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

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

Case No. 1002923

13
14 **ROSA E. MACIAS, DBA DEL MAR**
BEAUTY SCHOOL

STATEMENT OF ISSUES

15 **Application for Approval to Operate for an**
Institution Non-Accredited

16
17 Respondent.

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19
20 Complainant alleges:

21 **PARTIES**

22 1. Dr. Michael Marion, Jr. (Complainant) brings this Statement of Issues solely in his
23 official capacity as the Chief of the Bureau for Private Postsecondary Education, Department of
24 Consumer Affairs.

25 2. On or about March 21, 2016, the Bureau for Private Postsecondary Education
26 (Bureau) received an Application for Approval to Operate an Institution Non-Accredited from
27 Rosa E. Macias, doing business as Del Mar Beauty School (Respondent). Between February 24,

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1 2017 and June 27, 2017, the Bureau and Respondent exchanged correspondence regarding
2 Respondent's application.

3 3. On or about July 17, 2017, the Bureau issued Respondent a Notice of Denial of
4 Application for Approval to Operate. On or about August 30, 2017, the Bureau received from
5 Respondent a request for an administrative hearing.

6 **JURISDICTION**

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

11 5. Section 94885 provides:

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

- 14 (a) The content of each educational program can achieve its stated objective.
- 15 (b) The institution maintains specific written standards for student admissions
16 for each educational program and those standards are related to the particular
educational program.
- 17 (c) The facilities, instructional equipment, and materials are sufficient to enable
students to achieve the educational program's goals.
- 18 (d) The institution maintains a withdrawal policy and provides refunds.
- 19 (e) The directors, administrators, and faculty are properly qualified.
- 20 (f) The institution is financially sound and capable of fulfilling its commitments
21 to students.
- 22 (g) That, upon satisfactory completion of an educational program, the institution
gives students a document signifying the degree or diploma awarded.
- 23 (h) Adequate records and standard transcripts are maintained and are available
24 to students.

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

26 6. Section 94886 provides:

27 Except as exempted in Article 4 (commencing with Section 94874) or in
28 compliance with the transition provisions in Article 2 (commencing with Section
94802), a person shall not open, conduct, or do business as a private postsecondary

1 educational institution in this state without obtaining an approval to operate under this
2 chapter.

3 7. Section 94887 provides:

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

8 **STATUTORY AND REGULATORY PROVISIONS**

9 8. Section 94841 provides:

10 'Faculty' means the instructional staff of an institution, whether these persons
are employees or independent contractors.

11 9. Section 94909, subdivision (a)(10) provides:

12 (a) Except as provided in subdivision (d), prior to enrollment, an institution
13 shall provide a prospective student, either in writing or electronically, with a school
catalog containing, at a minimum, all of the following:

14 ...

15 (10) A statement reporting whether the institution participates in federal and
16 state financial aid programs, and if so, all consumer information that is required to be
disclosed to the student pursuant to the applicable federal and state financial aid
17 programs.

18 10. California Code of Regulations, title 5, section 71250 provides:

19 The Form Application 94886 shall include a statement that the institution has
20 contracted with sufficient duly qualified faculty members who meet the qualifications
of section 71720.

21 11. California Code of Regulations, title 5, sections 71260, subdivisions, (a), (b), (c) and
22 (f) provide:

23 (a) For each program offered, the Form Application 94886 shall contain a
24 description of the facilities and the equipment which is available for use by students at
the main, branch, and satellite locations of the institution.

25 (b) For facilities that are leased or rented, the Form Application 94886 shall
26 contain the name and address of the lessor or landlord, together with a copy of any
27 use, lease, or rental agreements for the facilities.

28 (c) The description of the physical facilities shall include building diagrams or

1 campus maps to assist the Bureau in locating these facilities. The diagrams or maps
2 shall identify the location of classrooms, laboratories, workshops, and libraries.

3 (f) The Form Application 94886 shall contain a list of all permits,
4 certifications, or other evidence of inspections or authorizations to operate required by
5 the jurisdictions within which the institution operates that the institution has obtained,
6 and/or an explanation as to why those permits, certifications, or inspections have not
7 yet been obtained.

