

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

In the Matter of the Statement of Issues	)	
Against:	)	
THE UNIVERSITY OF NATURAL	)	Case No. 1001497
MEDICINE,	)	
Larry J. Milam, President and CEO,	)	OAH-No. 2016090291
	)	
	)	
Respondent.	)	
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**DECISION AFTER REJECTION**

This matter was heard before Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on January 17-19, 2017, in Los Angeles. Morgan Malek, Deputy Attorney General, represented Joanne Wenzel (complainant). Larry J. Milam, Ph.D., President and CEO, represented The University of Natural Medicine (respondent). After evidence was presented and argument made, the matter was submitted for decision upon the conclusion of the hearing. On or about February 16, 2017, a Proposed Decision was issued in this matter.

On or about May 24, 2017, the Director of the Department of Consumer Affairs (Department or DCA) via his designee issued a notice rejecting the proposed decision. The Department requested briefing from the parties and invited argument as to whether pursuant to Title 5, California Code of Regulations (C.C.R.), section 71400, subdivision (d)(1), a school can be granted conditional approval to operate where there are findings that deficiencies in its application exist as to the syllabi, four years of missing annual reports and student performance fact sheets. In addition, arguments were invited to address whether, pursuant to Education Code section 94885.5 and Title 5 C.C.R. section 71400(d)(2), the granting of a conditional approval is appropriate where approval for only a degree-granting program is sought by an institution that is not accredited. Lastly, if a provisional approval is more appropriate, arguments could address what terms and conditions are necessary to protect the public. The transcript was ordered.<sup>1</sup> Written argument having been submitted by both parties and such written argument, together with the record, having been read and considered pursuant to Government Code section 11517, subdivision (c)(2)(E), the Director hereby makes the following decision:

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<sup>1</sup> The Notice of Nonadoption initially indicated that a decision could be made without the ordering of the transcript, unless one party objected. On or about June 2, 2017, respondent objected to stipulating to not ordering the transcript. Accordingly, the transcript was ordered, and received by the Bureau on or about June 27, 2017.

## SUMMARY

The Bureau for Private Postsecondary Education (Bureau) denied respondent's application to operate as a non-accredited private postsecondary institution. Respondent appeals, arguing it has cured most of the deficiencies found by Bureau staff, and requests more time to correct the other deficiencies not yet cured. Although respondent has remedied many of the deficiencies in question, a handful of deficiencies remain, meaning the application for outright approval cannot be granted at this time.

## FACTUAL FINDINGS

### *Parties and Jurisdiction*

1. On December 5, 2011, the Bureau, which is within the California Department of Consumer Affairs (Department), received an Application for Approval to Operate an Institution Non-Accredited (application) from respondent, along with the non-refundable application fee of \$5,000. (Ex. 3.) In the application, respondent asked for approval to offer distance learning (over the internet) to students throughout the world in integrative and natural medicine. (Ex. 3, pp. 18-119.)

2. Between March 21, 2012, and November 30, 2015, the Bureau sent Notices of Deficiency advising respondent that its application could not be approved because it did not meet applicable statutory and regulatory requirements. Each of those notices listed the areas of concern and requested additional information. Respondent submitted additional information after each notice in an effort to cure the stated deficiencies.

3. On February 9, 2016, the Bureau sent respondent a final Notice of Denial of the application because of deficiencies noted in the last Notice of Deficiency. The Bureau cited deficiencies in five sections of the application. (Ex. 27.) Respondent appealed the denial and requested a hearing to challenge the denial of its application. (Ex. 28.)

4. On July 19, 2016, complainant filed the Statement of Issues in her official capacity as the Chief of the Bureau. The Statement of Issues alleges five causes to deny respondent's application based on the deficiencies described in the final Notice of Deficiency. (Ex. 1.) Respondent timely requested a hearing to challenge the Statement of Issues. (Ex. 1.)

### *Respondent's Background Information*

5. Respondent is devoted to educational programs in the field of integrative and natural medicine. Although respondent traces the origin of many of its programs back to 1989, respondent was formally founded in 1996 in New Mexico. (Ex. 3, p. 118.)

6. Respondent was later incorporated in New Mexico in 2000 as a non-profit corporation, and it remains chartered there. Respondent is currently registered as a foreign corporation in California.

7. While operating in New Mexico, respondent offered programs culminating in doctoral degrees in Naturopathy (ND), Traditional Naturopathy (TN), Natural Medicine (DNM or IMD), Natural Health Sciences (PhD), and Clinical Psychology (PhD); Masters' Degrees in Natural Health Sciences (MS) and Body/Mind Integrative Studies (MA); a Bachelor Degree in Natural Health Sciences (BS); and diplomas in over 30 subject areas. (Ex. 3, pp. 66-68 & 118-119.) Some of the faculty members came from independent institutions, clinics or private practices located in this and several other countries. (*Ibid.*)

8. Larry J. Milam, Ph.D., who is currently respondent's president and CEO, first became involved with respondent many years ago as a student. He later taught for respondent and became a director. Because Dr. Milam lives in California, and the residents of this state were viewed as being more receptive to integrative and natural medicine, respondent's board decided to move its operations to California by or about 2009. Part of that decision involved the fact respondent was no longer able to operate in New Mexico as a result of a change in state law requiring approval by the state of New Mexico for private postsecondary institutions to operate there, which respondent had not obtained. Respondent no longer operates in New Mexico.

