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DEPARTMENT OF CONSUMER AFFAIRS

STATE OF CALIFORNIA

In the Matter of the Emergency Decision
Against:

American Beauty Institute
4625 Convoy St., Ste. A
San Diego, CA 92111
School Code 81663192

DECISION

Appellant.

INTRODUCTION

On August 15, 2018, the Bureau for Private Postsecondary Education (Bureau) issued an Emergency Decision (Decision) against the American Beauty Institute (ABI), directing ABI to cease enrollment in its programs and cease collecting tuition and fees. The Decision was scheduled to take effect at close of business on August 27, 2018.

ABI requested an opportunity to be heard before the Decision's effective date. The matter was heard on August 23, 2018, before the designee of the Director of the Department of Consumer Affairs, Deputy Director Ryan Marcroft. ABI's Director Chau H Suki Leung, Admissions Director Yiu Chung Wong, owner Brian Beakley, and attorney James Stevens appeared on behalf of ABI. Bureau Chief Dr. Michael Marion, Field Investigator Leslie Feist, and attorney Mina Hamilton appeared on behalf of the Bureau. At the conclusion of the hearing, the matter was submitted for a final decision.

After considering the evidence and argument submitted by ABI and the Bureau, the Decision shall not become effective on close of business August 27, 2018. The Bureau may, however, file a new emergency decision at any time, either before or after filing an accusation, with new or additional supporting evidence.

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LEGAL STANDARDS

I. EMERGENCY DECISIONS

An emergency decision may be issued only if there is an immediate danger to the public health, safety, or welfare that requires immediate action to protect students, prevent misrepresentation to the public, or prevent the loss of public funds or moneys paid by students. (Ed. Code, § 94938; Cal. Code Regs., tit. 5, § 75150, subd. (b).) Activities that might warrant the Bureau's emergency intervention include fraud, substantial misrepresentations in the institution's performance fact sheet, school catalog, or enrollment agreement, or a substantial failure to meet institutional minimum operating standards. (Cal. Code Regs., tit. 5, § 75150, subd. (b).)

The Bureau may order temporary, interim relief, including ceasing or limiting enrollment of new students, and ceasing collection of tuition or fees for some or all programs. (Cal. Code Regs., tit. 5, § 75150, subd. (c).) Institutions subject to an emergency decision may request an opportunity to be heard before the Director of the Department of Consumer Affairs or his designee. (Cal. Code Regs., tit. 5, § 75150, subd. (f).)

II. APPROVAL AND MINIMUM OPERATING STANDARDS

To operate in California, private postsecondary educational institutions must be approved by the Bureau. (Ed. Code, §§ 94817 & 94886.) Institutions that offer educational programs in an occupation that requires licensure in California must also be approved by the applicable state licensing entity, in this case, the Board of Barbering and Cosmetology (Board). (Ed. Code, § 94899; Bus. & Prof. Code, § 7362; Cal. Code Regs., tit. 16, § 941.)

An institution may only operate if it presents sufficient evidence to the Bureau that it can satisfy minimum operating standards. (Ed. Code, §§ 94885, 94887 & 94891; Cal. Code Regs., tit. 5, § 71700.) The standards ensure that the content of each educational program can achieve its stated objective, that upon satisfactory completion of the approved program, the institution gives students a document signifying the degree or diploma awarded, that administrators and

1 faculty are qualified, the institution is financially sound and able to fulfill financial commitments
2 to students, and that adequate records and transcripts are maintained. (Ed. Code, § 94885, subd.
3 (a).)

4 Institutions must adopt objectives for each educational program that describe the kind of
5 education offered, for whom the instruction is intended and the expected outcomes for graduates.
6 (Cal. Code Regs., tit. 5, § 71705.) The educational objective of ABI's cosmetology, esthetician,
7 barbering, and manicurist programs is for students to complete the Board-approved training
8 necessary to take the Board's licensing examinations. (See Ed. Code, § 94899; Bus. & Prof.
9 Code, §§ 7362 & 7362.1; Cal. Code Regs., tit. 16, § 941.)

10 Educational program curricula must include the subject areas necessary for a student to achieve
11 the program's objectives. (Cal. Code Regs., tit. 5, § 71710, subd. (a).)

12 The standards also require instruction to be the central focus of the resources and services of
13 the institution, and require direct instruction, where students and faculty are physically present in
14 the same location during the instruction. (Cal. Code Regs., tit. 5, § 71715.) Institutions must
15 also employ instructors that possess the academic, experiential and professional qualifications to
16 teach, including a minimum of three years of experience, education and training in current
17 practices of the subject area they are teaching. (Cal. Code Regs., tit. 5, § 71720, subd. (b)(1).)

