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

10 In the Matter of the Statement of Issues
11 Against:

Case No. 999860

12 **CRESCENT COLLEGE, INC.**
13 **ANGEL GUTIERREZ, Owner**

STATEMENT OF ISSUES

14 **Renewal of Approval to Operate and Offer**
15 **Educational Programs for Non-Accredited**
16 **Institution Applicant**

Respondent.

17 Complainant alleges:

18 PARTIES

19 1. Joanne Wenzel (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Chief of the Bureau for Private Postsecondary Education, Department of
21 Consumer Affairs.

22 2. On or about June 27, 2012, the Bureau for Private Postsecondary Education (Bureau)
23 received an application for a Renewal of Approval to Operate and Offer Educational Programs
24 for Non-Accredited Institution(s) from Crescent College, Inc.; Angel Gutierrez (Respondent). On
25 or about June 20, 2012, Angel Gutierrez certified under penalty of perjury to the truthfulness of
26 all statements, answers, and representations in the application. The Bureau denied the application
27 on June 26, 2014.
28

JURISDICTION

3. Education Code section 94891¹ states:

“(a) The bureau shall, by January 1, 2011, adopt by regulation the process and procedures whereby an institution may obtain a renewal of an approval to operate.

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

STATUTORY PROVISIONS

4. Business and Professions Code section 477 as used in this division provides in pertinent part:

(a) “Board” includes “bureau”

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

5. Education Code section 94885 states:

“The bureau shall, by January 1, 2011, adopt by regulation minimum operating standards for an institution that shall reasonably ensure that all of the following occur:

(a) The content of each educational program can achieve its stated objective.

(b) The institution maintains specific written standards for student admissions for each educational program and those standards are related to the particular educational program.

(c) The facilities, instructional equipment, and materials are sufficient to enable students to achieve the educational program's goals.

(d) The institution maintains a withdrawal policy and provides refunds.

(e) The directors, administrators, and faculty are properly qualified.

(f) The institution is financially sound and capable of fulfilling its commitments to students.

(g) That, upon satisfactory completion of an educational program, the institution gives students a document signifying the degree or diploma awarded.

¹ California Private Postsecondary Education Act of 2009, Ed. Code §§ 94800 et seq.

1 (h) Adequate records and standard transcripts are maintained and are available to
2 students.

3 (i) The institution is maintained and operated in compliance with this chapter and all
4 other applicable ordinances and laws.”

5 6. Education Code section 94886 states:

6 “Except as exempted in Article 4 (commencing with Section 94874) or in compliance with
7 the transition provisions in Article 2 (commencing with Section 94802), a person shall not open,
8 conduct, or do business as a private postsecondary educational institution in this state without
9 obtaining an approval to operate under this chapter.”

10 7. Education Code section 94887:

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

16 8. Education Code section 94930.5 states:

17 “An institution shall remit to the bureau for deposit in the Private Postsecondary Education
18 Administration Fund the following fees, in accordance with the following schedule:

19 . . .

20 (d)(1) In addition to any fees paid to the bureau pursuant to subdivisions (a) to (c), inclusive,
21 each institution that is approved to operate pursuant to this chapter shall remit both of the
22 following:

23 (A) An annual institutional fee, in an amount equal to three-quarters of 1 percent of the
24 institution's annual revenues derived from students in California, but not exceeding a total of
25 twenty-five thousand dollars (\$25,000) annually.

26 (B) An annual branch fee of one thousand dollars (\$1,000) for each branch or campus of
27 the institution operating in California.

28

1 (2) The amount of the annual fees pursuant to paragraph (1) shall be proportional to the
2 bureau's cost of regulating the institution under this chapter."

3 11. Education Code section 94931, states:

4 "(a) A fee that is not paid on or before the 30th calendar day after the due date for the
5 payment of the fee shall be subject to a 25 percent late payment penalty fee.

6 (b) A fee that is not paid on or before the 90th calendar day after the due date for
7 payment of the fee shall be subject to a 35 percent late payment penalty fee."

8 9. Education Code section 94934 states:

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

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

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

15 (3) The degree levels and diplomas offered.

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

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

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

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

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

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

25 (b) The bureau, by January 1, 2011, shall prescribe the annual report's format and method
26 of delivery."

