In the Matter of the First Amended Statement of Issues Against:

CALIFORNIA ACADEMY FOR THE HEALING ARTS; ARIEL F. HUBBARD 73% Owner; RONALD DUNHAM, 24% Owner; MARK MUSGRAVE, 2% Owner

School Code No. 18469321

Complainant alleges:

PARTIES

1. Joanne Wenzel (Complainant) brings this First Amended 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 October 18, 2004, the Bureau for Private Postsecondary and Vocational Education¹ (hereinafter "BPPVE") issued Ariel Hubbard, 73% Owner; Ronald Dunham, 24% Owner; Mark Musgrave, 2% Owner.

¹ The former Bureau for Private Postsecondary and Vocational Education sunsetting on July 1, 2007. On October 11, 2009, the Bureau for Private Postsecondary Education Act of 2009
Owner; and, Mark Musgrave, 2% Owner, an Approval to Operate California Academy for the Healing Arts, Inc. (Respondent). The Approval to Operate expired on August 11, 2011.

3. On or about August 11, 2011, the Bureau for Private Postsecondary Education (hereinafter “Bureau”) received an “Application for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions” (Application number 23852) from Respondent. On or about August 8, 2011, Ariel F. Hubbard certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Bureau denied the application on September 21, 2012.

JURISDICTION

4. This First Amended 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.

5. 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.

6. 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.

7. Title 5, California Code of Regulations (hereinafter “CCR”), section 71400.5 states:

(a) The inclusion of false or misleading information, or the intentional or negligent omission of pertinent information on any application may result in the denial of the application or a delay in processing, and may be grounds for action pursuant to Article 18 of the Act.

(b) In addition to denying an application pursuant to section 94887 of the Code, the Bureau may deny any application based on any act that constitutes grounds (AB 48) was signed into law. The Act, which became operative on January 1, 2010, established the Bureau for Private Postsecondary Education (hereinafter “Bureau”).
for the denial of a license under Section 480 of the Business and Professions Code, incorporated herein by reference.

(c) The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

STATUTORY AND REGULATORY PROVISIONS

8. Title 5, California Code of Regulations ("CCR"), section 71475 states in part:

(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 Education Programs for Non-Accredited Institutions," Form Application 94891 (rev. 2/10).

(j) An approval to operate that has expired may be renewed at any time within 6 months after its expiration on filing of an application for renewal and, as a condition precedent to renewal, payment of all accrued and unpaid renewal fees, late payment penalty fees prescribed in subdivision (e) of this section, and any other fees that would have been due in order to renew timely. After an approval to operate has expired for more than 6 months, the approval is automatically cancelled and the institution must submit a complete application pursuant to section 71100, meet all current requirements, and pay all fees that would have been due in order to timely renew, in order to apply for approval....

9. Title 5, CCR, 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.
10. Section 94897 of the Education Code states:

An institution shall not do any of the following:

(j) In any manner make an untrue or misleading change in, or untrue or misleading statement related to, a test score, grade or record of grades, attendance record, record indicating student completion, placement, employment, salaries, or financial information, including any of the following:

(3) Any other record or document required by this chapter or by the bureau.

(p) Offer an associate, baccalaureate, master's, or doctoral degree without disclosing to prospective students prior to enrollment whether the institution or the degree program is unaccredited and any known limitation of the degree, including, but not limited to, all of the following:

(1) Whether a graduate of the degree program will be eligible to sit for the applicable licensure exam in California and other states.

(2) A statement that reads: "A degree program that is unaccredited or a degree from an unaccredited institution is not recognized for some employment positions, including, but not limited to, positions with the State of California."

(3) That a student enrolled in an unaccredited institution is not eligible for federal financial aid programs.

11. Section 94906 of the Education Code states:

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

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

12. Section 94908 of the Education Code states:

Any information or statement required by this article to be included in the catalog, School Performance Fact Sheet, or enrollment agreement shall be printed in at least the same size font as the majority of the text in that document.
13. Section 94909 of the Education Code states:

(a) 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:

... 

