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BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: **INSTITUTE OF MEDICAL EDUCATION** **BINDU BABURAJAN, Owner** **130 S. Almaden Blvd.** **San Jose, CA 95113** **Institution Code No. 69608217** **7901 Oakport Street** **Oakland, CA 94621** **School Code No. 81701347** Respondent.	Case No. 997952 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Laura Metune (Complainant) brings this First Amended Accusation solely in her official capacity as the Bureau Chief of the Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs.

2. On or about November 1, 2004, the former Bureau for Private Postsecondary and Vocational Education[1] (BPPVE) issued a Temporary Approval to Operate the Institute of Medical

[1] The former Bureau for Private Postsecondary and Vocational Education sunsetted on (continued...)

Education, Bindu Baburajan, Owner (Institution Code No. 69608217) (Respondent or Institute). On or about October 27, 2005, BPPVE issued a Full Approval to Operate the Institute.

3. On or about February 8, 2005, BPPVE issued an Approval to Operate a Phlebotomy program and an EKG Technician program at the Institute.

4. On or about May 16, 2006, BPPVE issued an Approval to Operate a Vocational Nursing program at the Institute.

5. On or about March 22, 2007, BPPVE issued a Full Approval to Operate a satellite location at the Institute located at 2235 Polvorosa Avenue, Suite 200, San Leandro, CA 94577 (School Code No. 81701347). On this same date, BPPVE issued an Approval to Operate a Physical Therapy Aide program and a Nursing Assistant program at the Institute.

6. On or about April 11, 2007, BPPVE issued an Approval to Operate a Medical Assistant program at the Institute.

7. On or about May 7, 2010, the Bureau issued an Approval to Operate an Associate of Science in Nursing degree and an Associate of Arts in Dental Hygiene degree at the Institute.

8. On or about May 11, 2010, the Bureau issued an Approval to Operate an Associate of Applied Science in Physical Therapy degree at the Institute.

JURISDICTION

9. This First Amended Accusation is brought before the Bureau under the authority of the following laws. All section references are to the Education Code unless otherwise indicated.

10. Business and Professions Code section 118, subdivision (b) provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive a board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued, or reinstated.

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July 1, 2007. On October 11, 2009, the Private Postsecondary Education Act of 2009 (AB 48) was signed into law. The Act, which became operative on January 1, 2010, established the Bureau for Private Postsecondary Education.

STATUTORY PROVISIONS

11. Section 94813 states: " 'Accredited' means an institution is recognized or approved by an accrediting agency recognized by the United States Department of Education."

12. Section 94814 states: " 'Accrediting agency' is an agency recognized by the United States Department of Education."

13. Section 94836 states: " 'Educational materials' means textbooks, supplies, implements, tools, machinery, computers, electronic devices, or other goods related to any education, training, or experience required for participation in an educational program."

14. Section 94839 states: " 'Enrollment' means the execution of an enrollment agreement."

15. Section 94862 states: " 'Satellite location' means an auxiliary classroom or teaching site within 50 miles of the branch or main location."

16. Section 94885 provides in pertinent part:

"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:

. . .

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

17. 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."

18. Section 94893 states: "If an institution intends to make a substantive change to its approval to operate, the institution shall receive prior authorization from the bureau. Except as provided in subdivision (a) of Section 94896, if the institution makes the substantive change without prior bureau authorization, the institution's approval to operate may be suspended or revoked."

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19. Section 94894 provides in pertinent part:

"The following changes to an approval to operate are considered substantive changes and require prior authorization:

"(a) A change in educational objectives, including an addition of a new diploma or a degree educational program unrelated to the approved educational programs offered by the institution."

20. Section 94897 provides in pertinent part:

"An institution shall not do any of the following:

. . .

"(e) Advertise, or indicate in promotional material, that the institution is accredited, unless the institution has been accredited by an accrediting agency.

. . .

"(m) Direct any individual to perform an act that violates this chapter, to refrain from reporting unlawful conduct to the bureau or another government agency, or to engage in any unfair act to persuade a student not to complain to the bureau or another government agency."

