

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

In the Matter of the First Amended
Accusation Against:

SOUTH BAYLO UNIVERSITY, d.b.a.
South Baylo University School of Oriental
Medicine,

Approval to Operate No. 3004561

Respondent.

Case No. 999965

OAH No. 2017110611

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Director of Consumer Affairs as the Decision in the above-entitled matter, except that, pursuant to Government Code section 11517, subdivision (c)(2)(C), the reference to section 94987 of the Education Code in Legal Conclusion 25 is revised to refer to section 94897 of that code.

SEP 26 2018

This Decision shall become effective on _____

IT IS SO ORDERED

August 23, 2018



RYAN MARCROFT
Deputy Director, Legal Affairs
Department of Consumer Affairs

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BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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Accusation Against:

SOUTH BAYLO UNIVERSITY, doing
business as SOUTH BAYLO
UNIVERSITY SCHOOL OF ORIENTAL
MEDICINE,

Approval to Operate No. 3004561,

Respondent.

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PROPOSED DECISION

Theresa M. Brehl, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 14, 15, 16, 19, 20, 21, 22, and 26, 2018, in San Diego, California.

Marichelle S. Tahimic, Deputy Attorney General, represented complainant Dr. Michael Marion, Jr., Chief, Bureau for Private Postsecondary Education, Department of Consumer Affairs, State of California.

John D. Robertson and Jean Kwon, JK Law Firm, and Jeff A. Mann, Law Offices of Jeff A. Mann, Attorneys at Law, represented respondent South Baylo University, doing business as South Baylo University of Oriental Medicine (SBU).

The matter was submitted on May 7, 2018.^{1,2}

SUMMARY

This case concerns whether SBU, a school that offered an undergraduate Bachelor of Science in Holistic Science (BSHS) degree program and continues to offer graduate level acupuncture and Oriental medicine degree programs, as well as some non-degree programs, should retain its approval to operate in California.

Complainant sought to revoke SBU's approval to operate based on allegations that SBU failed to comply with its own admissions and transfer credit policies; failed to maintain required student and institutional records; falsified and/or altered records, including changing information in students' records after they graduated; failed to provide students enrolled in its BSHS program with a BSHS enrollment agreement or to disclose that the BSHS program was a nonaccredited program; and failed to immediately provide the bureau's investigator access to records when requested to do so. Complainant's allegations arose from student records provided by former employees (who referred to themselves as "whistleblowers"), SBU, and the California Acupuncture Board (CAB), which licensed SBU graduates. Complainant also sought recovery of investigation and enforcement costs totaling \$44,235.

SBU portrayed itself as the victim of a takeover plot by the whistleblowers, who were disgruntled former SBU employees, and it asserted that this proceeding resulted from an incomplete investigation that relied solely on the whistleblowers' allegations. SBU conceded that none of the students in its BSHS program were ever provided enrollment agreements for that program, but it claimed that failure was merely a minor technicality because all the students who received BSHS degrees were provided and signed enrollment agreements for the Master of Science in Acupuncture and Oriental Medicine (MSAOM) program. SBU also blamed its institutional accreditor and an accreditation consultant for the manner in which SBU structured its BSHS program and granted BSHS degrees. With respect to problems with SBU's maintenance of other student records, SBU contended that its former registrar (who worked for SBU for approximately four years and was one of the whistleblowers) was incompetent, negligent, and careless, and made errors in the student records, of which SBU argued its "management" was not aware. SBU asserted that it was not responsible for its former registrar's negligence or for conduct that its management did not intend or direct. SBU also asserted that it should not be disciplined because no one was actually deceived or damaged by its conduct.

SBU sought dismissal of this matter in its entirety because it concerned what SBU characterized as "minor clerical errors," for which, according to SBU, complainant should have sought correction through a "notice to comply" pursuant to Education Code section 94935. Additionally, SBU argued that no discipline was necessary because it had remedied the problems; it no longer offered a BSHS degree; it recently hired a compliance officer; and if its approval to operate were revoked, its students, alumni, employees, and the patients who received acupuncture and Oriental medicine treatments at its university clinic, would all suffer.

Based on the evidence presented, cause exists to impose discipline. Contrary to SBU's arguments, this matter did not concern solely minor technical violations, and it was within complainant's discretion to pursue revocation of SBU's approval to operate. SBU may not escape discipline by blaming its employees, accreditor, and/or a consultant or claiming the violations were not intentional. SBU was responsible for compliance with the statutory and regulatory requirements to maintain its approval to operate and for its employees' and agents' actions, regardless of how involved its management may or may not have been in the actual violations. Finally, complainant was not required to prove actual

damage to any member of the public to prevail, as the law is well established that the main purpose of an administrative disciplinary proceeding is to protect the public through the prevention of future harm and the improvement and rehabilitation of the licensee. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

The appropriate level of discipline, after taking into consideration all the facts and circumstances and the bureau's disciplinary guidelines, is revocation, stayed, and an eight-year term of probation, with terms and conditions to allow the bureau to closely monitor SBU's operations to assure the public is protected. SBU shall also be required to pay the bureau \$34,000 for the enforcement costs complainant incurred in this matter, which cost reimbursement shall be paid at least one year before the end of the probationary term.

FACTUAL FINDINGS

*SBU's Approval to Operate in California*¹

1. According to the bureau's Certification of Institutional and Program Approvals, dated January 16, 2018, SBU received full approval to operate in California on October 1, 1978,² under school and institution code number 3004561. Its approval to operate was scheduled to expire on September 1, 2017, and SBU submitted a renewal application on August 18, 2017. SBU's status has since been listed by the bureau as "Active-Refer to Specialist." SBU's Master of Science in Acupuncture and Oriental Medicine (MSAOM) program has been approved since August 8, 1997, and its Doctor of Oriental Medicine (DOM) degree has been approved since November 2, 2000. SBU's Bachelor of Science in Holistic Science (BSHS) degree program was approved on November 20, 1998.³ On April 17, 2017, the bureau discontinued its approval of the BSHS program, at SBU's request. SBU

¹ The Bureau for Private Postsecondary and Vocational Education (BPPVE) was previously the agency with authority over private postsecondary schools such as SBU. The legislation that created BPPVE sunsetted on July 1, 2007. On October 11, 2009, the Bureau for Private Postsecondary Education Act of 2009 (Ed. Code, § 94800, et seq.) was signed into law. The Act, which became operative on January 1, 2010, established the Bureau for Private Postsecondary Education (bureau), which has regulated private postsecondary institutions since 2010.

² The First Amended Accusation alleged BPPVE granted SBU approval to operate on January 1, 1995. The certification received in evidence did not include that information.

³ Attached to the bureau's certification was a "Complete Program List for Institution Code #3004561," dated April 15, 2016, which listed "BS Holistic Science" program (with program ID 30750) approved on "11/20/1998" and discontinued on "01/13/2012," and "Bachelor of Science in Holistic Science" program (with program ID 57018) approved on "11/20/1998."

also offers two non-degree programs, English as a Second Language (ESL) and Acupuncture-Tuina Massage, which are not the subject of this proceeding.

There have been no prior disciplinary actions against SBU by the bureau or the California Board of Acupuncture, which has licensed SBU graduates.

Jurisdictional Background

THE ACCUSATION AND FIRST AMENDED ACCUSATION

2. On February 16, 2017, Joanne Wenzel, who was then the bureau's Chief, signed the Accusation in her official capacity. The Accusation contained 22 separate causes for discipline, was served on SBU, and SBU timely submitted a notice of defense.

3. On January 11, 2018, complainant Dr. Michael Marion, Jr., the current Chief of the bureau, signed the First Amended Accusation in his official capacity. The First Amended Accusation sought revocation or suspension of SBU's Approval to Operate Number 3004561; an order requiring SBU to pay the bureau's reasonable investigation and prosecution costs pursuant to Education Code section 94937, subdivision (c), and Business and Professions Code section 125.3; and "such other and further action as deemed necessary and proper." The First Amended Accusation contained 15 separate causes for discipline which alleged SBU engaged in the following conduct:

- First Cause for Discipline. Failure to comply with SBU's own policies for admission in the MSAOM program and use of transfer credits. (Cal. Code Regs., tit. 5, § 71770, subd. (a).) SBU required a baccalaureate degree or completion of 60 semester or 90 quarter units at a baccalaureate level from an accredited institution for admission to the MSAOM program. Complainant alleged that students 32G and 32S⁴ did not have the required college credits. Additionally, SBU's transfer credit policy required that credits used to meet admissions requirements shall not be used again towards completion of the MSAOM degree program. Complainant alleged SBU applied credits used for admission of students 32Q and 32T as transfer credits towards the MSAOM program.
- Second Cause for Discipline. Failure to provide each student in the BSHS program with a BSHS enrollment agreement. (Ed. Code, §§ 94902, subd. (a) and 94911, subd. (a); Cal. Code Regs., tit. 5, § 71800.) Complainant alleged that 19 student files reviewed on June 18, 2015 (students 32B through 32T) did not have BSHS enrollment agreements even though each of those students was listed by

⁴ To protect students' privacy, the parties referred to the students in the pleadings and documents by numbers and/or initials and redacted student names that appeared in exhibits that were not subject to the protective order. After submission, some student names that had inadvertently been left unredacted by the parties, were redacted from exhibits.

SBU on a BSHS student roster. Additionally, complainant alleged that 11 student files reviewed on April 16, 2016, for students Y.S., J.G., H.V., E.V., S.J., K.M., M.T., J.P., A.C., D.K., and S.L., who were documented as enrolled in the BSHS program, did not contain BSHS enrollment agreements.

- Third Cause for Discipline. Failure to maintain written records and previous college transcripts of a student's previous formal education or training. (Cal. Code Regs., tit. 5, § 71920, subd. (b)(1).) Complainant alleged that a BSHS evaluation form⁵ supplied by the whistleblowers regarding student 32H's prior education was not in the student records supplied by SBU, and SBU's records did not contain any previous college transcripts in student 32H's student file such that student 32H's previous formal education could not be confirmed.
- Fourth Cause for Discipline. Failure to maintain records documenting units of credit earned at other institutions that were accepted and applied as transfer credits. (Cal. Code Regs., tit. 5, § 71920, subd. (b)(1)(B).) Complainant alleged SBU applied 52 credits toward completion of student 32H's general educational units even though student 32H's student file did not contain documentation identifying the source of those units.
- Fifth Cause for Discipline. Failure to maintain required enrollment agreements. (Cal. Code Regs., tit. 5, 71920, subd. (b)(3).) Complainant alleged SBU failed to maintain BSHS enrollment agreements in the student files for students 32B through 32T, who were all enrolled in the BSHS program.
- Sixth Cause for Discipline. Failure to maintain student files containing transcripts showing all the courses or other educational programs that were completed, or attempted but not completed, with the dates of completion or withdrawal. (Cal. Code Regs., tit. 5, § 71920, subd. (b)(5)(A).) Complainant alleged SBU failed to identify BSHS degrees on the official transcripts of 10 students (32B, 32E, and 32H through 32O) who received BSHS degrees.
- Seventh Cause for Discipline. Failure to maintain documentation in student files showing the total amount of money received from, or on behalf of, a student and the date(s) when the funds were received. (Cal. Code Regs., tit. 5, § 71920, subd. (b)(9).) Complainant alleged that payments made by seven students (32C, 32D, 32F, 32H, 32I, 32K, and 32L) related to their receipt of BSHS degrees were not identified on those students' ledgers.
- Eighth Cause for Discipline. Failure to maintain pertinent student records for five years. (Ed Code, § 94900, subd. (b)(1); Cal. Code Regs., tit. 5, 71930, subd.

⁵ The full title of this form was "General Education Evaluation Form for Bachelor of Science in Holistic Science," but it was also referred to during the hearing as a "BSHS evaluation form."

(b)(1).) Complainant alleged that documents contained in the copies of student files the whistleblowers provided were missing from the files SBU provided for the same students, and SBU failed to maintain copies of BSHS diplomas awarded to students 32I, 32J, 32O, and 32P in their student files.

- Ninth Cause for Discipline. Failure to maintain records immediately available for inspection by the bureau. (Cal. Code Regs., tit. 5, § 91930, subd. (e).) Complainant alleged SBU failed to provide the bureau's investigator access to 10 student files (for students 32B, 32C, 32D, 32E, 32F, 32H, 32K, 32L, 32M, and 32N) when the bureau's investigator requested to review those files on June 18, 2015.
- Tenth Cause for Discipline. Making misleading changes in, or untrue statements related to, a test score, grade or record of grades. (Ed. Code § 94897, subd. (j).) Complainant alleged that student 32A had three modified grades that did not match records supplied to the bureau by the whistleblowers for student 32A, and that SBU added a college algebra class to student 32L's official transcript after student 32L graduated.
- Eleventh Cause for Discipline. Making misleading changes in, or untrue statements in, other required documents. (Ed. Code, § 94897, subd. (j)(3).) Complainant alleged that: (a) SBU's file for student 32A had five modified student records that did not match the student records supplied by the whistleblowers; (b) students 32C, 32F, and 32L's transfer credits were increased after they graduated; (c) seven BSHS student files had BSHS evaluation forms that showed an increase in general education units when compared to the forms supplied by the whistleblowers, and the BSHS evaluation forms supplied by the whistleblowers for those students were missing from SBU's student files; and (d) students 32Q, 32R, and 32T had BSHS program titles removed from their academic records.
- Twelfth Cause for Discipline. Willfully falsifying, destroying, or concealing a document that is required to be maintained. (Ed. Code, § 94897, subd. (k).) Complainant alleged that the following student documents supplied by the whistleblowers were missing from the student files SBU provided: (a) student files for students 32I, 32J, 32O, and 32P were missing BSHS diplomas; (b) student files for students 32C, 32D, 32H, 32I, 32J, 32M, 32O, and 32P were missing BSHS evaluation forms; and (c) student 32A's file was missing a college transcript, and the student files for students 32J, 32L, and 32P were missing official transcripts.⁶

⁶ During the hearing, complainant's motion to amend Paragraph 69(c) of the First Amended Accusation, contained in the Twelfth Cause for Discipline, by interlineation was granted. That subparagraph was amended to read as follows: "(c) The student file for

- Thirteenth Cause for Discipline. Failure to disclose that a degree program was unaccredited. (Ed. Code, § 94897, subd. (p)(2).) Complainant alleged that SBU failed to disclose, in writing, that the BSHS program was not an accredited program in that student files for students who enrolled after January 1, 2013⁷ (students 32Q, 32R, 32S, and 32T) did not include BSHS enrollment agreements or any written disclosure that the BSHS program was not accredited.
- Fourteenth Cause for Discipline. Failure to maintain a record of grades earned by students in student files. (Ed. Code, § 94900, subd. (b)(3).) Complainant alleged that the grades on student 32A's October 27, 2014, academic record did not match the grades on student 32A's June 18, 2015, official transcript; and student 32L's July 29, 2013, official transcript added a class (ST131 College Algebra) eight months after student 32L graduated.
- Fifteenth Cause for Discipline. Failure to maintain institutional records for a period of not less than five years. (Ed. Code, § 94900.5.) Complainant alleged SBU: (a) failed to provide and maintain BSHS enrollment agreements for students 32B through 32T; (b) failed to maintain student 32H's previous transcripts from other institutions; and (c) documents supplied by the whistleblowers for students 32A, 32C, 32D, 32G, 32H, 32I, 32J, 32K, 32L, 32M, 32O, and 32P⁸ were not included in student files SBU provided the bureau's investigator for those students.

COMPLAINANT'S REQUEST TO AMEND TO CONFORM TO PROOF

4. Complainant's May 7, 2018, reply brief included a request to amend, which stated in bold letters: "**Therefore, Complainant requests the First Amended Accusation be amended to conform to proof to add violation of Education Code section 94937(a)(1).**" (Complainant's Reply Brief, page 6.) Complainant did not file an amended pleading.

Government Code section 11507 allows complainant to amend his accusation "[a]t any time before the matter is submitted for decision," and Government Code section 11516

student 32A was missing a college transcript, and the student files for students 32J, 32L, and 32P were missing Official Transcripts."

⁷ Education Code section 94897 was amended, effective January 1, 2013, to add subdivision (p)(2), which requires "[a] statement that reads: 'A degree program that is unaccredited or a degree from an unaccredited institution is not recognized for some employment positions, including, but not limited to, positions with the State of California.'"

⁸ The Fifteenth Cause for Discipline alleged this allegation concerned 21 students, but it only listed 12 students.

allows complainant to amend “after submission of the case for decision.” Both those code sections require complainant to give respondent notice of the intended amendment and provide procedures to address whether a respondent may present additional evidence in defense of the new charges.⁹ California Code of Regulations, title 1, section 1014, subdivision (a), requires complainant to serve on respondent and file with the Office of Administrative Hearings a “complete, new pleading incorporating the amendments.” Additionally, an accusation must “set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his or her defense. It shall specify the statutes and rules that the respondent is alleged to have violated, but shall not consist merely of charges phrased on the language of those statutes and rules” (Gov. Code § 11503.)

Here, complainant’s reply brief, filed on the day the record was closed, requests that the First Amended Accusation be amended to include an entirely new cause for discipline. Complainant’s request did not comply with California Code of Regulations, title 1, section 1014, and Government Code section 11503 because complainant did not file a new amended pleading specifying the acts or omissions of which he seeks to charge respondent. Therefore, the request to amend, as made in complainant’s reply brief, shall not be considered at this time, and this decision will not address whether respondent violated Education Code section 94937, subdivision (a)(1).

SBU’s Background, Leadership, and Mission Statement

5. SBU was founded by David Park, Ph.D., and it has been in business for approximately 40 years. SBU was incorporated on June 20, 1980, as a nonprofit public benefit corporation, by Dr. David Park,¹⁰ who was then its chairman. Dr. David Park did not testify at this hearing.

