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8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 1004589

13 **DUNNHILL BARBER ACADEMY,**
14 **Owned and Operated by LAP PHUOC**
15 **QUACH, sole proprietor**
16 **995 Oliver Road, Suite #9**
17 **Fairfield, CA 94534**

ACCUSATION

Approval to Operate License No. 27687984

Respondent.

18
19
20 **PARTIES**

21 1. Deborah Cochrane (Complainant) brings this Accusation solely in her official
22 capacity as the Chief of the Bureau for Private Postsecondary Education (Bureau), Department of
23 Consumer Affairs.

24 2. On February 13, 2012, Approval to Operate institution code number 27687984 was
25 issued by the Bureau to Rafael Ochoa, 100% owner of Maya Beauty Academy (previous school
26 name). On February 27, 2015, the Bureau approved a change of ownership from Rafael Ochoa to
27 Alicia Reid. On January 24, 2017, the Bureau approved the request for change in ownership to
28 Brian Hill. On January 26, 2017, the Bureau approved the change of name from Maya Beauty

1 Academy to DunnHill Barber Academy and a change of location. On November 17, 2017, the
2 Bureau approved a change in business organization/control/ownership to Lap Phuoc Quach
3 (Respondent). The approval to operate was in full force and effect at all times relevant to the
4 charges brought in this Accusation and will expire on November 17, 2022, unless renewed.

5 **JURISDICTION**

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

9 4. Business and Professions Code section 118 states, in part:

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

15 (c) As used in this section, "board" includes an individual who is authorized by any
16 provision of this code to issue, suspend, or revoke a license, and "license" includes
17 "certificate," "registration," and "permit."

17 5. Business and Professions Code section 125.9 states:

18 (a) Except with respect to persons regulated under Chapter 11 (commencing
19 with Section 7500), any board, bureau, or commission within the department, the
20 State Board of Chiropractic Examiners, and the Osteopathic Medical Board of
21 California, may establish, by regulation, a system for the issuance to a licensee of a
22 citation which may contain an order of abatement or an order to pay an administrative
23 fine assessed by the board, bureau, or commission where the licensee is in violation
24 of the applicable licensing act or any regulation adopted pursuant thereto.

22 (b) The system shall contain the following provisions:

23 (1) Citations shall be in writing and shall describe with particularity the
24 nature of the violation, including specific reference to the provision of law
25 determined to have been violated.

25 (2) Whenever appropriate, the citation shall contain an order of abatement
26 fixing a reasonable time for abatement of the violation.

26 (3) In no event shall the administrative fine assessed by the board, bureau,
27 or commission exceed five thousand dollars (\$5,000) for each inspection or
28 each investigation made with respect to the violation, or five thousand dollars
(\$5,000) for each violation or count if the violation involves fraudulent billing

1 submitted to an insurance company, the Medi-Cal program, or Medicare. In
2 assessing a fine, the board, bureau, or commission shall give due consideration
3 to the appropriateness of the amount of the fine with respect to factors such as
the gravity of the violation, the good faith of the licensee, and the history of
previous violations.

4 (4) A citation or fine assessment issued pursuant to a citation shall inform
5 the licensee that if the licensee desires a hearing to contest the finding of a
6 violation, that hearing shall be requested by written notice to the board, bureau,
7 or commission within 30 days of the date of issuance of the citation or
8 assessment. If a hearing is not requested pursuant to this section, payment of
any fine shall not constitute an admission of the violation charged. Hearings
shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1
of Division 3 of Title 2 of the Government Code.

9 (5) Failure of a licensee to pay a fine or comply with an order of
10 abatement, or both, within 30 days of the date of assessment or order, unless the
11 citation is being appealed, may result in disciplinary action being taken by the
12 board, bureau, or commission. Where a citation is not contested and a fine is
13 not paid, the full amount of the assessed fine shall be added to the fee for
14 renewal of the license. A license shall not be renewed without payment of the
15 renewal fee and fine.

16 (c) The system may contain the following provisions:

17 (1) A citation may be issued without the assessment of an administrative
18 fine.

19 6. Business and Professions Code section 477 states:

20 As used in this division:

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

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

25 7. Code section 94936 states:

26 (a) As a consequence of an investigation, which may incorporate any materials
27 obtained or produced in connection with a compliance inspection, and upon a finding
28 that the institution has committed a violation of this chapter or that the institution has
failed to comply with a notice to comply pursuant to Section 94935, the bureau shall
issue a citation to an institution for violation of this chapter, or regulations adopted
pursuant to this chapter.

(b) The citation may contain any of the following:

(1) An order of abatement that may require an institution to demonstrate
how future compliance with this chapter or regulations adopted pursuant to this
chapter will be accomplished.

(2) Notwithstanding Section 125.9 of the Business and Professions Code,
an administrative fine not to exceed five thousand dollars (\$5,000) for each
violation. . . .