21. Section 94898 provides in pertinent part:

"(b) After a student has enrolled in an educational program, the institution shall not do either of the following:

"(1) Make any unscheduled suspension of any class unless caused by circumstances beyond the institution's control."

22. Section 94909 provides in pertinent 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:

. . ."

23. Section 94927 states:

"An institution shall be considered in default of the enrollment agreement when an educational program is discontinued or canceled or the institution closes prior to completion of the educational program. When an institution is in default, student institutional charges may be refunded on a pro rata basis if the bureau determines that the school has made provision for

students enrolled at the time of default to complete a comparable educational program at another institution at no additional charge to the students beyond the amount of the total charges in the original enrollment agreement. If the institution does not make that provision, a total refund of all institutional charges shall be made to students."

24. Section 94930.5 provides in pertinent part:

"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.

. . ."

25. Section 94937 provides in pertinent part:

"(a) As a consequence of an investigation, and upon a finding that an institution has committed a violation, the bureau may place an institution on probation or may suspend or revoke an institution's approval to operate for:

. . .

"(2) A material violation or repeated violations of this chapter or regulations adopted pursuant to this chapter that have resulted in harm to students. For purposes of this paragraph, 'material violation' includes, but is not limited to, misrepresentation, fraud in the inducement of a contract, and false or misleading claims or advertising, upon which a student reasonably relied in executing an enrollment agreement and that resulted in harm to the student."

26. Section 94941, subdivision (d) states: "If the bureau finds that an institution's violation of this chapter has caused damage or loss to a student or group of students, the bureau shall order the institution to provide appropriate restitution to that student or group of students."

27. Business and Professions Code section 477 states:

"As used in this division:

"(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and 'agency.'

"(b) 'License' includes certificate, registration or other means to engage in a business or profession regulated by this code."

28. Business and Professions Code section 480 provides in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

. . .

"(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another."

REGULATORY PROVISIONS

29. California Code of Regulations, title 5, section 71717, subdivision (b) provides: "[An] institution shall not maintain any permanent student records [at a satellite location]."

30. California Code of Regulations, title 5, section 71720 provides in relevant part:

"(a) An Educational Program Leading to a Degree.

"(1) An institution offering an educational program that leads to a degree shall employ duly qualified faculty sufficient in number to provide the instruction, student advisement, and learning outcomes evaluation necessary for the institution to document its achievement of its stated mission and objectives, and for students to achieve the specific learning objectives of each course offered . . . ."

31. California Code of Regulations, title 5, section 71730, subdivision (f) states: "The institution shall employ administrative personnel who have the expertise to ensure the achievement of the institution's mission and objectives and the operation of the educational programs."

32. California Code of Regulations, title 5, section 71745 provides in relevant 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.

. . .

"(6) . . . [F]or 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. . . ."

33. California Code of Regulations, title 5, section 71810 provides in relevant part:

"(a) Each institution shall provide a catalog pursuant to section 94909 of the Code, which shall be updated annually.

. . ."

34. California Code of Regulations, title 5, section 71920, subdivision (a) states: "The institution shall maintain a file for each student who enrolls in the institution whether or not the student completes the educational service."

35. California Code of Regulations, title 5, section 71930, subdivision (e) states: "All records that the institution is required to maintain by the Act or this chapter shall be made immediately available by the institution for inspection and copying during normal business hours by the Bureau and any entity authorized to conduct investigations."

36. California Code of Regulations, title 5, section 74000 provides in relevant part:

"(a) An institution shall pay the fees established by Article 17 of the Act. . . .

. . .

"(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."

37. California Code of Regulations, title 5, section 74002 states:

"(a) 'Annual fee' or 'annual institutional fee' is the fee required by subdivision (d) of section 94930.5 of the Code.

"(b) 'Annual gross revenue' means all revenue such as tuition, fees, and other charges derived by an institution, during its last fiscal year ending before the due date of an annual fee payment, from any source for any education, instruction, training, or any services incident thereto. 'Annual gross revenue' does not include unearned tuition and refunds. An institution shall account for 'annual gross revenue' in accordance with generally accepted accounting principles."