6. Jason Shin, Ph.D., SBU’s former president, was the primary witness who testified on behalf of SBU. He was the president and an ex officio (non-voting) member of SBU’s board of trustees from 2007 through February 15, 2018. His duties as SBU’s president included overseeing the administration, implementing the school’s policies under the direction of the board of trustees, and ensuring the integrity of the institution. Dr. Shin

⁹ If the amendment is filed before submission, “the agency shall afford the respondent a reasonable opportunity to prepare his or her defense to the new charges.” (Gov. Code, § 11507.) If the amendment is submitted after submission, respondent “shall be given . . . [an] opportunity to show that he or she will be prejudiced thereby unless the case is reopened to permit the introduction of additional evidence on his or her behalf. If such prejudice is shown, the agency shall reopen the case to permit the introduction of additional evidence.” (Gov. Code, § 11516.)

¹⁰ Because there were several people involved who had the last name “Park,” their first names are used whenever they are referenced to avoid confusion.

worked from SBU's main campus located in Anaheim, California. Dr. Shin resigned in February 2018, and he no longer holds any positions at SBU.¹¹

7. SBU's "Mission Statement" provides:

The Mission of SBU is to expand professional, clinical and scientific knowledge of Acupuncture and Oriental medicine among students, faculty, staff, and the general public through effective teaching, scholarly activity and quality patient care.

SBU's MSAOM and BSHS Degree Programs

8. The two programs at issue in this matter were SBU's MSAOM degree program and its BSHS degree program.

9. The purpose of SBU's MSAOM degree program is to prepare students to become licensed acupuncturists. The MSAOM program normally takes four years to complete, and it consists of 212 quarter credit units of didactic courses conducted in a classroom setting and 960 credit hours of clinical internship training at the SBU's patient clinics. Graduates of SBU's MSAOM program may seek licensure to work as acupuncturists in California from the California Acupuncture Board (CAB).

CAB does not require licensees to hold a bachelor's degree. Instead, California Code of Regulations, title 16, section 1399.435, subdivision (a), outlines the following admissions requirements for acupuncture and Oriental medicine training programs:

An acupuncture and Oriental medicine training program approved by the board shall adopt the following procedures for its program effective January 1, 2005:

(a) Candidates for admission shall have successfully completed at least two (2) academic years (60 semester credits/90 quarter credits) of education at the baccalaureate level that is appropriate preparation for graduate level work, or the equivalent from an institution accredited by an agency recognized by the U.S. Secretary of Education.

Similarly, SBU's admissions policy for its MSAOM program does not require a bachelor's degree. Instead, consistent with California Code of Regulations, title 16, section 1399.435, subdivision (a), a student must have successfully completed at least 60 semester

¹¹ Although Dr. Shin acknowledged that he had been asked to resign, no further information was supplied during the hearing regarding the circumstances that led to his resignation.

units or 90 quarter units of education at the baccalaureate level to be admitted to SBU's MSAOM program.

10. SBU's BSHS degree program was offered until April 2017. According to SBU's renewal application submitted to the bureau in 2012, the purpose of the BSHS program was to provide "students with a foundational knowledge and application in holistic medicine." The BSHS program consisted of 180 quarter units, with 56 units in general education courses and 124 units in major and elective courses, and all BSHS courses were conducted in a classroom setting.

As of 2012, in order to be admitted to the BSHS program, students were required to have "completed a least a high school education." However, in SBU's 2014-2015 and 2016-2017 catalogs, the admissions requirements for the BSHS program were the same as the MSAOM program admissions requirements.

SBU's Accreditation

11. The Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) has been SBU's "institutional" accreditor. Karl Gauby, who has been ACAOM's Director of Regulatory Affairs since April 2016 and previously served as an ACAOM commissioner from 2004 through 2008, testified about ACAOM's accreditation of SBU. He explained that ACAOM is recognized by the United States Department of Education and its "scope of recognition" allows it to only provide institutional and programmatic accreditation of graduate level acupuncture and Oriental medicine programs. ACAOM may also accredit non-degree massage programs if they are related to acupuncture and Oriental medicine. ACAOM does not accredit undergraduate level programs. It has no standards for accrediting bachelor level programs, and approval of baccalaureate programs would be outside its United States Department of Education scope of recognition.

ACAOM may serve as a "programmatic" accreditor in situations where another agency accredits the institution and ACAOM only accredits the graduate level acupuncture and Oriental medicine programs. If ACAOM is a school's institutional accreditor, the institution will only be accredited for acupuncture and Oriental medicine graduate level programs. Therefore, as SBU's institutional accreditor, ACAOM has only accredited SBU's masters and doctorate programs. ACAOM did not accredit SBU's BSHS program. If SBU were to obtain a different institutional accreditor, ACAOM could convert its accreditation of SBU to programmatic accreditation of programs within ACAOM's scope of recognition.

12. SBU has explored obtaining institutional accreditation through two other accreditation agencies in the past, the Western Association of Schools and Colleges (WASC) and the Accrediting Council for Independent Colleges and Schools (ACICS), both of which provide institutional accreditation of schools offering graduate and undergraduate programs. If WASC or ACICS institutional accreditation had been obtained, WASC or ACICS could have accredited the entire institution and its undergraduate degree programs, and SBU could

have sought programmatic accreditation from ACAOM for SBU's graduate level acupuncture and Oriental medicine programs.

Impact of Accreditation on the Manner in Which SBU Awarded BSHS Degrees

13. According to Dr. Shin, the manner in which SBU offered and awarded BSHS degrees was influenced by information SBU received from ACAOM, its institutional accreditor. A letter dated February 9, 1999, from Dort S. Bigg, who was then the Executive Director of ACAOM,¹² discussed SBU's plans to offer a "Bachelor of Science in Acupuncture and Oriental Medicine" degree. That letter explained ACAOM's understanding that the purpose of the "new" bachelor's degree program was "to enable South Baylo to meet WASC accreditation standards which require a Baccalaureate degree to be eligible for accreditation." The letter then stated the following regarding ACAOM's position¹³ regarding SBU's planned bachelor's degree program:

Commission policy requires that all programs offered for the purpose of training an acupuncture or Oriental medicine practitioners [*sic*] for entry level independent practice must be at the professional Master's degree level. At the current time, the Commission does not permit schools to offer terminal Bachelors [*sic*] degrees in Acupuncture or Oriental medicine.

If South Baylo wishes to offer a Bachelor's degree to meet WASC accreditation requirements, we see only two options that the school may implement consistent with Commission policy:

¹² According to Mr. Biggs's curriculum vitae, he has not worked for ACAOM since 2010. After leaving ACAOM in 2010, Mr. Biggs served as a consultant to SBU. Mr. Biggs, who did not testify, authored a letter dated April 12, 2017, which was received as evidence, that contained his opinions regarding what most ACAOM accredited schools normally did with respect to offering "non-terminal" bachelor's degree programs. During Mr. Gauby's testimony, he voiced his disagreement with Mr. Biggs's opinions. However, this case concerns SBU's compliance with the California Education Code and the California Code of Regulations. Therefore, while advice Mr. Biggs provided SBU before the accusation was filed may be considered as mitigating evidence, the opinions contained in Mr. Biggs's April 12, 2017, letter about ACAOM's policies and/or what he believed other institutions might do, and Mr. Gauby's testimony disagreeing with Mr. Biggs opinions, were not considered to render the decision in this matter.

¹³ In January 2018, after this matter was already pending and after SBU ceased its BSHS program, ACAOM issued a position paper titled, "Acupuncture and/or Oriental Medicine Bachelor's degrees." Although that letter clarified some things about ACAOM's current position, it was not helpful to explain why SBU handled its BSHS degree program the way it did.

1. Change the title of the degree from "Bachelor of Science in Acupuncture and Oriental Medicine" to another degree title which omits references to acupuncture or Oriental medicine such as "Bachelor of Wholistic Health". The rationale for this is that if a student receives South Baylo's Bachelor of Science degree in acupuncture and Oriental medicine without completing the school's Masters [sic] program, it will be misleading and confusing to the public.

2. Offer a combined degree program in which graduates could only receive the Bachelor of Science in Acupuncture and Oriental Medicine upon completion of the school's Master's program. If the student does not complete the Master's program he or she would receive neither South Baylo's Masters [sic] degree nor Bachelor of Science degree.

14. On April 29, 1999, SBU sent a letter to BPPVE, the bureau's predecessor, requesting approval for a degree titled "Bachelor of Science in Health Science." That letter explained:

The requested degree is "Bachelor of Science in Health Science". This degree program is identical to the Bachelor of Science in Acupuncture and Oriental Medicine, previously approved by your office. The only difference is the degree title. The reason for our request is that the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) requires our University to change the title to avoid any misleading information or confusion to the public. We are enclosing for your review the letter of February 9, 1999 from the Executive Director of ACAOM to support our request.

SBU's April 29, 1999, letter did not seek approval from BPPVE to offer a combined program where students could only receive the bachelor's degree upon completion of the school's MSAOM degree program.

15. On June 11, 1999, BPPVE sent SBU a letter that stated BPPVE had approved the offering of the "Bachelor of Science in Holistic Science"¹⁴ degree program in place of the previously approved "Bachelor of Science in Acupuncture and Oriental Science" degree program. The letter did not say anything about a combined BSHS and MSAOM program.

¹⁴ There was no explanation during this hearing regarding why the name of the program BPPVE approved was "Bachelor of Science in Holistic Science" instead of "Bachelor of Science in Health Science."

16. SBU later sought institutional accreditation from ACICS beginning in 2014. According to Dr. Shin, ACICS's standards were very different than ACAOM's standards. ACICS required master's degree students to have a bachelor's degree. Therefore, while the ACICS accreditation application was pending, SBU required students enrolled in the MSAOM program who did not have a bachelor's degree to obtain a BSHS degree upon completion of the MSAOM program. If SBU had obtained ACICS accreditation, it could have offered the BSHS degree as a stand-alone program and offer other programs outside ACAOM's scope of recognition, such as health care management.

SBU withdrew its ACICS accreditation application in February or March of 2017 because ACICS lost its recognition from the United States Department of Education. After withdrawing its ACICS application, SBU discontinued the BSHS program. Dr. Shin explained that SBU decided to discontinue the BSHS program to "clarify" all the "confusion" about the BSHS program. He stated that the "confusion" was that ACICS required master's degree students to have a bachelor's degree upon completion of the master's program, but ACAOM did not want SBU to offer a stand-alone BSHS program. He noted that there was also confusion regarding how to reflect all the degree titles on SBU's master's degree transcript.

The Bureau's Investigation

17. The bureau initiated an investigation after it received two anonymous complaints in September 2014 regarding a civil action that alleged SBU and California University of Management and Sciences (CalUMS)¹⁵ were "selling diplomas," among other allegations. The matter was assigned to Bureau Enforcement Analyst Karen Johnson for investigation on September 17, 2014.

THE WHISTLEBLOWERS

18. The bureau received a third complaint in April 2015 from former SBU and CalUMS employees Michelle Park, Arthur Park, M.D., and Grace Choi, who referred to themselves as "whistleblowers." The whistleblowers' complaint stated it included a USB drive with documents, however there was no USB drive with the complaint the bureau received. Ms. Johnson contacted Dr. Arthur Park about the missing USB drive, and he emailed the documents to Ms. Johnson on April 13 and 27, 2015. Those records included student records of 16 SBU students that had been given to Dr. Arthur Park by Michelle Park.¹⁶

¹⁵ The bureau's investigation also involved, also known as CalUMS, which shared some trustees and employees with SBU. CalUMS was not a party to this proceeding.

¹⁶ Dr. Arthur Park is SBU founder David Park's son. Arthur and David Park are not related to Michelle Park. After Michelle Park stopped serving as SBU's registrar, SBU's new registrar was Christina Park, who is also not related to any of the other Parks.

19. Michelle Park, who worked as SBU's registrar between August 2011 and early 2015, testified at the hearing and she provided a written declaration that was consistent with her testimony and also received as evidence. Michelle Park described her duties as registrar as maintaining all the academic records of former and current students, preparing diplomas, copying diplomas for student files, updating the Registrar's Log with information about diplomas, keeping track of the number of students who graduated, and providing information to the president and other administrators as requested. Michelle Park's testimony regarding her registrar duties was consistent with documents SBU previously sent to the bureau regarding the registrar's duties. In addition to maintaining paper records, the school used an electronic record keeping system that had recently been developed by Dr. Shin, Lionel Yamata, and James Kim. They all had access and the ability to edit student records, even though it was the registrar's responsibility to maintain the student records.

During her work as SBU's registrar, Ms. Park noticed that certain school records were being modified and that students who graduated from the MSAOM program also received BSHS diplomas. She collected records over time during her tenure as SBU's registrar that showed modifications to some students' records and the issuance of BSHS degrees to students graduating from the MSAOM program. However, it was not clear when each of those documents may have been generated. According to Michelle Park, she alerted her superiors at SBU to problems she perceived with student records, and she kept copies of what she perceived to be problematic records because the administrators would repeatedly ask her for another copy of things she had already given them. Michelle Park testified that as far as she knew, the problems she pointed out to SBU's administration were not corrected. Michelle Park gave the records she had collected to Dr. Arthur Park, who then sent the records to the bureau with the whistleblowers' complaint. Among the records Michelle Park collected that the whistleblowers gave the bureau were documents concerning students 32A through 32P and a document titled "BA Degree," which listed payments from students of \$100, \$500, or \$550 between February 1, 2010, and August 22, 2013. According to Michelle Park, the "BA Degree" document was generated by SBU's Director of Finance and listed BSHS diploma applicants who paid fees for a BSHS diploma.

20. Dr. Arthur Park also testified at the hearing, but he had no first-hand knowledge about how the records the whistleblowers supplied the bureau were generated. Dr. Arthur Park is a medical doctor who left his medical practice in 2014 to work at SBU and CalUMS, another school founded by his father, Dr. David Park. When he left his medical practice, Dr. Arthur Park believed that he would someday take over the schools from his father. Dr. Arthur Park served as SBU's Vice Chancellor and was on the board of trustees until mid-2015. By the time the whistleblower complaint was sent to the bureau, Dr. Arthur Park was already in a dispute with his father and SBU, and it was clear that Dr. Arthur Park had a poor relationship with his father, who he accused of a variety of misdeeds that were not relevant to this proceeding.

21. SBU went to great lengths to discredit the testimony of whistleblowers Dr. Arthur Park and Michelle Park.¹⁷ It was evident from Dr. Arthur Park's and Michelle Park's testimony that they were not happy with SBU by the time they sent the whistleblower complaint and documents to the bureau. Dr. Arthur Park testified during the hearing that his father had breached agreements regarding Dr. Arthur Park's employment and eventual leadership of SBU and CalUMS and SBU had stopped paying credit card charges that he viewed as part of his compensation.¹⁸ Likewise, Michelle Park testified that she had been transferred to a different position which she considered a demotion, shortly before the whistleblower complaint was sent. She also testified that during her employment Dr. Shin had told her that she needed to be "flexible like a bamboo stick" or she "would break." She considered that comment to be threatening. Both Dr. Arthur Park and Michelle Park accused SBU of creating a hostile work environment. They also stated that after they submitted their complaint to the bureau, SBU asked them to identify the documents they had given the bureau so SBU could "fix" the documents. Michelle Park and Dr. Arthur Park interpreted SBU's desire to "fix" documents to mean that SBU planned to somehow inappropriately alter records.

Dr. Arthur Park sued SBU in September 2015, alleging multiple causes of action, including retaliation, wrongful termination, failure to timely pay final wages, breach of oral contract, promissory estoppel, and fraudulent misrepresentation. Michelle Park sued SBU in October 2015, alleging multiple causes of action, including retaliation, wrongful termination, breach of oral contract, promissory estoppel, and intentional infliction of emotional distress. SBU filed a Cross-Complaint against Michelle Park, alleging causes of action for conversion, breach of fiduciary duty, breach of loyalty, and breach of duty of confidentiality. Dr. Arthur Park, Michelle Park, and SBU settled their civil actions before the instant hearing.¹⁹

It was evident that Dr. Arthur Park and Michelle Park were biased against SBU. As a result, their testimony about what they thought SBU may have done wrong, much of which was not related to the allegations of the First Amended Accusation, was not given any weight.

Dr. Shin testified that he received complaints from the Los Angeles Campus staff that Dr. Arthur Park was very arrogant and very intimidating, and that Dr. Arthur Park and Michelle Park were creating a negative working environment. However, his testimony on

¹⁷ The third "whistleblower," Ms. Choi, did not testify.

¹⁸ Respondent's written "Response to First Amended Accusation," which was received solely as argument, included additional arguments about Dr. Arthur Park's background which were not supported by any evidence during the instant hearing. Those unsupported arguments were not considered.

¹⁹ The complaints and cross-complaint filed in those actions were received solely to show the witnesses' bias against SBU for purposes of evaluating their credibility. Those pleadings were not considered for the truth of the matters alleged in them.

this topic was not given any weight because it was based on unsubstantiated hearsay. Another SBU employee, Seon Kim, who had briefly worked with Michelle Park, gave emotional testimony about her belief that Michelle Park wanted to hurt the school and its students, based on advice Michelle Park gave Ms. Kim about whether Ms. Kim should accept a transfer to the Anaheim campus. However, Ms. Kim's testimony was not given any weight because she was speculating about Michelle Park's motives.

22. Although the records the whistleblowers provided may have prompted the bureau's concerns, the factual findings in this case are not based solely on the records supplied by the whistleblowers. Due to the fact that Michelle Park had gathered the records over time, it was not clear when the documents were generated. Therefore, the whistleblower documents were given less weight than the records SBU supplied the bureau. The analysis of the facts in this case focused primarily on student records SBU supplied directly to the bureau, student records SBU supplied to the CAB, SBU's catalogs and other documentation SBU authored about its programs, and Dr. Shin's hearing testimony and statements he previously made to the bureau's investigator and compliance inspector.