9. In December 2009, respondent's staff contacted the Department concerning whether a license or approval was needed to operate in California. (Ex. D.) They were advised that prior law requiring an application for approval before operating in California was repealed in 2008, the Bureau's predecessor agency had become inoperative, and no approval was required. (*Ibid.*) However, respondent's staff were also advised that a new law had been recently passed and would go into effect on January 1, 2010. If respondent opened before that date, no approval was needed. (*Ibid.*) Respondent decided to begin operating in California.

10. Since respondent began operating in California before the new law took effect, it was allowed to do so initially without approval. In her testimony, Joanna Murray, a Bureau education specialist, referred to this as the "sunset period." However, the California Private Postsecondary Education Act of 2009 (the Act) subsequently took effect in 2010 and the Bureau became operational on January 1, 2010. A few months later, the Bureau advised respondent that in order to continue operating in this state, it was required to apply for approval to operate under the Act. Respondent was given six months to do so. Because respondent had been allowed to operate without approval during the sunset period, Bureau staff afforded respondent more opportunity to cure any deficiencies in the application. The fact that respondent was provided with seven deficiency notices in response to its application is illustrative of this leniency.

11. Dr. Milam testified that respondent's board members are all in the health industry and independently employed. Since respondent is a non-profit enterprise, Dr. Milam and his colleagues, including the instructors, view their work for respondent as a labor of love.

Respondent primarily caters to students already in the health field, such as practitioners, fitness instructors, spa managers, and others who want to upgrade their background and knowledge. Dr. Milam acknowledges respondent is not equipped to take students from outside the health industry with no prior knowledge of the subject matter of natural health or integrative medicine.

### *The Application Process*

12. The Bureau operates pursuant to the Act (Ed. Code, § 94800 et seq.) and has promulgated regulations (Cal. Code Regs., tit. 5, § 71100 et seq.) that are complex and detailed. As a result, an application to the Bureau for approval is complex and detailed.

13. The application contains 24 sections, some of which require the applicant to attach exemplars, including a catalog and student enrollment agreement. These sections request information concerning, among other issues, the governance and administrative structure of the institution; the relationship between faculty and administrative positions; names and contact information of members of the governing board; the institution's mission and objectives; student enrollment agreements and instruments of indebtedness; financial aid policies, practices, and disclosures; advertising; educational programs offered; financial resources; facilities and equipment; library and other learning resources; job placement assistance; the institution's catalog; graduation or completion documents; recordkeeping methods; and self-monitoring procedures.

14. In reviewing applications, the Bureau's licensing analysts use detailed checklists to ensure that all statutory and regulatory requirements are met. After any initial technical deficiencies are noted and corrected by the applicant, the review and evaluation process is completed by an education specialist, with a more detailed eye toward specific educational issues, such as faculty, curriculum, educational programs, etc.

15. Initially, respondent's application was reviewed by Bureau licensing analysts for technical compliance with the Education Code and its regulations. Between March 21, 2012, and January 27, 2015, the analysts sent respondent four Notices of Deficiency, in which respondent was advised the application could not be approved because the application did not meet specified technical requirements. Respondent attempted to comply with each Notice of Deficiency by submitting requested information and documents to the analysts. (Exs. 4-13.)

16. By April 23, 2015, Bureau staff concluded the application complied with the technical requirements of the Education Code and its regulations. Respondent's application was therefore forwarded to Bureau Education Specialist Murray to determine if the application met educational program requirements specified in the Education Code and its regulations. From August 3, 2015, to November 30, 2015, Ms. Murray sent respondent three Notices of Deficiency, in which respondent was advised the application could not be approved because the application did not meet specified educational program requirements. Respondent attempted to comply with each Notice of Deficiency by submitting requested information and documents to Ms. Murray.

(Exs. 14-23.)

17. Throughout the application process, the Bureau's licensing analysts and Ms. Murray spoke with respondent's staff multiple times, for several hours, and explained the application requirements, how its application was deficient, and what was needed to address the deficiencies. On all such occasions, respondent's staff was gracious and acted in good faith to cure the deficiencies pointed out by the Bureau.

18. As discussed above, on February 9, 2016, the Bureau formally denied respondent's application, citing deficiencies in the following five sections of the application: organization and management; advertising; description of educational programs; faculty; and catalog.

19. On January 9, 2017, after the issuance of the Statement of Issues but before the hearing of this matter, respondent sent the Bureau's counsel of record a mitigation package containing 345 pages of additional information. (Ex. A.) In a cover letter, Dr. Milam wrote the package was intended to show respondent "has come into or is actively working toward compliance related to each of items noted on the [Statement of Issues]." (Ex. A, p. 1.) Dr. Milam also noted his hope that the Bureau would allow respondent additional time to come into full compliance with the Act, acknowledging to some extent there were still some remaining deficiencies. By that time, respondent had hired and worked with education consultants in the educational field, i.e., Cyanna Consulting (ex. B) and Reina Flores-Hansen, M.A., PPS (ex. C). Those consultants helped respondent update their syllabi for courses and curriculum. (Ex. A, pp. 5-176.)

20. As discussed above, respondent had initially proposed to offer programs resulting in the aforementioned doctoral degrees, master's degrees and bachelor degree. By November 2015, respondent had decided to abandon approval to offer any of those except the bachelor degree. This modification was intended by respondent to simplify the approval process and increase its chances of complying with the Act. If the bachelor degree program is approved, respondent intends to add back the other degree programs over time.

