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

13
14 In the Matter of the Accusation Against:

Case No. 1006499

15 **College of Botanical Healing Arts**

303 Potrero Street, #62
Santa Cruz, CA 95060

ACCUSATION

16 Mailing Address:

17 P.O. Box 352
Santa Cruz, CA 95060

18 Institution Code 4400871

19
20 Respondent.

21 **PARTIES**

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

25 2. On or about January 8, 2001, the Bureau issued Approval to Operate Institution Code
26 Number 4400871 to College of Botanical Healing Arts (Respondent). The Approval to Operate
27 was in full force and effect at all times relevant to the charges brought in this Revocation of
28 Approval to Operate, and will expire on May 14, 2024, unless renewed.

JURISDICTION

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

4. Business and Professions Code section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Bureau of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 94875 provides that the Bureau shall regulate private postsecondary educational institutions.

6. Section 94877 states, in relevant part, that:

(a) The bureau shall adopt and shall enforce regulations to implement this chapter pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(b) The bureau shall develop and implement an enforcement program, pursuant to Article 18 (commencing with Section 94932) to implement this chapter . . .

7. Section 94932 states that:

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 an investigation, that an institution has violated any applicable law or regulation, the bureau shall take appropriate action pursuant to this article.

8. Section 94937 states that:

(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

1 claims or advertising, upon which a student reasonably relied in executing an
2 enrollment agreement and that resulted in harm to the student.

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

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

7 **STATUTORY PROVISIONS**

8 9. Section 94936 states:

9 (a) As a consequence of an investigation, which may incorporate any materials
10 obtained or produced in connection with a compliance inspection, and upon a finding that
11 the institution has committed a violation of this chapter or that the institution has failed to
12 comply with a notice to comply pursuant to Section 94935, the bureau shall issue a citation
13 to an institution for violation of this chapter, or regulations adopted pursuant to this chapter.

14 (b) The citation may contain any of the following:

15 (1) An order of abatement that may require an institution to demonstrate how
16 future compliance with this chapter or regulations adopted pursuant to this chapter
17 will be accomplished.

18 (2) Notwithstanding Section 125.9 of the Business and Professions Code, an
19 administrative fine not to exceed five thousand dollars (\$5,000) for each violation.
20 The bureau shall base its assessment of the administrative fine on:

21 (A) The nature and seriousness of the violation.

22 (B) The persistence of the violation.

23 (C) The good faith of the institution.

24 (D) The history of previous violations.

25 (E) The purposes of this chapter.

26 (F) The potential harm to students.

27 (3) An order to compensate students for harm, including a refund of moneys
28 paid to the institution by or on behalf of the student, as determined by the bureau.

(c)

(1) The citation shall be in writing and describe the nature of the violation and
the specific provision of law or regulation that is alleged to have been violated.

(2) The citation shall inform the institution of its right to request a hearing in
writing within 30 days from service of the citation.

(3) If a hearing is requested, the bureau shall select an informal hearing
pursuant to Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1

1 of Division 3 of Title 2 of the Government Code or a formal hearing pursuant to
2 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
3 Government Code.

4 (4) If a hearing is not requested, payment of the administrative fine is due 30
5 days from the date of service, and shall not constitute an admission of the violation
6 charged.

7 (5) If a hearing is conducted and payment of an administrative fine is ordered,
8 the administrative fine is due 30 days from when the final order is entered.

9 (6) The bureau may enforce the administrative fine as if it were a money
10 judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the
11 Code of Civil Procedure.

12 (d) All administrative fines shall be deposited in the Private Postsecondary
13 Education Administration Fund.

14 **REGULATORY PROVISIONS**

15 10. California Code of Regulations, title 5, section 75020 states:

16 (a) The Bureau Chief, or his or her designee, or the Director's designee, is authorized
17 to issue citations containing orders of abatement and/or administrative fines pursuant to
18 section 94936 of the Code against approved private, postsecondary institutions that have
19 committed any acts or omissions that are in violation of the Act or any regulation adopted
20 pursuant thereto.

21 (b) The Bureau Chief, or his or her designee, or the Director's designee, is authorized
22 to issue citations containing orders of abatement and administrative fines not to exceed
23 \$100,000 pursuant to section 94944 of the Code against persons who are without proper
24 approval to operate a private, postsecondary institution. In addition, the citation may
25 contain an order of abatement pursuant to section 149 of the Business and Professions Code
26 that requires the unapproved person to cease any unlawful advertising and to notify the
27 telephone company furnishing services to the cited person: (1) to disconnect the telephone
28 services furnished to any telephone number contained in the unlawful advertising, and (2)
that subsequent calls to that number shall not be referred by the telephone company to any
new number obtained by that person. The provisions of section 75040 shall apply to this
subsection.

