

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 CARTER OTT
Deputy Attorney General
4 State Bar No. 221660
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2219
Facsimile: (510) 622-2270
7 E-mail: Carter.Ott@doj.ca.gov
Attorneys for Complainant

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

11
12 In the Matter of the Statement of Issues
Against:
13 **PRIME CAREER COLLEGE; MICHAEL**
14 **D. MORROW, 50% Owner; RAPHAEL C.**
15 **PASCUA, 50% Owner**
16 **Applicant for Renewal of Approval to**
Operate
17 Respondent.

Case No. 999720
STATEMENT OF ISSUES

18
19 Complainant alleges:

20 PARTIES

- 21 1. Joanne Wenzel (Complainant) brings this Statement of Issues solely in her official
22 capacity as the Chief of the Bureau for Private Postsecondary Education, Department of
23 Consumer Affairs.
- 24 2. On or about March 7, 2012, the Bureau for Private Postsecondary Education (Bureau)
25 received an Application for Renewal of Approval to Operate an Institution Non-Accredited from
26 Prime Career College; Michael D. Morrow, 50% owner; and Raphael C. Pascua, 50% owner
27 (Respondent). On March 12, 2012, the Bureau issued Respondent a letter explaining the
28 deficiencies in its application. After the Bureau did not receive a response to this letter, it sent the

1 deficiency letter to Respondent again on June 13, 2012. On May 28, 2013, the Bureau received a
2 response to its deficiency letter from Respondent.

3 3. On April 5, 2013, the Bureau issued an abandonment letter to Respondent. On May
4 6, 2013, the Bureau received a response to its deficiency letter.

5 4. On June 13 and September 12, 2013, the Bureau issued Respondent letters explaining
6 the deficiencies in its application. On October 11, 2013, the Bureau received a response from
7 Respondent.

8 5. On November 23, 2013, the Bureau issued Respondent a letter explaining the
9 deficiencies in its application. On December 10, 2013, the Bureau received a response to this
10 letter.

11 6. On May 13, 2014, the Bureau sent Respondent a Notice of Denial of Application for
12 Renewal of Approval to Operate. On May 19, 2014, Respondent submitted to the Bureau a letter
13 requesting an administrative hearing.

14 JURISDICTION

15 7. This Statement of Issues is brought before the Director of the Department of
16 Consumer Affairs (Director) for the Bureau for Private Postsecondary Education, under the
17 authority of the following laws. All section references are to the Education Code unless
18 otherwise indicated.

19 STATUTORY PROVISIONS¹

20 8. Code section 94887 states:

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

26
27 ¹ The California Private Postsecondary Education Act of 2009 was recently amended, effective
28 January 1, 2015. See Senate Bill No. 1247. This Statement of Issues is based on the pre-
amendment version of the Act.

1 9. Code section 94891, subdivision (b), states:

2 “(b) To be granted a renewal of an approval to operate, the institution shall demonstrate its
3 continued capacity to meet the minimum operating standards.”

4 10. Code section 94897 states, in part:

5 “An institution shall not do any of the following:

6 ...

7 “(1) Use the terms ‘approval,’ ‘approved,’ ‘approval to operate,’ or ‘approved to operate’
8 without stating clearly and conspicuously that approval to operate means compliance with state
9 standards as set forth in this chapter. If the bureau has granted an institution approval to operate,
10 the institution may indicate that the institution is ‘licensed’ or ‘licensed to operate,’ but may not
11 state or imply either of the following:

12 “(1) The institution or its educational programs are endorsed or recommended by the state
13 or by the bureau.

14 “(2) The approval to operate indicates that the institution exceeds minimum state standards
15 as set forth in this chapter.

16 ...”

17 11. Code section 94909, subdivision (a), states, in part:

18 “(a) Prior to enrollment, an institution shall provide a prospective student, either in writing
19 or electronically, with a school catalog containing, at a minimum, all of the following:

20 ...

21 “(2) Except as specified in Article 2 (commencing with Section 94802), a statement that the
22 institution is a private institution and that it is approved to operate by the bureau.

23 ...

24 “(7) Information regarding the faculty and their qualifications.

25 “(8) A detailed description of institutional policies in the following areas:

26 “(A) Admissions policies, including the institution's policies regarding the acceptance of
27 credits earned at other institutions or through challenge examinations and achievement tests,
28 admissions requirements for ability-to-benefit students, and a list describing any transfer or

1 articulation agreements between the institution and any other college or university that provides
2 for the transfer of credits earned in the program of instruction. If the institution has not entered
3 into an articulation or transfer agreement with any other college or university, the institution shall
4 disclose that fact.

5 . . .

6 “(C) Probation and dismissal policies.

7 . . .