1 (c)(1) The citation shall be in writing and describe the nature of the violation
2 and the specific provision of law or regulation that is alleged to have been violated.

3 (2) The citation shall inform the institution of its right to request a hearing
4 in writing within 30 days from service of the citation.

5 ...
6 (4) If a hearing is not requested, payment of the administrative fine is due
7 30 days from the date of service, and shall not constitute an admission of the
8 violation charged.

9 8. California Code of Regulations, title 5 (CCR), section 74000, subdivision (e),
10 states:

11 If an institution fails to pay any fee and any penalty fees timely, the Bureau
12 may initiate proceedings to revoke the institution's approval to operate for failure to
13 pay fees.

14 ...
15 (2) Any proceeding to revoke an institution's approval to operate is
16 subject to the provisions of Chapter 5 of the Administrative Procedures Act. If a
17 hearing is requested, it shall be limited to the issues of whether any fee or
18 penalty was owed and, if so, whether the fee or penalty were paid when
19 originally due.

20 (3) The procedure specified in this subdivision is cumulative to any other
21 right or remedy the Bureau may invoke against an institution which fails to pay
22 its annual fee or a penalty fee when originally due. Nothing in this subdivision
23 restricts the Bureau's authority to bring other administrative or judicial action
24 against an institution that fails to pay its fees when due.

25 (4) An institution whose approval to operate was revoked because of
26 nonpayment of an annual fee or penalty fee may seek to obtain approval to
27 operate only by filing an application for a new approval to operate.

28 **STATUTORY PROVISIONS**

9. Code section 94930.5 states, in pertinent part:

(d)(1) . . . each institution that is approved to operate pursuant to this chapter
shall remit both of the following:

(A) An annual fee for each campus designated by the institution as a main
campus location in California, in an amount equal to 0.45 percent of the
campus' total gross revenue derived from students in California, but not to be
less than two thousand five hundred dollars (\$2,500) and not to exceed sixty
thousand dollars (\$60,000).

...

1 (g) Notwithstanding subdivision (d), effective July 1, 2018, the annual fee for
2 each campus described in subparagraphs (A) and (B) of paragraph (1) of subdivision
3 (d) shall be in an amount equal to 0.55 percent of that campus' total gross revenue
4 derived from students in California, but not to be less than two thousand five hundred
5 dollars (\$2,500) and not to exceed sixty thousand dollars (\$60,000) for each campus.

6 10. Code section 94931, subdivision (a), provides that if a fee is not paid on or before the
7 30th calendar day after the fee is due, a 25% late payment penalty fee shall apply. If a fee is not
8 paid on or before the 90th calendar day after the fee is due, a 35% late fee applies.

9 11. Code section 94934 states:

10 (a) As part of the compliance program, an institution shall submit an annual
11 report to the bureau, under penalty of perjury, signed by a responsible corporate
12 officer, by July 1 of each year, or another date designated by the bureau, and it shall
13 include the following information for educational programs offered in the reporting
14 period:

15 (1) The total number of students enrolled by level of degree or for a
16 diploma.

17 (2) The number of degrees, by level, and diplomas awarded.

18 (3) The degree levels and diplomas offered.

19 (4) The Student Performance Fact Sheet, as required pursuant to Section
20 94910.

21 (5) The school catalog, as required pursuant to Section 94909.

22 (6) The total charges for each educational program by period of
23 attendance.

24 (7) A statement indicating whether the institution is, or is not, current in
25 remitting Student Tuition Recovery Fund assessments.

26 (8) A statement indicating whether an accrediting agency has taken any
27 final disciplinary action against the institution.

28 (9) Additional information deemed by the bureau to be reasonably
required to ascertain compliance with this chapter.

...

REGULATORY PROVISIONS

12. California Code of Regulations, title 5 (CCR), section 74000, subdivision (c),
provides that “[a] fee that is not paid timely is subject to penalty as set forth in section 94931 of
the Code.”

///

1 13. CCR section 74006 provides:

2 (a) An institution's annual fee is due within 30 days of the date on which the
3 institution originally receives its approval to operate and each year thereafter on the
anniversary of the date of the original approval.

4 (b) An institution shall pay its annual fee in addition to any other applicable
5 fees.

6 14. CCR section 75020 provides:

7 (a) The Bureau Chief, or his or her designee, or the Director's designee, is
8 authorized to issue citations containing orders of abatement and/or administrative
9 fines pursuant to section 94936 of the Code against approved private, postsecondary
institutions that have committed any acts or omissions that are in violation of the Act
or any regulation adopted pursuant thereto.

10 ...

11 (c) In addition to the requirements of section 94936 of the Code, each citation
12 shall inform the cited institution or person that:

13 ...

14 (4) failure to comply with any order of abatement within the time set forth
15 in the citation, unless the citation is being appealed, may result in disciplinary
action being taken by the Bureau; and

16 ...

