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

11 In the Matter of the Statement of Issues  
Against:

Case No. 1000959

12 **EMS TRAINING INSTITUTE, Inc.;**  
13 **MARK KOMINS, 50% Owner; RONA**  
**KOMINS, 50% Owner**

**STATEMENT OF ISSUES**

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

16 Respondent.

17 **Institution Code 41500904**  
18

19 Complainant alleges:

20 **PARTIES**

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

24 **APPLICANT'S LICENSE HISTORY**

25 2. On or about September 28, 2006, the Bureau for Private Postsecondary Education  
26 (Bureau) issued approval to operate Institution Code No. 41500904 to EMS Training Institute,  
27 Inc., Mark Komins, 50% owner, and Rona Komins, 50% owner (Respondent and/or the  
28

1 Institution). Said approval to operate was in full force and effect at all times alleged herein and  
2 was scheduled to expire on January 23, 2013, unless renewed.

3 3. On or about August 1, 2012, the Bureau sent Respondent a Renewal of An Approval  
4 to Operate letter, informing the Institution that their approval will expire on January 23, 2012. On  
5 or about August 31, 2012, the Bureau sent the Institution a receipt for the Application for  
6 Renewal for Approval to Operate an Accredited Institution, Application No. 25292. The letter  
7 also provided that the Institution must resubmit the Application for Renewal of Approval to  
8 Operate an Institution Non-Accredited and the required fees to continue the application process.

9 4. On or about September 19, 2012, the Bureau received a letter from the Institution,  
10 requesting that Application No. 25292, the Application for Renewal for An Approval to Operate  
11 an Accredited Institution be withdrawn, and that the fees in the amount of \$500 be transferred to  
12 the Application for Renewal for an Approval to Operate an Institution Non-Accredited. On or  
13 about September 21, 2012, the Bureau received an Application for Renewal of Approval to  
14 Operate an Institution Non-Accredited, Application No. 25368, from Respondent.

15 5. On or about October 17, 2012, the Bureau sent Respondent a deficiency letter. On or  
16 about October 25, 2012, the Bureau received a response to the deficiency letter from Respondent.

17 6. On or about February 25, 2015, the Bureau sent a deficiency letter to Respondent. On  
18 or about March 25, 2015, the Bureau received a response to the deficiency letter. On or about  
19 June 18, 2015, the Bureau received another response to the deficiency letter.

20 7. On or about July 31, 2015, the Bureau sent Respondent a "Notice of Denial" letter.

21 8. On or about August 17, 2015, Respondent sent the Bureau a letter requesting an  
22 administrative hearing to appeal the denial of his application for a renewal of its license. On or  
23 about August 31, 2015, the Bureau received additional documents from Respondent for review,  
24 which were not reviewed by the Bureau.

### 25 JURISDICTION

26 9. This Statement of Issues is brought before the Director of the Department of  
27 Consumer Affairs (Director) for the Bureau for Private Postsecondary Education, under the  
28

1 authority of the following laws. All section references are to the Education Code unless  
2 otherwise indicated.

3 **STATUTORY PROVISIONS<sup>1</sup>**

4 10. Code section 94891, subdivision (b) states: "To be granted a renewal of an approval  
5 to operate, the institution shall demonstrate its continued capacity to meet the minimum operating  
6 standards."

7 11. Code section 94897 states, in pertinent part:

8 An institution shall not do any of the following:

9 \* \* \* \*

10 (I) Use the terms "approval," "approved," "approval to operate," or  
11 "approved to operate" without stating clearly and conspicuously that approval to  
12 operate means compliance with state standards as set forth in this chapter. If the  
13 bureau has granted an institution approval to operate, the institution may indicate that  
14 the institution is "licensed" or "licensed to operate," but may not state or imply either  
15 of the following:

14 (1) The institution or its educational programs are endorsed or  
15 recommended by the state or by the bureau.

15 (2) The approval to operate indicates that the institution exceeds  
16 minimum state standards as set forth in this chapter.

16 \* \* \* \*

17  
18 12. Code section 94909, subdivisions (a)(1), (a)(2) & (a)(15), state in pertinent part, as  
19 follows:

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

22 (1) The name, address, telephone number, and, if applicable, Internet  
23 Web site address of the institution.

24 (2) Except as specified in Article 2 (commencing with Section 94802), a  
25 statement that the institution is a private institution and that it is approved to operate  
26 by the bureau.

25 \* \* \* \*

26  
27 <sup>1</sup> The California Private Postsecondary Education Act of 2009 was recently amended,  
28 effective January 1, 2015. See Senate Bill No. 1247. This Statement of Issues is based on the  
post-amendment version of the Act.