8 “(13) If the institution provides placement services, a description of the nature and extent of
9 the placement services.

10 “(15) The following statement:

11 ““NOTICE CONCERNING TRANSFERABILITY OF CREDITS AND CREDENTIALS
12 EARNED AT OUR INSTITUTION

13 ““The transferability of credits you earn at (name of institution) is at the complete discretion
14 of an institution to which you may seek to transfer. Acceptance of the (degree, diploma, or
15 certificate) you earn in (name of educational program) is also at the complete discretion of the
16 institution to which you may seek to transfer. If the (credits or degree, diploma, or certificate) that
17 you earn at this institution are not accepted at the institution to which you seek to transfer, you
18 may be required to repeat some or all of your coursework at that institution. For this reason you
19 should make certain that your attendance at this institution will meet your educational goals. This
20 may include contacting an institution to which you may seek to transfer after attending (name of
21 institution) to determine if your (credits or degree, diploma or certificate) will transfer.’

22 . . .”

23 12. Code section 94911 states, in part:

24 “An enrollment agreement shall include, at a minimum, all of the following:

25 . . .

26 “(b) A schedule of total charges, including a list of any charges that are nonrefundable and
27 the student's obligations to the Student Tuition Recovery Fund, clearly identified as
28 nonrefundable charges.

1 “(c) In underlined capital letters on the same page of the enrollment agreement in which the
2 student's signature is required, the total charges for the current period of attendance, the estimated
3 total charges for the entire educational program, and the total charges the student is obligated to
4 pay upon enrollment.

5 ...

6 “(e)(1) A disclosure with a clear and conspicuous caption, ‘STUDENT’S RIGHT TO
7 CANCEL,’ under which it is explained that the student has the right to cancel the enrollment
8 agreement and obtain a refund of charges paid through attendance at the first class session, or the
9 seventh day after enrollment, whichever is later.

10 “(2) The disclosure shall contain the institution's refund policy and a statement that, if the
11 student has received federal student financial aid funds, the student is entitled to a refund of
12 moneys not paid from federal student financial aid program funds.

13 “(3) The text shall also include a description of the procedures that a student is required to
14 follow to cancel the enrollment agreement or withdraw from the institution and obtain a refund.

15 ...

16 “(h) The transferability disclosure that is required to be included in the school catalog, as
17 specified in paragraph (15) of subdivision (a) of Section 94909.

18 ”

19 13. Code section 94913, subdivision (a), states, in part:

20 “(a) An institution that maintains an Internet Web site shall provide on that Internet Web
21 site all of the following:

22 ...

23 “(2) A School Performance Fact Sheet for each educational program offered by the
24 institution.

25 ...

26 “(4) A link to the bureau’s Internet Web site.

27 ”

28 ////

1 REGULATORY PROVISIONS

2 14. California Code of Regulations, title 5, section 70000, subdivisions (q) and (r), state:

3 “(q) ‘Mission’ means an institution’s stated educational reasons to exist. A mission
4 statement contains all of the following characteristics:

5 “(1) The mission includes the institution's broad expectations concerning the education that
6 students will receive, including the acquisition of the body of knowledge presented in the
7 educational program, the development of intellectual, analytical, and critical abilities, and the
8 fostering of values such as a commitment to pursue lifelong learning; and

9 “(2) The mission relates to the educational expectations of the institution's students, faculty
10 and community that the institution serves.

11 “(r) ‘Objectives’ are the goals and methods by which the institution fulfills its mission and
12 transforms it into measurable student learning outcomes for each educational program.”

13 15. California Code of Regulations, title 5, section 71700 states:

14 “The Bureau may request that an institution document compliance with the standards set
15 forth in the Act and this Division to obtain and maintain an approval to operate.”

16 16. California Code of Regulations, title 5, section 71475, subdivision (w), states, in part:

17 “(w)(1) The application shall contain a statement that the institution has and can maintain
18 the financial resources required pursuant to section 71745.

19 “(2) The institution shall submit current, audited financial statements at the time it applies
20 for approval to operate. Each set of financial statements shall comply with Section 74115 of this
21 chapter.”

22 17. California Code of Regulations, title 5, section 71745, subdivision (a), states, in part:

23 “(a) The institution shall document that it has at all times sufficient assets and financial
24 resources to do all of the following:

25 “(1) Provide all of the educational programs that the institution represented it would
26 provide.

27 “(2) Ensure that all students admitted to its educational programs have a reasonable
28 opportunity to complete the programs and obtain their degrees or diplomas.

1 “(3) Maintain the minimum standards required by the Act and this chapter.

2 “(4) Pay timely refunds as required by Article 13 of the Act.

3 “(5) Pay all operating expenses due within 30 days.