18 Each institution must have a chief executive officer, a chief operating officer, and a chief
19 academic officer. (Cal. Code Regs., tit. 5, § 71730.) The administration staff must reflect the
20 purposes, size, and educational operations of the institution. (*Ibid.*)

21 The school must also have sufficient assets and financial resources to demonstrate that it
22 maintains a ratio of assets to liabilities of at least 1.25 to 1.00 at the end of the most recent fiscal
23 year. (Cal. Code Regs., tit. 5, § 71745, subd. (a)(6).)

24 With respect to student records, institutions are required to maintain files on all enrolled
25 students, including admission records, contracts and financial records, payment receipts, and
26 transcripts. (Ed. Code, § 94900; Cal. Code Regs., tit. 5, §§ 71920 & 71930.) With respect to
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1 faculty records, institutions are required to maintain records containing faculty names and
2 addresses, and records of the educational qualifications of each faculty member. (Ed. Code, §
3 94900.5.)

4 Institutions are prohibited from making untrue or misleading statements or changes related to
5 records such as test scores, grades or records of grades, attendance records, records indicating
6 student completion, and financial information. (Ed. Code, § 94897.) Institutions are also
7 prohibited from willfully falsifying any document that is required to be maintained. (*Ibid.*)
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9 III. BOARD LICENSURE REQUIREMENTS

10 Board applicants for examination and licensure as a cosmetologist, esthetician, manicurist, or
11 barber must complete courses, respectively, in cosmetology, skin care, nail care, or barbering
12 from a Board-approved school. (Bus. & Prof. Code, §§ 7321, 7321.5, 7324, & 7326.) Board
13 examinations are designed to embrace the subjects that are typically taught in Board-approved
14 programs. (Bus. & Prof. Code, § 7338.) Applicants must supply the Board with evidence (i.e.,
15 "proof of training") that they are qualified to take the applicable examination, and for licensure.
16 (Bus. & Prof. Code, § 7337; Cal. Code Regs., tit. 16, § 909.) The proof of training document is
17 prepared by the school where the applicant completed the qualifying training. (Cal. Code Regs.,
18 tit. 16, § 909.)

19 Cosmetology courses must include at least 1,600 hours of practical training and technical
20 instruction in the practice of cosmetology. (Bus. & Prof. Code, § 7362.5; Cal. Code Regs., tit.
21 16, § 950.2.) Approved skin care courses consist of at least 600 hours of practical training and
22 technical instruction, and approved nail care courses consist of at least 400 hours of practical
23 training and technical instruction. (Bus. & Prof. Code, §§ 7364 & 7365; Cal. Code Regs., tit. 16,
24 §§ 950.3 & 950.4.) Approved barbering courses consist of at least 1,500 hours of practical
25 training and technical instruction. (Bus. & Prof. Code, § 7362.5; Cal. Code Regs., tit. 16, §
26 950.1.)

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FACTUAL AND PROCEDURAL BACKGROUND

I. AMERICAN BEAUTY INSTITUTE

The Bureau approved ABI to offer five non-degree programs. Four of the programs are also approved by the Board, including ABI's Barbering, Cosmetology, Esthetician, and Manicurist programs. In addition, ABI is approved to offer a Massage Therapy program. ABI is approved to offer 1,500 hours in barbering training, 1,600 hours in cosmetology training, 600 hours in esthetician training, 400 hours in manicurist training, and 600 hours in massage therapy training. Ms. Leung's declaration states that ABI currently enrolls 27 students in the manicurist, esthetician and cosmetology programs, but at the hearing, she testified that the school currently enrolls only 11 students. The school never enrolled students in its barbering program.

II. THE BUREAU'S EMERGENCY DECISION

13 On August 15, 2018, the Bureau issued its Decision and ordered ABI to cease enrolling new
14 students in its programs, and cease collecting tuition and fees for its program, effective close of
15 business August 25, 2018. The Bureau determined that the institution posed an immediate
16 danger to the public health, safety, and welfare by substantially failing to meet institutional
17 minimum operating standards, which required immediate action to protect students, prevent
18 misrepresentations to the public, and prevent the loss of monies paid by students.

19 The Bureau cited the following factors as grounds for the Decision:

- 20
- 21 • ABI collects money from students for education programs but does not offer instruction in the programs.
 - 22 • On April 25, 2018, Bureau staff observed that no instructor was present while the school
23 was open and educational services were taking place. An ABI student performed an
24 eyelash service on a consumer without any instructor supervision. Students told a Bureau
25 investigator that they frequently arrived at school before instructors to provide services to
26 consumers or to participate in self-directed study. The school did not have organized
27 classroom time, and students were required to independently study due to a lack of school
28 instructors.