38. California Code of Regulations, title 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."

39. California Code of Regulations, title 5, section 74200 states: "Every institution shall notify the Bureau in writing at least 30 days before the institution ceases to offer to the public any educational program."

40. California Code of Regulations, title 5, section 75100 provides in relevant part:

"(a) The Bureau may suspend, revoke or place on probation with terms and conditions an approval to operate.

"(b) 'Material violation' as used in section 94937 of the Code includes committing any act that would be grounds for denial under section 480 of the Business and Professions Code."

41. California Code of Regulations, title 5, section 76020, subdivision (a) provides in relevant part:

"The [Student Tuition Recovery Fund (STRF)] exists to relieve or mitigate economic losses suffered by a student in an educational program as defined in section 94837 of the Code at a qualifying institution, who is or was a California resident or was enrolled in a residency program, if the student enrolled in the institution, prepaid tuition, paid the assessment, and suffered loss as a result of any of the following:

. . ."

42. California Code of Regulations, title 5, section 76120, subdivision (a) provides in relevant part: "Each qualifying institution shall collect an assessment of two dollars and fifty cents ($2.50) 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. . . ."

43. California Code of Regulations, title 5, section 76130 provides in relevant part:

"(a) A qualifying institution shall collect the [Student Tuition Recovery Fund] assessment from each student in an educational program at the time it collects the first payment from or on behalf of the student at or after enrollment. The assessment shall be collected for the entire period of enrollment, regardless of whether the student pays the institutional charges in increments.

"(b) A qualifying institution shall complete the STRF Assessment Reporting Form (Rev. 2/10) and remit it with the STRF assessments collected from students to be received by the Bureau no later than the last day of the month following the close of the quarter as follows . . . ."

COSTS

44. Business and Professions Code section 125.3 provides that a board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

45. Section 94937, subdivision (c) states: "The bureau may seek reimbursement pursuant to Section 125.3 of the Business and Professions Code."

FIRST CAUSE FOR DISCIPLINE

(Unauthorized Substantive Change to Approval to Operate)

46. Respondent is subject to disciplinary action under Education Code sections 94893, 94894, subdivision (a), and 94937, subdivision (a)(2), and California Code of Regulations, title 5,

section 75100, subdivisions (a) and (b) in that the Institute added programs in MRI Technology and Ultrasound Technology without obtaining prior authorization from the Bureau. The MRI Technology and Ultrasound Technology programs are unrelated to the approved educational programs offered by the Institute. This conduct resulted in harm to students. The circumstances of Respondent's conduct are as follows:

47. On its website, the Institute advertises that it offers programs in "MRI Technology" and "Ultrasound Technology".

48. The Institute's "2010-2011 Catalog & Student Handbook" states that the Institute offers programs in MRI Technology and Ultrasound Technology.

49. The Institute enrolled students in its MRI Technology program in 2008, 2009, 2010, 2011, and 2012. The Institute enrolled students in its Ultrasound Technology program in 2009, 2010, and 2011. On or about October 27, 2011, Sunil Vethody (Sunil), the Institute's Chief Executive Officer, informed an investigator from the Division of Investigation that prospective students had registered for the next MRI Technology and Ultrasound Technology courses, and that these courses were scheduled to begin soon.

50. Neither BPPVE nor the Bureau has ever issued the Institute an approval to operate either an MRI Technology program or an Ultrasound Technology (Diagnostic Medical Sonography) program.

SECOND CAUSE FOR DISCIPLINE

(False Advertising of Accreditation)

51. Respondent is subject to disciplinary action under Education Code sections 94813, 94814, 94897, subdivision (e), and 94937, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, subdivisions (a) and (b) in that the Institute advertised on its website that it was accredited at a time when it was not accredited by an accrediting agency. This conduct

resulted in harm to students. The circumstances of Respondent's conduct are as follows:

52. As an institution the Institute is, and at all times pertinent to this Accusation has been, accredited by the Western Association of Schools and Colleges Accrediting Commission for Schools (WASC-ACS). As an institution the Institute is not, nor at any time pertinent to this Accusation was it, accredited by any other accrediting commission, association, agency, or organization.

