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7
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 Statement of Issues
Against:

Case No. 1000957

12 **INSTITUTE OF BEAUTY CULTURE,**
13 **OMAR AVILES (50% Owner), SUSAN**
14 **AVILES (50% Owner)**

STATEMENT OF ISSUES

15 **Application for Renewal of Approval to**
16 **Operate on Institutional Accredited School**
Code: 53593792

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about February 28, 2012, the Bureau for Private Postsecondary Education
25 received an Application for Renewal of Approval to Operate and Offer Educational Programs for
26 Non-Accredited Institutions from Institute of Beauty Culture, Omar Aviles (50% Owner), Susan
27 Aviles (50% Owner) (Respondents). On or about February 1, 2012, Omar Aviles and Susan
28 Aviles certified under penalty of perjury to the truthfulness of all statements, answers, and

1 representations in the application. The Bureau sent multiple deficiency letters and responses were
2 received. The Bureau denied the application on June 26, 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 94891¹ states:

9 “(a) The bureau shall adopt by regulation the process and procedures whereby an institution
10 may obtain a renewal of an approval to operate.

11 (b) To be granted a renewal of an approval to operate, the institution shall demonstrate its
12 continued capacity to meet the minimum operating standards.”

13 STATUTORY PROVISIONS

14 5. Business and Professions Code section 22 defines the term “board” to include
15 “bureau.”

16 6. Education Code section 94885 states:

17 (a) “The bureau adopt by regulation minimum operating standards for an institution that
18 shall reasonably ensure that all of the following occur:

19 “(1) The content of each educational program can achieve its stated objective.

20 “(2) The institution maintains specific written standards for student admissions for each
21 educational program and those standards are related to the particular educational program.

22 “(3) The facilities, instructional equipment, and materials are sufficient to enable students
23 to achieve the educational program's goals.

24 “(4) The institution maintains a withdrawal policy and provides refunds.

25 “(5) The directors, administrators, and faculty are properly qualified.

26 “(6) The institution is financially sound and capable of fulfilling its commitments to

27 ¹ California Private Postsecondary Education Act of 2009, California Education Code
28 sections 94800 et seq.

1 students.

2 “(7) That, upon satisfactory completion of an educational program, the institution gives
3 students a document signifying the degree or diploma awarded.

4 “(8) Adequate records and standard transcripts are maintained and are available to
5 students.

6 “(9) The institution is maintained and operated in compliance with this chapter and all
7 other applicable ordinances and laws.

8 (b) Except as provided in Section 94855.1, an institution offering a degree must satisfy one
9 of the following requirements:(i) Accreditation by an accrediting agency recognized by the
10 United States Department of Education, with the scope of that accreditation covering the offering
11 of at least one degree program by the institution.

12 (ii) An accreditation plan, approved by the bureau, for the institution to become fully
13 accredited within five years of the bureau's issuance of a provisional approval to operate to the
14 institution. The provisional approval to operate to an unaccredited degree-offering institution
15 shall be in compliance with Section 94885.5.

16 7. Education Code section 94886 states:

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

21 8. Education Code section 94887 states:

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

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9. Education Code section 94894 states in pertinent part:

The following changes to an approval to operate are considered substantive changes and require prior authorization:

(a) A change in educational objectives, including an addition of a new diploma or a degree educational program unrelated to the approved educational programs offered by the institution.

....

10. Education Code section 94904 states in pertinent part:

(a) Before an ability-to-benefit student may execute an enrollment agreement, the institution shall have the student take an independently administered examination from the list of examinations prescribed as of July 1, 2012, by the United States Department of Education pursuant to Section 484(d) of the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1070a et seq.). The student shall not enroll unless the student achieves a score, as specified by the United States Department of Education, demonstrating that the student may benefit from the education and training being offered.

....

11. Education Code section 94909 states in pertinent part:

“(a) Except as provided in subdivision (d), prior to enrollment, an institution shall provide a prospective student, either in writing or electronically, with a school catalog containing, at a minimum, all of the following:

.....

