XAVIER BECERRA
Attorney General of California
JOSHUA A. ROOM
Supervising Deputy Attorney General
CHRISTOPHER M. YOUNG
Deputy Attorney General
State Bar No. 238532
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3554
Facsimile: (415) 703-5480
Attorneys for Complainant

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

In the Matter of the Accusation Against: **ADVANCED VOCATIONAL INSTITUTE;** **RASHAD M. SAID, 50% Owner** **1925 S. Winchester Blvd., Suite 205** **Campbell, CA 95008** **JOANNE WINTERBERG, 50% Owner** **1925 S. Winchester Blvd., Suite 205** **Campbell, CA 95008** **Institution Code No. 65686922** Respondents.	Case No. 1002902 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Dr. Michael Marion, Jr. (Complainant) brings this Accusation solely in his official capacity as the Chief of the Bureau for Private Postsecondary Education, Department of Consumer Affairs.

2. On or about July 29, 2011, the Bureau for Private Postsecondary Education (Bureau) issued an Approval to Operate a Non-Accredited Institution to Advanced Vocational Institute,

Institution Code Number 65686922. Advanced Vocational Institute (Respondent) is jointly and equally owned by two shareholders: Rashad M. Said, 50% Owner, Joanne Winterberg, 50% Owner. The Approval to Operate was in full force and effect at all times relevant to the charges brought herein, and was set to expire on July 28, 2016. Respondent timely filed an Application for Renewal of Approval to Operate an Institution Non-Accredited on or about July 27, 2016. The Bureau denied the application on or about December 5, 2018, and Respondent has appealed the denial, and requested a hearing. Pursuant to Respondent's Approval to Operate, Respondent was permitted to teach the following programs: Computerized Accounting/Bookkeeping, Customer Service, General Office, Medical Billing and Coding, and Medical Front Office.

JURISDICTION

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

4. Code section 94932 states:

> The bureau shall determine an institution's compliance with the requirements of this chapter. The bureau shall have the power to require reports that institutions shall file with the bureau in addition to the annual report, to send staff to an institution's sites, and to require documents and responses from an institution to monitor compliance. When the bureau has reason to believe that an institution may be out of compliance, it shall conduct an investigation of the institution. If the bureau determines, after completing a compliance inspection or investigation, that an institution has violated any applicable law or regulation, the bureau shall take appropriate action pursuant to this article.

5. Code section 94933 states:

> The bureau shall provide an institution with the opportunity to remedy noncompliance, impose fines, place the institution on probation, or suspend or revoke the institution's approval to operate, in accordance with this article, as it deems appropriate based on the severity of an institution's violations of this chapter, and the harm caused to students.

6. Code section 94937 states, in pertinent part:

> (a) As a consequence of an investigation, which may incorporate any materials obtained or produced in connection with a compliance inspection, 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.

. . .

(c) The bureau may seek reimbursement pursuant to Section 125.3 of the Business and Professions Code.

. . . .

7. Section 118 of the Business and Professions Code provides, in pertinent part:

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

8. Section 477 of the Business and Professions Code 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.

STATUTORY PROVISIONS

9. Section 94893 of the Code provides:

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.

10. Section 94894 of the Code provides, in pertinent part:

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

. . .

(g) A significant change in the method of instructional delivery.

11. Section 94897 of the Code provides, in pertinent part:

An institution shall not do any of the following:

. . .

(j) In any manner make an untrue or misleading change in, or untrue or misleading statement related to, a test score, grade or record of grades, attendance record, record indicating student completion, placement, employment, salaries, or financial information, including any of the following:

. . .

(3) Any other record or document required by this chapter or by the bureau.

12. Section 94900 of the Code states:

(a) An institution shall maintain records of the name, address, e-mail address, and telephone number of each student who is enrolled in an educational program in that institution.

(b) An institution shall maintain, for each student granted a degree or certificate by that institution, permanent records of all of the following:

(1) The degree or certificate granted and the date on which that degree or certificate was granted.