*The Deficiencies Alleged in the Final Notice of Deficiency*

ORGANIZATION AND MANAGEMENT

21. Respondent identified instructors and their credentials in a document received by the Bureau on November 16, 2015. Respondent later submitted an organizational chart (org chart), received by the Bureau on January 4, 2016, which identified a substantially different list of instructors. Consequently, as of the time the final Notice of Deficiency was issued, the Bureau was unable to determine whether faculty members Drs. Dean, Irene, Kune, Pahwa and Shayne, were/are duly qualified to instruct the courses to which they may be assigned and whether the listed individuals are currently respondent's employees.

22. In the mitigation package, respondent attempted to remedy the inconsistencies of the org chart noted by the Bureau. Anna Gallahan, one of respondent's administrators, testified the org chart became "muddled" as a result of the changes constantly being made to the programs in response to the seriatim deficiency notices. Respondent also provided information indicating several of the faculty members noted above are in fact qualified to teach assigned courses.

23. However, Ms. Murray convincingly testified that there are still problems with the most recent org chart submitted by respondent. Primarily, the org chart lists Richard Brady and David Christopher as part of the faculty, but respondent has yet to provide the Bureau with transcripts or other documentary evidence demonstrating that those individuals are qualified to teach the courses assigned to them. Bureau staff had requested that information before. Ms. Gallahan conceded in her testimony that she has had a hard time getting the requested information from those two individuals and, as of hearing, still had not received it. Under these circumstances, respondent is unable to prove compliance with California Code of Regulations, title 5, section (Regulation) 71720, subdivisions (a)(1) and (a)(9).

24. In aggravation, Ms. Murray convincingly testified there are other problems with the org chart, albeit related to non-faculty individuals listed. For example, Ms. Gallahan testified she is the Student Services Administrator, but she is not listed on the org chart at all. Another employee, Lucy Rodriguez (who also testified), is listed as the "Director of Student Services." Moreover, the most recent org chart lists Dr. Adiel Tel-Oren as respondent's Chief Academic Officer (CAO). Because many of the deficiencies involve development of respondent's curriculum and syllabi, in which the CAO would be heavily involved, the CAO position is of interest to the Bureau. However, scant information was provided to the Bureau indicating Dr. Tel-Oren is actually involved in the CAO functions. Most of Ms. Murray's interactions have been with employees who do not have the type of academic expertise and background necessary to properly function as a CAO. Ms. Murray has had little to no interaction with Dr. Tel-Oren.

#### ADVERTISING

25. A. As of January 20, 2016, respondent's website still displayed the 2010/2011 school year performance fact sheet. Respondent has not submitted to the Bureau a new school performance fact sheet within the last four years.

B. This deficiency was not addressed in respondent's mitigation package. Ms. Gallahan conceded in her testimony that respondent was having a hard time compiling the data because students work independently and respondent did not have sufficient data from them. She also testified that staff were "guessing how to complete the fact sheets."

C. Under these circumstances, respondent is unable to prove compliance with Education Code section (Section) 94913, subdivision (a)(2).

26. As of January 20, 2016, respondent's website similarly did not provide the most recent annual report. Respondent had not submitted an annual report to the Bureau within the last four years. Respondent was deficient in this regard for the same reason explained immediately above. Under these circumstances, respondent is unable to prove compliance with Section 94913, subdivision (a)(5).

27. A. As of January 20, 2016, respondent's website displayed the following:

*Accreditation*

The University of Natural Medicine is accredited by the *American Naturopathic Medical Accreditation Board and the American Naturopathic Medical Board*. These two bodies examine and qualify educational programs that represent traditional medicines and holistic treatment programs. (Emphasis added)

B. Displaying that information is a prohibited business practice because an institution may not advertise or indicate in promotional material that it is accredited unless it has been accredited by an agency recognized by the United States Department of Education pursuant to Section 94814. Neither the American Naturopathic Medical Accreditation Board nor the American Naturopathic Medical Board are accrediting agencies recognized by the United States Department of Education.

C. The mitigation package did not directly address this deficiency. However, the cover letter indicated the website "has been taken down until such time as UNM receives approval to operate." (Ex. A, p. I.) Ms. Gallahan testified the website will not go live again until the Bureau is satisfied with respondent's application, though she pledged the prohibited accreditation language will be removed. Ms. Murray convincingly testified that taking down the website entirely is concerning because respondent is a distance learning institution that heavily relies on its website for instruction and student interaction.

D. By taking down the entire website, respondent has not yet demonstrated it can establish and maintain a proper website, especially with regard to advertising. Under these circumstances, respondent is unable to prove compliance with Section 94897, subdivision (e).

28. A. Respondent has advertised in promotional material, including in the website [www.umna.org](http://www.umna.org) (active as of January 21, 2016), that it offers programs to the public under the name "University of Natural Medicine California." Institutions must only use and advertise under their officially licensed name. Institutions also may not advertise by using two different websites ([universitynaturalmedicine.org](http://universitynaturalmedicine.org) and [unmca.org](http://unmca.org)) with contradicting information to the public. Ms. Murray testified this was of concern because of the potential confusion to the public of two similar websites.

B. The mitigation package cover letter stated the "unmca.org" website had been

eliminated, and in the future the only website used would be the one listed in the application. Lucy Rodriguez testified that the “unmca.org” website was the creation of Dr. Shayne, who had been involved in part of the application process, but that after he separated from respondent, staff did not have passwords or the ability to access or shut-down his website. No evidence presented indicates the “unmca.org” website is currently available to the public.

C. Based on the above, this deficiency was remedied, and respondent proved compliance, in this regard, with Section 94886 and Regulation 71110, subdivision (a).