“(5) A description of the programs offered and a description of the instruction provided in each of the courses offered by the institution, the requirements for completion of each program, including required courses, any final tests or examinations, any required internships or externships, and the total number of credit hours, clock hours, or other increments required for completion.

.....

“(8) A detailed description of institutional policies in the following areas:

1 (A) Admissions policies, including the institution's policies regarding the acceptance of
2 credits earned at other institutions or through challenge examinations and achievement tests,
3 admissions requirements for ability-to-benefit students, and a list describing any transfer or
4 articulation agreements between the institution and any other college or university that provides
5 for the transfer of credits earned in the program of instruction. If the institution has not entered
6 into an articulation or transfer agreement with any other college or university, the institution shall
7 disclose that fact.

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9 “(9) The schedule of total charges for a period of attendance and an estimated schedule of
10 total charges for the entire educational program.

11 “(10) A statement reporting whether the institution participates in federal and state
12 financial aid programs, and if so, all consumer information that is required to be disclosed to the
13 student pursuant to the applicable federal and state financial aid programs.”

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15 12. Education Code section 94911 states in pertinent part:

16 An enrollment agreement shall include, at a minimum, all of the following:

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18 “(b) A schedule of total charges, including a list of any charges that are nonrefundable and
19 the student's obligations to the Student Tuition Recovery Fund, clearly identified as
20 nonrefundable charges.”

21

22 13. Education Code section 94934 states:

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

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

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

- 1 (3) The degree levels and diplomas offered.
2 (4) The Student Performance Fact Sheet, as required pursuant to Section 94910.
3 (5) The school catalog, as required pursuant to Section 94909.
4 (6) The total charges for each educational program by period of attendance.
5 (7) A statement indicating whether the institution is, or is not, current in remitting
6 Student Tuition Recovery Fund assessments.

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

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

11 (b) The bureau, by January 1, 2011, shall prescribe the annual report's format and method
12 of delivery."

13 REGULATORY PROVISIONS

14 14. California Code of Regulations, title 5, division 7.5, section 71100 states:

15 "(a) An applicant seeking approval to operate pursuant to Section 94886 of the Code,
16 other than Approval to Operate by Accreditation pursuant to Section 94890(a)(1) of the Code,
17 shall complete the "Application for Approval to Operate for an Institution Not Accredited," Form
18 Application 94886 (rev. 2/10). An applicant seeking approval to operate by accreditation pursuant
19 to Section 94890(a)(1) of the Code shall comply with section 71390.

20 "(b) An applicant shall submit the completed form, the information or documentation,
21 required by this Article, the appropriate application fee as provided in Section 94930.5(a)(1) of
22 the Code, and any appropriate annual fee as required by Article 1 of Chapter 5 of this Division, to
23 the Bureau.

24 "(c) An application that fails to contain all of the information required by this article shall
25 render it incomplete."

26 15. California Code of Regulations, title 5, division 7.5, section 71475 states:
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1 “(a) Unless renewed, an approval to operate shall expire at 12 midnight on the last day of
2 the institution's term of approval to operate as granted pursuant to section 94802 or section 94889
3 of the Code.

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

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

10 (1) The name, institution/school code and website address of the institution.

11 (2) The physical address of the institution's primary administrative location in California.

12 (3) The mailing address, identified either by physical address or by post office box
13 number, telephone number and fax number of the institution.

14 (4) The physical address, phone number and fax number of each campus and branch at
15 which the educational programs will be offered, including the identification of the institution's
16 main location and branch locations.

17 (5) The name, address, email address, telephone number, and fax number of an individual
18 who will function as the institution's contact person for the purposes of the application.

19 (6) The form of business organization of the institution (e.g., sole proprietorship, general
20 or limited partnership, for-profit corporation, nonprofit corporation, or Limited Liability
21 Corporation). If the institution is incorporated, the institution shall also identify the state within
22 which the institution is incorporated and the date of incorporation, and provide copies of the
23 articles of incorporation and bylaws.

