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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  
13 Against:  
14 **DIANOVA FOUNDATION**  
**d.b.a. DIANOVA INSTITUTE**  
15 **Application for Approval to Operate for an**  
16 **Institution Non-Accredited**  
17 Respondent.

Case No. 1004095

OAH No. 2019050827

**SECOND AMENDED STATEMENT OF  
ISSUES**

18  
19 **PARTIES**

20 1. Dr. Michael Marion, Jr. (Complainant) brings this Second Amended Statement of  
21 Issues solely in his official capacity as the Chief of the Bureau for Private Postsecondary  
22 Education, Department of Consumer Affairs.

23 2. On or about July 7, 2017, the Bureau for Private Postsecondary Education received an  
24 Application for Approval to Operate for an Institution Non-Accredited. On or about November  
25 14, 2018, the Bureau denied the application. On or about January 14, 2019, Respondent  
26 requested an administrative hearing regarding the Bureau's denial of its application.

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1 **JURISDICTION**

2 3. This Second Amended Statement of Issues is brought before the Director of the  
3 Department of Consumer Affairs (Director) for the Bureau for Private Postsecondary Education,  
4 under the authority of the following laws. All section references are to the Education Code unless  
5 otherwise indicated.

6 4. Section 94887 states:

7 “An approval to operate shall be granted only after an applicant has presented sufficient  
8 evidence to the bureau, and the bureau has independently verified the information provided by the  
9 applicant through site visits or other methods deemed appropriate by the bureau, that the applicant  
10 has the capacity to satisfy the minimum operating standards. The bureau shall deny an application  
11 for an approval to operate if the application does not satisfy those standards.”

12 **STATUTES AND REGULATIONS**

13 5. Section 94811 states:

14 “‘Ability-to-benefit student’ means a student who does not have a certificate of graduation  
15 from a school providing secondary education, or a recognized equivalent of that certificate.”

16 6. Section 94908 states:

17 “Any information or statement required by this article to be included in the catalog, School  
18 Performance Fact Sheet, or enrollment agreement shall be printed in at least the same size font as  
19 the majority of the text in that document.”

20 7. Section 94909, subdivision (a) states, in part:

21 “(a) Except as provided in subdivision (d), prior to enrollment, an institution shall provide a  
22 prospective student, either in writing or electronically, with a school catalog containing, at a  
23 minimum, all of the following:

24 . . .

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

26 “(A) Admissions policies, including the institution's policies regarding the acceptance of  
27 credits earned at other institutions or through challenge examinations and achievement tests,  
28 admissions requirements for ability-to-benefit students, and a list describing any transfer or

1 articulation agreements between the institution and any other college or university that provides  
2 for the transfer of credits earned in the program of instruction. If the institution has not entered  
3 into an articulation or transfer agreement with any other college or university, the institution shall  
4 disclose that fact.

5 . . .

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

8 . . . .”

9 8. Section 94911, subdivision (a) states:

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

11 “(a) The name of the institution and the name of the educational program, including the  
12 total number of credit hours, clock hours, or other increment required to complete the educational  
13 program.”

14 9. California Code of Regulations, title 5, section 71210 states, in part:

15 “(a) The institution shall identify and describe the educational program it offers, or  
16 proposes to offer. If the educational program is a degree program, the institution shall identify the  
17 full title which it will place on each degree awarded.

18 . . .

19 “(c) In addition, the institution shall list the following for each educational program offered:

20 “(1) The admissions requirements, including minimum levels of prior education,  
21 preparation, or training;

22 “(2) If applicable, information regarding the ability-to-benefit examination as required by  
23 section 94904 of the Code;

24 “(3) The types and amount of general education required;

25 “(4) The title of the educational programs and other components of instruction offered,  
26 including a description of the level of the courses (e.g., below college level, undergraduate level,  
27 graduate level);

28 “(5) The method of instruction;

1 “(6) The graduation requirements; and

2 “(7) Whether the educational program is designed to fit or prepare students for employment  
3 in any occupation. If so, the Form Application 94886 shall identify each occupation and job title  
4 to which the institution represents the educational program will lead.”