4 “(6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or greater at the
5 end of the most recent fiscal year when using generally accepted accounting principles, or for an
6 institution participating in Title IV of the federal Higher Education Act of 1965, meet the
7 composite score requirements of the U.S. Department of Education. For the purposes of this
8 section, current assets does not include: intangible assets, including goodwill, going concern
9 value, organization expense, startup costs, long-term prepayment of deferred charges, and non-
10 returnable deposits, or state or federal grant or loan funds that are not the property of the
11 institution but are held for future disbursement for the benefit of students. Unearned tuition shall
12 be accounted for in accordance with general accepted accounting principles.”

13 18. California Code of Regulations, title 5, section 71800, subdivision (e), states, in part:

14 “In addition to the requirements of section 94911 of the Code, an institution shall provide to
15 each student an enrollment agreement that contains at the least the following information:

16 ...

17 “(e) Itemization of all institutional charges and fees including, as applicable:

18 ...

19 (5) Textbooks, or other learning media;

20”

21 19. California Code of Regulations, title 5, section 71810, subdivision (b), states, in part:

22 “(b) The catalog shall contain the information prescribed by Section 94909 of the Code and
23 all of the following:

24 ...

25 “(2) A statement of the institution's missions and purposes and the objectives underlying
26 each of its educational programs;

27 ////

28 ////

1 “(3) If the institution admits students from other countries, whether visa services are
2 provided or whether the institution will vouch for student status, and any associated charges;

3 ...

4 “(7) The institution’s policies and procedures for the award of credit for prior experiential
5 learning, including assessment policies and procedures, provisions for appeal, and all charges that
6 a student may be required to pay;

7 ...

8 “(9) A description of the facilities and of the types of equipment and materials that will be
9 used for instruction;

10 ...

11 “(14) Policies on student rights, including the procedure for addressing student grievances .
12 ...”

13 20. California Code of Regulations, title 5, section 74112 states, in part:

14 “(a) Format. The format for the Performance Fact Sheet shall be in at least 12 pt. type, in
15 an easily readable font, with 1.15 line spacing. The Performance Fact Sheet shall contain all and
16 only the information required or specifically permitted by section 94910 of the Code or this
17 chapter.

18 “(b) In addition to the definitions contained in section 94928 of the Code:

19 “(1) ‘Number of Students Who Began Program’ means the number of students who began a
20 program who are scheduled to complete the program within 100% of the published program
21 length within the reporting calendar year, and includes all the students who remained enrolled
22 after their cancellation period.

23 “(2) ‘Number of Graduates’ means the number of students who completed the program
24 within 100% of the published program length within the reporting calendar year.

25 “(3) ‘Graduates Employed in the Field’ means those graduates who meet the definition of
26 section 94928(e) of the Code, who have reported their employment to the institution.

27 “(c) Reporting periods:

28 ...

1 a. Respondent's schedule of charges on the Vocational Nurse/Hemodialysis
2 Program Enrollment Agreement does not include the fees for textbooks students must purchase,
3 as required by Code section 94911, subdivision (b) and California Code of Regulations, title 5,
4 section 71800, subdivision (e)(5).

5 b. Respondent's schedule of charges on the Nurse Assistant enrollment agreement
6 does not include the fees for textbooks students must purchase, as required by Code section
7 94911, subdivision (b).

8 c. Respondent's Vocational Nurse/Hemodialysis enrollment agreement includes a
9 fee schedule for the Vocational Nursing program but mistakenly indicates that the fees are for the
10 Nursing Assistant Program. Accordingly, this agreement does not comply with Code section
11 94911, subdivision (b).

12 d. Respondent's Vocational Nurse/Hemodialysis Program Enrollment Agreement,
13 at pages 7 and 10, lists different and inconsistent total charges, and therefore does not comply
14 with Code section 94911, subdivision (c).

15 e. Respondent's statement, on page 3 of the Nurse Assistant enrollment
16 agreement, that indicates that a student has a right to a refund if the student cancels prior to or on
17 the first day of class is incorrect and fails to comply with Code section 94911, subdivisions (e)(1)
18 and (e)(2).

19 f. Respondent's Vocational Nurse/Hemodialysis Program Enrollment Agreement
20 states that Respondent's refund policy includes that a pro rata refund is based on the number of
21 hours completed in relation to the total course hours as mandated by the State of California. This
22 policy does not comply with Code section 94911, subdivision (e)(2).

23 g. Respondent's Vocational Nurse/Hemodialysis Program Enrollment Agreement,
24 at pages 2 and 5, offers two different and inconsistent procedures for cancelling the enrollment
25 agreement or withdrawing from the institution and obtaining a refund. Accordingly, this
26 agreement does not comply with Code section 94911, subdivision (e)(3).

