In the Matter of the Statement of Issues Against: 

PRIME CAREER COLLEGE; MICHAEL D. MORROW, 50% Owner; RAPHAEL C. PASCUA, 50% Owner 

Applicant for Renewal of Approval to Operate 

Respondent. 

Complainant alleges: 

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 March 7, 2012, the Bureau for Private Postsecondary Education (Bureau) received an Application for Renewal of Approval to Operate an Institution Non-Accredited from Prime Career College; Michael D. Morrow, 50% owner; and Raphael C. Pascua, 50% owner (Respondent). On March 12, 2012, the Bureau issued Respondent a letter explaining the deficiencies in its application. After the Bureau did not receive a response to this letter, it sent the

3. On April 5, 2013, the Bureau issued an abandonment letter to Respondent. On May 6, 2013, the Bureau received a response to its deficiency letter.

4. On June 13 and September 12, 2013, the Bureau issued Respondent letters explaining the deficiencies in its application. On October 11, 2013, the Bureau received a response from Respondent.

5. On November 23, 2013, the Bureau issued Respondent a letter explaining the deficiencies in its application. On December 10, 2013, the Bureau received a response to this letter.


**JURISDICTION**

7. 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.

**STATUTORY PROVISIONS**

8. 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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1 The California Private Postsecondary Education Act of 2009 was recently amended, effective January 1, 2015. See Senate Bill No. 1247. This Statement of Issues is based on the pre-amendment version of the Act.
9. Code section 94891, subdivision (b), states:

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

10. Code section 94897 states, in part:

"An institution shall not do any of the following:

..."

"(l) Use the terms ‘approval,’ ‘approved,’ ‘approval to operate,’ or ‘approved to operate’ without stating clearly and conspicuously that approval to operate means compliance with state standards as set forth in this chapter. If the bureau has granted an institution approval to operate, the institution may indicate that the institution is ‘licensed’ or ‘licensed to operate,’ but may not state or imply either of the following:

“(1) The institution or its educational programs are endorsed or recommended by the state or by the bureau.

“(2) The approval to operate indicates that the institution exceeds minimum state standards as set forth in this chapter.

...”

11. Code section 94909, subdivision (a), states, in part:

“(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:

..."

“(2) Except as specified in Article 2 (commencing with Section 94802), a statement that the institution is a private institution and that it is approved to operate by the bureau.

..."

“(7) Information regarding the faculty and their qualifications.

“(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.

(C) Probation and dismissal policies.

(13) If the institution provides placement services, a description of the nature and extent of the placement services.

(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.'

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.

... 

“(e)(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.

... 

“(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.

...”

13. Code section 94913, subdivision (a), states, in part:

“(a) An institution that maintains an Internet Web site shall provide on that Internet Web site all of the following:

... 

“(2) A School Performance Fact Sheet for each educational program offered by the institution.

... 

“(4) A link to the bureau’s Internet Web site.

...”
REGULATORY PROVISIONS

14. California Code of Regulations, title 5, section 70000, subdivisions (q) and (r), state:

"(q) 'Mission' means an institution’s stated educational reasons to exist. A mission statement contains all of the following characteristics:

"(1) The mission includes the institution’s broad expectations concerning the education that students will receive, including the acquisition of the body of knowledge presented in the educational program, the development of intellectual, analytical, and critical abilities, and the fostering of values such as a commitment to pursue lifelong learning; and

"(2) The mission relates to the educational expectations of the institution’s students, faculty and community that the institution serves.

"(r) 'Objectives' are the goals and methods by which the institution fulfills its mission and transforms it into measurable student learning outcomes for each educational program."

15. California Code of Regulations, title 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."

16. California Code of Regulations, title 5, section 71475, subdivision (w), states, in part:

"(w)(1) The application shall contain a statement that the institution has and can maintain the financial resources required pursuant to section 71745.

"(2) The institution shall submit current, audited financial statements at the time it applies for approval to operate. Each set of financial statements shall comply with Section 74115 of this chapter."

17. California Code of Regulations, title 5, section 71745, subdivision (a), states, in part:

"(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.”

18. California Code of Regulations, title 5, section 71800, subdivision (e), states, in part:

“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:

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

…
(5) Textbooks, or other learning media;

…”

19. California Code of Regulations, title 5, section 71810, subdivision (b), states, in part:

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

…
“(2) A statement of the institution's missions and purposes and the objectives underlying each of its educational programs;
“(3) If the institution admits students from other countries, whether visa services are
provided or whether the institution will vouch for student status, and any associated charges;

“(7) The institution’s policies and procedures for the award of credit for prior experiential
learning, including assessment policies and procedures, provisions for appeal, and all charges that
a student may be required to pay;

“(9) A description of the facilities and of the types of equipment and materials that will be
used for instruction;

“(14) Policies on student rights, including the procedure for addressing student grievances.

20. California Code of Regulations, title 5, section 74112 states, in part:

“(a) Format. The format for the Performance Fact Sheet shall be in at least 12 pt. type, in
an easily readable font, with 1.15 line spacing. The Performance Fact Sheet shall contain all and
only the information required or specifically permitted by section 94910 of the Code or this
chapter.