(c) In addition to the requirements of section 94936 of the Code, each citation shall
inform the cited institution or person that:

(1) if a hearing pursuant to the Administrative Procedure Act (APA) is not
requested, payment of the administrative fine is due 30 days from the date of service,
and shall not constitute an admission of the violation charged.

(2) if a hearing pursuant to the APA is conducted and payment of an
administrative fine is ordered, the administrative fine is due 30 days from when the
order is effective;

(3) if the cited institution or person desires an informal conference to contest the
finding of a violation prior to an APA hearing, the informal conference shall be
requested by written notice to the Bureau within 30 days from service of the citation;

1 (4) failure to comply with any order of abatement within the time set forth in the
citation, unless the citation is being appealed, may result in disciplinary action being
2 taken by the Bureau; and

3 (5) the Bureau may enforce the administrative fine as if it were a money
judgment pursuant to the California Code of Civil Procedure (beginning with section
4 680.010).

5 (d) Each citation shall be served on the cited institution or person, in person, or by
certified and regular mail at the address of record on file with the Bureau. Citations
6 served by certified and regular mail shall be deemed "served" on the date of mailing.

7 (e) The sanction authorized under this section shall be separate from, and in addition
to, any civil, criminal, or other administrative remedies.

8 11. California Code of Regulations, title 5, section 75030 states:

9 Where citations pursuant to section 94936 of the Code and section 75020, subsection
10 (a) include an assessment of an administrative fine, the fine shall be not less than \$50 or
exceed \$5,000 for each violation. Each violation shall be classified according to the nature
11 of the violation and shall indicate the classification on the face thereof as follows:

12 (a) A Class A" violation shall not be less than \$2,501 nor more than \$5,000. A Class
A violation is one that the Bureau has, in its discretion, determined to be more serious in
13 nature, deserving the maximum fine. A Class A violation may, in the Bureau's discretion,
be issued to an institution that has committed one or more prior, separate Class B violations.

14 (b) A Class B" violation shall not be less than \$1,001 nor more than \$2,500. A Class
B violation is one that the Bureau has, in its discretion, determined to be less serious in
15 nature and may include, but is not limited to, a violation that could have resulted in student
harm. Typically some degree of mitigation will exist. A Class B violation may be issued to
16 an institution that has committed one or more prior, separate Class C violations.

17 (c) A Class C" violation shall not be less than \$501 nor more than \$1,000. A Class C
violation is one that the Bureau has, in its discretion, determined to be a minor or technical
18 violation, which may be directly or potentially detrimental to students or potentially impacts
their education.

19 (d) A Class D" violation shall not be less than \$50 nor more than \$500. A Class D
violation is one that the Bureau has, in its discretion, determined to be a minor or technical
20 violation, which is neither directly or potentially detrimental to students nor potentially
21 impacts their education.

22 12. California Code of Regulations, title 5, section 75040 states in relevant part:

23 (a) Pursuant to section 94936(c)(2) of the Code, a cited institution or person may,
within 30 days of service of the citation, request a hearing in writing to the Bureau, or it is
24 waived. In addition to contesting a citation by requesting a hearing, the cited institution or
person may, within the same 30 days, submit a written request to the Bureau for an informal
25 conference.

26 (b) The Bureau Chief, or his or her designee, or the Director, or his or her designee,
shall within 30 days from the Bureau's receipt of a written request for an informal
27 conference, hold an informal conference with the cited institution or person. The 30-day
period may be extended by the Bureau Chief or the Director for good cause. The informal
28 conference may be, by telephone.

1 (c) Following the informal conference, the Bureau Chief, or his or her designee, or
2 the Director, or his or her designee, will affirm, modify, or dismiss the citation, including
3 any fine assessed and/or order of abatement issued. A written order affirming, modifying,
4 or dismissing the original citation shall be served on the cited institution or person within 30
5 days from the informal conference. If the order affirms or modifies the original citation,
6 said order shall fix a reasonable period of time for abatement of the violation and/or
7 payment of the fine of not more than 30 days.

8 (d) If the informal conference results in the modification of the findings of
9 violation(s), the amount of the fine and/or the order of abatement, the citation shall be
10 considered modified, but not withdrawn. Unless waived, a cited institution or person is
11 entitled to a hearing to contest the modified citation if the institution or person filed a timely
12 request, but is not entitled to an informal conference to contest an affirmed or modified
13 citation. If a timely request for a hearing was not filed, the decision on the affirmed or
14 modified citation shall be considered final.

15 ...