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

... 

(B) Cancellation, withdrawal, and refund policies, including an explanation that the student has the right to cancel the enrollment agreement and obtain a refund of charges paid through attendance at the first class session, or the seventh day after enrollment, whichever is later. The text shall also include a description of the procedures that a student is required to follow to cancel the enrollment agreement or withdraw from the institution and obtain a refund consistent with the requirements of Article 13 (commencing with Section 94919).

... 

(15) The following statement:

“NOTICE CONCERNING TRANSFERABILITY OF CREDITS AND CREDENTIALS EARNED AT OUR INSTITUTION

The transferability of credits you earn at (name of institution) is at the complete discretion of an institution to which you may seek to transfer. Acceptance of the (degree, diploma, or certificate) you earn in (name of educational program) is also at the complete discretion of the institution to which you may seek to transfer. If the (credits or degree, diploma, or certificate) that you earn at this institution are not accepted at the institution to which you seek to transfer, you may be required to repeat some or all of your coursework at that institution. For this reason you should make certain that your attendance at this institution will meet your educational goals. This may include contacting an institution to which you may seek to transfer after attending (name of institution) to determine if your (credits or degree, diploma or certificate) will transfer.”

(16) A statement specifying whether the institution, or any of its degree programs, are accredited by an accrediting agency recognized by the United States Department of Education. If the institution is unaccredited and offers an associate, baccalaureate, master's, or doctoral degree, or is accredited and offers an unaccredited program for an associate, baccalaureate, master's, or doctoral degree, the statement shall disclose the known limitations of the degree program, including, but not limited to, all of the following:

(A) Whether a graduate of the degree program will be eligible to sit for the applicable licensure exam in California and other states.
(B) A degree program that is unaccredited or a degree from an unaccredited institution is not recognized for some employment positions, including, but not limited to, positions with the State of California.

(C) That a student enrolled in an unaccredited institution is not eligible for federal financial aid programs.

14. Section 94911 of the Education Code states:

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.

(c) In underlined capital letters on the same page of the enrollment agreement in which the student's signature is required, the total charges for the current period of attendance, the estimated total charges for the entire educational program, and the total charges the student is obligated to pay upon enrollment.

... 

(c) (1) A disclosure with a clear and conspicuous caption, “STUDENT’S RIGHT TO CANCEL,” under which it is explained that the student has the right to cancel the enrollment agreement and obtain a refund of charges paid through attendance at the first class session, or the seventh day after enrollment, whichever is later.

(2) The disclosure shall contain the institution's refund policy and a statement that, if the student has received federal student financial aid funds, the student is entitled to a refund of moneys not paid from federal student financial aid program funds.

(3) The text shall also include a description of the procedures that a student is required to follow to cancel the enrollment agreement or withdraw from the institution and obtain a refund.

... 

(g) A statement specifying that, if the student is eligible for a loan guaranteed by the federal or state government and the student defaults on the loan, both of the following may occur:

(1) The federal or state government or a loan guarantee agency may take action against the student, including applying any income tax refund to which the person is entitled to reduce the balance owed on the loan.

(2) The student may not be eligible for any other federal student financial aid at another institution or other government assistance until the loan is repaid.

(h) The transferability disclosure that is required to be included in the school catalog, as specified in paragraph (15) of subdivision (a) of Section 94909.
(i)(1) The following statement: “Prior to signing this enrollment agreement, you must be given a catalog or brochure and a School Performance Fact Sheet, which you are encouraged to review prior to signing this agreement. These documents contain important policies and performance data for this institution. This institution is required to have you sign and date the information included in the School Performance Fact Sheet relating to completion rates, placement rates, license examination passage rates, salaries or wages, and the most recent three-year cohort default rate, if applicable, prior to signing this agreement.”