5 10. California Code of Regulations, title 5, section 71800, subdivision (e)(2) states:

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

8 . . .

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

10 . . .

11 “(2) registration fee (non-refundable);”

12 **FIRST CAUSE FOR DENIAL OF APPLICATION**

13 (Statement of Admission Requirements)  
14 (Educ. Code §§ 94811, 94887 and 94909, subd. (a)(8)(A); and  
15 Cal. Code Regs., title 5, §§ 71210, subds. (a) and (c))

16 11. Respondent’s application is subject to denial because the application and proposed  
17 catalog fail to identify and describe the institution’s admission requirements, including  
18 information regarding the ability-to-benefit examination. (Educ. Code §§ 94811, 94887 and  
19 94909, subd. (a)(8)(A); and Cal. Code Regs., title 5, §§ 71210, subds. (a) and (c)). In particular,  
20 in stating the institution’s admission requirements, Respondent’s application refers to its proposed  
21 catalog. Respondent’s proposed catalog, at page 18, contains a section titled Requirements for  
22 Admission which lists three requirements for admission (registration for classes online,  
23 possession of a high school diploma or equivalent, and proof of English language proficiency).  
24 Separate from the admissions section, in a section on page 20 titled “Transferring of Credits &  
25 Credentials,” Respondent states its policy related to the ability-to-benefit examination.

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2 **SECOND CAUSE FOR DENIAL OF APPLICATION**

(Enrollment Agreement)

3 (Educ. Code §§ 94887, 94908, 94909, subd. (a)(9) and 94911, subd. (a); and Cal. Code Regs.,  
4 title 5, § 71800, subd. (e)(2))

5 12. Respondent’s application is subject to denial because Respondent failed to offer  
6 compliant enrollment agreements. (Educ. Code §§ 94887, 94908, 94909, subd. (a)(9) and 94911,  
7 subd. (a); and Cal. Code Regs., title 5, § 71800, subd. (e)(2).) In particular:

8 a. Respondent’s proposed enrollment agreement contains confusing, misleading,  
9 and/or conflicting statements regarding the total number of credits required to complete the  
10 educational program. (Educ. Code § 94911, subd. (a).) In particular, Respondent’s proposed  
11 enrollment agreement, at page 1, contains a statement reading “You must complete 252 credit  
12 hours to satisfy this program’s requirements.” But pursuant to Respondent’s enrollment  
13 requirements, students are required to complete 252 clock hours, not credit hours. In addition,  
14 Respondent’s proposed enrollment agreement, at page 1, contains a statement reading “It takes 8  
15 weeks to complete this program.” This conflicts with another statement in the proposed  
16 enrollment agreement stating “Institute Course are generally ten (10) weeks long.”

17 b. Respondent’s proposed enrollment agreement contains a confusing and  
18 potentially misleading statement related to the schedule of total charges for a period of  
19 attendance. ((Educ. Code § 94909, subd. (a)(9) and Cal. Code Regs., title 5, § 71800, subd.  
20 (e)(2).) In particular, page 4 of Respondent’s proposed enrollment agreement includes a  
21 Registration Fee which, in two lines, both reads that the “Registration Fee Today” is \$0 and also  
22 that the registration fee is “only to be paid in the case of a refund (not paid upon enrollment).”  
23 This is confusing and potentially misleading because, if the fee is meant to be assessed only upon  
24 cancellation, the enrollment agreement should refer to is as a cancellation fee, not a registration  
25 fee. If the fee is, in fact, a registration fee, it should be charged accordingly for all students.

26 c. A chart, contained on page 3 of Respondent’s proposed enrollment agreement,  
27 contains information and/or legally-required statements that are printed in a font that is smaller  
28 than the majority of the text in that document. (Educ. Code § 94908.)

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