53. As of October 26, 2010, WASC-ACS ceased to be recognized by the United States Department of Education (USDOE). As a result, WASC-ACS has not been an "accrediting agency" for purposes of section 94814 since that date. Consequently, the Institute has not been "accredited" for purposes of section 94813 since October 26, 2010. Nonetheless, since October 26, 2010, the Institute represented to enrolled and prospective students that it is accredited.

54. The Institute maintains a website. The website contains an "Accreditations" tab. The top portion of the "Accreditations" section of the website contains a check mark with the word "ACCREDITATIONS" next to it. Beneath this word the website states the following: "The Institute of Medical Education is approved and accredited by the following: Western Association of Schools and Colleges (WASC) Accrediting Commission of Schools and Colleges: http://www.acswasc.org/ . . . ."

55. The Institute has enrolled numerous students in several of its educational programs since October 26, 2010.

56. On or about January 17, 2012, Bindu Vethody (Bindu), the Institute's Chief Financial Officer, wrote a letter to USDOE in which she stated the following:

a. "With the withdrawal of our accreditation from WASC (or withdrawal of WASC approval from [USDOE]), we could not start (not allowed by the respective Board) any classes for Associate Degree in Nursing, and forced to cancel our Medical lab Technician program. We

are also given a notice to withdraw our approval of our Associate Degree in Dental Hygiene by [the Commission on Dental Accreditation]. There are already students who are ready to graduate in 4 months."

b. "Being an unaccredited school, we have started to see our enrollment and the corresponding revenue slashed by 50% of the original revenue (before the withdrawal of WASC)."

c. "Thirdly and most importantly, the current students are going to graduate from a non-accredited school. This is not something they signed up for."

THIRD CAUSE FOR DISCIPLINE

(Defaulting on Enrollment Agreement and Failure to Pay Refund)

57. Respondent is subject to disciplinary action under Education Code sections 94927 and 94937, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, subdivision (a) in that the Institute discontinued or canceled its Dental Hygiene program as to its junior class prior to completion of the program and failed to refund the students in the Dental Hygiene program the institutional charges they incurred. This conduct resulted in harm to students. The circumstances of Respondent's conduct are as follows:

58. On or about February 3, 2012, Sunil sent a letter to the Institute's Dental Hygiene program students in which he stated the following: "In light of the recent change in accreditation status, IME is no longer financially viable. As a result, we are sorry to inform you of the change to the IME Dental Hygiene Program. This letter serves as notice that the Institute of Medical Education Dental Hygiene program will be closing on February 03, 2012."

59. On or about February 6, 2012, Sunil sent a follow-up letter to the Institute's Dental Hygiene program students in which he stated the following: "To clarify, the letter dated on February 3, 2012, regarding the closure of the Dental Hygiene program at IME, pertains to only

the Junior Class of 2013 (Batch 2). However, the Senior Class of 2012 (Batch 1), will continue classes and clinic until graduation, with the expected date being the 15th of March, 2012."

FOURTH CAUSE FOR DISCIPLINE

(Maintenance of Permanent Student Records at Satellite Location)

60. Respondent is subject to disciplinary action under Education Code section 94937, subdivision (a)(2) and California Code of Regulations, title 5, sections 71717, subdivision (b) and 75100, subdivision (a) in that the Institute maintained permanent student records at its satellite location in Oakland, California. This conduct resulted in harm to students. The circumstances of Respondent's conduct are as follows:

61. During a meeting with an investigator from the Division of Investigation on or about October 27, 2011, Sunil disclosed that all student records for students enrolled at the Institute's Oakland campus are stored at the Institute's Oakland campus. Sunil acknowledged that storing student records at a satellite location is "a violation."