- 1 • On April 25, 2018, instructors told a Bureau investigator that the school did not use the
2 required Board-approved curriculum to teach students, and Ms. Leung reported that the
3 institution never taught the Board's required curriculum components.
- 4 • The school failed to maintain appropriate administration staff and faculty and failed to
5 provide appropriate documentation regarding faculty.
- 6 • ABI improperly advertised on its website that students enrolled in its massage therapy
7 program would be eligible for the state licensure examination, even though there is no
8 state licensure examination required for the program.
- 9 • ABI improperly advertised that it offered unapproved programs relating to microblading,
10 makeup, and eyelash extensions.
- 11 • ABI made false statements regarding the educational curriculum provided to students and
12 submitted false proof of training documents to the Board. ABI's representative signed a
13 proof of training document falsely certifying that a student completed training when that
14 was not the case.
- 15 • The school failed to maintain or provide the Bureau with student transcripts, academic or
16 financial records for current and former students, and student files.
- 17 • The school did not maintain adequate financial resources in 2017 to demonstrate that ABI
18 had an asset to liability ratio of 1.00 to 1.25.

17 III. ABI'S OPPORTUNITY TO BE HEARD

18 At the timely request of ABI, a hearing in this matter was held on August 23, 2018. The
19 Bureau appeared and offered testimony in support of the Decision. ABI also appeared and
20 offered testimony and documentary evidence in the matter.¹

21 The Bureau alleged that there were often no instructors at the school while it was open,
22 students performed services on consumers without instructor supervision, including on April 25,

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26 ¹ ABI submitted objections to the Bureau's declaration in this informal proceeding, and also objected at the informal
27 conference to the Bureau's submission of additional evidence in support of the Decision. The final decision in this
28 matter rests with the Department, and ABI thoroughly examined the Bureau's witness, presented testimonial and
documentary evidence in advance of, and at, the informal conference, and was not prejudiced by the admission of
the additional evidence.

1 2018, that the school did not have organized classroom time, and that students were required to
2 independently study due to a lack of instructors.

3 The Bureau sufficiently established that on April 25, 2018, students were present before
4 instructors, and one student partially performed an eyelash procedure without instructor
5 supervision, but did not complete it. The record does not establish, however, based on this one
6 incident, that the school frequently and currently allows students to perform procedures or
7 independently study without supervision, or that the school generally lacked instructors. Instead,
8 the Bureau noted during the hearing that a staff member was reportedly expected to be on site on
9 April 25, but may have been absent due to an illness or health-related issue.

10 In addition, two of the students the Bureau interviewed on April 25, 2018, submitted sworn
11 declarations that they did not inform the Bureau that students frequently arrive at school before
12 instructors, that they frequently perform independent study due to a lack of instructors, or that
13 classroom time is not organized. The two students stated that instructors were typically present
14 during the school's operating hours, which was generally consistent with the statements of other
15 students that ABI submitted in response to the Decision. In addition, Ms. Leung testified that the
16 school's practice was not to permit students to provide services without faculty supervision, and
17 that on April 25, 2018, the unsupervised student that the Bureau observed made the appointment
18 without informing the school. In light of the available record, it is difficult to conclude that ABI
19 routinely or presently has insufficient instructors on hand during its operations.

20 Regarding the Bureau's allegation that the school never taught the Board-approved
21 curriculum, the Bureau noted in its declaration that Ms. Leung reportedly said that ABI "never,
22 in the history of [its] operating, provided the required curriculum components" to students.² Ms.
23 Leung, however, denied making such a categorical statement, and offered contrary testimony. In
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27 ² The record does not identify other instructors that may have been interviewed in connection with providing the
28 required curriculum.

1 addition, the Bureau clarified at the hearing that Ms. Leung was asked whether she had the
2 Board's Health and Safety curriculum and the Board's Laws and Regulations, which are required
3 components of Board-approved training. (See Cal. Code Regs., tit. 16, §§ 950.1, 950.2, 950.3, &
4 950.4.) And Ms. Leung reportedly said she was not familiar with that curriculum, and that
5 students were also unable to provide the Bureau with the Board's Laws and Regulations, which
6 led the Bureau to conclude the school did not teach the curriculum components. In view of the
7 disputed and conflicting testimony, and absent additional evidence, it is difficult to conclude on
8 the current record that ABI does not teach, and never taught, the Board's required curriculum.
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10 The Bureau also alleged that ABI did not maintain appropriate administration staff and
11 faculty, and failed to provide the Bureau with records regarding faculty. With respect to the lack
12 of administration staff, the Bureau indicated at the hearing that it was primarily concerned with
13 the lack of administration staff on hand when the Bureau investigators arrived at the school on
14 April 25, 2018, for the site inspection. Ms. Leung reportedly arrived about 30 minutes after the
15 Bureau (and 15 minutes after the school's scheduled opening), and Mr. Wong appeared later in
16 the day. But there was no evidence apart from this one instance regarding the lack of
17 administration staff at the school, and it is not clear from the record whether this is a recurring
18 and continuing situation, or an isolated incident.