(2) The courses and units on which the certificate or degree was based.

(3) The grades earned by the student in each of those courses.

13. Section 94901 of the Code provides, in pertinent part:

(a) An institution's recruiters shall be employees.

. . .

14. Section 94902 of the Code provides, in pertinent part:

(a) A student shall enroll solely by means of executing an enrollment agreement. The enrollment agreement shall be signed by the student and by an authorized employee of the institution.

(b) An enrollment agreement is not enforceable unless all of the following requirements are met:

(1) The student has received the institution's catalog and School Performance Fact Sheet prior to signing the enrollment agreement.

. . .

(3) Prior to the execution of the enrollment agreement, the student and the institution have signed and dated the information required to be disclosed in the Student Performance Fact Sheet pursuant to subdivisions (a) to (d), inclusive, of

Section 94910. Each of these items in the Student Performance Fact Sheet shall include a line for the student to initial and shall be initialed and dated by the student.

15. Section 94904 of the Code provides, in pertinent part:

(a) Except as provided in subdivision (c), before an ability-to-benefit student may execute an enrollment agreement, the institution shall have the student take an independently administered examination from the list of examinations prescribed by the United States Department of Education pursuant to Section 484(d) of the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1070a et seq.). The student shall not enroll unless the student achieves a score, as specified by the United States Department of Education, demonstrating that the student may benefit from the education and training being offered.

(b) If the United States Department of Education does not have a list of relevant examinations that pertain to the intended occupational training, the bureau may publish its own list of acceptable examinations and required passing scores.

. . .

REGULATORY PROVISIONS

16. The California Code of Regulations (CCR), title 5, section 71600, provides, in pertinent part:

(a) An institution seeking to make a significant change in its method of instructional delivery shall complete the "Significant Change in Method of Instructional Delivery" form (INS rev. 2/10) to obtain prior authorization. For the purposes of this section a "significant change in instructional delivery" is any change that alters the way students interact with faculty or access significant equipment. The form shall be submitted to the Bureau along with the appropriate fee as provided in Section 94930.5(c) of the Code. For an institution approved under section 94885 of the Code, it shall be signed and dated by the signatory(ies) required by section 71380, and for an institution approved under section 94890 of the Code, it shall be signed and dated by the signatory(ies) required by section 71390, and each fact stated therein and each attachment thereto shall be declared to be true under penalty of perjury, 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)"

17. CCR, title 5, section 71770, provides, in pertinent part:

(a) The institution shall establish specific written standards for student admissions for each educational program. These standards shall be related to the particular educational program. An institution shall not admit any student who is obviously unqualified or who does not appear to have a reasonable prospect of completing the program. In addition to any specific standards for an educational program, the admissions standards must specify as applicable that:

(1) Each student admitted to an undergraduate degree program, or a diploma program, shall possess a high school diploma or its equivalent, or otherwise successfully take and pass the relevant examination as required by section 94904 of the Code.

. . .

18. CCR, title 5, section 71920, provides, in pertinent part:

(a) The institution shall maintain a file for each student who enrolls in the institution whether or not the student completes the educational service.

(b) In addition to the requirements of section 94900, the file shall contain all of the following pertinent student records:

(1) Written records and transcripts of any formal education or training, testing, or experience that are relevant to the student's qualifications for admission to the institution or the institution's award of credit or acceptance of transfer credits including the following:

(A) Verification of high school completion or equivalency or other documentation establishing the student's ability to do college level work, such as successful completion of an ability-to-benefit test;

. . .

(9) A document showing the total amount of money received from or on behalf of the student and the date or dates on which the money was received;

. . .

19. CCR, title 5, section 71930, provides, in pertinent part:

(a) An institution shall maintain all records required by the Act and this chapter. The records shall be maintained in this state.

. . .

(c) A record is considered current for three years following a student's completion or withdrawal. A record may be stored on microfilm, microfiche, computer disk, or any other method of record storage only if all of the following apply:

. . .