FIFTH CAUSE FOR DISCIPLINE

(Failure to Employ Sufficient Number of Qualified Faculty)

62. Respondent is subject to disciplinary action under Education Code section 94937, subdivision (a)(2) and California Code of Regulations, title 5, sections 71720, subdivision (a)(1) and 75100, subdivision (a) in that the Institute failed to employ qualified faculty in its Dental Hygiene and Ultrasound programs sufficient in number to provide the instruction, student advisement, and learning outcomes evaluation necessary for the Institute to document its achievement of its stated mission and objectives, and for Dental Hygiene and Ultrasound program students to achieve the specific learning objectives of the courses offered. This conduct resulted in harm to students. The circumstances of Respondent's conduct are as follows:

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63. The Institute has failed to provide adequate educational materials for the students enrolled in its Dental Hygiene program. As a result, several of the program's instructors have left the Institute.

64. The Institute does not have a sufficient number of instructors for its Dental Hygiene program. As a result, many Dental Hygiene classes have been canceled. Those instructors that do teach courses in the Dental Hygiene program lack the specialization and teaching experience necessary to provide the program's students with adequate instruction.

65. The Institute has failed to provide students enrolled in its Dental Hygiene program sufficient clinical time with patients, which is a required part of the program. As a result, these students have been forced to pay for their own family members to come into the Institute's Dental Hygiene clinic so that the students can use them as patients.

66. On or about October 27, 2011, Sunil met with an investigator from the Division of Investigation. During that meeting, Sunil told the investigator the following:

a. The Institute had been without a school director for the past month.

b. The Institute had been without a Dental Hygiene program director for one week.

c. In September 2011, some of the instructors in the Dental Hygiene program quit because of their concerns with the Institute's accreditation issues.

67. The Institute failed to employ qualified faculty in its Ultrasound program sufficient in number to provide the instruction, student advisement, and learning outcomes evaluation necessary for the Institute to document its achievement of its stated mission and objectives, and for Ultrasound program students to achieve the specific learning objectives of the courses offered.

SIXTH CAUSE FOR DISCIPLINE

(Failure to Employ Sufficient Administrative Personnel)

68. Respondent is subject to disciplinary action under Education Code section 94937,

subdivision (a)(2) and California Code of Regulations, title 5, sections 71730, subdivision (f) and 75100, subdivision (a) in that the Institute failed to employ sufficient administrative personnel to adequately service the Institute's students. This conduct resulted in harm to students. The circumstances of Respondent's conduct are as follows:

69. In her January 17, 2012, letter to USDOE, Bindu stated the following:

a. "I know that there are several Federal regulations to meet but I really want you to know that ours is a unique situation here and our lack of trained personnel to administer [financial aid] has occurred due to no fault of ours."

b. "Our employee turnover in the last 12 months has been very high and most of the trained staff in the financial aid department did leave or got terminated."

70. In 2011 and 2012 the Institute experienced a high rate of turnover of administrative personnel.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Document Sufficient Assets and Financial Resources)

71. Respondent is subject to disciplinary action under Education Code section 94937, subdivision (a)(2) and California Code of Regulations, title 5, sections 71745, subdivision (a) and 75100, subdivision (a) in that the Institute failed to document that it has sufficient assets and financial resources to do the following: (1) provide all of the educational programs that the Institute 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; and (3) meet the composite score requirements of the United States Department of Education. This conduct resulted in harm to students. The circumstances of Respondent's conduct are as follows:

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72. On or about May 14, 2011, Martina Fernandez-Rosario, an employee with USDOE, wrote a letter to Bindu stating the following:

a. As of October 26, 2010, WASC-ACS, which is the Institute's primary accreditor, is no longer a nationally recognized accrediting agency.

b. Since the Institute is no longer accredited by a nationally recognized accrediting agency, the Institute no longer qualifies as an "eligible institution" for purposes of participation in federal financial aid programs.

73. On or about November 2, 2011, Patricia Dickerson, an employee with USDOE, wrote a letter to Bindu stating the following:

a. A team from USDOE completed a review of audited financial statements from the Institute for the fiscal year ending on December 31, 2010.

b. In assessing the Institute's financial strength, a USDOE financial analyst reviewed the financial statements using the indicators set forth in 34 Code of Federal Regulations section 668.171.

c. The Institute's financial statements yielded a composite score of 0.7 out of a possible 3.0. "A minimum score of 1.5 is necessary to meet the requirement of the financial standards. Accordingly, IME fails to meet the standards of financial responsibility as described in 34 C.F.R. § 668.172, Financial Ratios."