17 (d) Each citation shall be served on the cited institution or person, in person, or
18 by certified and regular mail at the address of record on file with the Bureau.
Citations served by certified and regular mail shall be deemed "served" on the date of
mailing.

19 ...

20 15. CCR section 75050, subdivision (b), provides that, "[f]ailure of an applicant or
21 institution . . . to abate the violation or to pay the fine within the time allowed is a ground for
22 denial or discipline of an approval to operate."

23 16. CCR section 76020 is titled "Student Tuition Recovery fund (STRF)," and it
24 provides:

25 The fund exists to relieve or mitigate economic losses suffered by a student
26 while enrolled at a qualifying institution, who at the time of enrollment is or was a
California resident or was enrolled in a California residency program, if the student
27 enrolled in the institution and the student or a third-party payer prepaid tuition, paid
or is deemed to have paid the assessment and suffered economic loss as a result of
28 any of the conditions specified in section 94923 of the Code or due to an institution
losing its eligibility to receive a third-party payer benefit such as Cal Grant, Pell

1 Grant, or veterans' financial aid programs under Title 38 of the Code of Federal
2 Regulations.

3 17. CCR section 76130 provides:

4 (a)(1) A qualifying institution shall collect the assessment from each student in
5 an educational program at the time it collects the first payment from or on behalf of
6 the student at or after enrollment. The assessment shall be collected for the entire
7 period of enrollment, regardless of whether the student pays the institutional charges
8 in increments.

9 ...

10 (b) A qualifying institution shall complete the STRF Assessment report and
11 remit it with the STRF assessments collected from students to be received by the
12 Bureau no later than the last day of the month following the close of the quarter as
13 follows:

- 14 (1) April 30 for the first quarter,
- 15 (2) July 31 for the second quarter,
- 16 (3) October 31 for the third quarter, and
- 17 (4) January 31 for the fourth quarter.

18 If the due date falls on a Saturday, Sunday, or State or federal holiday, the due
19 date shall be extended to the next regular business day for the Bureau.

20 (c) The STRF Assessment report shall contain the following information:

- 21 (1) Total number of students who signed enrollment agreements for
22 educational programs during the reporting period; and
- 23 (2) Total number of students eligible for STRF who signed enrollment
24 agreements for educational programs during the reporting period; and
- 25 (3) The total number of students who signed their enrollment agreement
26 during the reporting period, were eligible for STRF, and who made their first
27 payment during the reporting period; and
- 28 (4) The total number of students who signed their enrollment agreement
in a previous reporting period, were eligible for STRF, and who made their first
payment during the current reporting period; and
- (5) Total amount of institutional charges after rounding each student's
institutional charges to the nearest \$1,000, for all eligible STRF students whose
STRF assessment was collected in the reporting period; and
- (6) Current contact telephone number of the person preparing the form;
and
- (7) A declaration dated and signed under penalty of perjury by the person
preparing the form that the form and any attachments are true and correct.

1 **COST RECOVERY**

2 18. Code section 125.3 provides that the administrative law judge may award the
3 reasonable costs of investigation and enforcement to the Bureau. If a case settles, a stipulated
4 settlement can include recovery of investigation and enforcement costs.

5 **FACTUAL ALLEGATIONS**

6 19. Respondent was due to pay the annual fee for Approval to Operate Number 27687984
7 by February 1, 2018. On March 15, 2018, the Bureau sent a delinquency notice to Respondent
8 explaining that the annual fee was overdue.

9 20. On April 26, 2018, the Bureau issued Citation number 1718026 to Respondent for
10 failure to submit Annual Reports for the 2015 and 2016 school years, failure to submit the
11 Student Tuition Recovery Fund (STRF) Assessment Reporting Forms for 2015, and portions of
12 the 2016 and 2017 school year, and failure to pay the annual fee for calendar year 2018. The
13 Citation also ordered Respondent to abate this violation by submitting the annual report,
14 delinquent STRF forms, substantiating data, annual fee, plus accrued late fees. Respondent failed
15 to comply with Citation number 1718026.

16 21. On June 6, 2019, the Bureau issued Citation number 1819211 to Respondent for
17 failure to timely submit the required Annual Report for the 2017 school year. The Citation
18 ordered Respondent to abate this violation by submitting the 2017 Annual Report online and
19 mailing a hard copy of its 2017 financials to the Bureau. The Citation assessed a \$5,000.00 fine
20 by July 6, 2019. Respondent failed to comply with Citation number 1819211.

21 22. Since April 2018, Respondent has not submitted any STRF Assessment Reporting
22 Forms to the Bureau, and these forms are due every quarter. Between April 2018 and March
23 2020, the Bureau mailed Respondent nine written notices that his STRF Assessment Reporting
24 Forms were due.

25 23. Between January 2019 and May 2020, the Bureau mailed Respondent seven invoices
26 stating that the annual fees for 2019 and 2020 were overdue to be paid. To date, Respondent has
27 never paid an annual fee to the Bureau.

28 ///

