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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. 1002383

12 **SCHOOL OF HOLISTIC TOUCH, INC.,**
13 **ARMANDO REYNA**

STATEMENT OF ISSUES

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

16 Application No. 28924
17 Institution Code No. 93794268

Respondent.

18
19
20 Complainant alleges:

21 **PARTIES**

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

25 2. On or about January 12, 2016, the Bureau received an application for a Renewal of
26 Approval to Operate a Non-Accredited Institution (Application No. 28924) from School of
27 Holistic Touch, Inc., Armando Reyna, owner, Institution Code Number 93794268 (Respondent).
28 On or about January 7, 2016, Armando Reyna certified under penalty of perjury to the

1 truthfulness of all statements, answers, and representations in the application. The Bureau denied
2 the application on January 3, 2017.

3 **JURISDICTION**

4 3. This Statement of Issues is brought before the Director of the Department of
5 Consumer Affairs (Director) for the Bureau, under the authority of the following laws.

6 **STATUTORY PROVISIONS**

7 4. Business and Professions Code section 22 defines the term “board” to include
8 “bureau.”

9 5. Section 94887¹ of the Education Code states:

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

15 6. Section 94891 of the Education Code states:

16 “(a) The bureau shall adopt by regulation the process and procedures whereby an institution
17 may obtain a renewal of an approval to operate.

18 “(b) To be granted a renewal of an approval to operate, the institution shall demonstrate its
19 continued capacity to meet the minimum operating standards.

20 “(c)(1) An institution that is denied renewal of an approval to operate may file an appeal in
21 accordance with the procedures established by the bureau pursuant to Section 94888.

22 “(2) An institution that has filed an appeal of a denial of a renewal application may continue
23 to operate during the appeal process, but must disclose in a written statement, approved by the
24 bureau, to all current and prospective students, that the institution’s application for renewal of
25 approval to operate was denied by the bureau because the bureau determined the application did
26

27 ¹ California Private Postsecondary Education Act of 2009, *Ed. Code* § 94800, *et seq.*,
28 effective January 1, 2017.

1 not satisfy the requirements to operate in California, that the institution is appealing the bureau's
2 decision, and that the loss of the appeal may result in the institution's closure.

3 "(3) If the bureau determines that the continued operation of the institution during the
4 appeal process poses a significant risk of harm to students, the bureau shall make an emergency
5 decision pursuant to its authority provided in Section 94938."

6 7. Section 94909 of the Education Code states:

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

10 ...

11 "(7) Information regarding the faculty and their qualifications.

12 "(8) A detailed description of institutional policies in the following areas:

13 "(A) Admissions policies, including the institution's policies regarding the acceptance of
14 credits earned at other institutions or through challenge examinations and achievement tests,
15 admissions requirements for ability-to-benefit students, and a list describing any transfer or
16 articulation agreements between the institution and any other college or university that provides
17 for the transfer of credits earned in the program of instruction. If the institution has not entered
18 into an articulation or transfer agreement with any other college or university, the institution shall
19 disclose that fact."

20 8. Section 94911 of the Education Code states:

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

22 ...

23 "(d) A clear and conspicuous statement that the enrollment agreement is legally binding
24 when signed by the student and accepted by the institution.

25 ...

26 "(e) (2) The disclosure shall contain the institution's refund policy and a statement that, if
27 the student has received federal student financial aid funds, the student is entitled to a refund of
28 moneys not paid from federal student financial aid program funds."

1 9. Section 94913 of the Education Code states:

2 "(a) An institution that maintains an Internet Web site shall provide on that Internet Web
3 site all of the following:

4 ...

5 "(2) A School Performance Fact Sheet for each educational program offered by the
6 institution."

7 10. Section 94930.5 of the Education Code states:

8 "Subject to Section 94930, an institution shall remit to the bureau for deposit in the Private
9 Postsecondary Education Administration Fund the following fees, in accordance with the
10 following schedule:

11 ...