(2) Immediately following the statement required by paragraph (1), a line for the student to initial, including the following statement: “I certify that I have received the catalog, School Performance Fact Sheet, and information regarding completion rates, placement rates, license examination passage rates, salary or wage information, and the most recent three-year cohort default rate, if applicable, included in the School Performance Fact sheet, and have signed, initialed, and dated the information provided in the School Performance Fact Sheet.”

15. Title 5, California Code of Regulations (hereinafter “CCR”), section 71180 states, “The institution shall include, with its Form Application 94886, exemplars of all student enrollment agreements and instruments of indebtedness.”

16. Title 5, CCR, section 71340 states:

(a) The institution shall include in the Form Application 94886 any material facts, which have not otherwise been disclosed in the Form Application 94886 that without inclusion would cause the information in the Form Application 94886 to be false, misleading or incomplete or that might reasonably affect the Bureau's decision to grant an approval to operate. In this context, a fact would be “material” if it would alter the Bureau's determination concerning the institution's ability to comply with any applicable provisions of the Act.

(b) The institution may also include in the Form Application 94886 any other facts which the institution would like the Bureau to consider in deciding whether to grant an approval to operate.

17. Title 5, CCR, section 71290 states:

The Form Application 94886 shall include a copy of the institution's catalog, in published or proposed-to-be-published form. The catalog shall meet the requirements of the Act and of section 71810.

18. Title 5, CCR, section 71475 states:

(o) The institution shall include, with its application, exemplars of all student enrollment agreements and instruments of indebtedness.
(bb) The application shall include a copy of the institution's catalog, in published or proposed-to-be-published form. The catalog shall meet the requirements of the Act and of section 71810.

19. Title 5, CCR, 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.

20. Title 5, CCR, section 71716 states:

(a) An institution offering a distance educational program where the instruction is not offered in real time shall transmit the first lesson and any materials to any student within seven days after the institution accepts the student for admission.

(b) The student shall have the right to cancel the agreement and receive a full refund pursuant to section 71750 before the first lesson and materials are received. Cancellation is effective on the date written notice of cancellation is sent. The institution shall make the refund pursuant to section 71750. If the institution sent the first lesson and materials before an effective cancellation notice was received, the institution shall make a refund within 45 days after the student's return of the materials.

(c)(1) An institution shall transmit all of the lessons and other materials to the student if the student: (A) has fully paid for the educational program; and (B) after having received the first lesson and initial materials, requests in writing that all of the material be sent.

(2) If an institution transmits the balance of the material as the student requests, the institution shall remain obligated to provide the other educational services it agreed to provide, such as responses to student inquiries, student and faculty interaction, and evaluation and comment on lessons submitted by the student, but shall not be obligated to pay any refund after all of the lessons and material are transmitted.

21. Title 5, CCR, section 71800 states:

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

(a) The name and address of the institution and the addresses where instruction will be provided.

(b) Period covered by the enrollment agreement.

(c) Program start date and scheduled completion date.

(d) Date by which the student must exercise his or her right to cancel or withdraw, and the refund policy, including any alternative method of
calculation if approved by the Bureau pursuant to section 94921 of the Code.

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

(1) tuition;
(2) registration fee (non-refundable);
(3) equipment;
(4) lab supplies or kits;
(5) textbooks, or other learning media;
(6) uniforms or other special protective clothing;
(7) in-resident housing;
(8) tutoring;
(9) assessment fees for transfer of credits;
(10) fees to transfer credits;
(11) Student Tuition Recovery Fund fee (non-refundable);
(12) any other institutional charge or fee.

(f) Charges paid to an entity other than an institution that is specifically required for participation in the educational program.

22. Title 5, CCR, section 71810 states:

(a) Each institution shall provide a catalog pursuant to section 94909 of the Code, which shall be updated annually. Annual updates may be made by the use of supplements or inserts accompanying the catalog. If changes in educational programs, educational services, procedures, or policies required to be included in the catalog by statute or regulation are implemented before the issuance of the annually updated catalog, those changes shall be reflected at the time they are made in supplements or inserts accompanying the catalog.