## DESCRIPTION OF EDUCATIONAL PROGRAMS

29. A. Respondent’s educational program, including some of the syllabi submitted to the Bureau, did not reference any curriculum. At most, the relevant syllabi indicated students would do assigned textbook readings and then take a final examination, which does not constitute comprehensive curriculum as described in Regulation 71710. In its response to the final deficiency notice, respondent advised that a “complete rewrite of several courses will be necessary and will take time. More information will be provided.” (Ex. 23, p. 2577.) Respondent also explained that some missing syllabi were from outsourced instructors over whom it did not have direct control. (*Ibid.*)

B. Ms. Gallahan testified that many of the involved syllabi were updated by the education consultants and included in the mitigation package. Other courses were eliminated, so their syllabi were not included. She also testified that several other syllabi were being revised and could be sent to the Bureau in the immediate future. The mitigation package contains 170 pages of updated syllabi completed by respondent’s education consultants. (Ex. A, pp. 6-176.) A review of those syllabi reveals students will be asked to complete various textbook readings, write essays, complete exercises, do quizzes and take a final. All of those exercises will be graded, meaning students will be given periodic assessment and feedback on their performance. The syllabi also provide detailed information concerning learning objectives for the courses. However, Ms. Gallahan and Ms. Rodriguez testified other syllabi were still being revised by the education consultants.

C. Ms. Murray reviewed the syllabi in the mitigation package and articulated concerns with some of them. For example, the Homeopathy I course describes several learning objectives, but the course schedule does not show how some of those objectives will be achieved. The learning objectives for the Clinical Nutrition course are specified in the syllabus, but the schedule implies all of them are addressed by the fifth week, begging the question of what will be learned the remaining weeks of the course. Ms. Murray also testified several other syllabi do not satisfactorily demonstrate that students will consume 135 hours to complete the coursework, which would be expected for courses offering three units of credit. Ms. Murray has the requisite training and expertise in educational program development and academic administration and thus was qualified to offer her opinions on this topic. Her opinions were reasonable and supported by her detailed explanations. Respondent offered no witness with the same academic and educational qualifications who undercut Ms. Murray’s expressed opinions. Ms. Murray’s

opinions in this regard were persuasive.

D. Respondent has not yet provided the Bureau with syllabi for all courses to be offered in the BS degree program. Some of those submitted have the deficiencies described immediately above. Under these circumstances, respondent is unable to prove compliance with Regulation 71710.

30. The Statement of Issues alleges some of respondent's submitted syllabi did not appear to reference any curriculum, respondent failed to provide the requested materials, and respondent thereby also violated Regulation 71220. In her testimony, Ms. Murray seemed to address other concerns, such as an inadequate description of the lessons to be offered in each course and refund policies. However, it is not clear how that testimony relates to Regulation 71220, which does not mention such topics. Regulation 71220 does have substantial overlap with the areas covered by Regulation 71710. Under these circumstances, it was simply established that in failing to comply with Regulation 71710 as described above, respondent similarly failed to comply with Regulation 71220.

31. As explained above, before the mitigation package was submitted, respondent had failed to demonstrate that it was maintaining clear standards for satisfactory academic progress, as none of its courses included formative assessments or other objective feedback while students are still able to make corrections and improvements. Instead, the final examination was the only instrument of evaluation provided. However, as also explained above, the syllabi contained in the mitigation package show students will be asked to complete various textbook readings, write essays, complete exercises, do quizzes and take a final, all of which will be graded. Therefore, students will be given periodic assessment and feedback on their performance. Based on the above, this deficiency was remedied, and respondent proved compliance, in this regard, with Regulation 71715, subdivision (d)(5).

32. For the same reason, the Statement of Issues also alleges respondent failed to demonstrate that learning objectives and outcomes are being evaluated by qualified faculty in a timely manner, because the materials submitted before the mitigation package described a final examination as the only instrument of evaluation. As explained above, the mitigation package contained syllabi showing assessments and feedback will be provided at various stages of a course. Ms. Murray complained that this may not be the case because of a provision she found in Dr. Milam's Instructor Agreement requiring that final grades must be submitted to administrators within three weeks of receipt. (Ex. A, p. 218.) But it was not established that is respondent's policy. In fact, the proposed catalog is clear that students will get their grades within 10 days of the final. (Ex. A, p. 316.) Based on the above, this deficiency was remedied, and respondent proved compliance, in this regard, with Regulation 71715, subdivision (d)(6).

33. A. Respondent failed to provide syllabi for the courses in Homeopathy II, Animal Natural Health II, Aromatherapy Studies, Botanical Medicine Level 100, and Herbal Studies. This was because respondent was unable to get the syllabi for those courses from the instructors, who were "outsourced," meaning they were either self-employed or worked for

another organization and therefore not under the direct control of respondent. Those instructors had a proprietary interest in the syllabi and did not want to divulge them in public.

B. Ms. Gallahan testified respondent had decided to eliminate three of the courses in question because of the problems in getting the syllabi. The mitigation package contains syllabi for two of the courses in question that remain in the program, i.e., Animal Natural Health (renamed) and Family Herbalist (also renamed). The syllabi for those courses indicate students have textbook reading assignments, activities, quizzes and a final, which are all graded. However, the two syllabi are briefer than the others provided in the mitigation package. In addition, Ms. Murray persuasively testified the two course schedules do not show how the stated learning objectives will be achieved and therefore are deficient.