12 "(d) (1) In addition to any fees paid to the bureau pursuant to subdivisions (a) to (c),
13 inclusive, each institution that is approved to operate pursuant to this chapter shall remit both of
14 the following:

15 (A) An annual fee for each campus designated by the institution as a main campus location
16 in California, in an amount equal to 0.45 percent of the campus' total gross revenue derived from
17 students in California, but not to be less than two thousand five hundred dollars (\$2,500) and not
18 to exceed sixty thousand dollars (\$60,000)."

19 11. Section 94931 of the Education Code states:

20 "(a) A fee that is not paid on or before the 30th calendar day after the due date for the
21 payment of the fee shall be subject to a 25 percent late payment penalty fee.

22 "(b) A fee that is not paid on or before the 90th calendar day after the due date for payment
23 of the fee shall be subject to a 35 percent late payment penalty fee."

24 **REGULATORY PROVISIONS**

25 12. California Code of Regulations, title 5, division 7.5, section 71100 states:

26 "(a) An applicant seeking approval to operate pursuant to Section 94886 of the Code,
27 other than Approval to Operate by Accreditation pursuant to Section 94890(a)(1) of the Code,
28 shall complete the "Application for Approval to Operate for an Institution Not Accredited," Form

1 Application 94886 (rev. 2/10). An applicant seeking approval to operate by accreditation pursuant
2 to Section 94890(a)(1) of the Code shall comply with section 71390.

3 “(b) An applicant shall submit the completed form, the information or documentation,
4 required by this Article, the appropriate application fee as provided in Section 94930.5(a)(1) of
5 the Code, and any appropriate annual fee as required by Article 1 of Chapter 5 of this Division, to
6 the Bureau.

7 “(c) An application that fails to contain all of the information required by this article shall
8 render it incomplete.”

9 13. California Code of Regulations, title 5, division 7.5, section 71700 states:

10 “The Bureau may request that an institution document compliance with the standards set
11 forth in the Act and this Division to obtain and maintain an approval to operate.”

12 14. California Code of Regulations, title 5, division 7.5, section 71770 states:

13 “(c) If credit for prior experiential learning is to be granted, the policy for granting such
14 credit shall be included in the institution's catalog.

15 “(1) An institution may grant credit to a student for prior experiential learning only if:

16 “(A) The prior learning is equivalent to a college or university level of learning;

17 “(B) The learning experience demonstrates a balance between theory and practice and;

18 “(C) The credit awarded for the prior learning experience directly relates to the student's
19 degree program and is applied in satisfaction of some of the degree requirements.

20 “(2) Each college or university level learning experience for which credit is sought shall be
21 documented by the student in writing.

22 “(3) Each college or university level learning experience shall be evaluated by faculty
23 qualified in that specific subject area who shall ascertain (1) to what college or university level
24 learning the student's prior experience is equivalent and (2) how many credits toward a degree
25 may be granted for that experience.

26 “(4) The faculty evaluating the prior learning shall prepare a written report indicating all of
27 the following:

28

1 “(A) The documents in the student's record on which the faculty member relied in
2 determining the nature of the student's prior experience;

3 “(B) The bases for determining that the prior experience (i) is equivalent to college or
4 university level learning and (ii) demonstrates a balance between theory and practice; and

5 “(C) The bases for determining (i) to what college or university level the experience is
6 equivalent and (ii) the proper number of credits to be awarded toward the degree for that
7 experience.

8 “(5)(A) The institution shall designate at least one administrator to be responsible for the
9 review of faculty determinations regarding the award of credit for prior experiential learning.

10 “(B) The administrator shall document the institution's periodic review of faculty
11 evaluations to assure that the faculty written evaluations and awards of credit comply with this
12 section and the institution's policies and are consistent.

13 “(6) The amount of credit awarded for prior experiential learning shall not be related to the
14 amount charged the student for the assessment process.