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REGULATORY PROVISIONS

10. California Code of Regulations, title 5, division 7.5, section 71700 states:

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

11. California Code of Regulations, title 5, division 7.5, section 71475 states:

“(a) Unless renewed, an approval to operate shall expire at 12 midnight on the last day of the institution's term of approval to operate as granted pursuant to section 94802 or section 94889 of the Code.

(b) An institution seeking to renew its Approval to Operate pursuant to section 94891 of the Code shall, prior to its expiration, complete and submit to the Bureau the ‘Application for Renewal of Approval to Operate and Offer Educations Programs for Non-Accredited Institutions,’ Form Application 94891 (rev. 2/10).

(c) The application for renewal of approval to operate and offer educational programs for non-accredited institutions shall include all of the following:

(1) The name, institution/school code and website address of the institution.

(2) The physical address of the institution's primary administrative location in California.

(3) The mailing address, identified either by physical address or by post office box number, telephone number and fax number of the institution.

(4) The physical address, phone number and fax number of each campus and branch at which the educational programs will be offered, including the identification of the institution's main location and branch locations.

(5) The name, address, email address, telephone number, and fax number of an individual who will function as the institution's contact person for the purposes of the application.

(6) The form of business organization of the institution (e.g., sole proprietorship, general or limited partnership, for-profit corporation, nonprofit corporation, or Limited Liability Corporation). If the institution is incorporated, the institution shall also identify the state within which the institution is incorporated and the date of incorporation, and provide copies of the articles of incorporation and bylaws.

1 (7) The name, title, address, email address, telephone number, nature of interest and
2 percentage of ownership of each person, as defined in section 94855 of the Code, who owns or
3 controls 25% or more of the stock or an interest in the institution and, to the extent applicable,
4 each general partner, officer, corporate director, member of the board of directors, and any other
5 person who exercises substantial control over the institution's management or policies. For the
6 purpose of this paragraph, a person exercises "substantial control over the institution's
7 management or policies" if the person has the authority to cause the institution to expend money
8 or incur debt in the amount of five thousand dollars (\$5,000) or more in any year.

9 (A) For each address required, the institution shall provide a physical home address, and
10 may request that the address, email address, and telephone number, of each person described in
11 paragraph (7) be maintained as personal information.

12 (B) The federal employer identification number for partnerships or the social security
13 number for individual owners identified in the application pursuant to section 71130(a)(1).

14 (d) In addition to the form required in (b), the institution shall submit all information
15 required by section 71100(b), and the appropriate renewal fee as provided in Sections
16 94930.5(b)(1) and 94930.5(b)(2) of the Code, as applicable, to the Bureau. Except for the
17 financial statements required by subdivision (e) of this section and the statement required in
18 subdivision (f) of this section, if the information required in order to renew its approval to operate
19 is substantially similar to the information submitted by the institution in its last renewal
20 application, or initial application if it is the first renewal, the institution may state that there are no
21 substantial changes.

22 ...

23 (gg) The institution demonstrates its continued capacity to meet the minimum operating
24 standards by submitting the renewal application signed and dated, and each fact stated therein and
25 each attachment thereto declared to be true under penalty of perjury, as follows:

26 (l) Signatories:

27 (A) Each owner of the institution, or
28

1 (B) If the institution is incorporated, the chief executive officer of the corporation and
2 each person who owns or controls 25 percent or more of the stock or interest in the institution, or

3 (C) Each member of the governing body of a nonprofit corporation.

4 (2) The declaration shall be in the following form:

5 'I declare under penalty of perjury under the laws of the State of California that the
6 foregoing and all attachments are true and correct.

7 _____

8 (Date)

(Signature)

9 (hh) In addition to the fees required by subdivision (d) of this section:

10 (1) An application for renewal that is received by the Bureau more than 30 days after the
11 expiration of the approval to operate shall be submitted with the 25 percent late payment penalty
12 fee required by section 94931(a) of the Code.

13 (2) An application for renewal that is received by the Bureau more than 90 days after
14 the expiration of the approval to operate shall be submitted with the 35 percent late payment
15 penalty fee required by section 94931(b) of the Code."

16 12. California Code of Regulations, title 5, division 7.5, section 74000 states:

17 "(a) An institution shall pay the fees established by Article 17 of the Act. A failure to
18 include a fee with an application or other request renders the application or request incomplete.

19 (b) All fees lawfully collected are non-refundable.

20 (c) A fee that is not paid timely is subject to penalty as set forth in section 94931 of the
21 Code.