74. On or about January 19, 2012, Martina Fernandez-Rosario wrote a letter to Bindu stating the following:

a. USDOE transferred the Institute "from the Advance method of payment to the Heightened Cash Monitoring 2 (HCM2) method of payment effective January 12, 2012."

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b. USDOE instituted this change "because as of October 26, 2010 IME was no longer accredited by a nationally recognized accrediting agency for purposes of participation in the Title IV financial aid programs."

c. The Institute is allowed to continue to participate in the financial aid programs under provisional certification for a period of 18 months until April 26, 2012, by which time the Institute must have secured accreditation from a nationally recognized accrediting agency.

d. "[A] program review initiated at IME on January 11, 2012, indicates that IME has not fulfilled its fiduciary responsibilities in administering the Title IV programs. In particular, IME has unsubstantiated cash draws and unreconciled records for Title IV expenditures. As a fiduciary of Federal funds, IME is required to reconcile expenditures on a monthly basis, and must have records readily available that unquestionably support all Title IV drawdowns and disbursements to students. The review team found that IME did not have such records available for the team's review."

75. In her January 17, 2012, letter to USDOE, Bindu stated the following:

a. USDOE's placement of the Institute on the HCM2 method of payment "is going to affect us terribly."

b. "As a result of [our] expansion plan, we have signed leases for 30+K square footage of space for [certain] programs and our rent went up to $70k (extra space not being used) which is just draining out of our current revenue."

c. "[W]e have started to see our enrollment and the corresponding revenue slashed by 50% of the original revenue (before the withdrawal of WASC). I am sure you have the resources to verify the reduction in our student community who have applied for financial aid in the last 6 months."

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d. "[I]t is very crucial and critical that US DOE allow us to draw down the funds for the current student on a HCM1 basis. We cannot move forward in HCM II as we do not have current capability to wait for a month to get the funds as well as to advance the student the money before we get paid from US DOE. In the event that US DOE freezes this account till we finish our reconciliation, we will have no choice but to close our doors to 380+ students as well to 90+ employees of ours. We are really concerned about our student community . . . ."

76. On or about January 30, 2012, Sunil sent a letter to the Institute's students in which he stated the following: "It has come to my attention that the default rate for student tuition is alarmingly high. Please understand that IME is not a financing agency in any manner and cannot afford to have a high default rate from tuition payment. . . . Failure to pay tuition by the 5th of each month will put our institution in a great financial difficulty."

77. On or about February 3, 2012, Sunil sent a letter to the Institute's Dental Hygiene program students in which he stated the following: "In light of the recent change in accreditation status, IME is no longer financially viable. As a result, we are sorry to inform you of the change to the IME Dental Hygiene Program. This letter serves as notice that the Institute of Medical Education Dental Hygiene program will be closing on February 03, 2012."

78. On or about February 6, 2012, Sunil sent a follow-up letter to the Institute's Dental Hygiene program students in which he stated the following: "To clarify, the letter dated on February 3, 2012, regarding the closure of the Dental Hygiene program at IME, pertains to only the Junior Class of 2013 (Batch 2). However, the Senior Class of 2012 (Batch 1), will continue classes and clinic until graduation, with the expected date being the 15th of March, 2012."

79. Effective February 7, 2012, the Institute lost its eligibility to participate in the Title IV federal financial aid programs due to its voluntary relinquishment of its participation in the programs.