15 “(7)(A) Of the first 60 semester credits awarded a student in an undergraduate program, no
16 more than 15 semester credits may be awarded for prior experiential learning.

17 “(B) Of the second 60 semester units (i.e., credits 61 to 120) awarded a student in an
18 undergraduate program, no more than 15 semester credits may be awarded for prior experiential
19 learning.

20 “(C) Of the first 30 semester credits awarded a student in a graduate program, no more than
21 6 semester credits may be awarded for prior experiential learning.

22 “(D) Of the second 30 semester credits (i.e., credits 31 to 60) awarded a student in a
23 graduate program, no more than 3 semester credits may be awarded for prior experiential
24 learning.

25 “(E) No credit for experiential learning may be awarded after a student has obtained 60
26 semester credits in a graduate program.”

27 15. California Code of Regulations, title 5, division 7.5, section 71800 states:
28

1 “In addition to the requirements of section 94911 of the Code, an institution shall provide to
2 each student an enrollment agreement that contains at the least the following information:

3 . . .

4 “(b) Period covered by the enrollment agreement.

5 . . .

6 “(d) Date by which the student must exercise his or her right to cancel or withdraw, and the
7 refund policy, including any alternative method of calculation if approved by the Bureau pursuant
8 to section 94921 of the Code.”

9 16. California Code of Regulations, title 5, division 7.5, section 71810 states:

10 “(b) The catalog shall contain the information prescribed by Section 94909 of the Code and
11 all of the following:

12 . . .

13 “(7) The institution's policies and procedures for the award of credit for prior experiential
14 learning, including assessment policies and procedures, provisions for appeal, and all charges that
15 a student may be required to pay.”

16 17. California Code of Regulations, title 5, division 7.5, section 74000, states:

17 “(a) An institution shall pay the fees established by Article 17 of the Act. A failure to
18 include a fee with an application or other request renders the application or request incomplete.

19 “(b) All fees lawfully collected are non-refundable.

20 “(c) A fee that is not paid timely is subject to penalty as set forth in section 94931 of the
21 Code.

22 “(d) The Bureau shall deny a renewal of an approval to operate if the institution fails to
23 submit at the time it files its application for renewal of an approval to operate: all unpaid fees;
24 penalty fees; penalties; orders for reimbursement of costs and expenses; and assessments for, and
25 reimbursement of all payments made to students from, the Student Tuition Recovery Fund.

26 “(e)(1) If an institution fails to pay any fee and any penalty fees timely, the Bureau may
27 initiate proceedings to revoke the institution's approval to operate for failure to pay fees.

28

1 “(2) Any proceeding to revoke an institution's approval to operate is subject to the
2 provisions of Chapter 5 of the Administrative Procedures Act. If a hearing is requested, it shall be
3 limited to the issues of whether any fee or penalty was owed and, if so, whether the fee or penalty
4 were paid when originally due.

5 “(3) The procedure specified in this subdivision is cumulative to any other right or remedy
6 the Bureau may invoke against an institution which fails to pay its annual fee or a penalty fee
7 when originally due. Nothing in this subdivision restricts the Bureau's authority to bring other
8 administrative or judicial action against an institution that fails to pay its fees when due.

9 “(4) An institution whose approval to operate was revoked because of nonpayment of an
10 annual fee or penalty fee may seek to obtain approval to operate only by filing an application for
11 a new approval to operate.”

12 18. California Code of Regulations, title 5, division 7.5, section 74006, states:

13 “(a) An institution's annual fee is due within 30 days of the date on which the institution
14 originally receives its approval to operate and each year thereafter on the anniversary of the date
15 of the original approval.

16 “(b) An institution shall pay its annual fee in addition to any other applicable fees.”