C. Under these circumstances, and with respect to the two syllabi provided from outsourced instructors, respondent is unable to prove compliance with Regulation 71710, subdivision (c), which requires that all syllabi provide “sequential and detailed outline of subject matter to be addressed or a list of skills to be learned and how those skills are to be measured.”

D. Pursuant to Regulation 71720, subdivision (a)(6), when an institution contracts for educational services, it shall maintain control of, and responsibility for, all academic matters, and shall assure that the instruction and faculty satisfy the standards established by the Act. In this case, respondent has decided to abandon courses offered by outsourced instructors who will not provide syllabi or otherwise cooperate with respondent’s administrators. The Bureau presented no other evidence indicating respondent is not, and will not be able to, maintain control of, and be responsible for academic matters provided by the outsourced instructors. Based on the above, this deficiency was remedied, and respondent proved compliance, in this regard, with Regulation 71720, subdivision (a)(6).

34. After several requests, respondent failed to provide an explanation as to how specific learning outcomes stated in the syllabi are tied to the sequence of the presentation of the material to measure the students’ learning of the material in all courses. An attempt was made in the revised syllabi contained in the mitigation package to do so. But other than the syllabi themselves, there is no explanation in the mitigation package outlining how this was done. For the reasons explained above in Factual Finding 30.C., Ms. Murray persuasively testified that several of the syllabi in the mitigation package did not satisfactorily do so. Respondent presented no competing expert opinion evidence contradicting Ms. Murray. Under these circumstances, respondent is unable to prove compliance with Regulation 71710, subdivision (e).

35. A. Respondent failed to provide an explanation, upon request from the Bureau, of how the Blood & Urine Analysis course is appropriate for delivery through distance education methods.

B. The mitigation package contained a revised syllabus for this course, renamed Holistic Blood Chemistry & Urinalysis. Ms. Murray’s primary concern about this course was that she believed it was meant to teach students how to obtain blood and urine samples and then

test them. She did not understand from the syllabus provided how that skill could be accomplished outside of a laboratory and in a distance learning environment. However, it is clear from the revised syllabus that this course is meant to teach students the purpose of available blood and urine tests, how to read the reports generated, and how to determine what tests work best for different situations. The course is not meant to train students how to conduct the actual tests.

C. Based on the above, this deficiency was remedied, and respondent proved compliance, in this regard, with Regulation 71715, subdivision (d)(1).

36. Not all of the syllabi provided to the Bureau included a sequential and detailed outline of the subject matter to be addressed or a list of skills to be learned and how those skills would be measured. The Bureau repeatedly requested updated syllabi, but respondent failed to provide the requested materials. However, the syllabi contained in the mitigation package provided the information requested. Based on the above, this deficiency was remedied, and respondent proved compliance, in this regard, with Regulation 71710, subdivision (c)(6).

#### FACULTY

37. Many of the contracts for proposed faculty members submitted to the Bureau were unsigned. Several times signed contracts from current faculty regarding instructor assignments were requested by the Bureau, but were not provided. However, signed contracts for all proposed faculty members were supplied in the mitigation package. Therefore, this deficiency was remedied, and respondent proved compliance, in this regard, with Regulation 71720, subdivision (a)(1).

38. A. Respondent identified instructors and their credentials in a document received by the Bureau on November 16, 2015. However, the org chart respondent later sent to the Bureau on January 4, 2016, identified a substantially different list of instructors. Respondent did not explain the changes in faculty and previously submitted credentials were in some cases incomplete. As a result, the Bureau could not determine which list of instructors was correct and whether or not currently employed instructors are qualified to teach the courses they have been assigned.

B. Ms. Gallahan testified the mitigation package addressed this problem and that she believed all the proposed faculty members were qualified. However, as discussed above, the Bureau has not received sufficient documentation for Msrs. Brady or Christopher indicating they are qualified to teach their assigned subjects. In addition, Ms. Murray convincingly testified the Bureau still has not received a list of course assignments, which makes it difficult to determine if all the proposed faculty members are qualified.

C. Under these circumstances, respondent is unable to prove compliance with Regulation 71720, subdivision (a)(1) and (a)(9).

## CATALOG

39. The school catalog provided to the Bureau on November 16, 2015, included references to programs beyond the BS degree in Natural Medicine,<sup>2</sup> which is the only program for which the institution is currently seeking approval. When respondent was asked for an updated catalog which removes these references, it failed to do so by the time the final deficiency notice was issued. However, the mitigation package contained a new catalog which addressed this issue by removing the programs other than the BS degree. In this regard, respondent remedied the deficiency and proved compliance with Regulation 71810, subdivision (a).

40. The org chart provided by respondent, dated January 4, 2016, indicates faculty members that did not match the catalog or credentials that were provided to the Bureau on November 16, 2015. However, the new catalog contained in the mitigation package resolved that deficiency. In this regard, respondent remedied the deficiency and proved compliance with Section 94909, subdivision (a)(7).

41. A. The November 16, 2015 catalog provided to the Bureau referenced “umn.ca.org” for contacts, which did not match the web address listed on the original application of “universitynaturalmedicine.org.”

B. The cover letter to the mitigation package stated the “umn.ca.org” website would no longer be referenced, and that respondent’s website had been taken down. The catalog contained in the mitigation package listed no website. However, the absence of a website from the catalog is concerning due to respondent’s status as a distance learning institution, as explained above. While it may have been expedient to simply remove any reference to a website from the catalog, it cannot be presumed respondent will operate in the future without one. Respondent has yet to demonstrate that it has established and maintained a website without deficiency.

