegations:

- NCIC engaged in prohibited business practices dealing with financial aid, including in part: falsifying financial documents for students who were no longer attending the institution in order to continue collecting federal financial aid from the U.S. Department of Education; changing a student's personal identification numbers (PIN) to prevent her from having access or control over that aid; From April 2014 to August 2015,

misrepresenting student attendance records, resulting in the appearance that students attended fewer hours, therefore requiring greater financial aid, as well as student completing the program without the requisite hours; falsifying financial aid disbursement documents; and discounting tuition for a student who didn't qualify for financial aid.

- NCIC failed to maintain sufficient resources in 2014 to pay all operating expenses for a month, as required.

- For 2014 and 2015, failed to have a compliant refund policy and committed Student Tuition Recovery Fund (STRF) violations, including in part: failing to pay refunds timely; charging inappropriate withdrawal fees; prorating STRF funds in the refund calculation; STRF assessment overages; and failing to submit STRF reporting forms for 2015.

- NCIC committed enrollment violations, including in part: failing to verify a student's identification and SSN; not providing a copy of the catalog and Student Performance Fact Sheet (SPFS) to prospective students; and failing to reasonably ensure that prospective students could complete the program.

- NCIC committed catalog violations by failing to provide the catalog to prospective students and to provide the required information in the catalog including in part: failing to include STRF disclosures; failing to have information about the faculty; failing to have disclosures about transferability of credits; and failing to update the catalog annually.

- NCIC failed to maintain enrollment agreements, including in part: failing to provide signed copies; failing to translate the agreement into the students' primary language; failing to include STRF language; failing to properly identifying charges, fees and loans and information about refunds; failing to include procedures for withdrawing.

- NCIC failed to maintain proper administrative and qualified faculty staff.

- NCIC threatened to sue or dismiss students who complained or did not give the school a good review to BPPE.

- NCIC provided instruction to students in Spanish without approval from the BPPE.

- NCIC failed to maintain and store records, including transcripts, academic and financial aid documents.

- NCIC failed to maintain documentation to substantiate SPFS data.

The decision was based on allegations contained in the declaration of Leslie Feist, a Field Investigator for the Bureau, and can be categorized into three primary areas: (1) financial aid practices; (2) enrollment and catalog violations; and (3) records violations.

Respondents described NCIC as a very small school. Although the numbers were not exact, they indicated that they may only have about six (6) students at this time. Respondents said that they have been in operation for approximately 13 years and, in that time, graduated about 100 students.

Respondents responded to each and every allegation in the declaration of Ms. Feist to the extent that it was sufficiently particular to permit a response. The most substantive allegations are discussed herein.

Respondents disputed that they violated any federal financial aid rules. They asked about which students no longer enrolled that it is alleged they accepted financial aid for, but none were named. Nor were any specifics provided regarding the falsification of financial aid documents, or the changing of PINs. Respondents acknowledged that they may have helped students who forgot their PINs, but never changed PINs to prevent a student's access to his or her funds. They also acknowledged that they may arrange a payment plan for a student who is not receiving federal financial aid, but denied that they discounted the tuition for any student. If a particular discount is offered, it is offered for every student.

With respect to misrepresentation of student hours, respondents presented evidence of its "time card" system it uses to have students punch in and out. That indicated that sometimes a student will forget to clock in or out, and they try to accommodate the student by correcting that time card, having the instructor initial where a correction may have been made.

With respect to the allegation that in 2014 they did not have sufficient resources on hand to pay all operating expenses within 30 days, respondents acknowledged that they did not make money in 2014, and appeared to not understand the requirement for having those resources on hand. The Bureau's representative explained the requirement for maintaining sufficient resources. (See 5 C.C.R. § 71745.)

Respondents denied ever failing to pay a refund. They indicated that they ask the student to pick up any refund due, and mail it if it is not picked up. They explained that there were times the refund was returned to the school because of a bad address, and in those cases they arrange for a direct reimbursement. They denied any improper withdrawal fees, stating that their registration fee has always been $100, and the withdrawal fee has always been $150. They do not know where the allegation of the $250 registration fee comes from. They acknowledged that there may have been an inappropriate proration of the STRF fees, but indicated that that has been corrected, and stated that they never overcharged for STRF.

With respect to the enrollment issues alleged, they acknowledged that there was one student who tried to enroll without proper identification and an SSN. She said that she could get

one and agreed to provide all the requirements. When pushed to produce the required documentation, the student allegedly cried; respondents admitted that they felt bad and seemed to indicate that they felt helpless to keep the student away.

Respondents indicated that the catalog has been updated, and that the most updated documents were submitted to a Bureau staff member.

With respect to their faculty, respondents indicated that they always had sufficient and qualified instructors. After Bureau staff identified the instructor who allegedly is not qualified, their explanation was somewhat inconsistent, stating that this person is an "assistant instructor." They then acknowledged that one of their six instructors, while a licensed cosmetologist, may not possess the other qualifications to be an instructor. (See 5 C.C.R. § 71720.) With respect to the allegations about faculty, respondents seemed to explain it by saying that students make excuses for their school performance.

Other statements were somewhat inconsistent or superficial as well. For example, with respect to offering instruction in Spanish before that was approved by the Bureau, they stated that they were told by Bureau staff that they did not have to, although the law clearly states that if instruction is to be offered in a language other than English, that must be part of the application. (See 5 C.C.R. § 71230.) In addition, they indicated that it was "confusing" and took a while to produce a student roster because of how they maintain the information; however, they have less than 10 students, so would seem not too difficult to produce a roster. Moreover, they attributed much of any difficulties that they acknowledged to a frequent change in staff, although they then say that they've always had instructors and an administrator.

That said, it seems difficult to conclude that the Bureau has established an immediate danger to the public health, safety, or welfare that requires immediate attention in order to protect students, prevent misrepresentations to the public, or prevent loss of public funds. The most troubling allegations that might warrant immediate action seem to be those regarding falsifying financial aid documents. Little specific information was provided, however. It is not clear whether there is supposed wide-spread forging of documents for non-existent student, or the continued collection of money for students after they withdraw from the program.

A substantial misrepresentation in the institution's SPFS, catalog, or enrollment agreement, or a substantial failure to meet institutional minimum operating standard may also form the basis for an emergency action. The allegations contained in the supporting declaration, while potential violations of the California Private Postsecondary Education Act of 2009, or their regulations, do not in the manner described indicate that immediate action is necessary. This seems particularly true where the numbers of students involved are quite small.

That is not to say that the Bureau, whether before or after the filing of an Accusation based upon the allegations supporting the Decision couldn't issue a new emergency decision if new or more specifics facts were established. In addition to the facts the Bureau seeks to establish as a result of its inspection and investigation, respondents acknowledged that they are required to respond to their accreditor on May 18, 2016. An action by its accreditor could result

in a loss of federal financial aid, or reveal other allegations that demonstrate an immediate need to protect the public.

There does not appear at this time to be an immediate danger to the public health, safety, or welfare of the students if respondents continue to enroll and collect tuition and fees from its students. Accordingly, the April 14, 2016, Amended Emergency Decision of the Bureau shall not become effective as noticed at COB April 19, 2016. Should new facts emerge, the Bureau is not precluded from issuing a new emergency decision in addition to any other actions that it may be taking.

DATED: 4-19-16

Tracy Rhine

TRACY RHINE
Chief Deputy Director
Department of Consumer Affairs