24 (7) The name, title, address, email address, telephone number, nature of interest and
25 percentage of ownership of each person, as defined in section 94855 of the Code, who owns or
26 controls 25% or more of the stock or an interest in the institution and, to the extent applicable,
27 each general partner, officer, corporate director, member of the board of directors, and any other
28 person who exercises substantial control over the institution's management or policies. For the

1 purpose of this paragraph, a person exercises “substantial control over the institution's
2 management or policies” if the person has the authority to cause the institution to expend money
3 or incur debt in the amount of five thousand dollars (\$5,000) or more in any year.

4 (A) For each address required, the institution shall provide a physical home address, and
5 may request that the address, email address, and telephone number, of each person described in
6 paragraph (7) be maintained as personal information.

7 (B) The federal employer identification number for partnerships or the social security
8 number for individual owners identified in the application pursuant to section 71130(a)(1).

9 (d) In addition to the form required in (b), the institution shall submit all information
10 required by section 71100(b), and the appropriate renewal fee as provided in Sections
11 94930.5(b)(1) and 94930.5(b)(2) of the Code, as applicable, to the Bureau. Except for the
12 financial statements required by subdivision (e) of this section and the statement required in
13 subdivision (f) of this section, if the information required in order to renew its approval to operate
14 is substantially similar to the information submitted by the institution in its last renewal
15 application, or initial application if it is the first renewal, the institution may state that there are no
16 substantial changes.

17 “(e) The institution shall submit at the time it applies for renewal current financial
18 statements that meet the requirements of section 74115 as follows: (1) for an institution with
19 annual gross revenues of \$ 500,000 and over, statements shall be audited; (2) for an institution
20 with annual gross revenues less than \$ 500,000, statements shall be reviewed.

21 . . .

22 (gg) The institution demonstrates its continued capacity to meet the minimum operating
23 standards by submitting the renewal application signed and dated, and each fact stated therein and
24 each attachment thereto declared to be true under penalty of perjury, as follows:

25 (1) Signatories:

26 (A) Each owner of the institution, or

27 (B) If the institution is incorporated, the chief executive officer of the corporation and
28 each person who owns or controls 25 percent or more of the stock or interest in the institution, or

1 (C) Each member of the governing body of a nonprofit corporation.

2 (2) The declaration shall be in the following form:

3 'I declare under penalty of perjury under the laws of the State of California that the
4 foregoing and all attachments are true and correct.

5 _____
6 (Date) (Signature)

7 (hh) In addition to the fees required by subdivision (d) of this section:

8 (1) An application for renewal that is received by the Bureau more than 30 days after the
9 expiration of the approval to operate shall be submitted with the 25 percent late payment penalty
10 fee required by section 94931(a) of the Code.

11 (2) An application for renewal that is received by the Bureau more than 90 days after
12 the expiration of the approval to operate shall be submitted with the 35 percent late payment
13 penalty fee required by section 94931(b) of the Code."

14 ...

15 16. California Code of Regulations, title 5, division 7.5, section 71600 states:

16 "(a) An institution seeking to make a significant change in its method of instructional
17 delivery shall complete the "Significant Change in Method of Instructional Delivery" form (INS
18 rev. 2/10) to obtain prior authorization. For the purposes of this section a "significant change in
19 instructional delivery" is any change that alters the way students interact with faculty or access
20 significant equipment. The form shall be submitted to the Bureau along with the appropriate fee
21 as provided in Section 94930.5(c) of the Code. For an institution approved under section 94885 of
22 the Code, it shall be signed and dated by the signatory(ies) required by section 71380, and for an
23 institution approved under section 94890 of the Code, it shall be signed and dated by the
24 signatory(ies) required by section 71390, and each fact stated therein and each attachment thereto
25 shall be declared to be true under penalty of perjury, in the following form:

26 "I declare under penalty of perjury under the laws of the State of California that the
27 foregoing and all attachments are true and correct.