23. Evidence SBU submitted in support of its claim that Michelle Park was incompetent or negligent in performing her registrar duties was also considered. However, rather than supporting respondent's position that it should not be disciplined, that evidence called into serious question the integrity of SBU's management of its operations and its training and oversight of the person who served as its registrar for four years.

According to Dr. Shin, Michelle Park was transferred from SBU in Anaheim, where she had worked as the registrar from 2011 until 2015, to CalUMS in Los Angeles, but Dr. Shin did not know why. Dr. Shin also said that Michelle Park was again transferred from CalUMS to SBU Los Angeles because she did not perform her CalUMS duties "effectively." Based on Dr. Shin's observations, Michelle Park did "not have enough knowledge to work effectively." Dr. Shin said he got the impression from other employees that Michelle Park did not have the "ability to analyze data." He was not her direct supervisor, although he observed her day-to-day work activity when she worked in Anaheim (where she worked as SBU's registrar) and he found it to be "deficient." According to Dr. Shin, Michelle Park was placed on administrative leave in July 2015 because she was not cooperative with the school's internal audit and created a negative environment at the Los Angeles Campus by harassing and intimidating other employees.

Ms. Kim testified that Michelle Park's reputation was not good, and people were always complaining about her. She said that Michelle Park had a "strong character" and "made a lot of mistakes."

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REQUESTS FOR SBU'S STUDENT ROSTERS AND THE JUNE 18, 2015, UNANNOUNCED VISIT TO SBU'S MAIN CAMPUS IN ANAHEIM, CALIFORNIA

24. On June 10, 2015, Ms. Johnson emailed Jeff Beasca, whom she understood was CalUMS and SBU's compliance officer,²⁰ and asked him to send her an SBU student roster for the last five years. On June 17, 2015, Mr. Beasca emailed her two SBU student rosters, one for the Anaheim campus and one for the Los Angeles campus. The rosters listed students in the MSAOM and the DOM programs. There were no students identified on the rosters as being enrolled in the BSHS program.

25. On June 18, 2015, Ms. Johnson conducted an unannounced inspection of SBU's main campus in Anaheim, California as part of the bureau's investigation.²¹ During that visit, she spoke with registrar Christina Park, Mr. Beasca, and Dr. Shin; received a tour of the school; and requested and received documents. Ms. Johnson testified about the inspection and she also described it in her August 9, 2016, Investigation Report, which was received as evidence.²² Dr. Shin testified about his conversations with Ms. Johnson, and he explained the BSHS program and discrepancies in the student records introduced as evidence during this hearing.

26. On June 18, 2015, Ms. Johnson requested copies of the student files of the same 16 students whose records the whistleblowers had provided. That day, Christina Park provided Ms. Johnson with copies of six of the requested student files (for students 32A, 32H, 32I, 32J, 32P, and 32O) and told Ms. Johnson that she could not find the remaining 10 student files (for students 32B, 32C, 32D, 32E, 32F, 32G, 32K, 32L, 32M, and 32N). Christina Park also provided Ms. Johnson official transcripts for each of the 16 students whose records Ms. Johnson had requested. Mr. Beasca gave Ms. Johnson another copy of the student rosters on June 18, 2015, which were the same rosters he had provided before, which did not identify any students enrolled in the BSHS program.

²⁰ According to Dr. Shin, Mr. Beasca was the compliance officer for CalUMS, and he did not work for SBU.

²¹ Ms. Johnson notified the whistleblowers in advance that she would be conducting that visit. SBU understandably claimed the advance notice to the whistleblowers may have been inappropriate. However, when Ms. Johnson notified the whistleblowers about that visit, SBU had already placed them on leave, and they were then not allowed on campus.

²² SBU argued that the investigator "was so titillated by the outrageous allegations" made by the whistleblowers, that "she failed to conduct a meaningful investigation and then grossly overcharged the case." (Respondent's Closing Reply Brief, page 9, fn. 2.) However, Ms. Johnson's August 9, 2016, investigation report and her April 12, 2017, supplemental report were both redacted, after meet and confer efforts between counsel, before being received as evidence, so irrelevant material that might be unduly prejudicial to SBU was not included in the record or considered when making this decision.

Dr. Shin did not know why the records were not given to Ms. Johnson on the spot. But he also said the problem providing the documents that day was somehow caused by the former registrar (Michelle Park), who was responsible for maintaining the records. Dr. Shin's testimony regarding blaming the former registrar was not credible, as his testimony was speculative and he admitted he did not know why the records were not provided.

27. Ms. Johnson met with Dr. Shin in his office during the June 18, 2015, inspection. According to Ms. Johnson's written report, which was consistent with her testimony, during that meeting:

J. Shin stated he was aware of the "Whistleblower" case and stated that M. Park had been working at the school less than two years and was the "worst employee". He stated M. Park was unable to generate reports and was not familiar with the computer. J. Shin stated that rather than fire M. Park, he transferred her to the CalUMS and SBU Los Angeles campus. He stated M. Park did not have permission to copy the student files and school documents that were included in the Whistleblower case. J. Shin stated that many SBU students attend both campuses and the school recently moved all the student files to the Anaheim campus as instructed by their accrediting agency, Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM).

J. Shin stated that 30% of the admitted students were awarded a BSHS from SBU. These students were required to have two years of prior college and minimum of 90 units to be accepted into the MSAOM program. The classes taken while enrolled in the MSAOM program are also applied to the BSHS degree to fulfill the BSHS, 180 required units. J. Shin stated the BSHS was not an accredited program; however, the school's accrediting agency, ACAOM allowed the school to issue the BSHS diplomas.

During his testimony, Dr. Shin disagreed with statements attributed to him in Ms. Johnson's August 9, 2016, report. He stated that he spoke to Ms. Johnson for less than 30 minutes, and he could not recall what he said. He denied telling her that Michelle Park was the "worst" employee, but he also stated that he could not recall discussing Michelle Park. Dr. Shin also testified that all SBU's students' files were always kept at the Anaheim campus, and he denied that he told Ms. Johnson that they transferred files from one campus to another. He also stated that ACAOM did not instruct them to move files to the Anaheim campus.

Ms. Johnson prepared her report closer in time to the June 18, 2015, inspection than Dr. Shin's hearing testimony, and Dr. Shin's testimony waivered between denying he said

certain things and saying he did not recall certain parts of the conversation or that he did not recall discussing certain topics. Therefore, Ms. Johnson's written account of her June 18, 2015, conversation with Dr. Shin was given greater weight than his testimony about that conversation.

ADDITIONAL RECORDS MS. JOHNSON OBTAINED DURING JULY 2015

28. On July 7, 2015, Ms. Johnson asked Mr. Beasca to send her the 10 student files that had not been provided as requested during the June 18, 2015, inspection. She also asked him to provide a BSHS student roster for the past five years. On July 9, 2015, Mr. Beasca provided Ms. Johnson a secure link to view and print the requested 10 student files (for students 32B, 32C, 32D, 32E, 32F, 32G, 32K, 32L, 32M, and 32N). Ms. Johnson accessed and printed those records. Mr. Beasca also emailed Ms. Johnson a roster of 75 students in the BSHS program from July 2010 to June 2015. In his email, dated July 9, 2015, Mr. Beasca stated the following regarding the BSHS roster (underlining in original):

Attached is the roster of SBU students who have received the bachelor (BSHS) diplomas and enrolled in the BSHS program (for Anaheim and Los Angeles campuses) since the last 5 years. With regard to this roster, please take note of the following:

1. Prior to 2014 Fall Quarter, students enrolled in MSAOM program had the option to pursue a bachelor's degree together with the master's degree by completing all the general education requirements. The bachelor's degree was awarded upon completion of the master's degree program.
2. Since 2014 Fall Quarter, students enrolled in MSAOM program are now required to complete all the general education requirements for the bachelor's degree. The bachelor's degree was awarded upon completion of the master's degree program. This is in light of SBU's pending application for accreditation with ACICS in order to be considered to be consistent with its criteria on threshold admissions requirements.

29. One of the 16 students whose files Ms. Johnson had reviewed, student 32A, had transferred from SBU's Virginia campus to its California campus. On July 22, 2015, Ms. Johnson received a student academic record from student 32A's file from SBU's Virginia campus.

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THE AUGUST 11, 2015, VISIT TO THE SBU ANAHEIM, CALIFORNIA CAMPUS

30. On August 11, 2015, Ms. Johnson visited SBU's Anaheim campus again and requested additional student files. During that visit, Christina Park explained that the files for students enrolled in the BSHS program were kept in blue folders. Ms. Johnson therefore randomly selected and copied five student files that were in blue folders. (Those students were identified as students 32Q, 32R, 32S, 32T, and 32U.)²³

ADDITIONAL RECORDS MS. JOHNSON OBTAINED AFTER AUGUST 11, 2015

31. On October 22, 2015, in response to Ms. Johnson's request, Mr. Beasca provided financial ledgers for students 32L, 32 Q, 32R, 32S, 32U, and 32T. On November 4, 2015, Ms. Johnson reviewed SBU's catalogs and accessed SBU's website and reviewed the MSAOM admission requirements.²⁴ In May 2016, Ms. Johnson requested and received copies of the official transcripts of students 32B, 32C, 32E, 32F, 32G, 32H, 32I, 32J, 32L, 32M, 32N, 32O, and 32P from CAB that SBU had provided CAB in connection with those student's license applications.²⁵

THE APRIL 14, 2016, COMPLIANCE INSPECTION

32. On April 19, 2016, Michele Alleger, a bureau compliance inspector, conducted an unannounced compliance inspection of SBU. Ms. Alleger prepared a report regarding her inspection, which was received as evidence, and she testified at this hearing. Her testimony was consistent with her report.²⁶ Her April 19, 2016, inspection included a tour of the school, visual inspection, review of institutional records, and interviews with key staff members. She found that the school's facilities and equipment met the minimum requirements, and in addition to violations she found that were relevant to this matter and are discussed further below, she also noticed some minor and major violations that were not at issue in the present proceeding.

33. Ms. Alleger reviewed a random sampling of student records, and her report included the following findings regarding that review:

²³ Student 32U's file did not, however, contain any information indicating participation in the BSHS degree program.

²⁴ SBU's admissions requirements are discussed further below under the heading "Admissions and Transfer Credit Policies."

²⁵ Because students 32D and 32F did not submit applications for examinations to CAB, SBU did not send official transcripts to CAB for those two students.

²⁶ Her report was titled "Announced Compliance Inspection Report." Ms. Alleger explained during the hearing that the inspection was actually unannounced, and the use of the word "announced" in the title was an error.

Three material violations were detected:

CEC 94900.5(c), institution failed to provide a list of students enrolled in the Bachelor of Science in Holistic Science. Enforcement Referral issued.

CEC 94902, Institution enrolled students into the Bachelor of Science in Holistic Science program without executing an enrollment agreement. Enforcement Referral Issued. . . .²⁷

34. Ms. Alleger testified that during her April 19, 2016, inspection, Dr. Shin gave her contradictory explanations about the BSHS program. Consistent with her testimony on this topic, her report stated:

At the request of the Bureau's Investigations Unit, upon receiving a list of current, graduated, and withdrawn students for most of the programs; the list of students for the BSHS program was not provided. I requested Dr. Shin to provide a student list for the Bachelor of Science in Holistic Science (BSHS). He stated he did not have a student list for the program because it is a part of the Master's of Science in Acupuncture and Oriental Medicine program. I asked if he had approval from his accreditor. He answered yes. I requested a copy of the accreditor approval letter. I did not receive the requested approval letter from the accreditor. When Dr. Shin arrived to provide a campus tour, he stated, the institution no longer offers the BSHS program. By the end of the day, he stated the institution does have the BSHS program. It was thought at the time of the inspection, the institution could be offering an unapproved "combo" program, part of the Master's program. Dr. Shin was advised he could be offering an unapproved program, and an Enforcement Referral could be issued. The student files only contained enrollment agreements for the Master's program; there were no enrollment agreements for the BSHS program. The review of the student files revealed current and graduated students were enrolled in the BSHS as indicated on transcripts, emails, degree, and letters. . . .

35. During his hearing testimony, Dr. Shin confirmed that he talked to Ms. Alleger for about one hour the day she conducted the compliance inspection, and she requested a list of students in the BSHS program. He said they discussed enrollment agreements and he told Ms. Alleger that the students only signed enrollment agreements for the MSAOM program,

²⁷ The third material violation concerned providing catalogs and other documents in Chinese and Korean, which was not an issue in the present matter.

the BSHS degree was non-terminal, and it was not awarded until the end of the MSAOM program. Dr. Shin did not recall discussing a “combo” program.

36. During her inspection, Ms. Alleger copied the student records of students J.P., Y.S., L.E., and K.M. Each of those files included an enrollment agreement for the MSAOM program and either a copy of a BSHS diploma and/or notation on a clearance form²⁸ stating that a BSHS degree was awarded. None of those four student’s files included an enrollment agreement for the BSHS degree program. The student records for Y.S. and K.M. also included an email from SBU’s General Education Coordinator which stated:

Dear Student,

This is to inform you that the minimum GE requirements for the Bachelor of Science in Holistic Science (BSHS) degree program at South Baylo University have been satisfied. The BSHS degree will be awarded upon completion of the MSAOM program. Should you have any questions, please contact me at your convenience.

THE MAY 24, 2016, ENFORCEMENT REFERRAL AND THE JULY 7, 2016, LETTER TO SBU REGARDING THE ENFORCEMENT REFERRAL

37. On May 24, 2016, Ms. Alleger issued an Enforcement Referral regarding material violations she identified during her April 19, 2016, inspection. Among the reasons for the referral was that:

Institution offers a Bachelor of Science in Holistic Science (BSHS). The BSHS program, per Dr. Jason Shin, runs concurrently with the Master’s Degree in Acupuncture and Oriental Medicine (MASOM). I requested a student list for the BSHS program; the list was not provided. Of the student files reviewed, no files contained enrollment agreements for the BSHS [sic] program. However several student files indicated enrollment in the BSHS program identified by transcripts, degree, email, or letter.

38. On July 7, 2016, Ms. Johnson sent a letter to Dr. David Park, at SBU, regarding the enforcement referral that was issued following the April 19, 2016, inspection. In that letter, she stated the following relative to the BSHS program (boldened and underlined emphasis in original):

²⁸ A clearance form was a document signed by several SBU faculty members, including the registrar, before a diploma could be issued, that also identified the degrees awarded.

CEC § 94900.5

Required Institutional Records

An institution shall maintain, for a period not less than five years, at its principal place of business in this state, complete and accurate records of all of the following information:

(c) Any other records required to be maintained by this chapter, including, but not limited to, records maintained pursuant to Article 16 (commencing with Section 94928).

During the inspection, the institution failed to maintain a list of current student [sic] enrolled in the Bachelor of Science in Holistic Science (BSHS) program.

[¶] . . . [¶]

When the Bureau has reason to believe that an institution may be out of compliance, it shall conduct an investigation of the institution. So that we can investigate the allegations of noncompliance, please provide the following information by **July 21, 2016:**

[¶] . . . [¶]

- A BSHS Student Roster for all students within the last five years.

Advertisements and Enrollment Agreements SBU supplied to the Bureau with its 2012 Renewal Application

39. When SBU submitted its approval renewal application to the bureau in 2012, it included copies of SBU's brochures and advertisements. One of the brochures stated the following regarding SBU's degree programs:

ABOUT SBU PROGRAMS

SBU offers three degree programs such as Doctor of Acupuncture and Oriental Medicine, Master of Science in Acupuncture and Oriental Medicine, and Bachelor of Science in Holistic Science, and two non-degree programs: Acupressure-Tuina Massage and English as a Second Language (ESL).

The same brochure stated the following regarding admissions, financial aid, and accreditation:

APPROVAL AND ACCREDITATION

SBU campuses in California are approved by California Bureau of Private Postsecondary Education (BPPE) to operate and offer programs leading to the Doctor of Oriental Medicine, Master of Science in Acupuncture and Oriental Medicine, Bachelor of Science in Holistic Science, Acupressure-Tuina Massage, and English as a Second Language (ESL).

SBU in California is approved by the California Acupuncture Board. SBU in California participates in student financial aid programs.

The Master's degree program in Acupuncture and Oriental Medicine is accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM). The Doctoral degree program in Acupuncture and Oriental Medicine is a candidate for accreditation with the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM).

When Dr. Shin was confronted with the advertisements at the hearing, he carefully stated that SBU did not use those ads to solicit students for the BSHS program. He did not, however, state those advertisements were not used at all.

40. With its 2012 renewal application, SBU also supplied the bureau with a sample enrollment agreement for its graduate programs and another sample enrollment agreement for the undergraduate and non-degree programs, including the BSHS program. The sample BSHS enrollment agreement included disclosures regarding estimated tuition and fees, a place to include the starting quarter/year and the scheduled completion quarter/year, and information regarding a student's right to cancel. It also stated:

I understand that this is a legally binding contract. My signature below certifies that I have read, understand, and agreed to my rights and responsibilities, and that the institution's cancellation and refund policies have been clearly explained to me.

Initial: _____

SBU's Admissions and Transfer Credit Policies

41. SBU's admissions and transfer credit policies are set forth in its catalogs and on its website. SBU's website, which Ms. Johnson printed on November 4, 2015, was

consistent with the catalogs regarding SBU's admissions and transfer credit policies for the MSAOM degree program. The website provided the following regarding the admissions requirements for the MSAOM program:

1. The University admits applicants who have completed a bachelor's degree or its equivalent from an institution accredited by an agency recognized by the U.S. Department of Education, with a minimum Cumulative Grade Point Average (CGPA) of 2.0 on a 4.0 scale.