16 (g) If a written request for a hearing pursuant to section 94936(c)(2) of the Code, or
17 for an informal conference as provided in subsection (a), or both, is not submitted to the
18 Bureau within 30 days from service of the citation, the cited institution or person is deemed
19 to have waived the right to an informal conference and/or administrative hearing.

20 13. California Code of Regulations, title 5, section 75050 states in relevant part:

21 (a) If a cited institution or person that or who has been issued an order of abatement
22 is unable to complete the correction within the time set forth in the citation because of
23 conditions beyond the institution's or person's control after the exercise of reasonable
24 diligence, the institution or person may request an extension of time within which to
25 complete the correction. Such a request shall be in writing and shall be made within the time
26 set forth for abatement.

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

...
20

21 14. California Code of Regulations, title 5, section 75100 provides that the Bureau may
22 suspend, revoke or place on probation with terms and conditions an approval to operate.

23 **COST RECOVERY**

24 15. Section 94937, subdivision (d), provides that the Bureau may seek reimbursement
25 costs of investigation and enforcement pursuant Business and Professions Code section 125.3.

26 16. Business and Professions Code section 125.3 provides, in pertinent part, that the
27 Board may request the administrative law judge to direct a licentiate found to have committed a
28 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
investigation and enforcement of the case, with failure of the licentiate to comply subjecting the

1 license to not being renewed or reinstated. If a case settles, recovery of investigation and
2 enforcement costs may be included in a stipulated settlement.

3 **FACTUAL ALLEGATIONS**

4 **Citation Number 1920127**

5 17. On October 30, 2019, the Bureau issued citation number 1920127 to Respondent for
6 failure to submit a Student Tuition Recovery Fund (STRF) reporting form for the second quarter
7 of 2019. The citation ordered Respondent to submit its second quarter STRF reporting form and
8 pay an administrative fine of \$50.00 for the violation. Respondent appealed the citation and fine.

9 18. An Informal Office Conference (IOC) was held on January 15, 2020. After the IOC,
10 the Bureau issued a modified citation that eliminated the fine, but affirmed the order requiring
11 Respondent to submit its STRF form for the second quarter of 2019.

12 19. The Bureau mailed letters to Respondent on April 2, 2020, May 13, 2020, and June
13 11, 2020, demanding compliance with the modified citation. The Respondent has not submitted
14 its STRF form for the second quarter of 2019 to the Bureau.

15 **Citation Number 1920214**

16 20. On February 6, 2020, the Bureau issued citation number 1920214 for Respondent's
17 failure to submit its 2017 Annual Report. Respondent was ordered to file its 2017 Annual Report,
18 and assessed a fine of \$5,000.00. On March 17, 2020, the Bureau sent a letter demanding that
19 Respondent file its 2017 Annual Report and pay the fine.

20 21. On April 1, 2020, the Bureau approved a payment plan to pay the fine in two equal
21 installments of \$2,500.00 each over two months.

22 22. On May 14, 2020, the Bureau's Citation Unit confirmed that Respondent submitted
23 its 2017 Annual Report. Five days later, the Bureau mailed a letter acknowledging receipt of
24 Respondent's 2017 Annual Report, and requesting payment of the fine.

25 23. The Bureau mailed letters to Respondent on June 10, 2020, July 23, 2020, and August
26 20, 2020, requesting payment of the outstanding fine. Although Respondent agreed to a payment
27 plan, the Respondent has not paid the fine associated with citation number 1920214.

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Failure to Comply with Citation)

3 24. Respondent is subject to disciplinary action under Code section 94936 and California
4 Code of Regulations, title 5, section 75050 in that Respondent failed to submit its STRF form for
5 the second quarter of 2019 as ordered by modified citation number 1920127. The circumstances
6 are set forth in paragraphs 17 through 19, above.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Failure to Comply with Citation)

9 25. Respondent is subject to disciplinary action under Code section 94936 and California
10 Code of Regulations, title 5, section 75050 in that Respondent failed to pay the fine assessed in
11 citation number 1920214. The circumstances are set forth in paragraphs 20 through 23, above.

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
14 Accusation, and that following the hearing, the Director of the Department of Consumer Affairs
15 issue a decision:

- 16 1. Revoking Approval to Operate Institution Code Number 4400871, issued to College
17 of Botanical Healing Arts;
- 18 2. Ordering College of Botanical Healing Arts to pay the Bureau for Private
19 Postsecondary Education the reasonable costs of the investigation and enforcement of this case,
20 pursuant to Business and Professions Code section 125.3; and,
- 21 3. Taking such other and further action as deemed necessary and proper.

22
23
24 DATED: "4/9/2021" _____

24 "Original signature on file"
25 LEEZA RIFREDI
26 Acting Chief
27 Bureau for Private Postsecondary
28 Education
Department of Consumer Affairs
State of California
Complainant

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