C. Under these circumstances, respondent is unable to prove compliance with Section 94909, subdivision (a)(1), which requires that an institution seeking approval provide its website address in its catalog.

### *Other Evidence*

42. Ms. Rodriguez and Ms. Gallahan testified the initial problems with the application were the result of their inexperience with the academic aspects of a distance learning institution. They and others involved in completing the application process did not understand many aspects of the deficiencies cited by Bureau staff or how to resolve them. It

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<sup>2</sup> The Proposed Decision indicated that respondent was only currently seeking approval for the BS degree in Natural Health Sciences. It appears from the transcript that respondent is pursuing approval for the BS in Natural Medicine. (RT, Vol. II, p, 188, lines 7-13.)

was not until November 2016, when the education specialists were hired, that respondent and staff were able to get a better grasp on this situation. Dr. Milam also testified staff initially underestimated the complexity of the process, given that respondent was already operating in California and was using some materials dating back to 1989.

43. Ms. Rodriguez, Ms. Gallahan, and Dr. Milam testified they are confident that, with the assistance of the education specialists, they can provide to the Bureau an acceptable application and supporting documents within six months. Thus, they requested additional time to cure any remaining deficiencies.

44. As a showing of good faith to the Bureau, respondent stopped enrolling new students after it received the final notice of deficiency in February 2016. On the other hand, it is not clear respondent has timely or fully informed current students enrolled in programs other than the BS degree that respondent is no longer seeking approval to offer those courses. Dr. Milam testified respondent will “teach out” students in those programs and that none have voiced any objection or complaint.

45. Ms. Rodriguez, Ms. Gallahan, and Dr. Milam testified respondent’s students are generally happy with the various programs and enjoy the classes. Evaluation forms completed by students (ex. E), which were admitted as administrative hearsay, generally corroborated their testimony on that point. No evidence was presented indicating any student has made a complaint to the Bureau about respondent.

46. Ms. Murray testified that, on average, the Bureau issues two or three notices of deficiency before making a final decision on an application. She believes the seven chances given to respondent (eight considering the mitigation package) were more than warranted (she used the word “crazy”).

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. Respondent bears the burden of proving that it meets all prerequisites necessary for the requested approval. (See *Kensington Univ. v. Council for Private Postsecondary and Vocational Education* (1997) 54 Cal.App.4<sup>th</sup> 27, 47, fn. 7.) This burden requires proof by a preponderance of the evidence. (*Ibid.*; see also Evid. Code, § 115.)

2. “Preponderance of the evidence” means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that one is unable to say that the evidence on either side of an issue preponderates, the finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2000) 92 Cal.App.4<sup>th</sup> 654, 663.)

*Statutory and Regulatory Authority*

3. Section 94887 provides:

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

4. Section 94885.5 provides:

(a) If an institution that has not been accredited by an accrediting agency recognized by the United States Department of Education seeks to offer one or more degree programs, the institution shall satisfy the following requirements in order to be issued a provisional approval to operate from the bureau:

(1) The institution may not offer more than two degree programs during the term of its provisional approval to operate.

(2) The institution shall submit an accreditation plan, approved by the bureau, for the institution to become fully accredited within five years of issuance of its provisional approval to operate. The plan shall include, at a minimum, identification of an accreditation agency recognized by the United States Department of Education, from which the institution plans to seek accreditation, and outline the process by which the institution will achieve accreditation candidacy or pre-accreditation within two years, and full accreditation within five years, of issuance of its provisional approval.

(3) The institution shall submit to the bureau all additional documentation the bureau deems necessary to determine if the institution will become fully accredited within five years of issuance of its provisional approval to operate.

(b) If an institution is granted a provisional approval to operate pursuant to subdivision (a), the following is required:

(1) Students seeking to enroll in that institution shall be notified in writing by the institution, prior to the execution of the student's enrollment agreement, that the institution's approval to operate is contingent upon it being subsequently accredited.

(2) Within the first two years of issuance of the provisional approval, a visiting committee, empaneled by the bureau pursuant to Section 94882, shall review the institution's application for approval and its accreditation plan, and make a recommendation to the bureau regarding the institution's progress to achieving full accreditation.

(3) The institution shall provide evidence of accreditation candidacy or pre-accreditation within two years of issuance of its provisional approval, and evidence of accreditation within five years of issuance of its provisional approval, with the scope of that accreditation covering the offering of at least one degree program.

(c) An institution required to comply with this section that fails to do so by the dates

provided, as required, shall have its provisional approval to operate automatically suspended on the applicable date. The bureau shall issue an order suspending the institution and that suspension shall not be lifted until the institution complies with the requirements of this section. A suspended institution shall not enroll new students in any of its degree programs and shall execute a teach-out plan for its enrolled students.

(d) (1) The bureau shall, upon the timely submission of sufficient evidence that an unaccredited institution is making strong progress toward obtaining accreditation, grant an institution's request for an extension of time, not to exceed two years, to meet the requirements of this section.

(2) Evidence submitted to the bureau pursuant to paragraph (1) shall include, but is not limited to, an amended accreditation plan adequately identifying why preaccreditation, accreditation candidacy, or accreditation outlined in the original plan submitted to the bureau was not achieved, active steps the institution is taking to comply with this section, and documentation from an accrediting agency demonstrating the institution's likely ability to meet the requirements of this section.