(2) For a record that is current, the institution maintains functioning devices that can immediately reproduce exact, legible printed copies of stored records. The devices shall be maintained in reasonably close proximity to the stored records at the institution's primary administrative location in California. For a record that is no longer current, the institution shall be able to reproduce exact, legible printed copies within two (2) business days.

(3) The institution has personnel scheduled to be present at all times during normal business hours who know how to operate the devices and can explain the operation of the devices to any person authorized by the Act to inspect and copy records; and

(4) Any person authorized by the Act or this chapter to inspect and copy records

shall be given immediate access to the document reproduction devices for the purpose of inspecting and copying stored records and shall, upon request, reimburse the institution for the reasonable cost of using the institution's equipment and material to make copies at a rate not to exceed ten cents ($ 0.10) per page.

. . .

(e) 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.

. . .

20. CCR, title 5, section 74110, provides, in pertinent part:

(a) The annual report required by Section 94934 of the Code shall include the information required by sections 94929.5 and 94934 for all educational programs offered in the prior calendar year, and all of the following for the prior calendar year:

. . .

(5) Information regarding participation in other public funding programs, including the amount of funding received from each public funding source; for purposes of this section, public funding is any financial aid paid on behalf of students or directly to an institution from any public source, such as the Workforce Investment Act, any veterans' financial aid programs pursuant to Section 21.4253 of Title 38 of the Code of Federal Regulations or any other financial aid program that is intended to help students pay education-related expenses, including tuition, fees, room and board, and supplies for education; . . .

21. CCR, title 5, section 74112, provides, in pertinent part:

. . .

(e) Reporting periods:

. . .

(2) A Performance Fact Sheet shall be current and available not later than December 1st, and shall report data for the previous two calendar years based upon the "number of students who began the program," as defined in subdivision (d)(1) of this section and were scheduled to graduate in the reported year(s).

COST RECOVERY

22. Section 125.3 of the Business and Professions Code provides, in pertinent part, that the Bureau 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, with failure of the licentiate to comply

subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation costs may be included in a stipulated settlement.

FACTUAL BACKGROUND

23. On or about August 15, 2017, the Bureau received a complaint from Insurance Company of the West (ICW) regarding Respondent. ICW's investigator complained that Respondent had invoiced ICW for $6,000.00 for a Supplemental Job Displacement Benefit voucher for a student (Student RB) that had never enrolled with Respondent. Following receipt of this complaint, the Bureau opened an investigation.

24. During the course of the investigation, the Bureau's investigator conducted a site visit at Respondent on or about September 25, 2017, and met with 50%-owner Rashad M. Said (Said). The investigator requested documents, including student files, a current student roster, and Student RB's student file. The investigator requested random student files for students appearing on the current roster provided by Said. Said stated that his colleague, 50%-owner Joanne Winterberg (Winterberg), maintained several student files online, and that she was out of town. Said claimed he could not provide the investigator with copies of the 2013-2016 former student rosters, 2013-2016 Student Tuition Recovery Fund (STRF) substantiating reports, or faculty records requested by the investigator, due to Winterberg's absence. The 2016 Annual Report for Respondent inaccurately reported the Workforce Innovation and Opportunity Act (WIOA) funds received by the institution, and further inaccurately reported the number of students enrolled.

25. Two of the student files did not have a High School Diploma or Ability-to-Benefit documentation. At least four student files did not contain a document showing the total amount of money received from or on behalf of the student. At least three students were not provided with the appropriate School Performance Fact Sheet (SPFS) required to be provided prior to the execution of an enrollment agreement. At least two student files failed to maintain the required address, email, and phone number for the students. Respondent further failed to maintain records of the courses, grades, or certificates concerning each student in the student files.

