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

In the Matter of the Statement of Issues Against: **INSTITUTE OF BEAUTY CULTURE, OMAR AVILES (50% Owner), SUSAN AVILES (50% Owner)** **Application for Renewal of Approval to Operate on Institutional Accredited School Code: 53593792** Respondent.	Case No. 1000957 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

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

representations in the application. The Bureau sent multiple deficiency letters and responses were received. The Bureau denied the application on June 26, 2015.

JURISDICTION

3. This Statement of Issues 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. Education Code section 94891[1] states:

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

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

STATUTORY PROVISIONS

5. Business and Professions Code section 22 defines the term "board" to include "bureau."

6. Education Code section 94885 states:

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

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

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

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

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

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

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

[1] California Private Postsecondary Education Act of 2009, California Education Code sections 94800 et seq.

students.

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

"(8) Adequate records and standard transcripts are maintained and are available to students.

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

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

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

7. Education Code section 94886 states:

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

8. Education Code section 94887 states:

"An approval to operate shall be granted 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."

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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:

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

. . . .

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

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

. . . . .

12. Education Code section 94911 states in pertinent part:

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

. . . .

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

. . . .

13. Education Code section 94934 states:

"(a) As part of the compliance program, an institution shall submit an annual report to the bureau, under penalty of perjury, signed by a responsible corporate 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.

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

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

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

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

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

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

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

REGULATORY PROVISIONS

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

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

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

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

15. California Code of Regulations, title 5, division 7.5, section 71475 states:

"(a) Unless renewed, an approval to operate shall expire at 12 midnight on the last day of the institution's term of approval to operate as granted pursuant to section 94802 or section 94889 of the Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

. . .

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

(1) Signatories:

(A) Each owner of the institution, or

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

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

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

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

_____ _____

(Date) (Signature)

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

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

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

. . .

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

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

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

.....

(Date) .....

(Signature)"

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

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

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

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

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

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

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

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

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

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

17. California Code of Regulations, title 5, division 7.5, 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."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

. . . .

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

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

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

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

. . . .

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

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

. . . .

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

. . .

(6) uniforms or other special protective clothing;

. . . .

(9) assessment fees for transfer of credits;

(10) fees to transfer credits;

. . .

(12) any other institutional charge or fee."

. . . .

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

. . . .

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

. . . .

(4) Language proficiency information, including:

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

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

. . . .

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

. . . .

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

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

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

1. The school closed before the course of instruction was completed.

2. The school's failure to pay refunds or charges on behalf of a student to a third party for license fees or any other purpose, or to provide equipment or materials for which a charge was collected within 180 days before the closure of the school.

3. The school's failure to pay or reimburse loan proceeds under a federally guaranteed student loan program as required by law or to pay or reimburse proceeds received by the school prior to closure in excess of tuition and other costs.

4. There was a material failure to comply with the Act or this Division within 30 days before the school closed or, if the material failure began earlier than 30 days prior to closure, the period determined by the Bureau.

5. An inability after diligent efforts to prosecute, prove, and collect on a judgment against the institution for a violation of the Act."

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

FIRST CAUSE FOR DENIAL OF APPLICATION

(Deficient Form of Business Organization)

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

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

SECOND CAUSE FOR DENIAL OF APPLICATION

(Failed to Meet Minimum Operating Standards – Enrollment Agreements)

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

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

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

THIRD CAUSE FOR DENIAL OF APPLICATION

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

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

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FOURTH CAUSE FOR DENIAL OF APPLICATION

(Failed to Meet Minimum Operating Standards – Catalog)

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

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

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

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

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

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

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

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

FIFTH CAUSE FOR DENIAL OF APPLICATION

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

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

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. Denying the application of Institute of Beauty Culture, Omar Aviles (50% Owner), Susan Aviles (50% Owner), owner for a Renewal of Approval to Operate a Non-Accredited Institution;

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

DATED: 3/1/16

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

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