28

1 (Date)

2 (Signature)"

3 (b) The application shall establish that the institution, if making a significant change in its
4 method of instructional delivery, can meet the minimum operating standards contained in Chapter
5 3, and shall include:

6 (1) The name, school code, address, and telephone and fax numbers of the institution;

7 (2) A description of the proposed new method of instructional delivery, and how the
8 curriculum will be changed or adapted to meet the change in delivery method;

9 (3) A detailed explanation of the reasons for the proposed change;

10 (4) A description of how the change affects students, administration, and the institution's
11 financial resources;

12 (5) If the proposed change will result in any significant changes in existing faculty,
13 facilities, library or learning resources, the institution shall provide the applicable information
14 required by Section 71250 through 71270, inclusive;

15 (6) A description of how the institution will phase in the new method of instructional
16 delivery;

17 (7) The name, address, email address, and telephone and fax numbers of the institution's
18 contact person for the purpose of this application; and

19 (8) Any additional information required by the Bureau pursuant to section 71340.

20 (c) An institution that has been granted an approval to operate by means of accreditation
21 shall notify the Bureau of the substantive change within 30 days of that change on the Change of
22 Instruction form by providing the information required in section (b)(1) and (b)(7), and shall
23 attach certification from the institution's accreditation agency demonstrating that the substantive
24 change was made in accordance with the institution's accreditation standards, and complies with
25 the Act and this Division."

26 17. California Code of Regulations, title 5, division 7.5, section 71700 states:

27 "The Bureau may request that an institution document compliance with the standards set
28 forth in the Act and this Division to obtain and maintain an approval to operate."

1 18. California Code of Regulations, title 5, division 7.5, section 71745 states:

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

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

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

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

9 (4) Pay timely refunds as required by Article 13 of the Act.

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

11 (6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or greater at the
12 end of the most recent fiscal year when using generally accepted accounting principles, or for an
13 institution participating in Title IV of the federal Higher Education Act of 1965, meet the
14 composite score requirements of the U.S. Department of Education. For the purposes of this
15 section, current assets does not include: intangible assets, including goodwill, going concern
16 value, organization expense, startup costs, long-term prepayment of deferred charges, and non-
17 returnable deposits, or state or federal grant or loan funds that are not the property of the
18 institution but are held for future disbursement for the benefit of students. Unearned tuition shall
19 be accounted for in accordance with general accepted accounting principles.

20 (b) At an institution's request, the Bureau may consider the financial resources of a parent
21 company if the parent company, as defined by section 94853 of the Code, meets and maintains all
22 of the following provisions:

23 (1) consents in writing to be sued in California;

24 (2) consents in writing to be subject to the jurisdiction of the Bureau with respect to the
25 institution's regulation under the Act and this Chapter;

26 (3) designates and maintains an agent for service of process, consistent with section 74190;

27 (4) agrees in writing to pay any refund, claim, penalty, or judgment that the institution is
28 obligated to pay; and

1 (5) files financial reports, maintains financial records, and consents in writing to permit the
2 inspection and copying of financial records to the same extent as is required of the institution.

3 (c) An institution shall provide to the Bureau its most current financial statements upon
4 request.”

5 19. California Code of Regulations, title 5, division 7.5, section 71750, states in pertinent
6 part:

7 “(c) A pro rata refund pursuant to section 94919(c) or 94920(d) or 94927 of the Code shall
8 be no less than the total amount owed by the student for the portion of the educational program
9 provided subtracted from the amount paid by the student, calculated as follows:

10

11 “(3) Except as provided herein, all amounts that the student has paid shall be subject to
12 refund unless the enrollment agreement and the refund policy outlined in the catalog specify
13 amounts paid for an application fee or deposit not more than \$ 250.00, books, supplies, or
14 equipment, and specify whether and under what circumstances those amounts are non-refundable.
15 Except when an institution provides a 100% refund pursuant to section 94919(d) or section
16 94920(b) of the Code, any assessment paid pursuant to section 94923 of the Code is non-
17 refundable.”