1 (15) The following statement:

2 "NOTICE CONCERNING TRANSFERABILITY OF CREDITS AND  
3 CREDENTIALS EARNED AT OUR INSTITUTION

4 The transferability of credits you earn at (name of institution) is at the  
5 complete discretion of an institution to which you may seek to transfer. Acceptance of  
6 the (degree, diploma, or certificate) you earn in (name of educational program) is also  
7 at the complete discretion of the institution to which you may seek to transfer. If the  
8 (credits or degree, diploma, or certificate) that you earn at this institution are not  
9 accepted at the institution to which you seek to transfer, you may be required to  
10 repeat some or all of your coursework at that institution. For this reason you should  
11 make certain that your attendance at this institution will meet your educational goals.  
12 This may include contacting an institution to which you may seek to transfer after  
13 attending (name of institution) to determine if your (credits or degree, diploma, or  
14 certificate) will transfer.

15 \* \* \* \*

16 13. Code section 94911 states, in pertinent part:

17 An enrollment agreement shall include, at a minimum, all of the following:

18 \* \* \* \*

19 (i)(2) Immediately following the statement required by paragraph (1), a  
20 line for the student to initial, including the following statement: "I certify that I have  
21 received the catalog, School Performance Fact Sheet, and information regarding  
22 completion rates, placement rates, license examination passage rates, and salary or  
23 wage information, and the most recent three year cohort default rates, if applicable,  
24 included in the School Performance Fact sheet, and have signed, initialed, and dated  
25 the information provided in the School Performance Fact Sheet.

26 14. Code section 94916 states as follows:

27 An institution extending credit or lending money to an individual for  
28 institutional and noninstitutional charges for an educational program shall cause any  
note, instrument, or other evidence of indebtedness taken in connection with that  
extension of credit or loan to be conspicuously marked on its face in at least 12-point  
type with the following notice:

"NOTICE"

"You may assert against the holder of the promissory note you signed in  
order to finance the cost of the educational program all of the claims and defenses  
that you could assert against this institution, up to the amount you have already paid  
under the promissory note."

**REGULATORY PROVISIONS**

15. California Code of Regulations, title 5, section 71700 states that "The Bureau may  
request that an institution document compliance with the standards set forth in the Act and this  
Division to obtain and maintain an approval to operate."

1 16. California Code of Regulations, title 5, section 71745, states, in pertinent part:

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

4 (1) Provide all of the educational programs that the institution represented  
5 it would provide.

6 (2) Ensure that all students admitted to its educational programs have a  
7 reasonable opportunity to complete the programs and obtain their degrees or  
8 diplomas.

9 (3) Maintain the minimum standards required by the Act and this chapter.

10 (4) Pay timely refunds as required by Article 13 of the Act.

11 (5) Pay all operating expenses due within 30 days.

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

23 (b) At an institution's request, the Bureau may consider the financial  
24 resources of a parent company if the parent company, as defined by section 94853 of  
25 the Code, meets and maintains all of the following provisions:

26 (1) consents in writing to be sued in California;

27 (2) consents in writing to be subject to the jurisdiction of the Bureau with  
28 respect to the institution's regulation under the Act and this Chapter;

(3) designates and maintains an agent for service of process, consistent  
with section 74190;

(4) agrees in writing to pay any refund, claim, penalty, or judgment that  
the institution is obligated to pay; and

(5) files financial reports, maintains financial records, and consents in  
writing to permit the inspection and copying of financial records to the same extent as  
is required of the institution.

(c) An institution shall provide to the Bureau its most current financial  
statements upon request.

17. California Code of Regulations, title 5, section 71810, subdivision (b)(1), states in  
pertinent part:

1 \* \* \* \*

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

4 (1) The specific beginning and ending dates defining the time period  
5 covered by the catalog;

6 18. California Code of Regulations, title 5, section 71930, states in pertinent part:

7 (a) An institution shall maintain all records required by the Act and this  
8 chapter. The records shall be maintained in this state.

9 (b)(1) In addition to permanently retaining a transcript as required by  
10 section 94900(b) of the Code, the institution shall maintain for a period of 5 years the  
11 pertinent student records described in Section 71920 from the student's date of  
12 completion or withdrawal.

13 (2) Notwithstanding (b)(1), the institution shall maintain records relating  
14 to federal financial aid programs as provided by federal law.

15 \* \* \* \*

16 19. California Code of Regulations, title 5, section 74115, states:

17 (a) This section applies to every set of financial statements required to be  
18 prepared or filed by the Act or by this chapter.

19 (b) A set of financial statements shall contain, at a minimum, a balance  
20 sheet, an income statement, and a cash flow statement, and the preparation of  
21 financial statements, shall comply with all of the following:

22 (1) Audited and reviewed financial statements shall be conducted and  
23 prepared in accordance with the generally accepted accounting principles established  
24 by the American Institute of Certified Public Accountants by an independent certified  
25 public accountant who is not an employee, officer, or corporate director or member of  
26 the governing board of the institution.