(3) The bureau may establish policies and procedures to comply with the requirements in this subdivision. Establishment of these policies and procedures are exempt from Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) An institution issued a provisional approval under this section is required to comply with all other laws and regulations.

(f) The bureau shall adopt emergency regulations for purposes of implementing this section. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare for purposes of Sections 11346.1 and 11349.6 of the Government Code. These emergency regulations shall become law through the regular rulemaking process within one year of the enactment of this section.

5. Regulation 71400, subdivision (d)(2) provides:

(d) Pursuant to section 94887 of the Code, the Bureau will either grant or deny an application.

(2) For an applicant that seeks to offer degree programs only, the Bureau will grant a provisional approval to operate the institution if the application demonstrates, in addition to all other requirements for approval to operate, that the institution meets the requirements of section 94885.5 of the Code, and the plan is approved pursuant to section 71105.

6. Regulation 71105 provides:

(a) For an application for approval to operate or a substantive change, the owner of an unaccredited institution also requesting provisional approval to offer a degree program

shall submit to the Bureau, for its approval, a plan for achieving institutional accreditation by an accrediting agency recognized by the United States Department of Education, with the scope of that accreditation covering the offering of at least one degree program.

(b) The plan shall include:

(1) Identification of the accrediting agency from which the institution will seek accreditation;

(2) Identification of the accrediting agency's eligibility requirements;

(3) Identification of the accrediting agency's minimum requirements for institutional accreditation covering at least one degree program offered by the institution with an outline of the process and timeline for complying within two years of provisional approval with the accrediting agency's requirements for submission of a completed application for initial accreditation with the required fee; and

(4) An outline of the process and timeline whereby the institution will achieve full accreditation within five years of provisional approval, including all of the following, if applicable:

(A) Attendance at the accrediting agency's required accreditation applicant workshop;

(B) Submission of financial statements as required by the accrediting agency;

(C) Submission of a self-evaluation report; and

(D) Hosting of a site visit by the accrediting agency.

#### *Cause for Denial of the Application*

7. First Cause for Denial (Organization and Management). Respondent's application is subject to denial under Business and Professions Code section 480, subdivision (a)(3)(A), and Regulation 71720, in that respondent submitted an organizational chart that did not meet minimum operating standards. (Factual Findings 1-23.)

8. Second Cause for Denial (Advertising). Respondent's application is subject to denial under Business and Professions Code section 480, subdivision (a)(3)(A), and Sections 94897 and 94913, in that respondent's website both lacks documents and information it is required to have and included prohibited statements or information before it was taken off the internet. (Factual Findings 1-27.)

9. Third Cause for Denial (Description of Educational Programs). Respondent's application is subject to denial under Business and Professions Code section 480, subdivision (a)(3)(A), and Regulations 71710, and 71220, in that respondent failed to provide sufficient descriptions of its educational programs in some, but not all of the ways alleged in the Statement of Issues. (Factual Findings 1-27, 29-30, 33.A.-33.C. & 34.)

10. Fourth Cause for Denial (Faculty). Respondent's application is subject to denial under Business and Professions Code section 480, subdivision (a)(3)(A), and Regulation 71720, subdivision (a)(1) and (a)(9), in that respondent failed to provide sufficient documents, contracts, and responses regarding respondent's faculty. Specifically, respondent failed to provide proof

that two faculty members are qualified to teach their assigned subjects, and the Bureau has not received a list indicating who is assigned to teach which courses. (Factual Findings 1-27 & 38.)

11. Fifth Cause for Denial (School Catalog). Respondent's application is subject to denial under Business and Professions Code section 480, subdivision (a)(3)(A), and Section 94909, in that respondent submitted a deficient school catalog to the Bureau which does not show respondent's website address, a noticeable absence since respondent proposes to offer a distance learning program. (Factual Findings 1-27 & 41.)

### *Disposition*

12. Consumer protection is the Bureau's highest priority. (Ed. Code, § 94875.) Respondent has the burden of demonstrating that it is currently capable of meeting the minimum standards to operate a private postsecondary institution in California. Respondent failed to show that it now meets all operating standards, namely in the areas of organization and management, advertising, description of educational programs, faculty, and catalog. Pursuant to Sections 94885.5 and 94887, respondent is not eligible for an outright approval to operate at this time. (Legal Conclusions 6-10.)

13. A. Respondent as much as conceded the above during the hearing. Instead, respondent requests a conditional approval pursuant to Regulation 71400, subdivision (d)(1), in order to remedy the remaining deficiencies. Dr. Milam and his staff believe that can be done within six months.

B. At this time, respondent must still establish compliance with the requirements of the Act. For example, in the area of organization and management, respondent must provide credentials for two proposed instructors or drop them from its faculty. Such action will also cure much of the problem in the area of faculty; the remaining problem in that area will be cured by creating a list of course assignments by the proposed acuity. In the area of advertising, respondent must provide performance fact sheets and annual reports for four years. It must also put its website back online, this time without the improper statement concerning accreditation, which should not be difficult. Doing so will also address the lone deficiency in the area of its school catalog. Finally, the remaining deficiencies in the area of describing educational programs require syllabi that need to be revised to include more information. Syllabi are a cornerstone of an approved educational program, since they describe the content of a course, and what is actually to be delivered to a student, and their importance cannot be minimized. In addition, respondent seeks approval to offer a degree-granting program, necessitating that it receive no more than a provisional approval. (Ed. Code § 94885.5; Regulation § 71400, subdiv. (d)(2).) Accordingly, a conditional approval is not appropriate in this circumstance.