EIGHTH CAUSE FOR DISCIPLINE

(Failure to Make Records Available for Inspection and Copying)

80. Respondent is subject to disciplinary action under Education Code section 94937, subdivision (a)(2) and California Code of Regulations, title 5, sections 71920, subdivision (a), 71930, subdivision (e), and 75100, subdivision (a) in that the Institute failed to make student records available for inspection and copying by a Bureau representative and an investigator from the Division of Investigation. This conduct resulted in harm to students. The circumstances of Respondent's conduct are as follows:

81. On or about December 7, 2011, Sunil met with an investigator from the Division of Investigation and a Bureau enforcement analyst. During this meeting, the investigator asked to inspect student records. Sunil informed the investigator that the student records were available but he refused to release them unless the investigator or the enforcement analyst agreed in writing that the Institute was exempt from Bureau regulation during a specific time period. Sunil did not allow the investigator or the enforcement analyst to review the requested student records.

NINTH CAUSE FOR DISCIPLINE

(Failure to Pay Annual Institutional Fee)

82. Respondent is subject to disciplinary action under Education Code section 94930.5, subdivision (d)(1)(A) and California Code of Regulations, title 5, sections 74000, subdivisions (a) and (e)(1), and 75100, subdivision (a) in that the Institute (1) failed to remit the correct annual fee to the Bureau for 2010 and (2) failed to remit the required annual fee to the Bureau for 2011. This conduct resulted in harm to students.

TENTH CAUSE FOR DISCIPLINE

(Failure to Collect and Remit Student Tuition Recovery Fund Assessments)

83. Respondent is subject to disciplinary action under Education Code section 94937,

subdivision (a)(2) and California Code of Regulations, title 5, sections 76120, subdivision (a), 76130, subdivisions (a) and (b), and 75100, subdivision (a) in that in 2010 and 2011 the Institute failed to collect Student Tuition Recovery Fund assessments from its students and remit those assessments to the Bureau. This conduct resulted in harm to students.

ELEVENTH CAUSE FOR DISCIPLINE

(Failure to Notify Bureau of Educational Program Closure)

84. Respondent is subject to disciplinary action under Education Code section 94937, subdivision (a)(2) and California Code of Regulations, title 5, sections 74200 and 75100, subdivision (a) in that the Institute failed to notify the Bureau in writing before closing its Dental Hygiene program. This conduct resulted in harm to students. The circumstances of Respondent's conduct are as follows:

85. On or about February 3, 2012, Sunil sent a letter to the Institute's Dental Hygiene program students in which he stated the following: "In light of the recent change in accreditation status, IME is no longer financially viable. As a result, we are sorry to inform you of the change to the IME Dental Hygiene Program. This letter serves as notice that the Institute of Medical Education Dental Hygiene program will be closing on February 03, 2012."

86. On or about February 6, 2012, Sunil sent a follow-up letter to the Institute's Dental Hygiene program students in which he stated the following: "To clarify, the letter dated on February 3, 2012, regarding the closure of the Dental Hygiene program at IME, pertains to only the Junior Class of 2013 (Batch 2). However, the Senior Class of 2012 (Batch 1), will continue classes and clinic until graduation, with the expected date being the 15th of March, 2012."

87. At no point before February 3, 2012, did the Institute notify the Bureau in writing that it would be closing its Dental Hygiene program.

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TWELFTH CAUSE FOR DISCIPLINE

(Committing a Dishonest and/or Deceitful Act)

88. Respondent is subject to disciplinary action under Education Code section 94937, subdivision (a)(2), Business and Professions Code section 480, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, subdivisions (a) and (b) in that Respondent committed an act involving dishonesty and/or deceit with the intent to substantially benefit itself or another. This conduct resulted in harm to students. The circumstances of Respondent's conduct are as follows:

89. USDOE approves private postsecondary institutions to participate in USDOE's Financial Aid Program. In order for a private postsecondary institution that offers degree-granting programs to obtain USDOE approval for financial aid, that institution's institutional accreditor must accredit the institution to offer degree-granting programs. If an institution is not accredited to offer degree-granting programs, that institution cannot participate in USDOE's Financial Aid Program for its degree-granting programs. Said otherwise, such an institution cannot receive USDOE financial aid for students enrolled in the institution's degree-granting programs.

90. WASC-ACS is and has been Respondent's only institutional accreditor. WASC-ACS only accredits institutions that offer non-degree-granting programs. It does not, and cannot, accredit institutions that offer degree-granting programs.