26. No students were present at Respondent during the September 25, 2017, site visit. Said stated that all students were enrolled in Skill Soft online training, and that 50%-owner

Winterberg was the only instructor for Respondent. Respondent did not have Bureau approval to conduct distance learning or to offer courses via Skill Soft. At least three of the student files reviewed contained student agreements to study in Online Course forms.

27. Said further conceded at the September 25, 2017, investigator site visit that Respondent would receive student referrals from Workers Compensation (WC) counselors, and that Respondent would pay WC counselors fees for the referrals. The WC counselors were not Respondent's employees.

FIRST CAUSE FOR DISCIPLINE

(Enrollment Violations)

28. Respondent has subjected its approval to operate to disciplinary action by not ensuring that students had high school diplomas and/or passed Ability-to-Benefit (ATB) tests prior to signing enrollment agreements, as required by Code sections 94902 and 94904, as set forth above in paragraphs 23-25, above.

SECOND CAUSE FOR DISCIPLINE

(Student Records Violations)

29. Respondent has subjected its approval to operate to disciplinary action under CCR, title 5, sections 71770(a)(1) and/or 71920(b)(1)(A) for failing to maintain student files with the required proof of high school diploma or equivalent, or ATB test results, as set forth in paragraphs 23-25, above.

THIRD CAUSE FOR DISCIPLINE

(Student Records Violations)

30. Respondent has subjected its approval to operate to disciplinary action under CCR, title 5, section 71920(b)(9) for failing to maintain student files that included a document showing the money received from, or on behalf of, the students, as set forth in paragraphs 23-25, above.

///

///

///

///

FOURTH CAUSE FOR DISCIPLINE

(Student Records Violations)

31. Respondent has subjected its approval to operate to disciplinary action under Code section 94902(b)(1)(3) and CCR, title 5, section 74112(e)(2), for failing to provide three students with current SPFS for the correct reporting period, as set forth in paragraphs 23-25, above.

FIFTH CAUSE FOR DISCIPLINE

(Student Records Violations)

32. Respondent has subjected its approval to operate to disciplinary action under Code section 94900(a) for failing to maintain the address, email, or telephone number for two students, as set forth in paragraphs 23-25, above.

SIXTH CAUSE FOR DISCIPLINE

(Maintenance of School Records Violations)

33. Respondent has subjected its approval to operate to disciplinary action under CCR, title 5, section 71930, for failing to provide Bureau staff with the 2013-2016 former student rosters, 2013-2016 Student Tuition Recovery Fund (STRF) substantiating reports, or faculty records requested by the investigator, as set forth in paragraphs 23-24, above.

SEVENTH CAUSE FOR DISCIPLINE

(Unapproved Program & Distance Education)

34. Respondent has subjected its approval to operate to disciplinary action under Code sections 94893 and 94894(g), and CCR, title 5, section 71600, for offering and teaching Skill Soft and distance education, when Respondent was not approved by the Bureau to offer Skill Soft or distance education, as set forth in paragraphs 23 and 26, above.

EIGHTH CAUSE FOR DISCIPLINE

(Prohibited Business Practices)

35. Respondent has subjected its approval to operate to disciplinary action under Code section 94897(j)(3) and CCR, title 5, section 74110, for failing to accurately report the WIOA funds on its 2016 Annual Report, and for failing to accurately report the number of students enrolled on their 2016 Annual Report, as set forth in paragraph 24, above.

NINTH CAUSE FOR DISCIPLINE

(Recruiter Violations)

36. Respondent has subjected its approval to operate to disciplinary action under Code section 94901, for obtaining student referrals from WC counselors, and paying WC counselors fees, as set forth in paragraph 27, above. An institution's recruiters must be employees.

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 Approval to Operate Non-Accredited Institution Number 65686922, issued to Advanced Vocational Institute, Rashad M. Said and Joanne Winterberg;

2. Ordering Respondents Rashad M. Said and Joanne Winterberg to pay the Bureau for Private Postsecondary Education the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

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

DATED: 6/25/19

DR. MICHAEL MARION, JR.
Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

OK2019900142
21453229.docx