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

23. Title 5, CCR, section 76120 states:

(a) Each qualifying institution shall collect an assessment of fifty cents ($.50) per one thousand dollars ($1,000) of institutional charges, rounded to the nearest thousand dollars, from each student in an educational program who is a California resident or is enrolled in a residency program. For institutional charges of one thousand dollars ($1,000) or less, the assessment is fifty cents ($.50).
(b) Unless a student has a separate agreement to repay the third party, a student whose costs are paid to the institution by third-party payer shall not pay the STRF assessment to the qualifying institution.

(c) Except when an institution provides a 100% refund pursuant to section 94919(d) or section 94920(b) of the Code, the assessment is non-refundable.

FACTS

24. On or about August 11, 2011, the Bureau received an “Application for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions” (Application Number 23852) from Respondent.

25. On May 30, 2012, the Bureau advised Respondent of the deficiencies in the application, including but not limited to deficiencies in the enrollment agreement and the school catalog. On June 27, 2012, the Bureau received Respondent’s response to the letter of deficiencies with corrections to the enrollment agreement and school catalog.

26. On September 21, 2012, the Bureau notified Respondent that Application number 23852 was denied and set forth deficiencies in the enrollment agreement, catalog and financial statements submitted.

27. On October 1, 2012, Respondent requested reconsideration of the denial of her application and on October 2, 2012, Respondent appealed the denial of the application and requested a hearing.

28. On November 21, 2012, the Bureau advised Respondent that it would place the denial letter “On Hold” until December 3, 2012, to allow Respondent to submit a corrected enrollment agreement and catalog. The Bureau further advised Respondent that if these deficiencies were cured, a provisional approval to operate for six months may be granted to give Respondent time to meet the required current liabilities to current asset ratio of 1:1.25.

29. On November 26, 2012, Respondent submitted a revised enrollment agreement and catalog. On November 30, 2012, the Bureau advised Respondent that errors in the enrollment agreement and catalog remained. Errors in the Performance Fact Sheet were also noted.

30. On December 7, 2012, Respondent submitted revisions to the enrollment agreement and catalog. On December 11, 2012, the Bureau advised Respondent that a provisional approval
to operate could not be granted because the enrollment agreement and catalog did not comply with the statutory and regulatory requirements.

31. On December 14, 2012 and January 16, 2013, Respondent submitted additional revisions to the enrollment agreement and catalog. On February 20, 2013, the Bureau advised Respondent of deficiencies in the enrollment agreement and catalog that had not been cured.

32. On February 21, 2013, Respondent submitted a revised catalog. On May 3, 2013, Respondent submitted a revised enrollment agreement. The catalog and enrollment agreement continued to have deficiencies and did not comply with the Bureau's statutory and regulatory requirements.

FIRST CAUSE FOR DENIAL

(Misleading and/or Untrue Information in Documents Required By the Bureau)

33. Respondent's application is subject to denial under title 5, CCR, sections 71100 and 71400.5(a) and Education Code sections 94909(a)(8)(B) and 94897(j)(3), in that Respondent made untrue or misleading statements in the school catalog and enrollment agreement as follows:

a. Under the section entitled “Withdrawal from Classes for Program Students,” the school catalog states, “If the student chooses to withdraw after attending the second day of class or later, the student will be charged a $100 non-refundable application fee (included as part of tuition costs when they enroll).” This language is misleading in that it implies that a refund of the application fee is available under other circumstances.

b. Under the “Right to Refunds” policy under the section entitled “Our Policies Regarding Student Rights,” the school catalog stated “Students have a right to a refund if they submit [sic] Notice of Cancellation in writing at the Chancellor’s Office prior to completing an individual class ... or completing less than 60% of a Program.” This language is misleading because the scenario described is indicative of a withdrawal, not a cancellation.

c. The Student Tuition Recovery Fee (“STRF”) of $4.50 as set forth in the school’s enrollment agreement is inaccurate for students who take individual courses and not the entire program pursuant to CCR 76120.
d. The school’s enrollment agreement erroneously stated that the Student Tuition
Recovery Fee is not refundable after the second day of class when this fee is a nonrefundable fee
pursuant to CCR 76120.