27 h. In the transferability disclosure, Respondent's Vocational Nurse/Hemodialysis
28 Program Enrollment Agreement does not reference the specific credential type ("credits or

1 degree, diploma, or certificate”) to be awarded to students upon program completion, as required
2 by Code sections 94911, subdivision (h), and 94909, subdivision (a)(15).

3 THIRD CAUSE FOR DENIAL OF APPLICATION

4 (Financial Resources and Statements)

5 (Educ. Code §§ 94887 and 94891, subd. (b); Cal. Code Regs., title 5, §§ 71475, subs. (w)(1) and
6 (w)(2); 71745, subs. (a)(1)-(a)(6); and 74115, subd. (b)(1))

7 24. Respondent’s application is subject to denial because Respondent has not submitted
8 financial statements that include a balance sheet, income statement and cash flow statement,
9 conducted and prepared in accordance with the generally accepted accounting principles
10 established by the American Institute of Certified Public Accountants. In addition, the financial
11 statements offered by Respondent have not been prepared by an independent certified public
12 accountant. (Educ. Code §§ 94887 and 94891, subd. (b); Cal. Code Regs., title 5, §§ 71475,
13 subs. (w)(1) and (w)(2); 71745, subs. (a)(1)-(a)(6); and 74115, subd. (b)(1)).

14 FOURTH CAUSE FOR DENIAL OF APPLICATION

15 (Catalog)

16 (Educ. Code §§ 94887; 94891, subd. (b); 94897, subd. (l); 94909, subd. (a)(2), (a)(7), (a)(8)(A),
17 (a)(8)(C), (a)(13), and (a)(15); Cal. Code Regs., title 5, § 70000, subs. (q) and (r); 71810, subd.
18 (b)(2), (b)(3), (b)(7), (b)(9), and (b)(14))

19 25. Respondent’s application is subject to denial because it fails to include a proposed
20 catalog that complies with applicable laws and regulations. Respondent has therefore failed to
21 provide evidence that it has the capacity to meet the minimum operating standards. (Educ. Code
22 §§ 94887 and 94891, subd. (b)). In particular:

23 a. The meaning of “approval,” as required by Code section 94897, subdivision (l),
24 is not included in Respondent’s proposed catalog. (Educ. Code §§ 94909, subd. (a)(2), and
25 94897, sub. (l)).

26 b. Respondent’s proposed catalog does not include a statement of the institution’s
27 missions and objectives, as required by California Code of Regulations, title 5, sections 71810,
28 subdivision (b)(2), and 70000, subdivisions (q) and (r). Specifically, as stated in Respondent’s
proposed catalog, the institution’s mission does not include the educational expectations of the
institution’s faculty and the community it serves. In addition, Respondent’s proposed catalog

1 does not include objectives that demonstrate the methods by which the institution fulfills its
2 mission.

3 c. Respondent's proposed catalog does not include information regarding the
4 facilities and equipment that will be used for instruction, as required by California Code of
5 Regulations, title 5, section 71810, subdivision (b)(9).

6 d. Respondent's proposed catalog does not include insertion of the specific
7 credential type awarded to students, within the "Notice Concerning Transferability of Credits and
8 Credentials Earned at our Institution," as required by Code section 94909, subdivision (a)(15).

9 e. Respondent's proposed catalog does not contain the description required by
10 Code section 94909, subdivision (a)(8)(A).

11 f. Respondent's proposed catalog does not contain the information regarding
12 probation policies required by Code section 94909, subdivision (a)(8)(C).

13 g. Respondent's proposed catalog does not include its policies on student's rights,
14 as required by California Code of Regulations, title 5, section 71810, subdivision (b)(14). In
15 addition, the grievance procedure stated in Respondent's proposed catalog offers contact
16 information for the Board of Vocational Nursing and Psychiatric Technicians, rather than the
17 Bureau for Private Postsecondary Education. Furthermore, the proposed catalog indicates that the
18 telephone number included is a toll-free number, but it is the Bureau's local (not toll-free)
19 number. (Cal. Code Regs., title 5, § 71810, subd. (b)(14)).

20 h. Respondent's proposed catalog does not contain the information required by
21 California Code of Regulations, title 5, section 71810, subdivision (b)(7).

22 i. Respondent's proposed catalog does not contain the information required by
23 California Code of Regulations, title 5, section 71810, subdivision (b)(3).

24 ////

25 ////

26 ////

27 ////

28 ////


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of the Department of Consumer Affairs issue a decision:

1. Denying Prime Career College; Michael D. Morrow, 50% owner; and Raphael C. Pascua, 50% owner an Application for Renewal of Approval to Operate an Institution Non-Accredited; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 4-8-15



JOANNE WENZEL
Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

SF2014902599