“(b) In addition to the definitions contained in section 94928 of the Code:

“(1) ‘Number of Students Who Began Program’ means the number of students who began a
program who are scheduled to complete the program within 100% of the published program
length within the reporting calendar year, and includes all the students who remained enrolled
after their cancellation period.

“(2) ‘Number of Graduates’ means the number of students who completed the program
within 100% of the published program length within the reporting calendar year.

“(3) ‘Graduates Employed in the Field’ means those graduates who meet the definition of
section 94928(e) of the Code, who have reported their employment to the institution.

“(c) Reporting periods:

...
“(2) A Performance Fact Sheet shall be current and available not later than August 1st, and
shall report data for the previous two calendar years based upon the ‘number of students who
began program’ or the ‘number of graduates,’ as defined in subdivision (b), for each reported
calendar year.

....”

21. California Code of Regulations, title 5, section 74115, subdivision (b), states, in part:
“(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.

....”

FIRST CAUSE FOR DENIAL OF APPLICATION
(Incomplete Application)
(Educ. Code §§ 94887 and 94891, subd. (b))

22. Respondent’s application is subject to denial because the enrollment agreement,
catalog, and financial statements are not in compliance with applicable laws and regulations, as
stated in the second through the fifth causes for denial of application. Respondent has therefore
failed to provide evidence that it has the capacity to meet the minimum operating standards.
(Educ. Code §§ 94887 and 94891, subd. (b)).

SECOND CAUSE FOR DENIAL OF APPLICATION
(Exemplars of Student Agreements)
(Educ. Code §§ 94887; 94891, subd. (b); 94909, subd. (a)(15); 94911, subds. (b), (c), (e)(1),
(e)(2), (e)(3), and (h); and Cal. Code Regs., title 5, § 71800, subd. (e)(5))

23. Respondent’s application is subject to denial because it fails to include exemplars of
student agreements that comply with applicable laws and regulations. Respondent has therefore
failed to provide evidence that it has the capacity to meet the minimum operating standards.
(Educ. Code §§ 94887 and 94891, subd. (b)). In particular:
a. Respondent’s schedule of charges on the Vocational Nurse/Hemodialysis Program Enrollment Agreement does not include the fees for textbooks students must purchase, as required by Code section 94911, subdivision (b) and California Code of Regulations, title 5, section 71800, subdivision (e)(5).

b. Respondent’s schedule of charges on the Nurse Assistant enrollment agreement does not include the fees for textbooks students must purchase, as required by Code section 94911, subdivision (b).

c. Respondent’s Vocational Nurse/Hemodialysis enrollment agreement includes a fee schedule for the Vocational Nursing program but mistakenly indicates that the fees are for the Nursing Assistant Program. Accordingly, this agreement does not comply with Code section 94911, subdivision (b).

d. Respondent’s Vocational Nurse/Hemodialysis Program Enrollment Agreement, at pages 7 and 10, lists different and inconsistent total charges, and therefore does not comply with Code section 94911, subdivision (c).

e. Respondent’s statement, on page 3 of the Nurse Assistant enrollment agreement, that indicates that a student has a right to a refund if the student cancels prior to or on the first day of class is incorrect and fails to comply with Code section 94911, subdivisions (e)(1) and (e)(2).

f. Respondent’s Vocational Nurse/Hemodialysis Program Enrollment Agreement states that Respondent’s refund policy includes that a pro rata refund is based on the number of hours completed in relation to the total course hours as mandated by the State of California. This policy does not comply with Code section 94911, subdivision (e)(2).

g. Respondent’s Vocational Nurse/Hemodialysis Program Enrollment Agreement, at pages 2 and 5, offers two different and inconsistent procedures for cancelling the enrollment agreement or withdrawing from the institution and obtaining a refund. Accordingly, this agreement does not comply with Code section 94911, subdivision (e)(3).

h. In the transferability disclosure, Respondent’s Vocational Nurse/Hemodialysis Program Enrollment Agreement does not reference the specific credential type (“credits or
degree, diploma, or certificate") to be awarded to students upon program completion, as required
by Code sections 94911, subdivision (h), and 94909, subdivision (a)(15).

THIRD CAUSE FOR DENIAL OF APPLICATION
(Financial Resources and Statements)
(Educ. Code §§ 94887 and 94891, subd. (b); Cal. Code Regs., title 5, §§ 71475, subds. (w)(1) and
(w)(2); 71745, subs. (a)(1)-(a)(6), and 74115, subd. (b)(1))

24. Respondent's application is subject to denial because Respondent has not submitted
financial statements that include a balance sheet, income statement and cash flow statement,
conducted and prepared in accordance with the generally accepted accounting principles
established by the American Institute of Certified Public Accountants. In addition, the financial
statements offered by Respondent have not been prepared by an independent certified public
accountant. (Educ. Code §§ 94887 and 94891, subd. (b); Cal. Code Regs., title 5, §§ 71475,
subds. (w)(1) and (w)(2); 71745, subs. (a)(1)-(a)(6), and 74115, subd. (b)(1)).

