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8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION**
STATE OF CALIFORNIA
11

12 In the Matter of the Statement of Issues
Against:

Case No. 1002211

13 **TOPLINE BEAUTY COLLEGE**

STATEMENT OF ISSUES

14
15 **Renewal of Approval to Operate an**
Institution Non-Accredited Applicant

16 **School Code: 1906941**

17
18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

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

25 2. On or about May 14, 2012, the Bureau for Private Postsecondary Education (Bureau)
26 received an application for a Renewal of Approval to Operate an Institution Non-Accredited from
27 Glamour Beauty College, Inc., from President/CEO Hien Nguyen. In January 2013, Tony Do
28 became the new President/owner, changing the name of the school to Topline Beauty College,

1 Inc. On April 9, 2014, Tony Do and Topline Beauty College, Inc. (Respondent) submitted a new
2 application certifying under penalty of perjury to the truthfulness of all statements, answers, and
3 representations in the application. The Bureau issued deficiency letters June, 4, 2014; December
4 23, 2014; and February 12, 2015 and received responses from the Respondent on July 1, 2014;
5 January 26, 2015; and March 4, 2015. On September 6, 2016, the Bureau requested updated
6 financials. On September 16, 2016, the Bureau received financial statements from the
7 Respondent. The Bureau denied the application on October 17, 2016.

8 JURISDICTION

9 3. This Statement of Issues is brought before the Director of the Department of
10 Consumer Affairs (Director) for the Bureau, under the authority of the following laws. All
11 section references are to the Education Code unless otherwise indicated.

12 STATUTORY & REGULATORY PROVISIONS¹

13 4. Code section 94885 states:

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

16 ...

17 (6) The institution is financially sound and capable of fulfilling its
18 commitments to students.

19 ...

20 5. Code section 94887 states: An approval to operate shall be granted only after an
21 applicant has presented sufficient evidence to the bureau, and the bureau has independently
22 verified the information provided by the applicant through site visits or other methods deemed
23 appropriate by the bureau, that the applicant has the capacity to satisfy the minimum operating
24 standards. The bureau shall deny an application for an approval to operate if the application does
25 not satisfy those standards.

26 _____
27 ¹ The California Private Postsecondary Education Act of 2009 was recently amended, effective
28 January 1, 2015. See Senate Bill No. 1247. This Statement of Issues is based on the pre-
amendment version of the Act.

1 6. Code section 94891 states:

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

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

6 ...

7 7. California Code of Regulations (CCR), title 5, section 71240 (Financial Resources
8 and Statements) states:

9 (a) The Form Application 94886 shall contain a statement that the institution has and
10 can maintain the financial resources required pursuant to section 71745.

11 (b) The institution shall submit current, reviewed financial statements at the time it
12 applies for approval to operate. Each set of financial statements shall comply with Section 74115
13 of this chapter.

14 8. CCR, title 5, section 71475 (Renewal of an Approval to Operate for a Non-
15 Accredited Institution; Cancellation of an Approval to Operate) states:

16 ...

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

21 ...

22 9. CCR, title 5, section 71745 (Financial Resources) states:

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

25 ...

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

27 ...

28 10. CCR, title 5, section 74115 (Financial Statements) states:

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

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

6 (1) Audited and reviewed financial statements shall be conducted and prepared
7 in accordance with the generally accepted accounting principles established by the American
8 Institute of Certified Public Accountants by an independent certified public accountant who is not
9 an employee, officer, or corporate director or member of the governing board of the institution.

10 (2) Financial statements prepared on an annual basis as required by section
11 74110(b) shall be prepared in accordance with the generally accepted accounting principles
12 established by the American Institute of Certified Public Accountants. Nonprofit institutions shall
13 provide annual financial statements as required under generally accepted accounting principles
14 for nonprofit organizations.

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

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

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

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

26 (d) "Current" with respect to financial statements means completed no sooner than
27 120 days prior to the time it is submitted to the Bureau, and covering no less than the most recent
28 complete fiscal year. If more than 8 months will have elapsed between the close of the most

1 recent complete fiscal year and the time it is submitted, the fiscal statements shall also cover no
2 less than five months of that current fiscal year.

3 **FIRST CAUSE FOR DENIAL OF APPLICATION**

(Financial Statements Not Current)

4 (Educ. Code section 94887; and CCR, title 5, section 71475, subd. (e) and section 74115,
5 subd. (a)(d))

6 11. Respondent's application is subject to denial because the financial statements
7 submitted by Respondent were not current. Specifically, the financial statements received with
8 Respondent's application on September 16, 2016 were for the year ending on December 31, 2015.
9 Pursuant to CRC, title 5, section 74115, subd. (d), as more than 8 months had elapsed between the
10 close of the most recent complete fiscal year (2015) and the time it was submitted, the financial
11 statements must also cover no less than five months of the current fiscal year (2016). The
12 financial statements provided by Respondent were not current and are therefore incomplete and
13 deficient.

14 **SECOND CAUSE FOR DENIAL OF APPLICATION**

(Financial Statements Not Properly Reviewed)

15 (Educ. Code section 94887; and CCR, title 5, section 71475, subd. (e)
16 and section 74115, subd. (b)(3))

17 12. Respondent's application is subject to denial because it does not include properly
18 reviewed financial statements. CRC, title 5, section 71475 requires institutions with annual gross
19 revenues of \$500,000 and over to be audited, and institutions with annual gross revenues less than
20 \$500,000 to be reviewed. As Respondent's gross revenue is less than \$500,000 per year, only a
21 review is required. However, the Independent Accountant's Compilation Report prepared by the
22 accounting firm of Cho & Khang that accompanies Respondent's financial statements expressly
23 states, "We did not audit or review the financial statements nor were we required to perform any
24 procedures to verify the accuracy or completeness of the information provided by management."
25 As no evidence of a review was submitted, the financial statements are incomplete and deficient.

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