C. But a number of mitigating facts are in respondent's favor. At all times during the application process, respondent's staff have been cooperative and acted in good faith with the Bureau. During the hearing, respondent's three employees who testified were candid in

their testimony and accepted responsibility for the remaining areas of deficiency. Respondent has taken meaningful action to correct the deficiencies cited by Bureau staff, including hiring education consultants, which resulted in correction of a majority of the deficiencies described in the final deficiency letter. Respondent also stopped enrolling new students when the final deficiency letter was issued. Respondent's students seem happy with the programming and no evidence of complaints by or harm to them was presented. Closure of the institution, even on a temporary basis, could also result in harm to current students, which is against the interests of public protection.

14. Based on the above, issues of minimum compliance still remain unresolved, and at this point in time there is insufficient evidence to conclude that the owners of The University of Natural Medicine University have shown the capacity to satisfy all relevant minimum operating standards of concern to the Bureau. Because of their progress in curing the deficiencies, however, an approval may be warranted. This can only be a provisional approval given that the application is only for a degree-granting program. Before such approval can issue, respondent must be required to demonstrate to the Bureau that it can comply with all the requirements of the Act as they apply to an applicant seeking to offer a degree-granting program. If compliance with the minimum standards cannot be established to the satisfaction of the Bureau, the application shall remain denied.

## ORDER

The application of respondent The University of Natural Medicine for approval to operate an institution not accredited is denied; however, the denial is stayed and a provisional approval to operate a Bachelor of Science degree program in Natural Medicine shall issue only upon satisfactory completion of all of the following terms and conditions:

### **1. Organization and Management**

Within 60 days of the effective date of this order, respondent shall submit an organizational chart that meets all minimum operating standards set forth in section 94885 of the Act and California Code of Regulations, title 5,<sup>3</sup> section 71720, as described in Factual Findings 21-24, and Legal Conclusion 7.

### **2. Advertising**

- A. Within 60 days of the effective date of this order, respondent shall have a fully operational website that is accessible to its students and the public. The website shall be maintained and shall meet all minimum operating standards set forth in the Act, specifically Sections 94897 and 94913, and any applicable Regulations, as described in Factual Finding 27, and Legal Conclusion 8.

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<sup>3</sup> References to Regulations in this Order refer to Title 5 of the California Code of Regulations.

B. Within 30 days of the effective date of this decision, respondent shall submit its Annual Reports and amended School/Student Performance Fact Sheet<sup>4</sup> for four years to reflect accurate information as required by sections 94910 and 94934 of the Act and Regulation sections 74110 and 74112. (Factual Findings 25-26, and Legal Conclusion 13.) Upon request of the Bureau, respondent shall provide the amended Fact Sheet for the Bureau's prior approval. Respondent shall also provide to the Bureau upon request verifiable documentation supporting the information contained on the Fact Sheet. Within 45 days of the effective date of this Decision, respondent shall provide the amended Fact Sheet as required by the Act, as well as to all current and prospective students who received the prior Fact Sheet. The amended School/Student Performance Fact Sheet shall contain a paragraph at the top containing the following disclosure:

This amended School/Student Performance Fact Sheet replaces the Fact Sheet previously provided by this institution dated [date], which contained outdated information, and is being provided pursuant to a Decision and Order of the Department of Consumer Affairs. For more information, you may contact the [contact name] at the Bureau for Private Postsecondary Education at [phone number].

### **3. Description of Educational Programs**

Within 60 days of the effective date of this order, respondent shall submit syllabi for courses included in the Bachelor of Science program in Natural Medicine that meet all minimum operating standards set forth in section 94885 of the Act and Regulation sections 71710 and 71220, as described in Factual Findings 33-34, and Legal Conclusion 9.

### **4. Faculty**

Within 60 days of the effective date of this order, respondent shall submit documentation for the faculty for the courses included in the Bachelor of Science program in Natural Medicine that meet all minimum operating standards set forth in section 94885 of the Act and Regulation section 71720, as described in Factual Findings 37-38, and Legal Conclusion 10.

### **5. Catalog**

Within 60 days of the effective date of this order, respondent shall submit a catalog that meets all minimum operating standards set forth in section 94909 of the Act and Regulation section 71810, as described in Factual Findings 39-41, and Legal Conclusion 11.

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<sup>4</sup> While not strictly regulated as Advertising, it is the heading contained in the Statement of Issues (SOI) alleging the deficiencies in the Annual Reports and the Performance Fact Sheet, and this decision tracks the SOI.

**6. Comply with All Accreditation Requirements for Degree-Granting Institution**

Within 6 months of the effective date of this decision, respondent shall submit to the Bureau for its approval a plan that complies with Regulation section 71105 for achieving institutional accreditation. The determination of the Bureau that the plan fails to meet the requirements of section 94885.5 of the Act or Regulation section 71105 and cannot be approved shall be a violation of this condition.

Upon satisfactory completion of all terms and conditions, a provisional approval to operate shall issue for a Bachelor of Science degree program in Natural Medicine. Thereafter, respondent shall comply with any and all other provisions of law applicable to the operation of a private postsecondary institution, including accreditation standards. The Bureau has continuing jurisdiction to investigate compliance with the laws and bring any enforcement action it deems necessary, regardless of the status of the provisional approval to operate. The failure to meet the terms and conditions necessary for the issuance of the provisional approval to operate shall result in the application being denied.

Dated: November 2, 2017



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RYAN MARCROFT  
Deputy Director, Legal Affairs  
Department of Consumer Affairs