8 12. California Code of Regulations, title 5, section 71720 provides:

9 (a) An Educational Program Leading to a Degree.

10 (1) An institution offering an educational program that leads to a degree shall
11 employ duly qualified faculty sufficient in number to provide the instruction, student
12 advisement, and learning outcomes evaluation necessary for the institution to
13 document its achievement of its stated mission and objectives, and for students to
14 achieve the specific learning objectives of each course offered.

15 (2) Each institution shall develop and implement written policies and
16 procedures providing for the participation by duly qualified faculty in the conducting
17 of research, development of curricula, academic planning, enforcement of standards
18 of academic quality, pursuit of academic matters related to the institution's mission
19 and objectives, establishment of criteria for contracting with new faculty, and
20 evaluation of faculty credentials.

21 (3) In determining the number of faculty sufficient to satisfy subdivision (a) (1)
22 of this section and to implement the policies established pursuant to subdivision (a)
23 (2) of this section, the institution shall base its faculty requirements on all of the
24 following factors:

25 (A) The educational level and number of students;

26 (B) The number of hours needed for direct interaction between students and
27 faculty per course, quarter, semester, or other term;

28 (C) The number of hours needed to be spent on evaluating written materials
prepared by students, such as distance education, papers, and examinations, per
course, quarter, semester, or other term;

(D) The number of group meetings per course, quarter, semester, or other term;

(E) The faculty duties established by the institution as required under
subdivision (a) (2) of this section; and

(F) The number of hours per week or units per term considered full-time for
faculty in the institution.

(4) The faculty shall have sufficient expertise to support the institution's
awarding of a degree identifying a specialty or major field of emphasis, demonstrated
by, at a minimum:

(A) That the person possesses one of the following:

1 1. a degree from an institution approved by the Bureau or
2 previously approved by a predecessor agency of the Bureau; or an
3 accredited institution in the United States or Canada; or other state
4 approved institution that documents that the institution at which the
5 faculty member earned his or her degree is equivalent to an institution that
6 is approved by the Bureau; or an institution outside the United States or
7 Canada and in addition provides a comprehensive evaluation of the
8 degree performed by a foreign credential evaluation service that is a
9 member of the National Association of Credential Evaluation Services
10 (NACES).

11 2. a credential generally recognized in the field of instruction.

12 (B) The degree, professional license, or credential possessed by the person shall
13 be at least equivalent to the level of instruction being taught or evaluated;

14 (5) The institution's faculty as a whole shall possess a diverse educational
15 background which shall be demonstrated in part by earned degrees from a variety of
16 colleges and universities or by credentials generally recognized in the field of
17 instruction;

18 (6) When contracting for educational services, the institution shall maintain
19 control of, and responsibility for, all academic matters, and shall assure that the
20 instruction and faculty satisfy the standards established by the Act and this chapter;

21 (7) The institution shall not employ or continue to employ any faculty who
22 were adjudicated in a judicial or administrative proceeding as having violated any
23 provision of the Act or this chapter or as having committed any act that would
24 constitute grounds for the denial of a license under Section 480 of the Business and
25 Professions Code;

26 (8) Each institution shall have a written Academic Freedom Policy which
27 describes the latitude the institution allows faculty in the classroom so faculty will not
28 inadvertently violate the principles of academic freedom. These policies shall be
29 made available to any person upon request. The institution shall not take adverse
30 action based on a staff member's exercise of academic freedom consistent with the
31 institution's policy; and

32 (9) The institution shall maintain records documenting that each faculty
33 member is duly qualified and was qualified to perform the duties to which the faculty
34 member was assigned, including providing instruction, evaluating learning outcomes,
35 evaluating graduate dissertations, theses, and student projects, and participating on
36 doctoral committees.

37 (b) Instructors in an Educational Program Not Leading to a Degree.

38 (1) An institution shall employ instructors who possess the academic,
39 experiential and professional qualifications to teach, including a minimum of three
40 years of experience, education and training in current practices of the subject area they
41 are teaching. If an instructor does not possess the required three years of experience,
42 education and training in the subject area they are teaching, the institution shall
43 document the qualifications the instructor possesses that are equivalent to the
44 minimum qualifications.