19 With respect to the lack of appropriate faculty, the Bureau faulted the school for not having
20 faculty for its approved barbering program. It was undisputed, however, that the school does not
21 currently enroll students in the barbering program, and has not enrolled students in the program
22 for several years. The Bureau also noted that it did not receive documentation relating to the
23 school's faculty during the site inspection. The Bureau acknowledged, however, that in response
24 to the Decision, ABI submitted faculty information, which, if accurate, would likely resolve this
25 issue going forward. Consequently, on the current record, it is unclear whether the school is
26 currently out of compliance with respect to faculty documentation.
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1 The Bureau noted that ABI improperly suggested on its website that there was a required
2 state licensing examination for massage therapists, because it posted on the site that students
3 enrolled in its massage therapy program would be eligible to sit for state licensure. In response,
4 ABI noted that its course catalogue, which was posted on its website, explained that massage
5 therapy certification is voluntary through the California Massage Therapy Council, and that local
6 laws exist pertaining to massage therapy. ABI also presented testimony at the hearing that its
7 current website does not indicate that massage therapy students would be eligible to sit for state
8 licensure. Although the Bureau noted at the hearing that the massage therapy examination
9 requirement was discussed on another part of the school's website, and not the course catalogue,
10 the actual website was not a part of the record, and it is not clear based on the current record that
11 ABI made a misleading statement with respect to the requirements for massage therapy
12 certification.³

14 The Bureau also indicated that ABI improperly advertised on its website that it offered
15 training in microblading, makeup, and eyelash extension. At the hearing, the Bureau clarified
16 makeup and eyelash extension courses are generally part of the Board-approved curriculum (see
17 Cal. Code Regs., tit. 16, §§ 950.2 & 950.3), but since the programs were advertised as stand-
18 alone programs, they would require Bureau approval. With respect to microblading, the Bureau
19 noted that ABI was not approved to offer microblading, and that microblading was not within
20 any Board-approved curriculum. ABI offered testimony that its makeup and eyelash courses
21 were a part of its overall curriculum, that it does not currently offer microblading at the school,
22 and it removed references to it from the school's website.

23 The Bureau alleged that ABI made false statements regarding the curriculum it taught to
24 students, in part because it did not teach the required curriculum but certified that it did, and in
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27 ³ There is an examination requirement to obtain certification as a massage therapist. (Bus. & Prof. Code, § 4604,
28 subd. (a)(3).)

1 part because it falsified and submitted false proof of training documents to the Board. For the
2 reasons already discussed, the current record does not establish that ABI does not teach the
3 required curriculum. With respect to the training records, Board applicants for examination and
4 licensure must supply the Board with evidence (i.e., "proof of training") that they are qualified to
5 take the applicable examination, and for licensure. (Bus. & Prof. Code, § 7337; Cal. Code Regs.,
6 tit. 16, § 909.) The proof of training document is prepared by the school where the applicant
7 completed the qualifying training. (Cal. Code Regs., tit. 16, § 909.)
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9 The evidence sufficiently demonstrated that ABI prepared a false proof of training record and
10 maintained it in a student file. Ms. Leung acknowledged that she and a student signed a proof of
11 training record sometime before May 25, 2018, which inaccurately certified that the student
12 completed 600 hours of esthetician training on May 25, 2018, even though the student had not
13 completed the training at the time Ms. Leung and the student signed the record. Ms. Leung also
14 testified that ABI's practice was to complete such proof of training records before students
15 completed the training reflected in them, and to store them in student files. She stated, however,
16 that she did not submit the inaccurate proof of training record to the Board until the information
17 in the record was accurate, and her testimony suggested confusion about the Board's pre-
18 application process. Ms. Leung noted that students could pre-apply for a Board examination
19 once they completed a percentage of their training, and she indicated that the inaccurate proof of
20 training forms were prepared in connection with pre-applications. The Board's pre-application
21 procedure, however, does not require the submission of a proof of training document, until the
22 training is completed. (See Bus. & Prof. Code, § 7337.5; Cal. Code Regs., tit. 16, § 928.) In all
23 events, the record does not indicate that the inaccurate proof of training document was submitted
24 to the Board before the training was completed.⁴ Moreover, at the hearing, ABI submitted a
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28 ⁴ No representative of the Board appeared or submitted evidence in support of the Decision.