27 (2) Financial statements prepared on an annual basis as required by  
28 section 74110(b) shall be prepared in accordance with the generally accepted  
accounting principles established by the American Institute of Certified Public  
Accountants. Nonprofit institutions shall provide annual financial statements as  
required under generally accepted accounting principles for nonprofit organizations.

(3) The financial statements shall establish that the institution meets the  
requirements for financial resources required by Section 71745.

(4) If an audit performed to determine compliance with any federal or  
state student financial aid program reveals any failure to comply with the  
requirements of the program and the noncompliance creates any liability or potential  
liability for the institution, the financial statements shall reflect the liability or  
potential liability.

(5) Any audits shall demonstrate that the accountant obtained an

1 understanding of the institution's internal financial control structure, assessed any  
2 risks, and has reported any material deficiencies in the internal controls.

3 (c) Work papers for the financial statements shall be retained for five  
4 years from the date of the statements and shall be made available to the Bureau upon  
5 request.

6 (d) "Current" with respect to financial statements means completed no  
7 sooner than 120 days prior to the time it is submitted to the Bureau, and covering no  
8 less than the most recent complete fiscal year. If more than 8 months will have  
9 elapsed between the close of the most recent complete fiscal year and the time it is  
10 submitted, the fiscal statements shall also cover no less than five months of that  
11 current fiscal year.

12 20. California Code of Regulations, title 5, section 76215, subdivision (a), states in  
13 relevant part:

14 (a) A qualifying institution shall include the following statement on both  
15 its enrollment agreement for an educational program and its current schedule of  
16 student charges:

17 "You must pay the state-imposed assessment for the Student Tuition  
18 Recovery Fund (STRF) if all of the following applies to you:

19 1. You are a student in an educational program, who is a California  
20 resident, or are enrolled in a residency program, and prepay all or part of your tuition  
21 either by cash, guaranteed student loans, or personal loans, and

22 2. Your total charges are not paid by any third-party payer such as an  
23 employer, government program or other payer unless you have a separate agreement  
24 to repay the third party.

25 You are not eligible for protection from the STRF and you are not  
26 required to pay the STRF assessment, if either of the following applies:

27 1. You are not a California resident, or are not enrolled in a residency  
28 program, or

2. Your total charges are paid by a third party, such as an employer,  
government program or other payer, and you have no separate agreement to repay the  
third party."

### **FIRST CAUSE FOR DENIAL OF APPLICATION**

#### **(Failed to Include Required Provisions in Student Enrollment Agreements)**

21. Respondent's application is subject to denial under Code section 94891, subdivision  
(b), in that:

22. Page two of the Institution's Enrollment Agreements for the EMT Refresher, EMT  
Initial, and Paramedic Refresher courses did not contain the verbatim, specific required language

1 related to the Student Tuition Recovery Fund (STRF) and it is missing the words “in an  
2 educational program” and “or are enrolled in a residency program”, in violation of California  
3 Code of Regulations, title 5, division 7.5, section 76215, subdivision (a).

4 23. Although page two of the Institution's Enrollment Agreements for the EMT  
5 Refresher, EMT Initial, and Paramedic Refresher courses contained the specific statement prior to  
6 signing the enrollment agreement, it did not contain a line for the student's initials immediately  
7 after the statement, in violation of Code section 94911, subdivision (i)(2).

8 24. Page three of the Institution's Enrollment Agreements for the EMT Refresher, EMT  
9 Initial, and Paramedic Refresher courses failed to reference the required “Notice” related to  
10 extending credit or lending money, and is not in capital letters, in violation of California Code of  
11 Regulations, title 5, section 94916.

## 12 **SECOND CAUSE FOR DENIAL OF APPLICATION**

### 13 **(Failed to Submit Adequate Financial Statements)**

14 25. Respondent's application is subject to denial under Code section 94891, subdivision  
15 (b), in that the Institution submitted a balance sheet and profit and loss statement for the year  
16 ending December 31, 2014, which is not a financial statement reviewed by a Certified Public  
17 Accountant in accordance with the generally accepted accounting principles established by the  
18 American Institute of Certified Public Accountants, in violation of California Code of  
19 Regulations, title 5, sections 71745 and 74115.

## 20 **THIRD CAUSE FOR DENIAL OF APPLICATION**

### 21 **(Violated Catalog Requirements)**

22 26. Respondent's application is subject to denial under Code section 94891, subdivision  
23 (b), in that:

24 27. Respondent violated Code section 94909, subdivision (a)(1), as the Institution's  
25 catalog did not include the internet website address of the Institution.

26 28. Respondent violated California Code of Regulations, title 5, section 71810,  
27 subdivision (b)(1), in that the Institution's catalog failed to include the specific beginning and  
28 ending dates which include the month, day and year covered by the catalog.