2. The University also admits applicants who have not completed a bachelor's degree, but earned at least 90 quarter or 60 semester units at the baccalaureate level from an institution accredited by an agency recognized by the U.S. Department of Education, with a minimum Cumulative Grade Point Average (CGPA) of 2.0 on a 4.0 scale, and must meet the general education requirements within six (6) quarters from the enrollment date to fulfill the graduation requirements for the bachelor's degree program.

3. College courses with a "D" grade or lower cannot be counted toward the 90 quarter or 60 semester units, but will be counted in the CGPA calculation to determine admission eligibility. . . .

42. Under the heading, "Evaluation of Transfer Credits," SBU's website stated:

Transfer Credits (TC) will be evaluated by the Academic Office upon receipt of the following:

1. Official transcripts from previously attended colleges or universities.
2. Completed Transfer Credit Evaluation Request Form.

Any credit used for admissions requirements shall not be used again for credit toward the Master's degree program.

43. The portion of the website that was received as evidence did not include admissions requirements for the BSHS program. SBU's 2011-2013 BSHS and non-degree program catalog provided that to be admitted to the BSHS program, an applicant must have "completed at least a high school education." The 2014-2015 and 2016-2017 catalogs stated that to be admitted to the BSHS program, a student must have completed a bachelor's degree or equivalent or have completed 90 quarter or 60 semester units at the baccalaureate level and meet general education requirements; however, grades of D or lower may not be counted toward the quarter or semester units necessary for admission.

SBU's Disclosures Regarding Accreditation and Federal Financial Aid

44. SBU's 2011-2013 catalog for the BSHS and non-degree programs; 2011-2013 catalog for the MSAOM program; 2014-2015 combined catalog for the MSAOM, doctorate, and BSHS programs; and 2016-2017 catalog for its BSHS program were received as evidence.

SBU's 2011-2013 catalog for BSHS and non-degree programs was separate from its catalog for the MSAOM and doctorate programs. Therefore, the 2011-2013 catalog for the BSHS, Acupressure-Tuina Massage, and English as a Second Language programs did not include admissions or graduation requirements for the master's or doctorate degree programs. Nevertheless, that catalog stated that SBU was accredited by ACAOM and it discussed federal financial aid, which statements were misleading because ACAOM only accredited SBU's graduate level programs, and only accredited programs were eligible for federal financial aid.

The 2014-2015 combined catalog included information about the MSAOM, doctorate, and BSHS programs and it stated that that ACAOM was SBU's institutional accreditor, SBU's master's and doctorate programs were accredited by ACAOM, and students enrolled in the master's and doctorate programs may be eligible for federal financial. It also stated that the "[u]ndergraduate degree program is not eligible for financial aid." That catalog did not expressly state that the BSHS program was not accredited.

SBU's 2016-2017 catalog for only the BSHS and non-degree programs did not include information about its graduate level programs. Nevertheless, it stated that SBU "is institutionally accredited by" ACAOM, "which is the recognized accrediting agency for freestanding institutions and colleges of acupuncture or Oriental medicine that offer such programs." That catalog also noted that ACAOM accredited SBU's master's and doctorate programs and then stated that its BSHS, Acupuncture-Tuina Massage, and English as a Second Language programs "are unaccredited programs. The Federal Financial Aid program is not eligible for students enrolled in unaccredited programs."

Evidence in the Student Records Regarding Allegations in First Amended Accusation

WHETHER SBU FOLLOWED ITS ADMISSIONS STANDARDS AND TRANSFER CREDIT POLICIES (FIRST CAUSE FOR DISCIPLINE)

Students 32G and 32S met SBU's Admissions Requirements.

45. Student 32G's records showed that student 32G earned 77 quarter units from the University of California Irvine (after deducting 12 units with a "D" grade from the total 89 units earned), 15 semester units from Santa Monica College, and 24.5 semester units from Cypress College. Ms. Johnson explained during her testimony that in order to convert quarter units to semester units, the semester units needed to be multiplied by 0.667. Student 32G's 77 quarter units multiplied by 0.667, equaled 51 semester units. Therefore, after

adding all the semester units together, student 32G's semester units used for admission equaled 90.5, which was more than the 60 semester units required for admission.

The records for student 32S showed that the following credits were used for admission: 23 quarter units from Eastern Oregon University, 7 semester units from Santiago Canyon University, 10 semester units from Golden State College, 3 semester units from University of Phoenix, and 25 semester units from Orange Coast College. Student 32S therefore had 23 quarter units and 45 semester units. After converting the 23 quarter units to semester units (multiplying the 23 quarter units by 0.667 equaled 15), student 32S had 60 semester units. During Ms. Johnson's testimony, she conceded that 32S met the requirements for admission to the MSAOM program.

Students 32Q and 32T were Given Transfer Credit in Violation of SBU's Transfer Credit Policy.

46. Student 32Q was admitted to the MSAOM program based on 67 units earned at Southwestern College. Because the minimum semester units required for admission is 60, that left seven units that could have been used as transfer credit without violating SBU's policy that units used for admission may not be used again as transfer credit. The Transfer Credit Form and Student Academic Record supplied by SBU for student 32Q showed that student 32Q was given nine transfer credits toward the MSAOM degree program, which was more than allowed.

Student 32T was admitted to the MSAOM program based on 62 units she earned at Professional Business College. That left two semester units that could be used for transfer credit. According to the Transfer Credit Form and Student Academic Record supplied by SBU, student 32T was given credit for three units for a psychology course she took at Professional Business College, which was more than was allowed.

WHETHER SBU FAILED TO PROVIDE AND MAINTAIN ENROLLMENT AGREEMENTS FOR THE BSHS PROGRAM (SECOND AND FIFTH CAUSES FOR DISCIPLINE; SUBPART (A) OF FIFTEENTH CAUSE FOR DISCIPLINE)

SBU Failed to Provide or Maintain Any BSHS Enrollment Agreements.

47. There was no dispute that SBU did not provide BSHS enrollment agreements to any students, and there were no BSHS enrollment agreements in any of the student records. SBU supplied Ms. Johnson a roster of 75 students enrolled in the BSHS program from July 2010 to June 2015. That list showed that students 32B through 32P received BSHS degrees and students 32Q through 32S were enrolled in the BSHS program. Additionally, the student files SBU supplied for students 32B through 32T all had information indicating that they were each enrolled in SBU's BSHS degree program and/or were awarded a BSHS degree. Although the student files for students 32B through 32T all

contained enrollment agreements for the MSAOM program, none of the student files contained an enrollment agreement for the BSHS program.

During Ms. Alleger's April 19, 2016, compliance inspection, she obtained student records regarding four students (J.P., Y.S., E.V., and K.M.) whose records were received as evidence.²⁹ Each of those four student files contained an enrollment agreement for the MSAOM program. The files for J.P. and K.M. contained copies of BSHS diplomas. The files for Y.S. and K.M. each contained an email about the general education credits needed for the BSHS degree. Y.S.'s file also contained a BSHS evaluation form. The Admission Check List in E.V.'s file noted the program as "M.S.O.M.; B.S.H.S." Despite the indications in each of these four student's files that they were enrolled in the BSHS program, none of them contained a BSHS enrollment agreement.

During the instant hearing, Dr. Shin testified that it was not necessary to have students sign a separate enrollment agreement for the BSHS degree program because the students signed enrollment agreements for the MSAOM program.

WHETHER SBU FAILED TO MAINTAIN PREVIOUS COLLEGE TRANSCRIPTS IN STUDENT 32H'S FILE AND ALLOWED STUDENT 32H TO MEET GENERAL EDUCATION CREDITS WITHOUT RECORDS IDENTIFYING THE SOURCE OF THE CREDITS (THIRD AND FOURTH CAUSE FOR DISCIPLINE; SUBPART (B) OF FIFTEENTH CAUSE FOR DISCIPLINE)

Student 32H's File Did Not Contain Previous College Transcripts or Show the Source of Credits Earned at Another School

48. The Official Transcript SBU supplied for student 32H, dated June 18, 2015, showed that student 32H was in the BSHS and MSAOM programs and graduated on June 16, 2013. According to an official transcript, student 32H was awarded an MSAOM degree on June 16, 2013, and the transcript also noted "BS Degree Awarded" in the portion of the transcript listing the classes taken during Spring 2013. The BSHS evaluation form supplied by SBU listed courses taken at National Tapei University that were applied to meet SBU's general education requirements to obtain a BSHS degree. The whistleblowers supplied a different BSHS evaluation form for student 32H, which identified the schools where the general education units were earned as Orange Coast College and University of California, Riverside. SBU did not have any transcripts from National Tapei University; Orange Coast College; University of California, Riverside; or any other previous school, in its records for student 32H.

SBU insisted during the hearing that the records it supplied to the bureau investigator were accurate. Dr. Shin testified that he "knew" that the wrong BSHS evaluation form (supplied by the whistleblowers) was submitted and that he was "sure" the academic office

²⁹ The Second Cause for Discipline references the files of 11 students reviewed during the April 19, 2016, compliance inspection; only four of those student's files were offered as evidence.

corrected the problems and put the correct BSHS evaluation form in the file SBU supplied. However, he did not provide any information to show that he had any knowledge of who corrected the problem or how he could be "sure" the correct form was in the SBU file. He had no idea who provided the incorrect information, and he stated that it looked like the problem was corrected according to the "previous transcript" in the file. But there was no previous transcript in student 32H's file to verify whether the information about student 32H's previous education was accurate.

WHETHER SBU FAILED TO MAINTAIN STUDENT FILES CONTAINING TRANSCRIPTS SHOWING ALL COURSES OR OTHER PROGRAMS COMPLETED, ATTEMPTED BUT NOT COMPLETED, AND THE DATES OF COMPLETION OR WITHDRAWAL (SIXTH CAUSE FOR DISCIPLINE)

SBU Failed to Maintain Student Files Showing All Programs Completed and Dates of Completion for Students 32B, 32E, and 32H through 32O Because their Transcripts Did Not Identify the BSHS Degrees and the Dates Completed.

49. The official transcripts SBU supplied on June 18, 2015, for students 32B, 32E, and 32H through 32O, only list the MSAOM degree with the date granted under the "Degree(s) Awarded" heading. Although BSHS diplomas were issued to those students, the fact that a "BS Degree Awarded" was only noted on the official transcripts under the heading for the last quarter each student attended, along with a list of courses completed during that last quarter. For example, although student 32B received MSAOM and BSHS diplomas on December 11, 2011, only the MSAOM is listed under the "Degree(s) Awarded" heading, with the December 11, 2011, date. Under the Fall 2011 heading, "BS Degree Awarded" is noted with the courses attended that quarter, without the date of issuance of the BSHS degree.

According to Dr. Shin, the transcripts sent to CAB would not have either of the degrees listed because those transcripts were usually sent before graduation. However, that did not explain why the transcripts in the records in SBU's files, including transcripts issued after graduation, did not list the BSHS degree as one of the degrees awarded or provide the date of issuance.

WHETHER SBU FAILED TO MAINTAIN DOCUMENTATION OF FEES PAID FOR BSHS DIPLOMAS IN STUDENT FILES (SEVENTH CAUSE OF DISCIPLINE)

SBU Failed to Maintain Documentation of Fees Paid for BSHS Diplomas in Seven Students' Files (Students 32C, 32D, 32F, 32H, 32I, 32K, 32L).

50. Students paid fees of \$100, \$500, or \$550 for an evaluation to obtain a BSHS degree. A list of the fees paid maintained by Michelle Jang, SBU's Director of Finance, was supplied to the bureau by Michelle Park. SBU did not dispute that such fees were paid. According to the list, titled "BA Degree," student 32C paid \$550 on March 14, 2012; student 32D paid \$100 on March 5, 2010; student 32F paid \$550 on March 15, 2012; student 32H

paid \$550 on March 21, 2013; student 32I paid \$550 on August 22, 2013; student 32K paid \$550 on February 27, 2013; and student 32L paid \$550 on October 3, 2012. SBU maintained a document titled "ledger card" as part each student's records, which SBU provided to Ms. Johnson during her investigation. None of the BA Degree fee payments listed above were included on the ledger cards for students 32C, 32D, 32F, 32H, 32I, 32K, or 32L.

According to Dr. Shin, the student ledger only included money paid for programs in which the students were enrolled. He explained that because the students were only enrolled in the MSAOM program, the BSHS fees were not included in the students' ledgers because the BSHS degrees were not related to the MSAOM program. Dr. Shin's testimony was not persuasive.

WHETHER SBU FAILED TO MAINTAIN PERTINENT STUDENT RECORDS (EIGHTH CAUSE FOR DISCIPLINE)

SBU's Files for Students 32J, 32O, and 32P Were Missing BSHS Diplomas.

51. The records supplied by the whistleblowers for students 32J, 32O, and 32P included copies of BSHS diplomas. SBU's records for each of those students did not include a copy of a BSHS diploma. The records SBU provided the bureau indicated that each of those student's files should have included a BSHS diploma as follows:

- The official transcript supplied by SBU for student 32J indicated "BS Degree Awarded" in Spring 2011, and SBU's clearance form for student 32J noted "BS in Holi" on "6/12/2011."
- The official transcript SBU supplied for student 32O indicated "BS Degree Awarded" in Spring 2011.
- The official transcript SBU supplied for student 32P indicated "BS Degree Awarded" in Fall 2011, and SBU's clearance form for student 32P stated, "BS in Holistic" followed by the date "12/11/2011."

During Dr. Shin's testimony, he stated that students 32J, 32O, and 32P did not receive BSHS diplomas in error because SBU did not realize that those students did not receive their diplomas until July or August of 2015. Dr. Shin said the registrar (who was then Michelle Park) was responsible for that mistake.

SBU's File for Student 32I was Not Missing a Diploma.

52. The records received in evidence as having been supplied by the whistleblowers did not contain a BSHS diploma for student 32I. The official transcript SBU provided indicated a BSHS degree was not awarded to student 32I, even though that student had paid a fee related to an evaluation for a BSHS degree.

WHETHER SBU MADE MISLEADING CHANGES OR UNTRUE STATEMENTS IN RECORDS, FAILED TO MAINTAIN GRADES IN STUDENT FILES, AND/OR FALSIFIED, DESTROYED, OR CONCEALED DOCUMENTS (TENTH, ELEVENTH, TWELFTH, AND FOURTEENTH CAUSES FOR DISCIPLINE)

Discrepancies in the Grades Given to Student 32A When He Attended SBU's Virginia Campus Did Not Amount to Untrue or Misleading Changes or Statements by SBU.

53. The records provided by the whistleblowers and SBU showed discrepancies in student 32A's grades for three classes: History of Medicine (taken during Spring 2014), Systemic Pathology (taken during Spring 2014), and Acupuncture B (taken in Summer 2014). Student 32A had attended SBU's Virginia campus beginning in Spring 2014, where he registered for the courses that had the grade irregularities. The bureau does not have authority over SBU's Virginia campus. Student 32A transferred to SBU in California beginning in the Spring of 2015.

The whistleblowers provided the bureau an email dated October 27, 2014, which was during the Fall 2014 term, after the three courses were completed, stating that student 32A received an "A" in History of Medicine; a "B" in Systemic Pathology; and an "A" in Acupuncture B. Academic records for student 32A issued January 25, 2015, and February 11, 2015, listed all three courses as "IP," meaning the courses were in progress. On the official transcript SBU issued and supplied to the bureau investigator on June 18, 2015, it stated student 32A received a "B" in History of Medicine, an "A" in Systemic Pathology, and a "B+" in Acupuncture B. An academic record the Virginia campus gave Ms. Johnson, dated July 17, 2015, stated student 32A received a "B" in History of Medicine, an "A" in Systemic Pathology, and a "B+" in Acupuncture B.

Dr. Shin attempted to explain how the grades might have been changed by the Virginia campus due to record keeping issues at that campus. However, no one with first-hand knowledge testified to explain how or why the grades were different. Dr. Shin obtained and supplied additional documents at the hearing, including student rosters for the three classes and an official transcript issued on April 18, 2017. The roster for the Acupuncture B class showed a grade of "B+"; the roster for the Systemic Pathology class showed a grade of "A"; and the roster for History of Medicine class show a grade of "A." The April 18, 2017, official transcript listed the grades for those three classes as follows: "A" in History of Medicine, "A" in Systemic Pathology, and "B+" in Acupuncture B. So, it appeared that the History of Medicine Grade was changed again after June 18, 2015, from a "B" to an "A."

Dr. Shin explained that because the student took the classes in Virginia, the Virginia campus registrar would enter the grades. Dr. Shin believed mistakes were made because there was a new registrar and new campus director in Virginia at the time. Although there clearly were discrepancies in student 32A's grades, the evidence did not establish that SBU in California made an untrue or misleading change in or statement about those grades.

Instead, it appeared that the Virginia campus may have made errors when posting those grades.

College Algebra Class Added to Student 32L's Transcript After He Graduated Did Not Amount to An Untrue or Misleading Change or Statement.

54. Student 32L graduated and received MSAOM and BSHS degrees on December 9, 2012. Official transcripts issued on July 29, 2013, and June 18, 2015, state that student 32L took College Algebra during the Fall 2012 term and received an "A" grade. However, the College Algebra class was not included on the official transcript issued on January 19, 2013. The College Algebra class taken at SBU was listed on the BSHS evaluation form that was signed on December 8, 2012, the day before student 32L graduated.

Dr. Shin explained, although he did not have personal knowledge regarding student 32L's algebra class, that sometimes there can be a delay in the entry of grades for classes. Dr. Shin also blamed the registrar for not timely entering the class. Although complainant alleged in the Fourteenth Cause for Discipline that the College Algebra class was not added until eight months after student 32H graduated, there was no evidence showing when the grade was added, as there were no official transcripts issued between January 19, 2013, and July 29, 2013.

WHETHER SBU MADE UNTRUE OR MISLEADING CHANGES OR UNTRUE OR MISLEADING STATEMENTS IN RECORDS REGARDING STUDENTS 32A, 32C, 32F, 32L, 32Q, 32R, AND 32T (ELEVENTH CAUSE FOR DISCIPLINE)

Five Modified Records of Student 32A Did Not Amount to Untrue or Misleading Changes or Statements.

