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DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Emergency Decision
Against:

Queenston College of America
3660 Wilshire Blvd, Suite 338
Los Angeles, CA 90010
School Code 1940681

DECISION

Appellant.

INTRODUCTION

To protect students, prevent misrepresentations to the public, and prevent loss of student funds, on July 10, 2018, the Bureau for Private Postsecondary Education (the Bureau) issued an Emergency Decision (Decision) against the Queenston College of America (the College), directing the College to cease enrollment in its programs and cease collecting tuition and fees for its programs. The Decision is scheduled to take effect at close of business on July 16, 2018.

The College requested an opportunity to be heard before the Director of the Department of Consumer Affairs before the Decision's effective date. The matter was heard on July 13, 2018, before the Director's designee, Deputy Director Ryan Marcroft. The College's Operating Manager Mi Lee and attorney Jonathan Turner appeared on behalf of the College. Enforcement Analyst Renee Walters appeared on behalf of the Bureau, and Deputy Executive Officer Heather Berg appeared on behalf of the Board of Barbering and Cosmetology (the Board). At the conclusion of the hearing, the matter was submitted for a final decision.

After considering the evidence and argument submitted by the College, the Bureau, and the Board, the Decision is **MODIFIED** and **AFFIRMED**.

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FACTUAL AND PROCEDURAL BACKGROUND

I. QUEENSTON COLLEGE OF AMERICA

The Bureau approved the College to offer 11 non-degree programs. Three of the programs are also approved by the Board, including the College's Cosmetology, Esthetics, and Nail Care programs, and according to the College, these are the only three programs the College presently offers. As of June 2016, the College is approved to offer 1,600 hours in cosmetology training, 600 hours in esthetics training, and 600 hours in nail care training. The College reports that it currently has two enrolled students, one in its cosmetology program and one in its esthetics program.

II. THE BUREAU'S EMERGENCY DECISION

On July 10, 2018, the Bureau issued its Decision and ordered the College to cease enrolling new students in its programs, and cease collecting tuition and fees for its program, effective close of business July 16, 2018. The Bureau determined that the institution posed an immediate danger to the public health, safety, and welfare, requiring immediate action to protect students, prevent misrepresentations to the public, and prevent the loss of monies paid by students. In particular, the Bureau found that the institution substantially failed to meet institutional minimum operating standards when it charged students for approved educational programs that were not actually provided, and when it falsified "Proof of Training" records submitted to the Board, which the Board uses to verify that its license examination applicants completed the requisite number of training hours before taking the examination.

Citing similar concerns, the Board stated that it would not process license examination applications from the College's applicants, meaning that the College's students will not be permitted to take the Board's licensure examination.

The Bureau submitted two declarations in support of its Decision, which cited the following factors as grounds for the Decision:

- 1 • The College collects money from students for education programs but does not offer
2 instruction in the programs.
- 3 • The College falsified “Proof of Training” records submitted to the Board that certified
4 that students completed education programs when they did not.
- 5 • On April 16, 2018, a College faculty member admitted to a Bureau investigator that the
6 College collects up to \$6,000 from students and falsifies student records and timecards to
7 show that students attended the College the preceding 10 months.
- 8 • On January 29, 2018, the College certified in records submitted to the Board that a
9 student completed 1,600 hours in the school’s cosmetology program, but on April 20,
10 2018, the student admitted to a Bureau investigator that the student did not attend the full
11 program and attended only two or three weeks of the program.
- 12 • During an on-site investigation on March 28 and 29, 2018, a Bureau investigator found
13 that the College lacked student attendance, did not follow its class schedule, did not
14 provide lecture or direct instruction, and did not document the students’ performance of
15 operations such as the number of perms, hair coloring, or haircuts.
- 16 • The College falsely certified between June 2016 and March 2018 that three students
17 completed educational programs when their student files lacked supporting
18 documentation to substantiate completion of the programs. In particular, the timecards in
19 the files did not contain the students’ names and had only a time/date stamp.
- 20 • The College submitted 19 student examination application records to the Board for
21 students that were not identified as graduates of the College on the College’s roster of
22 graduated students.
- 23 • On January 25, 2018, a Board investigator visited the College and observed multiple
24 violations of the Board’s laws.
- 25 • On March 16, 2018, a student told a Bureau investigator that the student paid the College
26 but never attended classes. Nonetheless, the College offered the student a certificate
27 showing completion of 160 hours.
- 28 • The College’s students and prospective students will lose money because the Board will
not process their examination applications out of concerns about the College not
providing the requisite training to students.