18 20. California Code of Regulations, title 5, division 7.5, section 71770, states in pertinent
19 part:

20 “(a) The institution shall establish specific written standards for student admissions for
21 each educational program. These standards shall be related to the particular educational program.
22 An institution shall not admit any student who is obviously unqualified or who does not appear to
23 have a reasonable prospect of completing the program. In addition to any specific standards for an
24 educational program, the admissions standards must specify as applicable that:

25 (1) Each student admitted to an undergraduate degree program, or a diploma program, shall
26 possess a high school diploma or its equivalent, or otherwise successfully take and pass the
27 relevant examination as required by section 94904 of the Code.”

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1 21. California Code of Regulations, title 5, division 7.5, section 71800, states in pertinent
2 part:

3 In addition to the requirements of section 94911 of the Code, an institution shall provide to
4 each student an enrollment agreement that contains of the last the following information:

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6 “(e) Itemization of all institutional charges and fees including, as applicable:

7 . . .

8 (6) uniforms or other special protective clothing;

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10 (9) assessment fees for transfer of credits;

11 (10) fees to transfer credits;

12 . . .

13 (12) any other institutional charge or fee.”

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15 22. California Code of Regulations, title 5, division 7.5, section 71810, states in pertinent
16 part:

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18 “(b) The catalog shall contain the information prescribed by Section 94909 of the Code and
19 all of the following:

20

21 (4) Language proficiency information, including:

22 (A) the level of English language proficiency required of students and the kind of
23 documentation of proficiency, such as the Test of English as a Foreign Language (TOEFL), that
24 will be accepted; and

25 (B) whether English language services, including instruction such as ESL, are provided
26 and, if so, the nature of the service and its cost;”

27

28 23. California Code of Regulations, title 5, division 7.5, section 74110 states:

1 “(a) The annual report required by section 94934 of the Code shall include the information
2 required by section 94934 for all educational programs offered in the prior calendar year.

3 (b) In addition to the information required by section 94934 provided under penalty of
4 perjury, the institution shall have annual financial statements prepared for the institution's prior
5 fiscal year and signed under penalty of perjury, and shall submit a hard copy under separate cover
6 of such statements in conjunction with its annual report. The form, content and mode of
7 preparation of financial statements shall comply with section 74115 of this Division. The Bureau
8 may request that the institution immediately make available for inspection to a representative of
9 the Bureau, these financial statements at the offices of the institution.

10 (c) An institution shall file its annual report by September 1st. The Bureau may extend
11 the period for filing if the institution demonstrates evidence of substantial need but in no case
12 longer than 60 days. The institution shall not change the date of its filing its annual report because
13 of a change in the fiscal year without the Bureau's approval.

14 (d) The annual report shall be electronically filed by submitting the information required
15 by section 94934 of the Code via the Bureau's website, electronically attaching, as directed, the
16 School Performance Fact Sheet and the school catalog. An institution without the capability to
17 submit the information electronically shall inform the Bureau not less than 45 days prior to the
18 date the information is required by subdivision (c), and receive direction on alternative means of
19 submission.”

20 24. California Code of Regulations, title 5, division 7.5, section 74115, states:

21 “(a) This section applies to every set of financial statements required to be prepared or filed
22 by the Act or by this chapter.

23 (b) A set of financial statements shall contain, at a minimum, a balance sheet, an income
24 statement, and a cash flow statement, and the preparation of financial statements, shall comply
25 with all of the following:

26 (1) Audited and reviewed financial statements shall be conducted and prepared in
27 accordance with the generally accepted accounting principles established by the American
28

1 Institute of Certified Public Accountants by an independent certified public accountant who is not
2 an employee, officer, or corporate director or member of the governing board of the institution.

3 (2) Financial statements prepared on an annual basis as required by section 74110(b) shall
4 be prepared in accordance with the generally accepted accounting principles established by the
5 American Institute of Certified Public Accountants. Nonprofit institutions shall provide annual
6 financial statements as required under generally accepted accounting principles for nonprofit
7 organizations.

8 (3) The financial statements shall establish that the institution meets the requirements for
9 financial resources required by Section 71745.

