In the Matter of the Statement of Issues  
Against:  
CRESCENT COLLEGE, INC.  
ANGEL GUTIERREZ, Owner  

Renewal of Approval to Operate and Offer  
Educational Programs for Non-Accredited  
Institution Applicant  

Respondent.  

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 June 27, 2012, the Bureau for Private Postsecondary Education (Bureau)  
received an application for a Renewal of Approval to Operate and Offer Educational Programs  
for Non-Accredited Institution(s) from Crescent College, Inc.; Angel Gutierrez (Respondent). On  
or about June 20, 2012, Angel Gutierrez certified under penalty of perjury to the truthfulness of  
all statements, answers, and representations in the application. The Bureau denied the application  
on June 26, 2014.
JURISDICTION

3. Education Code section 94891 states:
   "(a) The bureau shall, by January 1, 2011, 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

4. Business and Professions Code section 477 as used in this division provides in
   pertinent part:
   (a) "Board" includes "bureau" . . .
   (b) "License" includes certificate, registration or other means to engage in a business
   or profession regulated by this code.

5. Education Code section 94885 states:
   "The bureau shall, by January 1, 2011, adopt by regulation minimum operating standards
   for an institution that shall reasonably ensure that all of the following occur:
   (a) The content of each educational program can achieve its stated objective.
   (b) The institution maintains specific written standards for student admissions for each
   educational program and those standards are related to the particular educational program.
   (c) The facilities, instructional equipment, and materials are sufficient to enable students
   to achieve the educational program's goals.
   (d) The institution maintains a withdrawal policy and provides refunds.
   (e) The directors, administrators, and faculty are properly qualified.
   (f) The institution is financially sound and capable of fulfilling its commitments to
   students.
   (g) That, upon satisfactory completion of an educational program, the institution gives
   students a document signifying the degree or diploma awarded.

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

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

6. 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.”

7. Education Code section 94887:

“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.”

8. Education Code section 94930.5 states:

“An institution shall remit to the bureau for deposit in the Private Postsecondary Education
Administration Fund the following fees, in accordance with the following schedule:

... 

(d)(1) In addition to any fees paid to the bureau pursuant to subdivisions (a) to (c), inclusive,
each institution that is approved to operate pursuant to this chapter shall remit both of the
following:

(A) An annual institutional fee, in an amount equal to three-quarters of 1 percent of the
institution's annual revenues derived from students in California, but not exceeding a total of
twenty-five thousand dollars ($25,000) annually.

(B) An annual branch fee of one thousand dollars ($1,000) for each branch or campus of
the institution operating in California.
(2) The amount of the annual fees pursuant to paragraph (1) shall be proportional to the
bureau's cost of regulating the institution under this chapter.

11. Education Code section 94931, states:
   "(a) A fee that is not paid on or before the 30th calendar day after the due date for the
       payment of the fee shall be subject to a 25 percent late payment penalty fee.
   (b) A fee that is not paid on or before the 90th calendar day after the due date for
       payment of the fee shall be subject to a 35 percent late payment penalty fee."

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

10. 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."

11. 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.

... (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:

(I) 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."

12. California Code of Regulations, title 5, division 7.5, section 74000 states:

“(a) An institution shall pay the fees established by Article 17 of the Act. A failure to
include a fee with an application or other request renders the application or request incomplete.

(b) All fees lawfully collected are non-refundable.

(c) A fee that is not paid timely is subject to penalty as set forth in section 94931 of the
Code.

(d) The Bureau shall deny a renewal of an approval to operate if the institution fails to
submit at the time it files its application for renewal of an approval to operate: all unpaid fees;
penalty fees; penalties; orders for reimbursement of costs and expenses; and assessments for, and
reimbursement of all payments made to students from, the Student Tuition Recovery Fund.

(e) (1) If an institution fails to pay any fee and any penalty fees timely, the Bureau may
initiate proceedings to revoke the institution's approval to operate for failure to pay fees.
(2) Any proceeding to revoke an institution's approval to operate is subject to the provisions of Chapter 5 of the Administrative Procedures Act. If a hearing is requested, it shall be limited to the issues of whether any fee or penalty was owed and, if so, whether the fee or penalty were paid when originally due.

(3) The procedure specified in this subdivision is cumulative to any other right or remedy the Bureau may invoke against an institution which fails to pay its annual fee or a penalty fee when originally due. Nothing in this subdivision restricts the Bureau's authority to bring other administrative or judicial action against an institution that fails to pay its fees when due.

(4) An institution whose approval to operate was revoked because of nonpayment of an annual fee or penalty fee may seek to obtain approval to operate only by filing an application for a new approval to operate.”

13. California Code of Regulations, title 5, division 7.5, section 74006 states:

“(a) An institution's annual fee is due within 30 days of the date on which the institution originally receives its approval to operate and each year thereafter on the anniversary of the date of the original approval.

(b) An institution shall pay its annual fee in addition to any other applicable fees.

(c) The annual institutional fee is based on the institution's annual revenue. For purposes of this article, annual revenue is annual gross revenue.”

14. 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.”

CAUSES FOR DENIAL OF APPLICATION

(Incomplete Application)

15. Respondent's application is subject to denial under Business and Professions Code sections 480, subdivision (a)(3)(A), Education Code section 94887 and California Code of Regulations, title 5, division 7.5, section 71100, subdivisions (a) – (c), and 71475, in that on or about June 27, 2012, Respondent submitted an incomplete application to the Bureau. Each violation is a sole and separate cause for denial. The violations are as follows:

(a) Ownership:
1. Respondent failed to provide the correct ownership information and correct signatures on the application, violating California Code of Regulations, title 5, division 7.5, section 71475, subdivisions (c)(7), and (gg).

(b) Outstanding Fees:
(d)(1)(A), and section 94931, and violated California Code of Regulations, title 5, division 7.5, section 74000, subdivision (d), and section 74006, subdivision (b).

(c) Annual Reports:


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 Crescent College, Inc., Angel Gutierrez, Owner, for a Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institution;

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

DATED: 11/11/14

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