22 (d) The Bureau shall deny a renewal of an approval to operate if the institution fails to
23 submit at the time it files its application for renewal of an approval to operate: all unpaid fees;
24 penalty fees; penalties; orders for reimbursement of costs and expenses; and assessments for, and
25 reimbursement of all payments made to students from, the Student Tuition Recovery Fund.

26 (e) (1) If an institution fails to pay any fee and any penalty fees timely, the Bureau may
27 initiate proceedings to revoke the institution's approval to operate for failure to pay fees.

28

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

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

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

12 13. California Code of Regulations, title 5, division 7.5, section 74006 states:

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

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

17 (c) The annual institutional fee is based on the institution's annual revenue. For purposes
18 of this article, annual revenue is annual gross revenue.”

19 14. California Code of Regulations, title 5, division 7.5, section 74110 states:

20 “(a) The annual report required by section 94934 of the Code shall include the information
21 required by section 94934 for all educational programs offered in the prior calendar year.

22 (b) In addition to the information required by section 94934 provided under penalty of
23 perjury, the institution shall have annual financial statements prepared for the institution's prior
24 fiscal year and signed under penalty of perjury, and shall submit a hard copy under separate cover
25 of such statements in conjunction with its annual report. The form, content and mode of
26 preparation of financial statements shall comply with section 74115 of this Division. The Bureau
27 may request that the institution immediately make available for inspection to a representative of
28 the Bureau, these financial statements at the offices of the institution.

1 (c) An institution shall file its annual report by September 1st. The Bureau may extend
2 the period for filing if the institution demonstrates evidence of substantial need but in no case
3 longer than 60 days. The institution shall not change the date of its filing its annual report because
4 of a change in the fiscal year without the Bureau's approval.

5 (d) The annual report shall be electronically filed by submitting the information required
6 by section 94934 of the Code via the Bureau's website, electronically attaching, as directed, the
7 School Performance Fact Sheet and the school catalog. An institution without the capability to
8 submit the information electronically shall inform the Bureau not less than 45 days prior to the
9 date the information is required by subdivision (c), and receive direction on alternative means of
10 submission.”

11 CAUSES FOR DENIAL OF APPLICATION

12 (Incomplete Application)

13 15. Respondent's application is subject to denial under Business and Professions Code
14 sections 480, subdivision (a)(3)(A), Education Code section 94887 and California Code of
15 Regulations, title 5, division 7.5, section 71100, subdivisions (a) – (c), and 71475, in that on or
16 about June 27, 2012, Respondent submitted an incomplete application to the Bureau. Each
17 violation is a sole and separate cause for denial. The violations are as follows:

18 (a) Ownership:

19 1. Respondent failed to provide the correct ownership information and correct signatures
20 on the application, violating California Code of Regulations, title 5, division 7.5, section 71475,
21 subdivisions (c)(7), and (gg).

22 (b) Outstanding Fees:

23 1. Respondent failed to submit the 2011, 2012, 2013 and 2014 annual fee and
24 subsequent delinquent fees. Respondent failed to submit the 1st, 2nd, and 3rd quarter 2010
25 California Student Tuition Recovery Fund (STRF) Assessments, failed to submit the 4th quarter
26 2011 STRF Assessments, failed to submit the 1st, 2nd, 3rd and 4th quarter 2012 STRF Assessments,
27 failed to submit the 1st, 2nd, 3rd and 4th quarter 2013 STRF Assessments, and failed to submit the
28 1st quarter 2014 STRF Assessments. Respondent violated Education Code section 94930.5,

1 subdivision (d)(1)(A), and section 94931, and violated California Code of Regulations, title 5,
2 division 7.5, section 74000, subdivision (d), and section 74006, subdivision (b).

3 (c) Annual Reports:

4 1. Respondent failed to submit annual reports from 2011 and 2012, violating Education
5 Code sections 94934, and California Code of Regulations, title 5, division 7.5, section 74110.

6 PRAYER

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

- 10 1. Denying the application of Crescent College, Inc., Angel Gutierrez, Owner, for a
11 Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institution;
12 2. Taking such other and further action as deemed necessary and proper.

13 DATED: 11/11/14



14 JOANNE WENZEL
15 Chief
16 Bureau for Private Postsecondary Education
17 Department of Consumer Affairs
18 State of California
19 *Complainant*

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