55. Complainant pointed to what appeared to be five modified records in SBU's records for student 32A (who transferred to SBU in California from SBU in Virginia) that did not match the student records provided by the whistleblowers. Those records included missing signatures on documents that were later signed, missing dates on documents that later included a date, and an admissions evaluation form that stated student 32A attended Dong-A University from "1982 to 1985," that was later changed to "1982 to 1986," and that stated student 32A earned 37 units at one college, that was later reduced after units with a "D" grade were deducted from the units that may count towards admission.

When Dr. Shin reviewed student 32A's records during the hearing, he noted that some of the forms with missing signatures were not normally required to be maintained in the student files. He did not know what happened and suggested that the complete records for student 32A might have been maintained in Virginia. Dr. Shin also testified that if there were errors in records, it was SBU's policy to correct the errors.

Changes in Students 32C, 32F, and 32L's Transfer Credits After They Graduated Amounted to Untrue or Misleading Changes or Statements.

56. Transfer credits increased in students 32C, 32F, and 32L's records after they graduated as follows:

- Student 32C received a BSHS degree on March 10, 2012, and a MSAOM degree on June 10, 2012. According to SBU's June 18, 2015, official transcript, student 32C had a total of 36 transfer credits. However, earlier official transcripts, including a transcript sent to CAB that was issued on May 9, 2012 (after student 32C received the BSHS diploma and shortly before student 32C received the MSAOM diploma) showed that student 32C had only three transfer credits.
- Student 32F graduated and received BSHS and MSAOM diplomas on June 10, 2012. According to SBU's June 18, 2015, official transcript, student 32F had 72 transfer credits. However, earlier official transcripts issued on June 28, 2012, and July 5, 2012, shortly after student 32F graduated, showed only 10 transfer credits.
- Student 32L graduated and received BSHS and MSAOM diplomas on December 9, 2012. According to SBU's July 29, 2013, and June 18, 2015, official transcripts, student 32L had 41 transfer credits. However, an earlier official transcript issued January 19, 2013, shortly after student 32L graduated, which was also the official transcript sent to CAB, showed only 1 transfer credit.

Dr. Shin testified that the transfer credits changed because initially only the transfer credits for the MSAOM degree were shown. Later, the school decided to add the transfer credits for the general education units necessary for the BSHS degree. The school had been trying to figure out how to make the transcript templates for the BSHS and MSAOM programs and decided to add the general education credits for the BSHS degree to the MSAOM degree transcript. When they were pursuing the ACICS accreditation, SBU asked for the best way to reflect the credits on transcript. They ended up adding credits to the MSAOM program transcript based on advice from ACICS.³⁰ However, Dr. Shin's testimony did not adequately explain why the BSHS diplomas were issued without the appropriate credits having been given and documented in the students' records.

The Use of Different BSHS Evaluation Forms Did Not Amount to Untrue or Misleading Changes or Statements.

³⁰ There was no independent evidence showing that ACICS gave such advice. Dr. Shin's testimony that ACICS gave such advice was considered as administrative hearsay that explained Dr. Shin's testimony about why the credits were placed on the transcripts in relationship to SBU's ACICS accreditation application.

57. Although there were different BSHS evaluation forms in the whistleblower-provided records than were contained in the records SBU supplied, the whistleblower records were given very little weight due to Michelle Park's testimony that she collected the documents over her time as registrar and that she had supplied the records she collected to her superiors when she thought there were problems. It was possible that there were problems with the records she collected that were remedied after she pointed them out to her superiors. Additionally, Dr. Shin explained that the format of the BSHS evaluations forms had been modified and the old versions were not kept in the student records after the new BSHS evaluation forms were put in the files.

The Change in Program Titles on Students 32Q, 32R, and 32T's Records Did Not Amount to Untrue or Misleading Changes or Statements.

58. The program titles in Students 32Q, 32R, and 32T academic records changed.

- Student academic records for student 32Q issued on November 4, 2014, and November 11, 2014, listed the program as "BSH/MSAOM," but a later student academic record in student 32Q's student file listed the program as "MSAOM."
- The program listed on student 32R's March 10, 2015, student academic record was "BSH/MSAOM," but student 32R's October 22, 2015, student academic record listed the program as "MSAOM."
- In student 32T's records, the student academic records issued May 21, 2014, and July 1, 2014, state the program as "MSAOM," the student academic record issued March 24, 2015, lists the program as "BSH/MSAOM," and the student academic record issued October 22, 2015, lists the program as "MSAOM."

Dr. Shin explained that based on ACICS's requirement that students earn a bachelor's degree upon completion of the MSAOM program, the "MSAOM" program designation was for students who already had a bachelor's degree and the "BSH/MSAOM" program designation was for students who did not already have a bachelor's degree. According to Dr. Shin, SBU later changed to the program title to only "MSAOM" in order to avoid confusion to the students and ACICS. The changes in the program designations did not amount to misleading or untrue changes or statements.

WHETHER SBU WILLFULLY FALSIFIED, DESTROYED, OR CONCEALED DOCUMENTS
(TWELFTH CAUSE FOR DISCIPLINE; SUBPART (C) OF FIFTEENTH CAUSE FOR
DISCIPLINE)

SBU Did Not Willfully Falsify, Destroy, or Conceal Documents

59. Complainant alleged SBU willfully falsified, destroyed, or concealed records, and/or failed to maintain records based on the fact that the following categories of documents

the whistleblowers supplied to the bureau were not contained in SBU's files for students: (a) BSHS diplomas were in the whistleblower supplied documents for students 32I, 32J, 32O, and 32P, but there were no BSHS diplomas in the files for those students that SBU supplied; (b) BSHS evaluation forms that were in the records the whistleblowers provided for students 32C, 32D, 32H, 32I, 32J, 32M, 32O, and 32P were missing from the records SBU provided; and (c) official transcripts supplied by the whistleblowers for students 32J, 32L, and 32P were missing from the records SBU supplied for those students.

Although there were some different documents in the whistleblower-provided records than were contained in the records SBU supplied, the whistleblower records were given very little weight due to Michelle Park's testimony that she collected the documents over her time as registrar and that she had supplied the records she collected to her superiors when she thought there were problems. It was possible that there were problems with the records she collected that were remedied after she pointed them out to her superiors. Additionally, Dr. Shin explained that the format of the BSHS evaluation forms had been modified and that the old versions were not kept in the student records after the new BSHS evaluation forms were put in the files. Furthermore, many of the new BSHS evaluation forms in the SBU records were also updated forms that included general education courses the students had taken at SBU.

Accordingly, the fact that records the whistleblowers provided may not have been in the SBU provided records was not sufficient to support a finding that SBU willfully falsified, destroyed, or concealed documents.

WHETHER SBU FAILED TO DISCLOSE TO STUDENTS ENROLLED AFTER JANUARY 1, 2013, THAT THE BSHS PROGRAM WAS NOT ACCREDITED (THIRTEENTH CAUSE FOR DISCIPLINE)

SBU Failed to Notify Students 32Q, 32R, 32S, and 32T in Writing that the BSHS Program Was Unaccredited.

60. Students 32Q, 32R, 32S, and 32T all signed MSAOM enrollment agreements after January 1, 2013, and they were all enrolled in the BSHS program, based on the information contained in their student files. None of these four students signed a BSHS enrollment agreement. The MSAOM enrollment agreements they signed did not include any disclosures about the BSHS program or that any program in which they were enrolled was not accredited. The enrollment agreements these students signed also did not disclose that a student enrolled in an unaccredited program may not be eligible for federal financial aid.

SBU's Mitigation and Rehabilitation Evidence

61. In addition to Dr. Shin's explanations described above, Dr. Shin testified about the reasons SBU handled the BSHS program the way it did and SBU's rehabilitative efforts.

62. Dr. Shin explained that a bachelor's degree was not required for admission to the MSAOM program and the BSHS degree was never granted without the MSAOM degree. SBU students were enrolled in the MSAOM program, and SBU would award a BSHS degree if a student met four requirements: paid a \$100 or \$550 general education evaluation fee (the amount had increased over time); met the general education requirements; satisfied the major course requirements; and successfully completed the MSAOM program. The evaluation fee was charged because SBU needed to communicate with the students regarding which courses were needed so they could earn the necessary general education credits, and that process took time. According to Dr. Shin, the BSHS degree was a non-terminal degree, SBU "never" recruited students for the BSHS program, and no students enrolled in only the BSHS program.

ACICS's standards generally required a bachelor's degree to enter a master's degree program. However, if a student was enrolled in a professional master's degree program that did not require a bachelor's degree, ACICS required that the student receive a bachelor's degree upon completion of the master's degree. Therefore, beginning in 2014, while SBU was pursuing ACICS accreditation, all students entered in the MSAOM program without a bachelor's degree were required to receive a BSHS degree upon completion of the MSAOM degree program in order to meet ACICS's standards. Dr. Shin stated that "did not mean" the students were "enrolled" in the BSHS program, and Dr. Shin believed BSHS enrollment agreements were not required.

Dr. Shin never asked the bureau if students enrolled in the MSAOM program did not need to sign an enrollment agreement for the BSHS program.

63. When SBU discontinued the BSHS program in April 2017, it prepared a "Notice Regarding the Bachelor of Science in Holistic Medicine" and an "Addendum to Enrollment Agreement." Both those documents explained that SBU no longer offered a BSHS degree and SBU would refund any money paid by students to pursue the BSHS degree. The notice, which Dr. Shin stated was sent to all students who had expressed an interest in the BSHS degree, explained that:

Previously, students enrolled in the MSAOM program without a bachelor's degree were provided the option to concurrently pursue the BSHS through completion of additional general education coursework and payment of an evaluation and processing fee. The BSHS was only available to those students who completed all graduation requirements for the MSAOM degree, as well as additional coursework. This option is no longer available.

64. Dr. Shin denied that Dr. Arthur Park ever expressed any concerns to him. As president, Dr. Shin would have expected Dr. Arthur Park to come to him. When Dr. Arthur Park later made a request during 2015 that the board of trustees conduct an investigation, Dr. Shin did not respond to that request because he did not think what Dr. Arthur Park wrote was

accurate. SBU asked Michelle Park to return documents because “they had heard” that she took a lot of student records and wanted her to return confidential records. According to Dr. Shin, SBU intended to correct deficiencies that were raised by the documents. The documents were never returned, and SBU initiated an investigation to correct whatever mistakes had been made.

65. Dr. Shin stated that it was SBU’s policy to correct inaccuracies found in student records. If errors or mistakes were found, the procedure was to update the records to make sure they were correct. Additionally, SBU staff were trained to cooperate with the bureau, and according to Dr. Shin, they did not hide documents from the bureau or falsify documents submitted to the bureau.

66. Dr. Shin listed measures SBU has taken since the accusation was filed to ensure compliance with the rules and regulations: SBU provided another training to the registrar; reviewed the file check list to make sure all files were in the student records; reviewed who can see student records and implemented a check in and check out log; and required that all files be maintained in fire proof cabinets. Dr. Shin stated that he was “sure” all students files were in compliance. SBU also hired a new compliance officer in October 2017 to oversee and assess compliance with all rules and regulations and implement new policies and procedures. However, no evidence was submitted regarding the new policies and procedures, and the new compliance officer did not testify.³¹

67. SBU currently has approximately 500 students in the MSAOM program and 100 students in the doctorate program. Some of its current students were enrolled before 2017, when the BSHS program was eliminated. SBU has over 3,000 alumni. SBU’s acupuncture clinics in Anaheim and Los Angeles treat thousands of patients per month. Dr. Shin expressed his desire to see the school continue to operate. He emphasized that SBU graduates are proud of the school, the clinics provide health care to patients in the community, and the students learn hands-on treatment of patients and serve the community.

Petition Signed by Students and Faculty and SBU Student Susan Soto’s Testimony

68. SBU submitted a petition addressed to the bureau signed by multiple students and faculty members during March 2018, and Susan Soto, one of the SBU students who signed the petition, testified.

³¹ SBU submitted a copy of the compliance officer’s resume, which was received as administrative evidence. That document only supplemented Dr. Shin’s testimony that she was hired. The hearsay statements about her education and experience contained in that document did not supplement or explain any other admitted evidence and was not considered. (Gov. Code, 11513, subd. (d).)

69. The petition stated:³²

Dear Bureau for Private Postsecondary Education (BPPE),

South Baylo University has been a public nonprofit corporation since 1986, serving and benefiting the community as one of the largest school [sic] Acupuncture and Oriental Medicine. Suspending or revoking South Baylo University based on past violations in 2013 and 2014 is an injustice to the current students, staff, faculties [sic] and the patients of the University Clinic. Bringing any punishment upon our school would negatively impact the reputation of Acupuncture and Oriental Medicine, displace over 500 current students, affect over three thousand graduates and thousands of patients who are cared [sic] at the University Clinic. We respectfully request upon [sic] BPPE to please consider these factors that will impact [sic] in the closure of SBU, and ask to [sic] help the current students to continue the education and their career as a graduate of SBU.

70. Ms. Soto attended SBU for four years in the MSAOM program and her expected graduation date was in May of 2018. Ms. Soto signed an enrollment agreement for the MSAOM program; she will not be receiving a BSHS degree. She was not aware of any problems with the accuracy of student records at SBU, she has not had any problems with SBU, and she had no complaints about SBU. Ms. Soto voluntarily signed the petition, which was in a classroom at SBU. She did not know who prepared it.

Ms. Soto explained that the school was very strict about paperwork, and when she needed to take a leave of absence, the school required her to complete all the necessary documents in person to do so. Ms. Soto's son has received treatment at SBU's clinic, and Ms. Soto believed the treatment he received was excellent.

Letter from the Asian Pacific Islander American Public Affairs Association Community Education Foundation

71. SBU submitted a letter from the Asian Pacific Islander American Public Affairs Association Community Education Foundation (APAPA-CEF), dated February 13, 2018, addressed to complainant. The letter was received as administrative hearsay³³ and

³² The petition did not accurately describe the alleged violations or the relevant timeframe. There was no evidence showing that the persons who signed the petition were fully informed of the allegations against SBU.

³³ Pursuant to Government Code section 11513, subdivision (d), the letter was only considered to the extent it supplemented and explained other evidence that was admitted during the hearing.

requested that consideration be given to the impact revocation would have on SBU's students, graduates, employees and patients. The letter, which did not indicate knowledge of the specific allegations asserted in the First Amended Accusation, stated that:

The closure of SBU would have a severe and negative impact on the practice, influence and reputation of Acupuncture and Oriental Medicine, displace hundreds of current students, affect over three thousand graduates and thousands of clinical patients who are cared for at the University clinic, and effectively dismantle almost 40 years of professional education in the state of California.

Costs of Investigation and Enforcement

72. Complainant sought recovery of investigation and enforcement costs totaling \$44,235.

The Deputy Attorney General who prosecuted the case provided a declaration signed on March 12, 2018, the last business day before the commencement of this hearing, regarding prosecution costs of \$36,135 incurred up through March 12, 2018, plus an additional eight-hour good faith estimate of time that "were or will be incurred and billed" before the hearing, amounting to \$1,360, for a total of \$37,495. Attached to her declaration was a document entitled "Master Time Activity by Professional Type," that identified the tasks performed, the time spent on each task, the persons who performed each task, and the hourly rates charged for the \$36,135 incurred up through March 12, 2018. The Deputy Attorney General did not explain why she was estimating an additional eight hours that "were or would be billed" before the commencement of the hearing, when she signed the declaration on March 12, 2018, making those costs speculative. The request for prosecution costs through March 12, 2018, in the amount of \$36,135, complied with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b)(2), to prove the prosecution costs sought. The request for the estimated additional eight hours of costs did not comply with California Code of Regulations, title 1, section 1042, subdivision (b)(3), which states: "When agency presents an estimate of actual costs incurred, its Declaration shall explain the reason actual cost information is not available." Accordingly, the reasonable enforcement costs amount to \$36,135.

Complainant also submitted a document titled "Certification of Costs of Investigation," executed by the bureau's enforcement chief. The declaration stated that the costs were for "investigation of complaints," "researching school history, accreditation and program requirements," "contacting and interviewing complainants, students, faculty and witnesses," "preparation of correspondence, reports, and/or declarations," and "collecting, organizing and evaluating documents and evidence." The costs were listed as having been performed by "Associate Government Program Analyst" and calculated by the number of hours worked per fiscal year multiplied by the hourly rate of \$31.83. The certification listed the totals by fiscal year of \$1,018.56 for 2014/2015; \$3,747.98 for 2015/2016; \$1,862.05 for

2016/2017; and \$111.41 for 2017/2018; and totaled \$6,740. The certification did not specify the hours spent on specific tasks as required by California Code of Regulations, title 1, section 1042, subdivision (b)(1). Therefore, the investigation costs are not recoverable.

SBU did not present any evidence or argument regarding its ability to pay costs.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proof of establishing that the charges in the accusation are true. (*Martin v. State Personnel Board* (1972) 26 Cal.App.3d 573, 583; Evid. Code, § 500.)

2. The burden is on respondent to produce positive evidence of rehabilitation. (*Epstein v. California Horse Racing Board* (1963) 222 Cal.App.2d 831, 842-843.)

3. Evidence Code section 115 provides that: "Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."

4. Complainant argued that the preponderance of the evidence standard applies, citing the analysis in *Lone Star Sec. & Video, Inc. v. Bureau of Sec. and Inv. Services* (2012) 209 Cal.App.4th 445, 452, regarding application of the clear and convincing standard in only those administrative disciplinary cases that concern a professional license. In *Lone Star*, an alarm company argued that the clear and convincing evidence standard applied in an administrative disciplinary proceeding before the Bureau of Security and Investigative Services to revoke its alarm company license. The appellate court disagreed and stated:

"'Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.' . . . In determining the proper standard of proof to apply in administrative license revocation proceedings, courts have drawn a distinction between professional licenses such as those held by doctors . . . , lawyers . . . , and real estate brokers . . . [,] on the one hand, and nonprofessional or occupational licenses such as those held by food processors . . . , and vehicle salespersons . . . , on the other hand. In proceedings to revoke professional licenses, the decision makers apply the clear and convincing evidence standard of proof, while in proceedings to revoke nonprofessional or occupational licenses, the decision makers apply the preponderance of the evidence standard of proof.

“The ‘sharp distinction between professional licenses, on the one hand, and . . . nonprofessional licenses, on the other, supports the distinction in the standards of proof applicable in proceedings to revoke these two different types of licenses. Because a professional license represents the licensee’s fulfillment of extensive educational, training and testing requirements, the licensee has an extremely strong interest in retaining the license that he or she has expended so much effort in obtaining. It makes sense to require that a higher standard of proof be met in a proceeding to revoke or suspend such a license. The same cannot be said for a licensee’s interest in retaining a [nonprofessional] license.’” (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916, 135 Cal.Rptr.3d 402, citations omitted.) “A ‘professional’ is ‘[a] person who belongs to a learned profession or whose occupation requires a high level of training and proficiency.’” (*Id.* at p. 916, fn. 5, 135 Cal.Rptr.3d 402.)

5. Respondent argued that the clear and convincing evidence standard of proof applies, citing cases regarding discipline of holders of professional licenses. (*Bley v. Board of Dental Examiners* (1927) 87 Cal.App. 193 (dentist); *Furman v. State Bar* (1938) 12 Cal.2d 212 (lawyer); *Coffman v. California State Board of Architectural Examiners* (1933) 130 Cal.App. 343 (architect); *Golden v. State Bar* (1931) 213 Cal. 237 (lawyer); and *Bar Association v. Sullivan* (1921) 185 Cal. 621 (lawyer). Respondent also pointed to *Cornell v. Reilly* (1954) 127 Cal.App.2d 178, 184 (liquor license)³⁴; *Johnstone v. Daly City* (1958) 156 Cal.App.2d 506, 516 (dismissal of publicly employed police inspector)³⁵; and *In the Matter of the Revocation of the Grade V. Wastewater Treatment Plant Operator Certificate Held by Kabine Mara* 1984 W.L. 19062 (wastewater plant operator certificate).³⁶ Although

³⁴ Respondent cited the *Cornell, supra*, case for the proposition that proof “cannot be based on surmise or conjecture, suspicion or theoretical conclusions, or uncorroborated hearsay.” (Respondent’s Brief, page 5, lines 10-11.) But that does not answer the question regarding the standard of proof to be applied here.

³⁵ The portion of the *Johnstone, supra*, case cited by respondents that concerned the standard of proof was in conflict with more recent California Supreme Court and appellate court authority applying the preponderance of the evidence standard in state employment dismissal cases. (*Skelley v. State Personnel Board* (1975) 15 Cal. 3d 194, 204, fn. 19; *Gardner v. Board of Education of the Tustin Unified School District* (1985) 164 Cal.App.3d 1035, 1039, fn. 3.).

³⁶ This was an Order by the State Water Resources Control Board, which does not have any precedential value in this matter. Although that Order stated that the burden of proof applied in that proceeding was clear and convincing evidence, it did not contain any

respondent argued that the cases it cited were “well-reasoned,” only the cases which concerned professional licensees (attorneys and an architect) explained the rationale for applying the clear and convincing evidence standard.

6. This case concerns discipline of an approval to operate held by an institution, which is not a person and not a member of a learned profession. Accordingly, because SBU is not a professional licensee, and in the absence of legal authority that any other standard of proof applies, the standard of proof is the preponderance of the evidence as dictated by Evidence Code section 115.

7. “Preponderance of the evidence means evidence that has more convincing force than that opposed to it.’ [Citations.]” (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324.) “The sole focus of the legal definition of ‘preponderance’ in the phrase ‘preponderance of the evidence’ is on the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant.” (*Ibid.* at 324-325, italics in original.) “If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it. [Citation].” (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

The Purpose of Administrative Disciplinary Proceedings and the Bureau’s Duty to Protect the Public

8. The main purpose of an administrative disciplinary proceeding is to protect the public through the prevention of future harm and the improvement and rehabilitation of the licensee. (*Ettinger, supra*, 135 Cal.App.3d at 856.) It is far more desirable to impose discipline before a licensee harms anyone than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.)

9. Education Code section 94801, subdivision (b), explains the need to regulate private postsecondary schools to protect students and the public:

(b) Private postsecondary schools can complement the public education system and help develop a trained workforce to meet the demands of California businesses and the economy; however, concerns about the value of degrees and diplomas issued by private postsecondary schools, and the lack of protections for private postsecondary school students and consumers of those schools’ services, have highlighted the need for strong state-level oversight of private postsecondary schools.

analysis regarding the standard of proof other than citing *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 583, a case which concerned discipline of a physician, a member of a learned profession.

10. Education Code section 94875 provides that the bureau "shall regulate private postsecondary educational institutions through the powers granted, and duties imposed, by this chapter. In exercising its powers, and performing its duties, the protection of the public shall be the bureau's highest priority. If protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

Statutory Disciplinary Authority

11. Education Code section 94885 sets forth the bureau's duty to regulate postsecondary education institutions' minimum operating standards:

(a) The bureau shall adopt by regulation minimum operating standards for an institution that shall reasonably ensure that all of the following occur:

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

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

[¶] . . . [¶]

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

[¶] . . . [¶]

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

(8) Adequate records and standard transcripts are maintained and are available to students.

(9) The institution is maintained and operated in compliance with this chapter and all other applicable ordinances and laws.

(b) Except as provided in Section 94885.1, an institution offering a degree must satisfy one of the following requirements:

(1) 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 by the institution.

(2) An accreditation plan, approved by the bureau, for the institution to become fully accredited within five years of the bureau's issuance of a provisional approval to operate to the institution. The provisional approval to operate to an unaccredited degree-offering institution shall be in compliance with Section 94885.5.

12. Education Code section 94897, subdivisions (j), (k), and (p), state that:

An institution shall not do any of the following:

[¶] . . . [¶]

(j) In any manner make an untrue or misleading change in, or untrue or misleading statement related to, a test score, grade or record of grades, attendance record, record indicating student completion, placement, employment, salaries, or financial information, including any of the following:

(1) A financial report filed with the bureau.

(2) Information or records relating to the student's eligibility for student financial aid at the institution.

(3) Any other record or document required by this chapter or by the bureau.

(k) Willfully falsify, destroy, or conceal any document of record while that document of record is required to be maintained by this chapter.

[¶] . . . [¶]

(p) Offer an associate, baccalaureate, master's, or doctoral degree without disclosing to prospective students prior to enrollment whether the institution or the degree program is unaccredited and any known limitation of the degree, including, but not limited to, all of the following:

[¶] . . . [¶]

(2) A statement that reads: "A degree program that is unaccredited or a degree from an unaccredited institution is not recognized for some employment positions, including, but not limited to, positions with the State of California."

(3) That a student enrolled in an unaccredited institution is not eligible for federal financial aid programs.³⁷

13. Education Code section 94900, subdivision (b), provides:

(b) An institution shall maintain, for each student granted a degree or certificate by that institution, permanent records of all of the following:

(1) The degree or certificate granted and the date on which that degree or certificate was granted.

(2) The courses and units on which the certificate or degree was based.

(3) The grades earned by the student in each of those courses.

14. Education Code section 94900.5 provides:

An institution shall maintain, for a period of not less than five years, at its principal place of business in this state, complete and accurate records of all of the following information:

(a) The educational programs offered by the institution and the curriculum for each.

(b) The names and addresses of the members of the institution's faculty and records of the educational qualifications of each member of the faculty.

(c) Any other records required to be maintained by this chapter, including, but not limited to, records maintained pursuant to Article 16 (commencing with Section 94928).

15. Education Code section 94902, subdivision (a), requires that a "student shall enroll solely by means of executing an enrollment agreement." Education Code section 94911, subdivision (a), requires that an enrollment agreement include the "name of the

³⁷ Subdivisions (p)(2) and (p)(3) were adopted effective January 1, 2013.

institution and the name of the educational program, including the total number of credit hours, clock hours, or other increment required to complete the educational program.”

16. Education Code section 94932 provides:

The bureau shall determine an institution’s compliance with the requirements of this chapter. The bureau shall have the power to require reports that institutions shall file with the bureau in addition to the annual report, to send staff to an institution’s sites, and to require documents and responses from an institution to monitor compliance. When the bureau has reason to believe that an institution may be out of compliance, it shall conduct an investigation of the institution. If the bureau determines, after completing a compliance inspection or investigation, that an institution has violated any applicable law or regulation, the bureau shall take appropriate action pursuant to this article.

17. Education Code section 94933 states:

The bureau shall provide an institution with the opportunity to remedy noncompliance, impose fines, place the institution on probation, or suspend or revoke the institution’s approval to operate, in accordance with this article, as it deems appropriate based on the severity of an institution’s violations of this chapter, and the harm caused to students.

18. Education Code section 94935 provides the following regarding the use of a “notice to comply” when bureau staff identify “minor violations”:³⁸

(a) Bureau staff who, during an inspection of an institution, detect a violation of this chapter, or regulations adopted pursuant to this chapter, that is a minor violation as determined by the bureau, pursuant to regulations adopted by January 1, 2011, shall issue a notice to comply before leaving the institution. The bureau shall establish a voluntary informal appeal process, by regulation, within one year of the enactment of this chapter.

³⁸ Respondent cited California Code of Regulations, title 5, section 75030, for the proposition that it somehow defines “minor” violations. However, that regulation does not discuss or define minor violations as respondent suggests. Instead, section 75030 provides ranges for administrative fines and does not even use the phrase “minor violation.”

(b) An institution that receives a notice to comply shall have no more than 30 days from the date of inspection to remedy the noncompliance.

(c) Upon achieving compliance, the institution shall sign and return the notice to comply to the bureau.

(d) A single notice to comply shall be issued listing separately all the minor violations cited during the inspection.

(e) A notice to comply shall not be issued for any minor violation that is corrected immediately in the presence of the bureau staff. Immediate compliance may be noted in the inspection report, but the institution shall not be subject to any further action by the bureau.

(f) A notice to comply shall be the only means the bureau shall use to cite a minor violation discovered during an inspection. The bureau shall not take any other enforcement action specified in this chapter against an institution that has received a notice to comply if the institution remedies the violation within 30 days from the date of the inspection.

(g) If an institution that receives a notice to comply pursuant to subdivision (a) disagrees with one or more of the alleged minor violations listed in the notice to comply, an institution shall send the bureau a written notice of disagreement. The agency may take administrative enforcement action to seek compliance with the requirements of the notice to comply.

(h) If an institution fails to comply with a notice to comply within the prescribed time, the bureau shall take appropriate administrative enforcement action.

19. Education Code section 94937 grants the bureau the authority to discipline private postsecondary institutions as follows:

(a) As a consequence of an investigation, which may incorporate any materials obtained or produced in connection with a compliance inspection, and upon a finding that an institution has committed a violation, the bureau may place an institution on probation or may suspend or revoke an institution's approval to operate for:

(1) Obtaining an approval to operate by fraud.

(2) A material violation or repeated violations of this chapter or regulations adopted pursuant to this chapter that have resulted in harm to students. For purposes of this paragraph, "material violation" includes, but is not limited to, misrepresentation, fraud in the inducement of a contract, and false or misleading claims or advertising, upon which a student reasonably relied in executing an enrollment agreement and that resulted in harm to the student.

(b) The bureau shall adopt regulations, within one year of the enactment of this chapter, governing probation and suspension of an approval to operate.

(c) The bureau may seek reimbursement pursuant to Section 125.3 of the Business and Professions Code.

(d) An institution shall not be required to pay the cost of investigation to more than one agency.

Regulatory Authority

20. California Code of Regulations, title 5, section 71770, subdivision (a), regulates admissions standards as follows:

(a) The institution shall establish specific written standards for student admissions for each educational program. These standards shall be related to the particular educational program. An institution shall not admit any student who is obviously unqualified or who does not appear to have a reasonable prospect of completing the program. In addition to any specific standards for an educational program, the admissions standards must specify as applicable that:

(1) Each student admitted to an undergraduate degree program, or a diploma program, shall possess a high school diploma or its equivalent, or otherwise successfully take and pass the relevant examination as required by section 94904 of the Code.

(2) Each student admitted into a post-baccalaureate degree program shall possess a bachelor's degree or its equivalent. If a graduate program leads to a profession or an occupation requiring state licensure and the licensing agency does not require that a member of the profession or occupation possess a Bachelor's degree or its equivalent, this subdivision does not apply.

21. California Code of Regulations, title 5, section 71800, provides the following enrollment agreement requirements:

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

- (a) The name and address of the institution and the addresses where instruction will be provided.
- (b) Period covered by the enrollment agreement.
- (c) Program start date and scheduled completion date.
- (d) Date by which the student must exercise his or her right to cancel or withdraw, and the refund policy, including any alternative method of calculation if approved by the Bureau pursuant to section 94921 of the Code.
- (e) Itemization of all institutional charges and fees including, as applicable:
 - (1) tuition;
 - (2) registration fee (non-refundable);
 - (3) equipment;
 - (4) lab supplies or kits;
 - (5) Textbooks, or other learning media;
 - (6) uniforms or other special protective clothing;
 - (7) in-resident housing;
 - (8) tutoring;
 - (9) assessment fees for transfer of credits;
 - (10) fees to transfer credits;
 - (11) Student Tuition Recovery Fund fee (non-refundable);
 - (12) any other institutional charge or fee.

(f) Charges paid to an entity other than an institution that is specifically required for participation in the educational program.

22. California Code of Regulations, title 5, section 71920, provides the following regarding maintenance of student records:

(a) The institution shall maintain a file for each student who enrolls in the institution whether or not the student completes the educational service.

(b) In addition to the requirements of section 94900, the file shall contain all of the following pertinent student records:

(1) Written records and transcripts of any formal education or training, testing, or experience that are relevant to the student's qualifications for admission to the institution or the institution's award of credit or acceptance of transfer credits including the following:

(A) Verification of high school completion or equivalency or other documentation establishing the student's ability to do college level work, such as successful completion of an ability-to-benefit test;

(B) Records documenting units of credit earned at other institutions that have been accepted and applied by the institution as transfer credits toward the student's completion of an educational program;

(C) Grades or findings from any examination of academic ability or educational achievement used for admission or college placement purposes;

(D) All of the documents evidencing a student's prior experiential learning upon which the institution and the faculty base the award of any credit;

[¶] . . . [¶]

(3) Copies of all documents signed by the student, including contracts, instruments of indebtedness, and documents relating to financial aid;

[¶] . . . [¶]

(5) In addition to the requirements of section 94900(b) of the Code, a transcript showing all of the following:

(A) The courses or other educational programs that were completed, or were attempted but not completed, and the dates of completion or withdrawal;

(B) Credit awarded for prior experiential learning, including the course title for which credit was awarded and the amount of credit;

(C) Credit for courses earned at other institutions;

(D) Credit based on any examination of academic ability or educational achievement used for admission or college placement purposes;

(E) The name, address, website address, and telephone number of the institution.

[¶] . . . [¶]

(9) A document showing the total amount of money received from or on behalf of the student and the date or dates on which the money was received; . . .

23. California Code or Regulations, title 5, section 71930, subdivisions (a), (b)(1), and (e), provide:

(a) An institution shall maintain all records required by the Act and this chapter. The records shall be maintained in this state.

(b)(1) In addition to permanently retaining a transcript as required by section 94900(b) of the Code, the institution shall maintain for a period of 5 years the pertinent student records described in Section 71920 from the student's date of completion or withdrawal.

[¶] . . . [¶]

(e) All records that the institution is required to maintain by the Act or this chapter shall be made immediately available by the institution for inspection and copying during normal business hours by the Bureau and any entity authorized to conduct investigations.

24. California Code or Regulations, title 5, section 75100, states:
- (a) The Bureau may suspend, revoke or place on probation with terms and conditions an approval to operate.
 - (b) "Material violation" as used in section 94937 of the Code includes committing any act that would be grounds for denial under section 480 of the Business and Professions Code.
 - (c) The proceedings under this section shall be conducted in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, as requested by the institution.

Case Law Regarding a "Willful" Violation

25. While the statutes and regulations at issue do not specifically require evidence of "intent" in order to find cause to impose discipline, Education Code section 94987, subdivision (k), requires a "willful" falsification, destruction, or concealment of documents.

Pettinger v. Collection Agency Licensing Bureau (1962) 208 Cal.App.2d 585, is a case that discussed the use of the word "wilful"³⁹ in Business and Professions Code section 6930 concerning registration of employees of collection agencies. In that case, Pettinger was denied registration as a collection agency employee because he had misrepresented that he was from the "Red Cross" in order to persuade an employer to disclose the address of a former employee. Business and Professions Code section 6930, was quoted in *Pettinger*, as follows (*Id.* at p. 587):

If it be found upon the hearing, . . . that the licensee or employee has wilfully violated any of the provisions of this chapter [§§ 6850- 6956] . . . or that he has been guilty of fraud or misrepresentation, . . . the director shall . . . render the decision which may:

- (a) Order the revocation of the license or licenses . . . or order any accused employee disqualified from further employment in the collection agency business.
- (b) Order the license or licenses suspended. . . .

³⁹ The code and the *Pettinger* case spell the words "wilful" and wilfully" instead of "willful" and "willfully"

Pettinger argued that he did not willfully intend to violate any section of the code. The court of appeal disagreed that intent to violate the code was necessary to impose discipline and explained (*Id.* at pp. 588-589):

In statutory offenses “wilfully” implies only a willingness to commit the act, unless otherwise apparent from the context of the statute. Section 7 of the Penal Code provides that within the Penal Code “wilfully” does not require an intent to violate the law. This definition of the term “wilfully” has been adopted in reference to prohibitions and regulations in other codes created under the state’s police power. (*Bay Shore Laundry Co. v. Industrial Acc. Com.*, 36 Cal.App. 547, 551 [172 P. 1128].) Absent any contrary legislative intent we hold that the same interpretation is proper here.

The refusal to register petitioner was also under section 6894.7, subdivision (b) on grounds that he committed an “act constituting dishonesty or fraud.” No special intent is required under this subsection. The terms “dishonesty or fraud” as used in this statute are not designed to serve as standards of precise measurement of conduct. Clearly the terms extend beyond acts which are criminal to embrace misrepresentation and deception committed with an intent to gain an advantage over another. (*Wayne v. Bureau of Private Investigators & Adjusters*, 201 Cal.App.2d 427, 436, 437 [20 Cal.Rptr. 194].)

Responsibility for Conduct of Employees, Agents, and Advisors

26. SBU blamed the problems with its maintenance of student records on the negligence and incompetence of its former registrar, Michelle Park, and it blamed the manner in which it handled its BSHS degree program on its accreditor, a potential accreditor, an accreditation consultant. SBU also argued that its “management” did not direct the violations and was not aware of the violations.

The law is well established that a licensee who elects to operate its business through employees is responsible to the licensing authority for the conduct of its employees. (*Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal3d 347, 360; *Kirby v. Alcoholic Bev. Etc. Appeals Bd.* (1973) 33 Cal.App.3d 732, 737.) This rule is consistent with the law governing principal-agent liability contained in Civil Code section 2330 that “[a]n agent represents his principal for all purposes within the scope of his actual or ostensible authority. . . .” It is also consistent with the doctrine of respondeat superior codified in Civil Code section 2338, which provides that “a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business. . . .”

Additionally, *Sternberg v. California State Board of Pharmacy* (2015) 239 Cal.App.4th 1159, is a more recent case in which the State Board of Pharmacy disciplined Sternberg, a pharmacist, for violating provisions of the Business and Professions Code, based on the theft of dangerous drugs by a pharmacy employee he supervised as the pharmacist-in-charge. The employee, who was a pharmacy technician, accomplished the theft by ordering drugs to be delivered when she was scheduled to work, bringing the drugs to the work station farthest away from the pharmacist's work area, and putting the bottles in her purse. (*Id.* at p. 1163.) The pharmacy board found that the pharmacist failed to implement procedures to assure the pharmacy and its staff were adequately supervised. (*Id.* at p. 1164.) In his writ petition, the pharmacist argued that the board incorrectly disciplined him for violating Business and Professions Code because he did not know the pharmacy technician was stealing. (*Id.* at p. 1165.)

On appeal, the court determined that the pharmacy board properly interpreted Business and Professions Code when it disciplined Sternberg even though he did not have actual knowledge of the thefts. (*Id.* at p. 1170.) The appellate court explained (*Id.* at pp. 1168-1170):

The Board properly interpreted section 4081 not to require knowledge in order to impose licensing discipline. The language of subdivisions (a) and (b) of section 4081 contains no express knowledge requirement, and language may not be inserted into a statute that the Legislature has omitted. (*Conrad v. Medical Bd. of California* (1996) 48 Cal.App.4th 1038, 1046, 55 Cal.Rptr.2d 901; *Khan v. Medical Board* (1993) 12 Cal.App.4th 1834, 1845, 16 Cal.Rptr.2d 385 (*Khan*) ["The Legislature's failure to include 'knowingly' or 'intentionally' or other qualifying words signals that it did not intend either guilty knowledge or intent to be elements of" the licensing statute at issue.].) This is particularly true in light of section 4081, subdivision (c), which provides that a pharmacist-in-charge may not be criminally liable for an employee's violation of section 4081 if he or she did not know the violation occurred. (See *Telish v. California State Personnel Bd.* (2015) 234 Cal.App.4th 1479, 1490, 184 Cal.Rptr.3d 873 [applying the *maxim expressio unius est exclusio alterius*, meaning "the expression of certain things in a statute necessarily involves exclusion of other things not expressed. . . ."]; *Khan, supra*, at pp. 1844-1845, 16 Cal.Rptr.2d 385 [refusing to imply knowledge requirement into medical licensing statute given other statutes in same article contained express knowledge requirement].)

The Board's interpretation also supports the purpose of protecting the public by encouraging pharmacists-in-charge to take necessary precautions to adequately supervise and maintain

the inventory of dangerous drugs. (§ 4001.1 [“Protection of the public shall be the highest priority for the California State Board of Pharmacy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”]; see *Khan, supra*, 12 Cal.App.4th at p. 1845, 16 Cal.Rptr.2d 385 [refusing to imply knowledge requirement in medical licensing statute, which served the purpose of protecting the public].) And imposing strict liability is consistent with other cases imposing strict liability under other licensing statutes. (See *Margarito v. State Athletic Com.* (2010) 189 Cal.App.4th 159, 168–169, 116 Cal.Rptr.3d 888 [collecting cases]; see also *Brodsky v. Cal. State Bd. of Pharmacy* (1959) 173 Cal.App.2d 680, 682, 691, 344 P.2d 68 (Brodsky) [refusing to imply knowledge requirement in now-repealed pharmacy statute that provided that “any person who permits the compounding of prescriptions or the selling of drugs in his pharmacy except by a registered pharmacist is guilty of a misdemeanor. . .”].)

Sternberg analogizes licensing discipline to criminal liability to argue a knowledge requirement is necessary, but licensing discipline is civil in nature, not criminal, designed to “protect the public from incompetent practitioners by eliminating those individuals from the roster of state-licensed professionals.” (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817, 45 Cal.Rptr.2d 486; see *Brodsky, supra*, 173 Cal.App.2d at p. 688, 344 P.2d 68.) The Legislature drew that very distinction in section 4081 when it imposed a knowledge requirement for vicarious criminal violations but not violations leading to licensing discipline, and we are not authorized to rewrite the statute to add an element the Legislature omitted.

Another case, *Norman v. Department of Real Estate* (1979) 93 Cal.App.3d 768, 778, considered real estate licensees’ arguments that they should not be disciplined because their conduct was in good faith, not willful, and based on legal advice. In that case, the real estate commissioner disciplined the real estate brokers’ and salespersons’ licenses based on misrepresentations, fraud, and/or dishonest dealings in connection with investments in loans with prepaid interest in violation of Business and Professions Code sections 10176, subdivisions (a) and (i), and the sale of unsecured promissory notes in violation of Business and Professions Code section 10231.

The licensees in that case blamed some of the violations on others, including an office worker and an unnamed member of the “loan committee.” (*Id.* at p. 775.) The appellate court affirmed the discipline and stated (*Id.* at p. 778):

No merit is seen in [licensees'] insistent contentions that since their acts were in good "faith," and not "willful," and in accordance with "legal advice," they were improperly subjected to discipline. "Disciplinary procedures provided for in the Business and Professions Code . . . are to protect the public not only from conniving real estate salesmen but also from the uninformed, negligent, or unknowledgeable salesman." (*Handeland v. Department of Real Estate*, 58 Cal.App.3d 513, 518 [129 Cal.Rptr. 810]; italics added.) Their purpose "is not to punish but to afford protection to the public . . ." (*Borror v. Department of Investment*, 15 Cal.App.3d 531, 540 [92 Cal.Rptr. 525].)

Evaluation of Cause to Discipline

27. The legislature has recognized the need for strict state oversight of private postsecondary education to protect the value of degrees such private postsecondary schools institutions issue. Schools, such as SBU, must properly train their employees, manage their businesses, and maintain their students' records to assure compliance with the statutory and regulatory requirements applicable to their approvals to operate in California. If they fail to do so, the value and integrity of the degrees they issue are impaired, all to the detriment of their students and the public.

29. SBU's attempt to blame its former registrar, Michelle Park, various accreditors, and an accreditation consultant for its violations was not persuasive. Dr. Shin's testimony that he had heard complaints that Michelle Park was incompetent calls into question SBU's own competence due to its failure to make sure that its registrar was properly trained and that she accurately maintained SBU's student records. The fact that SBU relied on advice from a consultant and may not have intentionally violated the code or the regulations does not shield it from discipline, as it was not necessary for complainant to prove intent. SBU's decision to forego providing BSHS enrollment agreements to students pursuing a BSHS degree, even though SBU provided the bureau a sample BSHS enrollment agreement with its 2012 renewal application, showed a troubling disregard for the statutes and regulations that govern its approval to operate.

30. **First Cause for Discipline.** Complainant failed to prove the allegations in subpart (a) of the First Cause for Discipline, and complainant proved the allegations in subpart (b) of First Cause for Discipline.

Complainant failed to prove by a preponderance of the evidence that SBU admitted students 32G and 32S to the MSAOM program in violation of its admissions requirements. In order to be admitted, they needed to have at least 60 semester units or 90 quarter units from a baccalaureate program. After conversion of the quarter units used for admission to semester units, both students 32G and 32S met the minimum of at least 60 semester units. Therefore, SBU is not subject to discipline pursuant to California Code of Regulations, title

5, section 71770, subdivision (a), with respect to its admission of students 32G and 32S in its MSAOM program.

Complainant proved by a preponderance of the evidence that SBU used units that had already been used for admissions to the MSAOM program as transfer credits for students 32Q and 32T in violation of its transfer credit policy, which required that units used for admission not also be used as transfer credits. Accordingly, cause exists to discipline SBU for violation of California Code of Regulations, title 5, section 71770, subdivision (a), with respect to SBU's application of its transfer credit policy to students 32Q and 32T.

31. **Second Cause for Discipline.** Complainant proved by a preponderance of the evidence that SBU failed to provide each student enrolled in the BSHS program an enrollment agreement. During 2015, SBU supplied the bureau's investigator 19 files (for students 32B through 32T) which showed those 19 students were enrolled in SBU's BSHS program. But none of those student's files contained a BSHS enrollment agreement. During a 2016 bureau compliance inspection, SBU supplied the bureau's compliance inspector with an additional four student files (for students J.P., Y.S., E.V. and K.M.)⁴⁰ which showed those four students were enrolled in SBU's BSHS program. None of those student's files contained a BSHS enrollment agreement. SBU did not dispute that it failed to provide the students BSHS enrollment agreements, but it argued that such enrollment agreements were not necessary. Despite SBU's arguments, Education Code section 94902, subdivision (a), clearly and unambiguously required that the students be provided and execute an enrollment agreement as the "sole means" of enrolling in the BSHS program. Accordingly, cause exists, pursuant to Education Code sections 94902, subdivision (a), and 94911, subdivision (a), and California Code of Regulations, title 5, section 71800, to discipline SBU for its failure to provide students enrolled in the BSHS program an enrollment agreement for the BSHS program.

32. **Third Cause for Discipline.** Complainant proved by a preponderance of the evidence that student 32H's previous college transcripts were not maintained in student 32H's student file. Accordingly, cause exists to discipline SBU for failure to maintain written records and transcripts of any formal education or training pertaining to student 32H in violation of California Code of Regulations, title 5, section 71920, subdivision (b)(1).

33. **Fourth Cause for Discipline.** Complainant proved by a preponderance of the evidence that SBU failed to maintain records documenting the units of credits earned at other institutions when it applied 56 units of general education units to allow student 32H to obtain a BSHS degree even though it had no documentation identifying the source of those credits. Therefore, cause exists to discipline SBU for violating California Code of Regulations, title 5, section 71920, subdivision (b)(1)(B), because SBU failed to maintain records documenting credits student 32H earned at other institutions.

⁴⁰ Complainant did not prove there was anything amiss with the student records of J.G., H.V., S.J., M.T., A.C., D.K., or S.L. inspected during the April 19, 2016, compliance inspection because no records for those students were offered as evidence.

34. **Fifth Cause for Discipline.** Complainant proved by a preponderance of the evidence that SBU failed to maintain BSHS enrollment agreements in the student files for students 32B through 32T, who were each enrolled in SBU's BSHS program. Accordingly, cause exists to discipline SBU for violating California Code of Regulations, title 5, section 71920, subdivision (b)(3).

35. **Sixth Cause for Discipline.** Complainant proved by a preponderance of the evidence that SBU failed to identify the BSHS degrees on the official transcripts of students 32B, 32E, 32H, and 32J though 32O. SBU only listed the MSAOM degrees as degrees granted with the date the degree was granted, even though these students were also given BSHS diplomas. The phrase "BS Degree Awarded" was buried on their transcripts within the courses completed during the last quarter each student was enrolled and the transcripts did not include the date the BSHS degrees were awarded. Therefore, cause exists to discipline SBU because it failed to maintain student files containing transcripts showing all the courses or other educational programs that were completed, or were attempted but not completed, and the dates of completion or withdrawal, in violation of California Code of Regulations, title 5, section 71920, subdivision (b)(5)(A).

36. **Seventh Cause for Discipline.** Complainant proved by a preponderance of the evidence that seven students (students 32C, 32D, 32F, 32H, 32I, 32K, and 32L) paid fees related to their receipt of BSHS degrees that were not recorded or maintained in their student files as part of the total payments they made to SBU. Accordingly, cause exists to discipline SBU because it failed to maintain documentation in the students' files showing the total amount of money received from, or on behalf of, the students and the date or dates on which the money was received, in violation of California Code of Regulations, title 5, section 71920, subdivision (b)(9).

37. **Eighth Cause for Discipline.** Complainant proved by a preponderance of the evidence that the student records for students 32J, 32O, and 32P were missing BSHS diplomas which SBU should have maintained in the records. Complainant did not, however, prove that records were missing from student 32I's student record. Accordingly, because there were records missing from three student files (for students 32J, 32O, and 32P), cause exists to discipline SBU for failing to maintain pertinent student records in violation of Education Code section 94900, subdivision (b)(1), and California Code of Regulations, title 5, section 71930, subdivision (b)(1).

38. **Ninth Cause for Discipline.** Complainant proved by a preponderance of the evidence that when the bureau's investigator requested access to 16 specific students' records on June 18, 2015, SBU failed to provide 10 of the 16 requested students' records. Although SBU personnel provided official transcripts for the 16 students requested, SBU personnel told the investigator that they were not able to locate the records of 10 students (students 32B, 32C, 32D, 32E, 32F, 32H, 32K, 32L, 32M, and 32N). Accordingly, cause exists to discipline SBU for its failure to make all records that the institution is required to maintain immediately available for inspection by the bureau in violation of California Code of Regulations, title 5, section 71930, subdivision (e).

39. **Tenth Cause for Discipline.** The Tenth Cause for Discipline related to changes to the student records of students 32A and 32L.

Although there were changes made in the grades for three classes taken by student 32A, complainant failed to prove by a preponderance of the evidence that SBU made an untrue or misleading change in, or misleading statement related to those grades, as the grades were from student 32A's studies at the Virginia campus and there was no evidence presented that the changes made were not actually corrections to accurately reflect the student's grades in those classes.

Similarly, although a college algebra class showed up in student 32L's transcript after he had already graduated in December 2012, complainant failed to prove that the addition of the college algebra class was an untrue or misleading change to student 32L's transcript. The fact that the college algebra class was listed on the BSHS evaluation form signed before student 32L graduated tends to prove that student 32L took that course, but it was not entered into his records until after he graduated.

Accordingly, cause does not exist to discipline SBU for a violation of Education Code section 94897, subdivision (j).

40. **Eleventh Cause for Discipline.** The Eleventh Cause for Discipline included four categories regarding alleged untrue or misleading changes or untrue statements in required records. Complainant proved only a portion of the allegations.

Complainant failed to prove by a preponderance of the evidence that (a) differences between student 32A's records supplied by SBU as compared to the documents the whistleblowers supplied amounted to untrue or misleading changes or untrue or misleading statements; or (b) differences in BSHS evaluation forms in the records supplied by the whistleblowers as compared to the records SBU supplied amounted to untrue or misleading changes or statements. Complainant also failed to prove by a preponderance of the evidence that changes in students 32Q, 32R, and 32T's academic records regarding the BSHS program titles amounted to untrue or misleading statements.

Complainant proved by a preponderance of the evidence that SBU made untrue and misleading changes in the student records of students 32C, 32F, and 32L by increasing transfer credits on the official transcripts for those three students after they graduated. Accordingly, cause exists to discipline SBU for making untrue and misleading changes in the student records of students 32C, 32F, and 32L, in violation of Education Code section 94897, subdivision (j)(3).

41. **Twelfth Cause for Discipline.** The evidence showed there were differences between records the whistleblowers supplied as compared to the records SBU supplied for students 32C, 32D, 323H, 32I, 32J, 32L, 32M, 32O, and 32P. However, complainant failed to prove by a preponderance of the evidence that SBU willfully falsified, destroyed, or

concealed documents in or from those students' files. Accordingly, cause does not exist to discipline SBU under Education Code section 94897, subdivision (k).

42. **Thirteenth Cause for Discipline.** Complainant proved by a preponderance of the evidence that SBU failed to disclose to students 32Q, 32R, 32S, and 32T in writing that the BSHS degree program in which they were enrolled was not an accredited program in violation of Education Code section 94897, subdivision (p)(2). While SBU's student records for each of those students showed they were enrolled in the BSHS program after January 1, 2013, none of those students' records contained a BSHS enrollment agreement or any other written disclosure that they were enrolled in an unaccredited program. Accordingly, cause exists to discipline SBU for violation of Education Code section 94897, subdivision (p)(2).

43. **Fourteenth Cause for Discipline.** The Fourteenth Cause for Discipline concerned whether SBU failed to maintain records of grades of students 32A and 32L. Complainant failed to prove those allegations by a preponderance of the evidence.

Although there were changes made in the grades for three classes taken by student 32A, complainant failed to prove by a preponderance of the evidence that SBU failed to maintain records of student 32A's grades for those three classes, as the grades were given to student 32A for studies at the Virginia campus and there was no evidence presented that the changes made were not actually corrections to accurately reflect the student's grades in those classes.

Similarly, although a college algebra class showed up in student 32L's transcript after he graduated in December 2012, complainant failed to prove that the delay in the addition of the college algebra to student 32L's transcript amounted to a failure to maintain a record of student 32L's grade in that class. The fact that the college algebra class was listed on the BSHS evaluation form signed before student 32L graduated tends to prove that student 32L took that course.

Accordingly, cause does not exist to discipline SBU for violation of Education Code section 94900, subdivision (b)(3).

44. **Fifteenth Cause for Discipline.** The Fifteenth Cause for Discipline included three separate factual bases for discipline: (a) the failure to maintain BSHS enrollment agreements, (b) the failure to maintain student 32H's previous transcripts from other institutions, and (c) the failure of SBU's files to include documents provided by the whistleblowers. Complainant proved cause to discipline based on the first two factual grounds, but not on the third.

Complainant proved by a preponderance of the evidence that SBU failed to maintain BSHS enrollment agreements in the student files for students 32B through 32T, who were each enrolled in SBU's BSHS program. Complainant also proved by a preponderance of the evidence that previous college transcripts were not maintained in student 32H's student file.

However, the fact that some documents the whistleblowers provided the bureau investigator may not have been included in SBU's records did not show that SBU failed to maintain records under the third category alleged in the Fifteenth Cause for Discipline. Michelle Park testified that she collected the whistleblower documents over the years when she was SBU's registrar and showed them to her superiors when she saw problems she thought should be corrected. Therefore, the absence of specific documents in SBU's records when compared to the documents the whistleblowers supplied is not enough to meet complainant's burden of proof.

Accordingly, cause exists to discipline SBU for violation of Education Code section 94900.5 based on SBU's failure to maintain the BSHS enrollment agreements for students 32B through 32T and the previous college transcripts of student 32H.

The Bureau's Disciplinary Guidelines and Legal Authority Regarding Rehabilitation

45. California Code of Regulations, title 5, section 75500, provides:

In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code section 11400 et seq.), the Bureau shall comply with the "Disciplinary Guidelines" [August 2010], which are hereby incorporated by reference. Deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Bureau in its sole discretion determines that the facts of the particular case warrant such deviation, e.g., the presence of aggravating or mitigating factors; age of the case; discipline history; evidentiary issues.

46. The bureau's Disciplinary Guidelines, effective December 2010, (guidelines)⁴¹ provides under the "General Considerations" heading:

The Bureau requests that a Proposed Decision following an administrative hearing include the following:

- a. Specific code sections violated and their definitions.
- b. Clear description of the violation.

⁴¹ Official notice of the guidelines, marked as Exhibit 72, was taken at complainant's request during the hearing. Nevertheless, respondent curiously accused complainant of failing to disclose the bureau's "rules, regulations and policies which govern the determination of what sanctions are appropriate in what situations" and making "the tactical decision to keep the Court in the dark as to how to apply" the bureau's "Factors to be Considered." (Respondent's Closing Reply Brief, at page 5, lines 10-20.)

c. Respondent's explanation of the violation if a representative is present at the hearing.

d. Findings regarding aggravation, mitigation, and rehabilitation where appropriate.

e. When suspension or probation is ordered, the Bureau requests that the disciplinary order include terms within the recommended guidelines for that offense unless reason for departure from the recommended terms is clearly set forth in the findings and supported by the evidence.

47. The guidelines provide recommendations for maximum and minimum discipline for specific categories of violations. For all categories, the maximum recommended discipline is revocation. The minimum recommended discipline for the violations found in this matter are as follows:

- For violation of Education Code section 94987, revocation, stayed, and five years' probation, with standard terms 1 through 15 and optional conditions 21 through 28;
- For violation of Education Code sections 94900 or 94900.5, revocation, stayed, and three years' probation, with standard terms 1 through 15 and optional conditions 18 and 20;
- For violation of Education Code sections 94902 and 94911, revocation, stayed, and three years' probation, with standard terms 1 through 15 and optional condition 18; and
- For violation of California Code of Regulations, title 5, sections 71700 through 71930, revocation, stayed, and three years' probation, with standard terms 1 through 15.

48. The guidelines also list the following "Factors to be Considered" when determining whether revocation, suspension, or probation should be imposed:

In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.

2. Actual or potential harm to any consumer, student or the general public.
3. Prior record of discipline.
4. Number and/or variety of current violations.
5. Mitigation and aggravation evidence.
6. Rehabilitation evidence.
7. In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
8. Overall criminal record.
9. Time passed since the act(s) or offense(s) occurred.
10. Whether or not the respondent cooperated with the Bureau's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by respondent of its wrongdoing and demonstration of corrective action to prevent recurrence.

49. California Code of Regulations, title 5, section 75070, also provides the following rehabilitation criteria:

In determining whether any of the grounds for denial set forth in Section 480 of the Business and Professions Code exist, the Bureau shall consider evidence of rehabilitation and present eligibility for any approval issued by the Bureau, including all of the following factors:

- (a) The nature and severity of the acts or crimes under consideration as grounds for denial;
- (b) Evidence of any acts committed after the acts or crimes under consideration as grounds for denial that also could be considered grounds for denial;
- (c) The time that has elapsed since commission of the acts or crimes described in subdivisions (a) and (b);

- (d) The extent to which the person has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant;
- (e) Evidence of any rehabilitation submitted by the applicant;
- (f) Total criminal record;
- (g) Evidence, if any, of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

50. Rehabilitation is a state of mind, and a person who has reformed should be rewarded with the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) “While a candid admission of misconduct and a full acknowledgement of wrongdoing may be a necessary step in the process, it is only a first step. In our view, a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice. . . .” (*In re Conflenti* (1981) 29 Cal.3d 120, 124-125.)

51. “The evidentiary significance of an applicant’s misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct.” (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

Evaluation of Appropriate Discipline

52. In the present case, there was no dispute that SBU completely failed to comply with the statutory and regulatory requirements concerning the need to provide BSHS enrollment agreements to students enrolled in the BSHS program and maintain such enrollment agreements in the students’ files. SBU received information from its institutional accreditor, and from other accreditors with which it was applying, that may have added confusion regarding whether it could handle the BSHS program as part of the MSAOM program. In 1999, SBU sent a copy of a letter from its accreditor to the bureau’s predecessor requesting that it be allowed to change the name of its bachelor’s program, which it was allowed to do. But SBU did not contact the bureau for guidance about whether it could forgo having students sign a BSHS enrollment agreement, and there was no evidence that anyone told SBU to do so. Instead, SBU cavalierly decided not to have the students sign BSHS agreements, even though its actions were contrary to the information it supplied the bureau in its 2012 renewal application, which included a sample BSHS enrollment agreement.

SBU also failed to maintain records of fees related to the BSHS program in the student’s files, failed to identify the BSHS degree as one of the degrees awarded with the date it was awarded on the students’ official transcripts, failed to include copies of a prior educational institution’s transcripts in student 32H’s files, added transfer credits to students’ transcripts after they graduated, and failed to disclose to students who enrolled after January 1, 2013, that the BSHS program was not accredited. Then, when the bureau sent an

investigator to SBU, it failed to immediately permit the investigator to review and copy 10 out of the 16 student files she requested. These are serious violations, the number of different violations is troubling, and the violations impair the integrity and value of the degrees SBU issues to its students.

53. Although a compliance inspector notified SBU in person in April 2016, and the bureau's investigator notified SBU in writing shortly thereafter, that SBU may be offering an inappropriate "combo" program and awarding BSHS degrees without enrollment agreements, SBU continued to offer the BSHS program in the same manner, without ever using the BSHS enrollment agreements, until it abandoned the BSHS program in April 2017. SBU only stopped awarding the BSHS program after the accusation was filed in this matter, and after it withdrew its application for ACICS accreditation. Nevertheless, SBU argues that complainant should have only issued it a 30-day notice to comply, despite the fact that SBU did not take any action to address the compliance inspector's and investigator's concerns for almost a year.

54. SBU hired a compliance officer in October 2017, but it did not present that person as a witness to explain what she has done, or plans to do in the future, to ensure SBU complies with all the applicable codes and regulations.

55. Rather than taking responsibility for its violations, SBU blamed its former registrar, who SBU now claims was negligent and incompetent when she worked for SBU from 2011 to 2015. SBU also argued that its "management" did not know about or direct the violations. SBU's attitude in this regard is reprehensible, as SBU is responsible for the conduct of its employees, including its registrar. Its attempt to shirk responsibility by claiming its "management" was not aware of what was going on is extremely troubling, as the bureau must be able to rely on the management of approved institutions to be accountable for ensuring that employees are properly trained and supervised, the institution's operations are properly managed, and the laws that govern the approval to operate in this state are followed.

56. In mitigation, SBU has been in business for approximately 40 years and has many alumni, students, and patients who depend on SBU remaining in operation to maintain the integrity of their degrees, to award degrees for the efforts its students have invested in their studies, and to provide acupuncture services. It is the interests of these persons which the bureau strives to protect.

57. Because of SBU's long history, without previous discipline, and the many students who are relying on it to teach, train, and prepare them to pursue their careers in acupuncture, revocation is not appropriate under the circumstances of this case. But neither is the minimum recommendation of three or five years of probation. Public protection requires that SBU be monitored for an extended period of time to make sure that its management becomes diligent and accountable for fully complying with all the provisions of the Education Code and California Code of Regulations that govern its approval to operate. This is particularly so given SBU's complete failure to accept responsibility for its violations

and the many alumni, students, and patients who depend on the value of SBU's degrees. Therefore, SBU's approval to operate shall be placed on probation, with appropriate terms and conditions to protect the public, for a term of eight years.

Recovery of Costs of Investigation and Enforcement

58. Education Code section 94937, subdivision (c), provides that the "bureau may seek reimbursement pursuant to Section 125.3 of the Business and Professions Code." Business and Professions Code section 125.3 provides, in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation . . . of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case

[¶] . . . [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a)

59. California Code of Regulations, title 1, section 1042, subdivision (b), provides, in part:

Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on

each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

60. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court dealt with the issue of cost recovery and noted that because a licensee with limited financial resources might forego a hearing for fear that a board might erroneously sustain the charges and order the licensee to reimburse costs, discretion must be used to ensure that a licensee with a meritorious claim is not deterred from exercising his or her right to a hearing. (*Id.* at p. 44.) The Court determined that five factors should be considered in determining whether a particular licensee should be ordered to pay the reasonable costs of investigation and prosecution under statutes similar to Business and Professions Code section 125.3: Whether the licensee was successful at hearing in having charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Ibid.*)

61. After taking the *Zuckerman* factors into consideration, the amount of the reasonable enforcement costs incurred of \$36,135, shall be reduced to take into account the three causes for discipline (Tenth, Twelfth, and Fourteenth causes for Discipline) that were not proven. Given that the evidence related to those causes for discipline overlapped and the seriousness of the causes for discipline that were proven, the costs shall be reduced to \$34,000. Accordingly, SBU shall pay complainant's enforcement costs in the amount of \$34,000, which shall be paid at least one year before the end of the probationary term.

ORDER

IT IS HEREBY ORDERED that Approval Operate No. 3004361 issued to respondent South Baylo University, doing business as South Baylo University of Oriental Medicine, is revoked. However, the revocation is stayed, and respondent is placed on probation for eight years on the following conditions.

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SEVERABILITY CLAUSE

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or in any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. Obey All Laws

Respondent shall obey all federal, state and local laws and regulations governing the operation of a private postsecondary educational institution in California. Respondent shall submit, in writing, a full detailed account of any and all violations of the law to the Bureau within five (5) days of discovery.

CRIMINAL COURT ORDERS: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an Accusation and/or Petition to Revoke Probation.

2. Compliance with Probation and Quarterly Reporting

Respondent shall fully comply with the terms and conditions of probation established by the Bureau and shall cooperate with representatives of the Bureau in its monitoring and investigation of respondent's compliance with probation. Respondent, within ten (10) days of completion of the quarter, shall submit quarterly written reports to the Bureau on a Quarterly Report of Compliance form obtained from the Bureau.

3. Personal Appearances

Upon reasonable notice by the Bureau, respondent shall report to and make personal appearances at times and locations as the Bureau may direct.

4. Notification of Address and Telephone Number Change(s)

Respondent shall notify the Bureau, in writing, within five (5) days of a change of name, title, physical home address, email address, or telephone number of each person, as defined in section 94855 of the Code, who owns or controls 25 percent or more of the stock or an interest in or of the institution and, to the extent applicable, each general partner, officer, corporate director, corporate member or any other person who exercises substantial control over the institution's management or policies.

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5. Notification to Prospective Students

When currently soliciting or enrolling (or re-enrolling) a student for any program, respondent shall provide notification of this action to each current or prospective student prior to accepting their enrollment, and to those students who were enrolled at the time of the conduct that is the subject of this action as directed by the Bureau. This notification shall include a copy of the Accusation, Statement of Issues, Stipulated Settlement, or Disciplinary Decision (whichever applies).

6. Student Roster

Within 15 days of the effective date of this Decision, and with the Quarterly Reports thereafter, respondent shall provide to the Bureau the names, addresses, phone numbers, email addresses, and the programs in which they are or were enrolled, of all persons who are currently or were students of the institution within 60 days prior to the effective date of the Decision, and those students who were enrolled at the time of the conduct that is the subject of this action.

7. Instruction Requirements and Limitations

During probation, Respondent shall provide approved instruction in the State of California. If respondent is not providing instruction, the period of probation shall be tolled during that time.

8. Record Storage

Within 5 days of the effective date of this Decision, respondent shall provide the Bureau with the location of the repository for all records as they are required to be maintained pursuant to California Code of Regulations, title 5, section 71930.

9. Maintenance of Current and Active Approval to Operate

Respondent shall, at all times while on probation, maintain a current and active approval to operate with the Bureau including any period during which approval is suspended or probation is tolled.

10. Comply with Citations

Respondent shall comply with all final orders resulting from citations issued by the Bureau.

11. Cost Recovery Requirements

Respondent shall pay to the Bureau its costs of investigation and enforcement in the amount of \$34,000 no later than one year before the termination of probation. Such costs

shall be payable to the Bureau and are to be paid regardless of whether the probation is tolled. Failure to pay such costs shall be considered a violation of probation.

Except as provided above, the Bureau shall not renew or reinstate the approval to operate of any respondent who has failed to pay all the costs as directed in a Decision.

12. Violation of Probation

If respondent violates probation in any respect, the Bureau, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an Accusation or a Petition to Revoke Probation is filed against respondent during probation, the Bureau shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended, and respondent shall comply with all probation conditions, until the matter is final.

13. Future Approvals to Operate

If respondent subsequently obtains other approvals to operate during the course of this probationary order, this Decision shall remain in full force and effect until the probationary period is successfully terminated. Future approvals shall not be granted, however, unless respondent is currently in compliance with all of the terms and conditions of probation.

14. Comply with All Accreditation Standards

As applicable, respondent shall comply with all standards set by its accreditor in order to maintain its accreditation. Respondent shall submit to the Bureau, in writing, a full detailed account of any and all actions taken by any accrediting agency against respondent regarding any institution operated by respondent, including an order to show cause, or conditions or restrictions placed on accreditation, within five (5) days of occurrence.

15. Completion of Probation

Upon successful completion of probation, respondent's approval to operate will be fully restored.

16. Operations Auditor/Billing Auditor

Within 45 days of the effective date of this Decision, respondent shall submit to the Bureau for prior approval, the name and qualifications of an auditor who is experienced in operations or accounting practices for educational institutions, who has agreed to serve as an operations auditor/billing auditor. The auditor shall (1) be a California-licensed certified public accountant or public accountant with a clear and current license; and (2) have no prior or current business, professional, personal or other relationship with respondent, or any former owner, director, or officer of respondent institution.

Once approved, the auditor shall submit to the Bureau or its designee a plan by which respondent's operations shall be audited. Auditing shall consist of at least one hour per month of face to face meetings with respondent and shall continue during the entire probationary period. While such face to face meetings may include a director or employee of the institution not listed as having ownership or control, at least one person listed as having ownership or control shall participate in each such meeting. Respondent shall provide the auditor with a copy of this Decision and access to respondent's fiscal and/or student records. Respondent shall obtain any necessary student releases to enable the auditor to review records and to make direct contact with students. Respondent shall execute a release authorizing the auditor to divulge any information that the Bureau may request. It shall be respondent's responsibility to assure that the auditor submits written reports to the Bureau on a quarterly basis verifying that auditing has taken place and providing an evaluation of respondent's performance.

Respondent shall notify all current and potential students of any term or condition of probation that will affect the confidentiality of their records (such as this condition, which requires an operations auditor/billing auditor). Such notifications shall be signed by each student prior to continuing or beginning enrollment.

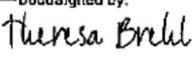
If the auditor quits or is otherwise no longer available, respondent shall notify the Bureau within 10 days and get approval from the Bureau for a new auditor within 30 days. If no new auditor is approved within 30 days, respondent shall not operate until a new auditor has been approved by the Bureau. During this period of non-operation, probation will be tolled and will not commence again until the period of non-operation is completed.

Respondent shall pay all costs associated with this auditing requirement. Failure to pay these costs shall be considered a violation of probation.

17. Records Maintenance

With 45 days of the effective date of this Decision, respondent shall provide for and secure a second set of all academic and financial records as required by California Code of Regulations, title 5, section 71930, and provide to the Bureau the location of these records, and access to them upon request.

DATED: June 6, 2018

DocuSigned by:

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THERESA M. BREHL
Administrative Law Judge
Office of Administrative Hearings