10 (4) If an audit performed to determine compliance with any federal or state student
11 financial aid program reveals any failure to comply with the requirements of the program and the
12 noncompliance creates any liability or potential liability for the institution, the financial
13 statements shall reflect the liability or potential liability.

14 (5) Any audits shall demonstrate that the accountant obtained an understanding of the
15 institution's internal financial control structure, assessed any risks, and has reported any material
16 deficiencies in the internal controls.

17 (c) Work papers for the financial statements shall be retained for five years from the date
18 of the statements and shall be made available to the Bureau upon request.

19 (d) "Current" with respect to financial statements means completed no sooner than 120
20 days prior to the time it is submitted to the Bureau, and covering no less than the most recent
21 complete fiscal year. If more than 8 months will have elapsed between the close of the most
22 recent complete fiscal year and the time it is submitted, the fiscal statements shall also cover no
23 less than five months of that current fiscal year."

24 25. California Code of Regulations, title 5, division 7.5, section 76215, states in pertinent
25 part:

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1 “(b) In addition to the statement described under subdivision (a) of this section, a
2 qualifying institution shall include the following statement on its current schedule of student
3 charges:

4 “The State of California created the Student Tuition Recovery Fund (STRF) to relieve or
5 mitigate economic losses suffered by students in educational programs who are California
6 residents, or are enrolled in a residency programs attending certain schools regulated by the
7 Bureau for Private Postsecondary and Vocational Education.

8 You may be eligible for STRF if you are a California resident or are enrolled in a residency
9 program, prepaid tuition, paid the STRF assessment, and suffered an economic loss as a result of
10 any of the following:

- 11 1. The school closed before the course of instruction was completed.
- 12 2. The school's failure to pay refunds or charges on behalf of a student to a third party for
13 license fees or any other purpose, or to provide equipment or materials for which a charge was
14 collected within 180 days before the closure of the school.
- 15 3. The school's failure to pay or reimburse loan proceeds under a federally guaranteed
16 student loan program as required by law or to pay or reimburse proceeds received by the school
17 prior to closure in excess of tuition and other costs.
- 18 4. There was a material failure to comply with the Act or this Division within 30 days
19 before the school closed or, if the material failure began earlier than 30 days prior to closure, the
20 period determined by the Bureau.
- 21 5. An inability after diligent efforts to prosecute, prove, and collect on a judgment against
22 the institution for a violation of the Act.”

23 However, no claim can be paid to any student without a social security number or a
24 taxpayer identification number.”

25 **FIRST CAUSE FOR DENIAL OF APPLICATION**

26 (Deficient Form of Business Organization)

27 26. Respondent's application is subject to denial under Education Code section 94887 and
28 California Code of Regulations, title 5, division 7.5, sections 71100 and 71475 (c) (6), in that on

1 or about February 1, 2012 and continuing thereafter, Respondent submitted an incomplete
2 application to the Bureau that failed to provide the bylaws for the corporation. Each violation is a
3 sole and separate cause for denial.

4 **SECOND CAUSE FOR DENIAL OF APPLICATION**

5 (Failed to Meet Minimum Operating Standards – Enrollment Agreements)

6 27. Respondent's application is subject to denial under Education Code sections
7 94887, 94909 subdivision (a) (9) and 94911 subdivision (b) and California Code of Regulations,
8 title 5, division 7.5, sections 71800 subdivisions (e)(6), (e)(9), (e)(10) and (e)(12) and section
9 76215 subdivision (b) in that on or about February 1, 2012 and continuing thereafter, Respondent
10 submitted an incomplete application to the Bureau that failed to comply with California law as
11 follows:

12 a. Respondent failed to provide an enrollment agreement that included a complete
13 itemized schedule of charges and fees. Moreover, some of the charges identified in the Student
14 Agreements were inconsistent with the charges listed in the catalog.

15 b. The Student Tuition Recovery Fund Disclosure in the Enrollment Agreement
16 did not include the language that if a student does not have a social security number or tax payer
17 identification number a claim will not be paid.