III. THE COLLEGE’S OPPORTUNITY TO BE HEARD

At the timely request of the College, a hearing in this matter was held on July 13, 2018. The Bureau and Board declarants appeared at the hearing and offered testimony in support of the

1 Bureau's Decision. The College's Operating Manager also appeared and offered testimony in
2 the matter.

3 The College presented no evidence to directly refute the Bureau's claim that on April 16,
4 2018, a College faculty member admitted to a Bureau investigator that the College collects up to
5 \$6,000 from students and falsifies student records and timecards to show that students attended
6 the College's programs. Ms. Lee testified generally that she had no knowledge of such practices
7 occurring at the College, and that she did not know which faculty member made the statement to
8 the Bureau.
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10 The College also did not directly refute the Bureau's claim that on April 20, 2018, a student
11 admitted to a Bureau investigator that the student did not attend the College's full cosmetology
12 program, and only attended approximately two to three weeks of the program, even though the
13 College certified to the Board on January 29, 2018, that the student completed the full 1,600-
14 hour program. Ms. Lee testified that the College typically submits "Proof of Training" records
15 to the Board after students complete their education, but she had no direct knowledge about the
16 particular student record at issue, because the student's information was not available from the
17 records. The College questioned the reliability of the student's statement to the Bureau, in that
18 both the College and the student certified under penalty of perjury to completing the full 1,600-
19 hour program. However, the student's admission to the Bureau against her own self interest is
20 sufficiently reliable.

21 With respect to student attendance during the March 28 and 29 investigation, the Bureau
22 stated that there were two students present on March 28, but one was uncomfortable and left. On
23 March 29, three students were present. This observation, however, is consistent with the small
24 size of the College, and the Bureau did not offer evidence about the number of students that
25 should have been present on each day.

26 Regarding the College's adherence to its educational program schedule, the Bureau observed
27 that the schedule was not followed. Subjects that should have been taught were not, and the only
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1 instructor on hand during the investigation was hired to teach about hair cutting, even though
2 other subjects were scheduled. Ms. Lee indicated that the College typically holds classes each
3 day, and that the reason regularly-scheduled classes did not occur was due to the disruption
4 caused by the Bureau's presence at the College. The Bureau's observations, however, were
5 consistent with the Board's observations on January 25, 2018, when the Board's investigator
6 observed that the College did not teach the approved curriculum, but instead taught students
7 strictly about passing the licensing examination.
8

9 Neither the Bureau nor the Board observed the College providing direct instruction to
10 students during the site visits. Regarding the documentation of students' performance, the
11 students the Bureau interviewed during the investigation noted that instructors do not document
12 the operations they perform. Similarly, the Board testified that the College's instructors and
13 students noted that student hours were not tracked.

14 In a similar vein, during the Board's January 25, 2018, site visit, the Board observed 15
15 student timecards, which were used to record student attendance at the College. The cards
16 reflected some student attendance, but they lacked identifying student names, making it
17 impossible to associate the cards with students and verify their attendance. College instructors
18 also told the Board that students did not accurately complete timecards, insofar as they did not
19 properly identify when they were at lunch. And during the Bureau's March 28 and 29
20 investigation, the Bureau noted that there were 27 timecards present, but only four students
21 present during that time.

22 Ms. Lee indicated that she does not check student timecards in the classroom, and did not
23 have knowledge about why timecards lacked student names. She explained that there were more
24 timecards than students because the College asked graduated students practicing for the
25 examination to use the timecards when they practice.

26 The College also noted that at the Board's January 25, 2018, and the Board and Bureau's
27 joint March 28 and 29, 2018, site visits, separate Board and Bureau compliance inspections took
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1 place, in addition to the investigations. The College pointed out that the Board's compliance
2 inspection identified only minor violations of the Board's laws, and that the Bureau's April 24,
3 2018, letter to the College regarding the compliance inspection identified no minor or material
4 violations of the Bureau's laws. The Board, however, persuasively explained that its compliance
5 inspection was limited to health and safety issues, such as the proper maintenance of nail files,
6 indicating that it did not involve the more serious allegations in the investigation. Likewise, the
7 Bureau noted that its letter was issued without the investigator's input, that a corrected letter was
8 issued shortly thereafter, and that the Bureau considered the College to have engaged in material
9 violations of the Bureau's laws.
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11 With respect to the Bureau's finding that the College falsely certified between June 2016 and
12 March 2018 that three students completed their educational programs, the Bureau noted that it
13 randomly-selected 27 student files to review, and that three of them related to graduated students.
14 In the Bureau's experience, the College's files were unlike the files of other cosmetology
15 schools. They did not contain transcripts evidencing the completion of educational programs,
16 and they contained timecards with date and time stamps recorded on them, but with no other
17 descriptive information, including the name of the student or the classes attended. The timecards
18 were, however, located within three named student files, and the Bureau acknowledged the
19 possibility that the student names may have been inadvertently omitted from the cards. But since
20 the cards are used to substantiate students' daily and hourly attendance at the College throughout
21 the entire educational program, the Bureau considered it unlikely that the absence of the names
22 was a mere inadvertence, or that the cards could possibly capture accurately a student's
23 attendance at the school when no name was associated with the card. The College did not
24 explain why the cards would lack student names.
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26 Regarding the Bureau's claim that the College submitted examination application materials
27 to the Board for 19 students that were not graduates of the College, the Bureau noted that the
28 College supplied it with the College's graduate student roster, which was a list of the school's