1 more recent student file where the proof of training record was not completed in the same
2 erroneous fashion. Accordingly, it is unclear whether the school remains out of compliance with
3 respect to completing these records.

4 With respect to the Bureau's allegation that the school did not maintain or provide the
5 Bureau with transcripts, academic or financial records, and student files, the Bureau noted at the
6 hearing that it reviewed seven student files on April 25, 2018, and none of them had a payment
7 ledger that reflected monies received by the school from the students or similar financial records.
8 In one case, a student attending the school did not have student file, and was missing an
9 enrollment agreement. ABI presented evidence that the school maintains student transcripts for
10 graduated students. Ms. Leung also testified that the school maintained test scores and financial
11 records in the files, and the school presented an exemplar student file at the hearing that
12 contained admission records, payment receipt documentation, an enrollment agreement, and
13 course progress information. Ms. Leung also acknowledged that after the Bureau's site
14 inspection, ABI corrected file deficiencies the Bureau identified. It is, therefore, not clear to
15 what extent the school remains out of compliance with respect to record retention.

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17 Lastly, the Bureau noted that as of December 2017, ABI failed to maintain an asset to
18 liability ratio of 1.25 to 1.00, as required under the Bureau's minimum standards. The Bureau
19 explained at the hearing that the school's asset to liability ratio was .17 to 1, with assets of \$890
20 and liabilities of \$5,255. ABI did not contest the Bureau's finding, but noted the aged nature of
21 the 2017 finding, that it is presently fiscally solvent, pays its bills on time, and is not involved in
22 bankruptcy proceedings. The record does not reveal any specific instances where the school
23 failed to provide a refund or was unable to provide services to students due to financial
24 constraints. In addition, ABI presented evidence regarding the harmful effects that the Bureau's
25 Decision would have on the school, even on a temporary basis. Ms. Leung stated that the school
26 would likely be unable to pay bills, would lay off instructors, and would discontinue student
27 education.
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2 **DISCUSSION**

3 An emergency decision is an extraordinary remedy that is appropriate only if there is an
4 immediate danger to the public health, safety, or welfare that requires immediate action to
5 protect students, prevent misrepresentation to the public, or prevent the loss of student money.
6 The Bureau's decision here is based on a substantial failure to meet institutional minimum
7 operating standards, which can form the basis for an emergency decision. But for the reasons
8 discussed above, it is difficult to conclude on the current record that the Bureau established an
9 immediate danger to the public that requires immediate intervention, pending the outcome of a
10 formal disciplinary proceeding.

11 The gravamen of the Bureau's Decision is that the school does not provide the educational
12 programs that students pay for. The evidence presented for this conclusion, however, depends
13 substantially upon a single site visit in April, and incomplete and excerpted statements attributed
14 to students and staff that were interviewed. It is not clear, however, if the Bureau's observations
15 in April reflect recurring and current events, or were isolated incidents. Indeed, ABI presented
16 evidence at the hearing that it corrected identified deficiencies, and offered explanations for other
17 identified problems that were not contested. Moreover, students and staff submitted sworn
18 testimony disputing the characterization of the statements that the Bureau attributed to them, and
19 which provide the basis for the Bureau's action. And in other instances—the failure to maintain
20 an instructor for the barbering program, for example—it is difficult to conceive that immediate
21 intervention is necessary, when there have been no students in the program for years. ABI also
22 provided convincing testimony about the harmful impact the Bureau's temporary Decision
23 would have on the small school.

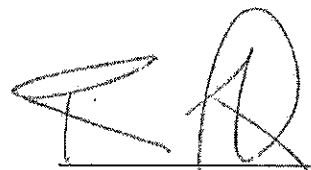
24 In sum, the allegations do not in the manner described, and based on the current record,
25 indicate that immediate intervention is necessary. The Bureau may, however, either before or
26 after filing an accusation based on the allegations, issue a new emergency decision with new or
27 additional supporting evidence.
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DECISION

The Bureau's August 15, 2018, Emergency Decision and order is REVERSED and shall not take effect at close of business on August 27, 2018. The Bureau may, however, file a new emergency decision at any time with new or additional supporting evidence.

DATED August 27, 2018



RYAN MARCROFT
Deputy Director, Legal Affairs
Department of Consumer Affairs