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7
8 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
9 **FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
Against:

Case No. 1001128

12 **MARSTON POLYGRAPH ACADEMY;**
13 **THOMAS KELLY, OWNER**

STATEMENT OF ISSUES

14 **Application for Renewal of Approval to**
15 **Operate and Offer Educational Programs**
for Non-Accredited Institutions

16 **Application Number 24714**
17 **School Code 25448403**

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Complainant Joanne Wenzel brings this Statement of Issues 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 May 9, 2006, the Bureau for Private Postsecondary and Vocational Education¹
25 issued an Approval to Operate to Marston Polygraph Academy; Thomas Kelly, owner

26 ¹ The former Bureau for Private Postsecondary Education and Vocational Education
27 sunsetted on July 2, 2007. On October 11, 2009, the Bureau for Private Postsecondary Education
28 Act of 2009 (AB 48) was signed into law. The Act, which became operative on January 1, 2010,
established the Bureau for Private Postsecondary Education.

1 (Respondent). Respondent was assigned School Code 25448403. Respondent's Approval to
2 Operate was due to expire on April 30, 2012.

3 3. On April 23, 2012, the Bureau received Respondent's Application for Renewal of
4 Approval to Operate and Offer Educational Programs for Non-Accredited Institutions. The
5 Bureau denied the application on October 29, 2015 and Respondent timely appealed.

6 **JURISDICTION**

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

10 5. Section 94875 authorizes the Bureau to regulate private postsecondary educational
11 institutions under the California Private Postsecondary Education Act of 2009, Education Code
12 sections 94800 through 94950.

13 **STATUTES AND REGULATIONS**

14 *Standards for Evaluating Applications to Operate and Their Renewal*

15 6. In pertinent part, Section 94885² requires the Bureau to adopt certain minimum
16 operating standards for institutions:

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

19 ...

20 (3) The facilities, instructional equipment, and materials are sufficient to
21 enable students to achieve the educational program's goals.

22 ...

23 (6) The institution is financially sound and capable of fulfilling its
24 commitments to students.

25 ...

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

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² The statutes and regulations quoted are those in effect as of January 1, 2015 and cover the date on which the Bureau denied Respondent's application.

1 7. Section 94887 dictates when the Bureau may grant an application to operate:

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

8 8. Section 94891 requires the Bureau to adopt regulations for evaluating renewals of
9 approvals to operate and states in subdivision (b) that “[t]o be granted a renewal of an approval to
10 operate, the institution shall demonstrate its continued capacity to meet the minimum operating
11 standards.”

12 9. In pertinent part, California Code of Regulations, title 5, section 71475, implements
13 section 94891 by providing requirements for renewal applications:

14 (b) An institution seeking to renew its Approval to Operate pursuant to
15 section 94891 of the Code shall, prior to its expiration, complete and submit to the
16 Bureau the "Application for Renewal of Approval to Operate and Offer Educations
17 Programs for Non-Accredited Institutions," Form Application 94891 (rev. 2/10)

18 ...

19 (e) The institution shall submit at the time it applies for renewal current
20 financial statements that meet the requirements of section 74115 as follows: (1) for an
21 institution with annual gross revenues of \$500,000 and over, statements shall be
22 audited; (2) for an institution with annual gross revenues less than \$500,000,
23 statements shall be reviewed.

24 Regulations Governing Institutions' Financial Statements

25 10. In relevant part, California Code of Regulations, title 5, section 71745, sets specific
26 requirements for institution's assets and financial resources:

27 (a) The institution shall document that it has at all times sufficient assets and
28 financial resources to do all of the following:

 ...

 (6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or
greater at the end of the most recent fiscal year when using generally accepted
accounting principles, or for an institution participating in Title IV of the federal
Higher Education Act of 1965, meet the composite score requirements of the U.S.
Department of Education. For the purposes of this section, current assets does not
include: intangible assets, including goodwill, going concern value, organization
expense, startup costs, long-term prepayment of deferred charges, and non-
returnable deposits, or state or federal grant or loan funds that are not the property
of the institution but are held for future disbursement for the benefit of students.
Unearned tuition shall be accounted for in accordance with general accepted
accounting principles.

BACKGROUND

11. On April 23, 2012, the Bureau received Respondent's Application for Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions. The Bureau assigned it Application Number 24714.

12. Following several subsequent responsive submittals of documents from Respondent, the Bureau denied Respondent's application on October 29, 2015.

13. On or about December 24, 2015, the Bureau received from Respondent an accountant's review report for the fiscal year ending in December 31, 2014 which also included seven additional months ending on July 31, 2015. The review report revealed that the institution's total current assets were \$30,808.00, their total current liabilities were \$25,703, and the resulting total current assets to liabilities ratio was 1.20 to 1.00.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Failure to Maintain Ratio of Current Assets to Current Liabilities)

14. Respondent's application for renewal of approval revealed that the institution failed to maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or greater, subjecting the application to denial under the following sections of the Education Code and applicable regulations:

| Education Code / Regulation Violated | Description |
|---|--|
| Section 94885 | Respondent failed to operate the institution in compliance with the California Private Postsecondary Education Act of 2009. |
| Section 94887 | Respondent failed to present sufficient evidence to the Bureau that his institution had the capacity to satisfy the minimum operating standards. |
| Section 94891 | Respondent failed to demonstrate his institution's continued capacity to meet the minimum operating standards. |
| 5 CCR § 71475(a)(6) | Respondent failed to maintain the required 1.25 to 1.00 or greater ratio of current assets to current liabilities in that the institution's total current assets were \$30,808 and its total current liabilities were \$25,703 resulting in current ratio of 1.20 to 1.00. |

15. Complainant hereby incorporates paragraphs 11 through 13, above, as though set forth fully.


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PRAYER

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

1. Denying the application of Marston Polygraph Academy and its owner Thomas Kelly for a Renewal of Approval to Operate and Offer Educational Programs for Non-Accredited Institutions; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 7/19/16


Joanne Wenzel
Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

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