1 students that previously graduated from the College. The Bureau compared the list of 71
2 students to the Board's list of the College's examination applicants, and 19 applicants for
3 examination were not identified as the College's graduates. The Bureau reviewed one of the 19
4 student files. There was no executed enrollment agreement in the file, and no transcripts to
5 demonstrate the student's academic progress, but the file contained timecards reflecting
6 completion of 405 hours, and a proof of training record certifying that the student completed a
7 400-hour nail care program. The College, however, is approved only to offer a 600-hour nail
8 care program.
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10 The College did not adequately explain the 19-student discrepancy. The College attributed
11 the discrepancy to a misunderstanding about how to complete the graduate student roster forms.
12 The College stated that prior to the March 29, 2018, site visit, the College's practice was to
13 identify current graduates on the graduate student roster forms. The College indicated, however,
14 that it received instructions from Bureau staff during the site visit that it should identify
15 prospective graduates on the forms. Even if true, the College's misapprehension does not
16 explain the discrepancy. Before the site visit, if the College identified current graduates on the
17 forms, then the 19 graduates should have been listed, but they were not. Moreover, the Board
18 noted at the hearing that the site visit instructions involved a different set of forms, and not the
19 graduate student roster forms.
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21 With respect to the student who, on March 16, 2018, told the Bureau that the College offered
22 a certificate showing completion of 160 hours, the Bureau stated that the student complained to
23 the Bureau that she paid to enroll in the College's cosmetology program but never attended
24 classes. The student told the Bureau that she asked the College for a refund, but the school
25 would not provide it. Instead, the student reported that the College offered the student a
26 certificate for completing 160 hours.
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28 The College persuasively refuted the student's characterization of events. According to the
College, the student's payment included the application fee, text books, tools, and mannequins,

1 and the student received four months of training. Thereafter, the student did not attend school,
2 and she completed a “drop form” to drop the course. Months later, the student asked for a
3 refund, but the school refused. The student sued the school in small claims court and obtained a
4 \$500 refund. The College disputed that anyone offered the student a certificate in lieu of a
5 refund, or offered to certify hours for the student that were not actually completed.
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7 There was no dispute, however, regarding the Bureau’s claim that students and prospective
8 students would lose money because the Board will not process their examination applications.
9 The College testified about potential harm to the College’s graduates that are currently waiting to
10 take the Board’s licensing examination, but testimony related to the College’s graduates and
11 former students is not directly related to these proceedings, which involve the Bureau’s decision
12 to order the College to cease enrolling new students and collecting tuition and fees.

13 LEGAL STANDARDS

14 I. EMERGENCY DECISIONS

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

22 The Bureau may order temporary, interim relief in the form of the following:

- 23 (1) Cease or limit enrollment of new students;
- 24 (2) Cease part or all instruction for some or all programs;
- 25 (3) Cease collection of tuition or fees for some or all programs; and
- 26 (4) Suspend approval or provisional approval to operate or offer any degree
programs.

27 (Cal. Code. Regs., tit. 5, § 75150, subd. (c).)

1 Institutions subject to an emergency decision may request an opportunity to be heard before
2 the Director of the Department of Consumer Affairs or his designee. (Cal. Code. Regs., tit. 5, §
3 75150, subd. (f).)

4 **II. APPROVAL AND MINIMUM OPERATING STANDARDS**

5 To operate in California, private postsecondary educational institutions must be approved by
6 the Bureau. (Ed. Code, §§ 94817 & 94886.) Institutions that offer educational programs in a
7 profession or occupation that requires licensure in California must also be approved by the
8 applicable state licensing entity, in this case, the Board. (Ed. Code, § 94899; Bus. & Prof. Code,
9 § 7362; Cal. Code Regs., tit. 16, § 941.)

10 The Bureau adopted minimum operating standards for approved institutions, and an
11 institution may only operate if it presents sufficient evidence to the Bureau that it can satisfy the
12 standards. (Ed. Code, §§ 94885, 94887 & 94891; Cal. Code Regs., tit. 5, § 71700.)