18 **THIRD CAUSE FOR DENIAL OF APPLICATION**

19 (Failed to Meet Minimum Operating Standards – Financial Resources and Statements)

20 28. Respondent's application is subject to denial under Education Code section
21 94887 and California Code of Regulations, title 5, division 7.5, sections 71100, 71475 subdivision
22 (e), 71745 and 74115 in that on or about February 1, 2012 and continuing thereafter, Respondent
23 submitted incomplete applications to the Bureau. Specifically, the institution has not provided
24 audited or currently reviewed financial statements that comply with the regulations set forth
25 above. Each violation is a sole and separate cause for denial.

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1 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

2 (Failed to Meet Minimum Operating Standards – Catalog)

3 29. Respondent’s application is subject to denial under Education Code sections
4 94887, 94894 subdivision (a), 94904 subdivision (a) and 94909 subdivisions (a) (8), (a) (9), (a)
5 (10), 94911 subdivision (b) and California Code of Regulations, title 5, division 7.5, sections
6 71600, 71750 subdivision (c) (3), 71770 subdivision (a)(1), 71800 subdivision (e), and 71810
7 subdivision (b)(4) in that on or about February 1, 2012 and continuing thereafter, Respondent
8 submitted an incomplete application to the Bureau as described more fully below:

9 a. Respondent did not provide a catalog that includes acceptable admission
10 requirements pertaining to the Ability-to-Benefit (ATB) requirement. The description included on
11 page six (6) of the catalog indicates it is a Bureau requirement for all prospective students to take
12 and pass the "Capacity to Benefit Test (CTBT)" prior to enrollment. However, the description
13 fails to state that the ATB exam is only required if a prospective student does not have a high
14 school diploma or its equivalent.

15 b. Respondent did not provide a catalog that includes the language proficiency
16 information, including the level of English language proficiency required of students. The catalog
17 does indicate that the institution does not provide instruction for English as a second language.

18 c. Respondent’s catalog includes a “Teach Training” program that was not
19 approved by the Bureau. Although the Bureau specifically stated that this program could not be
20 included in the enrollment agreement, catalog and any advertising currently offered to the public,
21 it continues to be listed under "Course of Study" and "Course to Teach." The institution has not
22 submitted an application to add this program to their list of approved programs.

23 d. The institution did not provide a catalog that includes a consistent schedule of
24 charges in comparison to the itemization of charges and fees in the enrollment agreement. In
25 addition, the institution utilizes an "Application for Enrollment" form located on its website that
26 includes additional fees not listed in the enrollment agreement or catalog.

27 e. The institution did not provide a consistent refund policy in comparison to the
28 enrollment agreement. The registration or application fee (same fee, referred differently;

1 institution does not indicate why the same fee has the two (2) titles), is not the same amount on
2 either document. The catalog also refers to supplies and/or equipment cost as nonrefundable
3 while the enrollment agreement does not disclose this information.

4 f. The catalog indicates that the institution does not offer financial aid; however,
5 on page 10 under the "Satisfactory Academic Progress (SAP) Standards," the description does
6 contain language referring to students receiving Title IV funding.

7 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

8 (Failed to Meet Minimum Operating Standards - Deficient Annual Reports)


9 30. Respondent's application is subject to denial under Education Code sections 94887
10 and 94934 and California Code of Regulations, title 5, division 7.5, sections 71100 and 74110 in
11 that about February 1, 2012 and continuing thereafter, Respondent submitted incomplete
12 applications to the Bureau in that it failed to submit annual reports for the years 2011, 2012, and
13 2013. Each violation is a sole and separate cause for denial.

14 **PRAYER**

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

- 18 1. Denying the application of Institute of Beauty Culture, Omar Aviles (50% Owner),
19 Susan Aviles (50% Owner), owner for a Renewal of Approval to Operate a Non-Accredited
20 Institution;
21 2. Taking such other and further action as deemed necessary and proper.

22
23 DATED: 3/1/16


24 JOANNE WENZEL
25 Chief
26 Bureau for Private Postsecondary Education
27 Department of Consumer Affairs
28 State of California
Complainant

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