45 (2) Each instructor shall maintain their knowledge by completing continuing

1 education courses in his or her subject area, classroom management or other courses
2 related to each.

3 (3) The institution shall not employ or continue to employ an instructor who
4 was adjudicated in a judicial or administrative proceeding as having violated any
5 provisions of the Act or this chapter, or as having committed any act that would
6 constitute grounds for the denial of a license under Section 480 of the Business and
7 Professions Code.

8 13. California Code of Regulations, title 5, section 71810, subdivision (b)(6) provides:

9 (a) Each institution shall provide a catalog pursuant to section 94909 of the
10 Code, which shall be updated annually. Annual updates may be made by the use of
11 supplements or inserts accompanying the catalog. If changes in educational
12 programs, educational services, procedures, or policies required to be included in the
13 catalog by statute or regulation are implemented before the issuance of the annually
14 updated catalog, those changes shall be reflected at the time they are made in
15 supplements or inserts accompanying the catalog.

16 (b) The catalog shall contain the information prescribed by Section 94909 of
17 the Code and all of the following:

18 ...

19 (6) The institution's policies and practices regarding any form of financial aid,
20 including all consumer information which the institution is required to disclose to the
21 student under any state or federal financial aid program.

22 **FIRST CAUSE FOR DENIAL OF APPLICATION**

23 (Faculty)

24 (Educ. Code §§ 94887 and 94841, and
25 Cal. Code of Regs., title 5, §§ 71250 and 71720)

26 14. Respondent's application is subject to denial based on Respondent's failure to
27 demonstrate that its instructors possess the academic, experiential and professional qualifications
28 to teach. (Educ. Code §§ 94887 and 94841, and Cal. Code of Regs., title 5, § 71250, and
§ 71720). Specifically, Respondent failed to provide the resumes for each of the identified faculty
members, demonstrating that they possess the qualifications to teach the designated subjects.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Facilities and Equipment)

(Educ. Code § 94887; and Cal. Code of Regs., title 5, §§ 71260,
subds. (b), (c) and (f))

15. Respondent's application is subject to denial based on its inability to demonstrate it
possesses the appropriate facilities and equipment. (Educ. Code § 94887; and Cal. Code of Regs.,

1 title 5, § 71260, subds. (b), (c) and (f)). In particular:

2 a. Respondent's application fails to provide the name and address of the lessor or
3 landlord or provide a lease agreement for its main campus. (Cal. Code of Regs., title 5, §
4 71260, subd. (b)).

5 b. Respondent's application fails to provide a building diagram or campus map for
6 its main campus, which identifies the location of classrooms, laboratories, workshops, and
7 libraries. (Cal. Code of Regs., title 5, § 71260, subd. (c)).

8 c. Respondent's application fails to provide a list of all permits, certifications, or
9 other evidence of inspections or authorizations to operate required by the jurisdictions
10 within which Respondent operates that the institution has obtained, and/or an explanation as
11 to why those permits, certification, or inspections have not yet been obtained. (Cal. Code of
12 Regs., title 5, § 71260, subd. (f)).

13 **THIRD CAUSE FOR DENIAL OF APPLICATION**

14 (School Catalog)

15 (Educ. Code §§ 94887 and 94909, subd. (a) (10),
and Cal. Code of Regs., title 5, § 71810, subd. (b)(6))

16 16. Respondent's application is subject to denial because Respondent's proposed school
17 catalog is incomplete. (Educ. Code §§ 94887 and 94909, subd. (a) (10), and Cal. Code of Regs.,
18 title 5, § 71810, subd. (b)(6)). In particular, Respondent's catalog fails to contain its policies and
19 practices, including required disclosures, regarding any form of financial aid. (Cal. Code of
20 Regs., title 5, § 71810, subd. (b)(6)).

21 **PRAYER**

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

25 1. Denying the application of Rosa E. Macias, doing business as Del Mar Beauty School
26 for approval to operate an institution non-accredited; and

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2. Taking such other and further action as deemed necessary and proper.

DATED: 11/30/17



DR. MICHAEL MARION, JR.
Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

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