91. In or around May 2008, Respondent applied to USDOE to participate in USDOE's Financial Aid Program. At the time of application, Respondent represented to USDOE that it offered only non-degree-granting programs. On this basis, USDOE, in or around October 2008, approved Respondent's application to participate in the Financial Aid Program. Because Respondent is accredited by WASC-ACS, USDOE would not, and could not, have approved

Respondent's application as to those programs that were degree-granting.

92. In or around 2009, Respondent represented to WASC-ACS that Respondent intended to offer a non-degree-granting program in dental hygiene.

93. In or around 2010, Respondent misrepresented to USDOE that Respondent's Dental Hygiene Program was non-degree-granting. In reality, Respondent's Dental Hygiene Program was degree-granting. Based on this misrepresentation, USDOE approved Respondent's participation in the Financial Aid Program for students enrolled in Respondent's Dental Hygiene Program. USDOE would not have approved Respondent's participation in the Financial Aid Program for students enrolled in Respondent's Dental Hygiene Program had USDOE known that the program was degree-granting.

THIRTEENTH CAUSE FOR DISCIPLINE

(Directing an Individual to Perform an Act that Violates the California Private Postsecondary Education Act of 2009)

94. Respondent is subject to disciplinary action under Education Code sections 94897, subdivision (m), 94930.5, subdivision (d)(1)(A), and 94937, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, subdivision (a) in that Respondent or one of Respondent's officers or directors directed Respondent's former accounts manager to submit to the Bureau the incorrect 2010 annual institutional fee for the Institute. This conduct resulted in harm to students. The circumstances of Respondent's conduct are as follows:

95. As an approved private postsecondary institution, the Institute is required to submit to the Bureau an annual institutional fee along with an Annual Institutional Fee Reporting Form. In November 2010, Heidi Formoso (Formoso), Respondent's accounts manager, was in charge of preparing the Institute's Annual Institutional Fee Reporting Form. Formoso determined that based on the Institute's annual gross revenue for 2010, which exceeded $6,000,000, the Institute

owed at least $25,000 in annual institutional fees to the Bureau for 2010. In or around June 2011, Sunil directed Formoso to write a check for $10,266.66 for the Institute's 2010 annual institutional fee. The Institute submitted this check to the Bureau. In this way, the Institute paid the incorrect annual institutional fee for 2010.

FOURTEENTH CAUSE FOR DISCIPLINE

(Making an Unscheduled Suspension of a Class)

96. Respondent is subject to disciplinary action under Education Code sections 94898, subdivision (b)(1) and 94937, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, subdivision (a) in that in or around September or October 2011, Respondent made an unscheduled suspension of its Oral Biology class, which Respondent offered as part of its Dental Hygiene Program. This conduct resulted in harm to students.

FIFTEENTH CAUSE FOR DISCIPLINE

(Failure to Provide School Catalog)

97. Respondent is subject to disciplinary action under Education Code sections 94909, subdivision (a) and 94937, subdivision (a)(2), and California Code of Regulations, title 5, sections 71810, subdivision (a) and 75100, subdivision (a) in that Respondent failed to provide prospective students with a school catalog prior to enrollment. This conduct resulted in harm to students.

SIXTEENTH CAUSE FOR DISCIPLINE

(Failure to Make Records and/or Transcripts Available to Students)

98. Respondent is subject to disciplinary action under Education Code sections 94885, subdivision (h) and 94937, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, subdivision (a) in that Respondent failed to make records and/or transcripts available to students. This conduct resulted in harm to students.

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. Revoking or suspending the Approval to Operate the Institute of Medical Education, Bindu Baburajan, Owner (Institution Code No. 69608217 and School Code No. 81701347) (Respondent);

2. Ordering Respondent to pay the Bureau the reasonable costs of the investigation and enforcement of this case pursuant to Education Code section 94937, subdivision (c) and Business and Professions Code section 125.3;

3. Ordering Respondent to provide appropriate restitution to its students and former students;

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

DATED: June 7, 2012 Laura Metune

LAURA METUNE
Bureau Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant