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

13 In the Matter of the Accusation Against:

14 **JINSHAN INSTITUTE OF CLINICAL**
15 **MASSAGE; YUNXIA XIAO, OWNER**
16 **5088 Mission Street**
17 **San Francisco, CA 94112**

18 **Approval to Operate an Institution Non-**
19 **Accredited, School Code 71847798**

20 Respondent.

Case No. 1006705

ACCUSATION

21 **PARTIES**

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

25 2. On or about July 31, 2014, the Bureau for Private Postsecondary Education issued
26 Approval to Operate an Institution Non-Accredited, School Code 71847798 to Yunxia Xiao,
27 Owner of Jinshan Institute of Clinical Massage (Respondent). The Approval to Operate expired
28 on July 31, 2019, and has not been renewed.

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JURISDICTION

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

6 4. Business and Professions Code section 118, subdivision (b) states:

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

14 5. Section 94932 states:

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

23 6. Section 94933 states:

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

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1 **REGULATORY PROVISIONS**

2 7. California Code of Regulations, title 5, section 75050, subdivision (b) states:

3 “(b) Failure of an applicant or institution issued an approval to operate to abate the violation
4 or to pay the fine within the time allowed is a ground for denial or discipline of an approval to
5 operate.”

6 **COST RECOVERY**

7 8. Section 94937, subdivision (c) and Business and Professions Code section 125.3
8 provide, in part, that the Bureau may request the administrative law judge to direct a licentiate
9 found to have committed a violation or violations of the licensing act to pay a sum not to exceed
10 the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate
11 to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of
12 investigation and enforcement costs may be included in a stipulated settlement.

13 **FACTUAL ALLEGATIONS**

14 9. On or about March 5, 2020, the Bureau issued Respondent Citation Number 1920262
15 based on failure to submit an Annual Report for the year 2017, pursuant to Section 94934 and
16 Code of Regulations, title 5, section 74110. The Citation included an order of abatement
17 directing Respondent to complete and submit its 2017 Annual Report and financial statements,
18 and assessed an administrative fine of \$5,000.00. Respondent did not request an appeal of the
19 Citation. To date, Respondent has failed to pay the fine or comply with the order of abatement.

20 10. On or about November 24, 2020, the Bureau issued Respondent Citation Number
21 2021156 based on failure to submit Student Tuition Recovery Fund (STRF) forms for the third
22 quarter of 2017, second quarters of 2018 and 2019, and the second and third quarters of 2020,
23 pursuant to California Code of Regulations, title 5, section 76130; and based on Respondent’s
24 failure to pay a late payment penalty, pursuant to Section 94931, subdivision (b), related to
25 Respondent’s late payment of its Annual Fee for 2020. The Citation included an order of
26 abatement directing Respondent to submit its delinquent STRF forms and pay the late payment
27 penalty, and assessed an administrative fine of \$50.00. Respondent did not request an appeal of

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1 the Citation. To date, Respondent has failed to pay the fine or comply with the order of
2 abatement.

3 **CAUSE FOR DISCIPLINE**

4 (Failure to Comply with Citations)

5 11. Respondent has subjected his Approval to Operate to discipline for failing to comply
6 with two orders of abatement and to pay the fines set forth citations. (Cal. Code Regs., title 5, §
7 75050, subd. (b).) The circumstances are set forth in paragraphs 9 and 10, above.

8 **PRAYER**

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

12 1. Revoking Approval to Operate an Institution Non-Accredited, School Code
13 71847798, issued to Yunxia Xiao, Owner of Jinshan Institute of Clinical Massage;

14 2. Ordering Yunxia Xiao, Owner of Jinshan Institute of Clinical Massage to pay the
15 Bureau for Private Postsecondary Education the reasonable costs of the investigation and
16 enforcement of this case, pursuant to Business and Professions Code section 125.3 and Education
17 Code section 94937, subdivision (c); and

18 3. Taking such other and further action as deemed necessary and proper.

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21 DATED: "4/27/2021"

"Original signature on file"

22 DEBORAH COCHRANE
23 Chief
24 Bureau for Private Postsecondary
25 Education
26 Department of Consumer Affairs
27 State of California
28 *Complainant*

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