SECOND CAUSE FOR DENIAL

(Failure to Include Required Language in Enrollment Agreement)

34. Respondent’s application is subject to denial under title 5, CCR, sections 71100 and
Code section 94887 in that the school’s enrollment agreement submitted with Respondent’s
application fails to comply with the Bureau’s statutes and regulations as follows:
a. The school’s enrollment agreement failed to include the name and address of the
institution and the addresses where instruction will be provided as required by CCR section
71800(a).
b. The school’s enrollment agreement failed to include the period covered by the
enrollment agreement as required by CCR section 71800(b).
c. The school’s enrollment agreement failed to include the date by which the student
must exercise his or her right to cancel or withdraw, and the school’s refund policy as required by
CCR section 71800(d).
d. The school’s enrollment agreement failed to itemize all of the institutional charges
and fees, including the “certified student fee,” and fees for lab supplies or kits; textbooks or other
learning media; uniforms or other protective clothing; in-resident housing; tutoring; assessment
fees for transfer of credits as required by CCR section 71800(e).
e. The school’s enrollment agreement failed to state whether there are charges to an
entity other than the institution, which are specifically required for participation in the education
program, as required by CCR section 71800(f).
f. The school’s enrollment agreement failed to clearly state that the Student Tuition
Recovery Fee is a nonrefundable charge, as required by Code section 94911(b).
g. The school’s enrollment agreement failed to state in underlined capital letters on the
same page of the enrollment agreement in which the student’s signature is required, the total
charges for the current period of attendance, the estimated total charges for the entire educational
program, and the total charges the student is obligated to pay upon enrollment, as required by Code section 94911(c).

h. The school’s enrollment agreement failed to state that if the student is eligible for a loan guaranteed by the federal or state government and the student defaults on the loan, the student may not be eligible for any other federal student financial aid at another institution or other government assistance until the loan is repaid, as required by Code section 94911(g)(2).

i. The school’s enrollment agreement did not contain the transferability disclosure required by Code sections 94911(h) and 94909(a)(15).

j. The school’s enrollment agreement failed to contain the required language regarding a school catalog or brochure and School Performance Fact Sheet with a line for the student to initial as required by Code section 94909(i).

k. The school’s enrollment agreement failed to disclose that an institution offering a distance educational program where the instruction is not offered in real time shall transmit the first lesson and any materials to any student within seven days after the institution accepts the student for admission as required by CCR section 71716(a).

l. The school’s enrollment agreement failed to disclose that for institutions offering a distance educational program where the instruction is not offered in real time, the student shall have the right to cancel the agreement and receive a full refund pursuant to section 71750 before the first lesson and materials are received; that cancellation is effective on the date written notice of cancellation is sent; that the institution shall make the refund pursuant to section 71750; and, that if the institution sent the first lesson and materials before an effective cancellation notice was received, the institution shall make a refund within 45 days after the student’s return of the materials. This language is required by CCR section 71716(b).

m. The school’s enrollment agreement failed to disclose that, for institutions offering a distance educational program where the instruction is not offered in real time, an institution shall transmit all of the lessons and other materials to the student if the student: (A) has fully paid for the educational program; and (B) after having received the first lesson and initial materials, requests in writing that all of the material be sent. The enrollment also failed to disclose that if an
institution transmits the balance of the material as the student requests, the institution shall remain
obligated to provide the other educational services it agreed to provide, such as responses to
student inquiries, student and faculty interaction, and evaluation and comment on lessons
submitted by the student, but shall not be obligated to pay any refund after all of the lessons and
material are transmitted. This language is required by CCR section 71716(c).

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 Ariel F. Hubbard for a Renewal of Approval to Operate
and Offer Educational Programs for Non-Accredited Institutions; and,

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

DATED: 6/16/14

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