FOURTH CAUSE FOR DENIAL OF APPLICATION
(Catalog)
(Educ. Code §§ 94887; 94891, subd. (b); 94897, subd. (l); 94909, subd. (a)(2), (a)(7), (a)(8)(A),
(a)(8)(C), (a)(13), and (a)(15); Cal. Code Regs., title 5, § 70000, subds. (q) and (r); 71810, subd.
(b)(2), (b)(3), (b)(7), (b)(9), and (b)(14))

25. Respondent's application is subject to denial because it fails to include a proposed
catalog that complies with applicable laws and regulations. Respondent has therefore failed to
provide evidence that it has the capacity to meet the minimum operating standards. (Educ. Code
§§ 94887 and 94891, subd. (b)). In particular:

a. The meaning of “approval,” as required by Code section 94897, subdivision (l),
is not included in Respondent’s proposed catalog. (Educ. Code §§ 94909, subd. (a)(2), and
94897, sub. (l)).

b. Respondent’s proposed catalog does not include a statement of the institution’s
missions and objectives, as required by California Code of Regulations, title 5, sections 71810,
subdivision (b)(2), and 70000, subdivisions (q) and (r). Specifically, as stated in Respondent’s
proposed catalog, the institution’s mission does not include the educational expectations of the
institution’s faculty and the community it serves. In addition, Respondent’s proposed catalog
does not include objectives that demonstrate the methods by which the institution fulfills its mission.

c. Respondent’s proposed catalog does not include information regarding the facilities and equipment that will be used for instruction, as required by California Code of Regulations, title 5, section 71810, subdivision (b)(9).

d. Respondent’s proposed catalog does not include insertion of the specific credential type awarded to students, within the “Notice Concerning Transferability of Credits and Credentials Earned at our Institution,” as required by Code section 94909, subdivision (a)(15).

e. Respondent’s proposed catalog does not contain the description required by Code section 94909, subdivision (a)(8)(A).

f. Respondent’s proposed catalog does not contain the information regarding probation policies required by Code section 94909, subdivision (a)(8)(C).

g. Respondent’s proposed catalog does not include its policies on student’s rights, as required by California Code of Regulations, title 5, section 71810, subdivision (b)(14). In addition, the grievance procedure stated in Respondent’s proposed catalog offers contact information for the Board of Vocational Nursing and Psychiatric Technicians, rather than the Bureau for Private Postsecondary Education. Furthermore, the proposed catalog indicates that the telephone number included is a toll-free number, but it is the Bureau’s local (not toll-free) number. (Cal. Code Regs., title 5, § 71810, subd. (b)(14)).

h. Respondent’s proposed catalog does not contain the information required by California Code of Regulations, title 5, section 71810, subdivision (b)(7).

i. Respondent’s proposed catalog does not contain the information required by California Code of Regulations, title 5, section 71810, subdivision (b)(3).
j. Respondent’s proposed catalog does not include information regarding the qualifications of the institution’s faculty, as required by Code section 94909, subdivision (a)(7). In addition, the names of the faculty members listed on the institution’s website do not match the names of the faculty members listed in the proposed catalog. (Educ. Code § 94909, subd. (a)(7)).

k. Respondent’s proposed catalog does not contain the placement services information required by Code section 94909, subdivision (a)(13).

FIFTH CAUSE FOR DENIAL OF APPLICATION (Performance Fact Sheet and Website) (Educ. Code §§ 94887; 94891, subd. (b); 94913, subd. (a)(2) and (a)(4); Cal. Code Regs., title 5, § 74112, subdivisions (a), (b), and (c)(2))

26. Respondent’s application is subject to denial because it fails to include a proposed performance fact sheet and website that comply with applicable laws and regulations. Respondent has therefore failed to provide evidence that it has the capacity to meet the minimum operating standards. (Educ. Code §§ 94887 and 94891, subd. (b)). In particular:

a. The Performance Fact Sheet on the institution’s website does not include the correct subject headings or the number of students who completed the program within 101-150% of the published program length within the reporting calendar year. (Educ. Code § 94913, subd. (a)(2); Cal. Code Regs., title 5, § 74112, subdivisions (a) and (b)).

b. The Performance Fact Sheet on the institution’s website fails to provide information for the current calendar year, as required by Code section 94913, subdivision (a)(2) and California Code of Regulations, title 5, section 74112, subdivision (c)(2).

c. The link on the institution’s website that leads to the Bureau’s website is found under a title reading “Accreditation.” The Bureau is not an accreditor. Accordingly, the title “Accreditation” is incorrect and should not be used in this instance. (Educ. Code § 94913, subd. (a)(4)).
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 Prime Career College; Michael D. Morrow, 50% owner; and Raphael C. Pascua, 50% owner an Application for Renewal of Approval to Operate an Institution Non-Accredited; and

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

DATED: 1-8-15

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