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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:

Case No. 1006701

14 **SAINT JOSEPH'S SCHOOL OF**
15 **NURSING**

622 W. Lancaster Blvd.
Lancaster, CA 93534

16 Institution Code No. 42097062

FIRST AMENDED ACCUSATION

17
18 Respondent.

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20 **PARTIES**

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

24 2. On or about August 30, 2012, the Bureau issued Approval to Operate Institution Code
25 Number 42097062 to Saint Joseph's School of Nursing, owned by Excel Nursing School, Inc.
26 (Respondent). The Approval to Operate was in full force and effect at all times relevant to the
27 charges herein, and will expire on June 27, 2023, unless renewed.

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JURISDICTION

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

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

9 5. Code section 94875 provides that the Bureau shall regulate private postsecondary
10 educational institutions.

11 6. Code section 94877 states, in relevant part, that:

12 (a) The bureau shall adopt and shall enforce regulations to implement this chapter
13 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).

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

16 7. Code section 94932 states that:

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

26 8. Code section 94937 states that:

27 (a) As a consequence of an investigation, which may incorporate any materials
28 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
6 one agency.

7 **STATUTORY PROVISIONS**

8 9. Code 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.

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1 (3) If a hearing is requested, the bureau shall select an informal hearing
2 pursuant to Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1
3 of Division 3 of Title 2 of the Government Code or a formal hearing pursuant to
4 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
5 Government Code.

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

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

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

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

16 REGULATORY PROVISIONS

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

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

23 (b) The Bureau Chief, or his or her designee, or the Director's designee, is authorized
24 to issue citations containing orders of abatement and administrative fines not to exceed
25 \$100,000 pursuant to section 94944 of the Code against persons who are without proper
26 approval to operate a private, postsecondary institution. In addition, the citation may
27 contain an order of abatement pursuant to section 149 of the Business and Professions Code
28 that requires the unapproved person to cease any unlawful advertising and to notify the
telephone company furnishing services to the cited person: (1) to disconnect the telephone
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;

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1 (3) if the cited institution or person desires an informal conference to contest the
2 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;

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

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

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

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

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

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

15 (a) A “Class A” violation shall not be less than \$2,501 nor more than \$5,000. A
16 Class A violation is one that the Bureau has, in its discretion, determined to be more serious
17 in 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.

18 (b) A “Class B” violation shall not be less than \$1,001 nor more than \$2,500. A
19 Class B violation is one that the Bureau has, in its discretion, determined to be less serious
20 in 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 an institution that has committed one or more prior separate Class C violations.

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

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

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

27 (a) Pursuant to section 94936(c)(2) of the Code, a cited institution or person may,
28 within 30 days of service of the citation, request a hearing in writing to the Bureau, or it is
waived. In addition to contesting a citation by requesting a hearing, the cited institution or

1 person may, within the same 30 days, submit a written request to the Bureau for an informal
2 conference.

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

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

15 (d) If the informal conference results in the modification of the findings of
16 violation(s), the amount of the fine and/or the order of abatement, the citation shall be
17 considered modified, but not withdrawn. Unless waived, a cited institution or person is
18 entitled to a hearing to contest the modified citation if the institution or person filed a timely
19 request, but is not entitled to an informal conference to contest an affirmed or modified
20 citation. If a timely request for a hearing was not filed, the decision on the affirmed or
21 modified citation shall be considered final.

22 ...

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

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

28 ...

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

...

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

COST RECOVERY

15. Code section 94937, subdivision (c), provides that the Bureau may seek
reimbursement for its costs of investigation and enforcement pursuant Business and Professions
Code section 125.3.

1 Abatement to submit the delinquent STRF Assessment Reporting Forms and pay the delinquent
2 Annual Fee, as set forth in Citation No. 1920166.

3 22. To date, Respondent has failed to comply with the Orders of Abatement to submit the
4 delinquent STRF Assessment Reporting Forms and pay the delinquent Annual Fee, as set forth in
5 Citation No. 1920166.

6 **Citation Number 1920206**

7 23. On February 4, 2020, the Bureau issued Citation No. 1920206 to Respondent for
8 failure to submit its 2017 Annual Report. Citation No. 1920206 to ordered Respondent to
9 complete and submit its 2017 Annual Report through the Bureau's online portal, to submit a copy
10 of Respondent's financial statements for the year ending in 2017 by mail to the Bureau. Citation
11 No. 1920206 also assessed an administrative fine of \$5,000.00 for the violation.

12 24. On February 25, 2020, the Bureau received a Request for Informal Conference
13 regarding Citation No. 1920206 from Respondent, along with Respondent's \$50.00 payment of
14 the fine in connection with the previously issued Citation No. 1920166. Respondent did not
15 appeal or otherwise request a formal administrative hearing contesting Citation No. 1920206 at
16 such time.

17 25. On February 28, 2020, the Bureau mailed a letter to Respondent erroneously
18 confirming that Respondent's \$50.00 payment of the fine for Citation No. 1920206 was received,
19 when in fact such \$50.00 payment had been intended by Respondent to satisfy payment of the
20 fine in connection with Citation No. 1920166. The Bureau's February 28, 2020 letter to
21 Respondent also requested evidence of Respondent's compliance with the Order of Abatement as
22 set forth in Citation No. 1920206.

23 26. Thereafter, on March 10, 2020, the Bureau mailed a letter to Respondent clarifying
24 that the \$50.00 payment Respondent tendered to the Bureau on February 28, 2020 was actually
25 applied to previous Citation No. 1920166. The Bureau's March 10, 2020 letter to Respondent
26 also acknowledged that the Bureau received Respondent's Request for Informal Conference as to
27 Citation No. 1920206, and that Citation No. 1920206 was therefore still open and pending.

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1 Abatement in Citation Number 1920166. Complainant hereby incorporates paragraphs 17
2 through 22 above as though set forth in full herein.

3 **SECOND CAUSE FOR DISCIPLINE**
4 (Failure to Comply with Citation)

5 34. Respondent is subject to disciplinary action under Code section 94936 and California
6 Code of Regulations, title 5, section 75050 in that Respondent failed to comply with the Order of
7 Abatement in Modified Citation Number 1920206. Complainant hereby incorporates paragraphs
8 23 through 32 above as though set forth in full herein.

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
11 First Amended Accusation, and that following the hearing, the Director of the Department of
12 Consumer Affairs issue a decision:

- 13 1. Revoking Approval to Operate Institution Code Number 42097062, issued to Saint
14 Joseph's School of Nursing;
- 15 2. Ordering Saint Joseph's School of Nursing to pay the Bureau for Private
16 Postsecondary Education the reasonable costs of the investigation and enforcement of this case,
17 pursuant to Business and Professions Code section 125.3; and,
- 18 3. Taking such other and further action as deemed necessary and proper.

19
20 DATED: "4/27/2022" _____

20 "Original Signature on File" _____
21 DEBORAH COCHRANE
22 Chief
23 Bureau for Private Postsecondary
24 Education
25 Department of Consumer Affairs
26 State of California
27 *Complainant*