13 Minimum operating standards are, in part, designed to ensure that the content of each
14 educational program can achieve its stated objective, that upon satisfactory completion of the
15 approved program, the institution gives students a document signifying the degree or diploma
16 awarded, and that adequate records and transcripts are maintained. (Ed. Code, § 94885, subd.
17 (a).)

18 Institutions must adopt objectives for each educational program that describe the kind of
19 education offered, for whom the instruction is intended and the expected outcomes for graduates.
20 (Cal. Code Regs., tit. 5, § 71705.) The educational objective of the College's cosmetology,
21 esthetics and nail care courses is for students to complete the approved training necessary to take
22 the Board's licensing examinations. (See Ed. Code, § 94899.)

23 Under the Bureau's minimum standards, educational programs must be comprised of the
24 subject areas necessary for a student to achieve the program's objectives. (Cal. Code Regs., tit.
25 5, § 71710, subd. (a).) The standards also require instruction to be the central focus of the
26 resources and services of the institution, and require direct instruction, where students and
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1 faculty are physically present in the same location during the instruction. (Cal. Code Regs., tit.
2 5, § 71715.)

3 **III. BOARD LICENSURE REQUIREMENTS**

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

12
13 Cosmetology courses must include at least 1,600 hours of practical training and technical
14 instruction in the practice of cosmetology. (Bus. & Prof. Code, § 7362.5; Cal. Code Regs., tit.
15 16, § 950.2.) Approved skin care courses consist of at least 600 hours of practical training and
16 technical instruction, and approved nail care courses consist of at least 400 hours of practical
17 training and technical instruction. (Bus. & Prof. Code, §§ 7364 & 7365; Cal. Code Regs., tit. 16,
18 §§ 950.3 & 950.4.)

19 **DISCUSSION**

20 An emergency decision is proper if there is an immediate danger to the public health, safety,
21 or welfare that requires immediate action to protect students, prevent misrepresentation to the
22 public, or prevent the loss of student money. Circumstances that warrant the Bureau’s
23 intervention include a substantial failure to meet institutional minimum operating standards.
24 (Cal. Code. Regs., tit. 5, § 75150, subd. (b).)

25 Here, the evidence demonstrates the College’s substantial failure to meet minimum operating
26 standards with respect to its cosmetology, esthetics, and nail care programs. The purpose of the
27 programs is to provide students with the approved education necessary to qualify for the
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1 licensure examination and ultimately achieve licensure. (See Ed. Code, § 94899.) The Bureau's
2 evidence that the school collected money and submitted inaccurate student records to the Board,
3 did not adhere to its instruction schedule, and failed to ensure an accurate and verifiable record
4 of student instruction and performance, sufficiently demonstrates that the College's programs do
5 not consist of the areas needed to qualify for the licensure examinations, and that instruction is
6 not the central focus of the school's resources and services.

7
8 The harm to the College's students and the public under these circumstances is evident. If, as
9 the Bureau contends and as the evidence indicates, the College's students do not complete the
10 educational hours necessary to qualify for the licensing examination, the College's students will
11 not receive the education they pay for, and the public may be harmed if unqualified students
12 obtain licensure. The Bureau's immediate action is also necessary to protect students and
13 prevent the loss of their money, in that the purpose of the programs is to prepare students for the
14 Board's licensure examinations, but there is a substantial risk that the Board will not process the
15 College's examination applications, given its concerns about the College.

16 The Bureau's Decision is appropriate, but the supporting evidence is focused on the
17 College's cosmetology, esthetics and nail care programs. The Decision, however, broadly
18 directs the College to cease enrollment and cease collecting tuition in all of its programs,
19 presumably including the College's approved massage therapy programs and continuing
20 education seminars. There is no evidence to support the Bureau's Decision as to these programs.

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DECISION

The Bureau's Emergency Decision and order is MODIFIED as follows, and otherwise

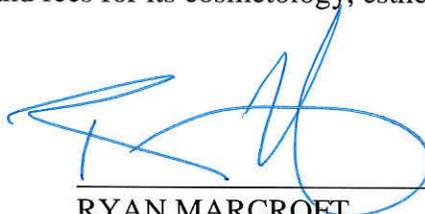
AFFIRMED:

Queenston College of America is ordered to:

- (1) Cease enrollment of any new students in its cosmetology, esthetics, and nail care programs; and
- (2) Cease the collection of tuition and fees for its cosmetology, esthetics, and nail care programs.

DATED

July 16, 2018



RYAN MARCROFT
Deputy Director, Legal Affairs
Department of Consumer Affairs