17 19. California Code of Regulations, title 5, division 7.5, section 74115, states:

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

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

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

27 “(2) Financial statements prepared on an annual basis as required by section 74110(b) shall
28 be prepared in accordance with the generally accepted accounting principles established by the

1 American Institute of Certified Public Accountants. Nonprofit institutions shall provide annual
2 financial statements as required under generally accepted accounting principles for nonprofit
3 organizations.

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

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

10 “(5) Any audits shall demonstrate that the accountant obtained an understanding of the
11 institution's internal financial control structure, assessed any risks, and has reported any material
12 deficiencies in the internal controls.

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

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

20 20. California Code of Regulations, title 5, division 7.5, section 71475 states, in
21 relevant part:

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

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1 21. California Code of Regulations, title 5, division 7.5, section 74117 states:
2 “In addition to the requirement in Section 94913(b) of the Code, an institution that
3 maintains a website shall provide on the homepage of that website clear and conspicuous links to
4 all the items required in Section 94913(a) of the Code.”

5 **FIRST CAUSE FOR DENIAL OF APPLICATION**

6 **(Financial Statement Review)**

7 22. Respondent's application is subject to denial under California Code of Regulations,
8 title 5, division 7.5, section 71475, subdivision (e), and section 74115 in that Respondent
9 submitted an incomplete application to the Bureau by failing to include current financial
10 statements that had been audited or reviewed by a Certified Public Accountant as required.

11 **SECOND CAUSE FOR DENIAL OF APPLICATION**

12 **(Enrollment Agreement – Failure to Include Legally Binding Statement)**

13 23. Respondent's application is subject to denial under Education Code section 94911,
14 subdivision (d), in that the enrollment agreement did not include a clear and conspicuous
15 statement that the enrollment agreement is legally binding when signed by the student and
16 accepted by the institution.

17 **THIRD CAUSE FOR DENIAL OF APPLICATION**

18 **(Enrollment Agreement – Deficient)**

19 24. Respondent's application is subject to denial under California Code of Regulations,
20 title 5, division 7.5, section 71800, subdivisions (b) and (d), in conjunction with the Education
21 Code, in that Respondent used a deficient enrollment agreement. The circumstances are as
22 follows:

23 a. The enrollment agreement did not identify the period covered by the
24 enrollment.

25 b. The enrollment agreement did not identify the date by which the student must
26 exercise his or her right to cancel or withdraw from enrollment.

27 ///

28 ///

1 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

2 **(Enrollment Agreement – Failure to Disclose Right to Refund)**

3 25. Respondent's application is subject to denial under Education Code section 94911,
4 subdivision (e)(2), in that the enrollment agreement did not include a disclosure regarding a
5 student's right to recover payments not paid from a federal financial student aid program. The
6 circumstances are as follows: an enrollment agreement must include language related to a
7 student's right to cancel. That disclosure shall contain the institution's refund policy and a
8 statement that, if the student received federal student financial aid funds, the student is entitled to
9 a refund of moneys not paid from federal student aid program funds. Respondent did not make
10 that disclosure.

11 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

12 **(School Catalog – Minimum Requirements)**

13 26. Respondent's application is subject to denial under Education Code section 94909,
14 subdivision (a)(7), in that Respondent's catalog did not include qualifications for the faculty.
15 Specifically, the catalogue did not include the educational background of the faculty.

16 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

17 **(School Catalog – Inadequate)**

18 27. Respondent's application is subject to denial under California Code of Regulations,
19 title 5, division 7.5, sections 71770, subsection (c), and 71810, subsection (b)(7), and Education
20 Code section 94909, subsection (a)(8)(A), in that Respondent's catalog failed to include the
21 institution's policies and procedures for the award of credit for prior experiential learning, to
22 include assessment policies and procedures, provisions for appeal, and all charges that a student
23 may be required to pay.

24 **SEVENTH CAUSE FOR DENIAL OF APPLICATION**

25 **(Institutional Website Requirements)**

26 28. Respondent's application is subject to denial under Education Code section 94913,
27 subdivision (a)(2), and California Code of Regulations, title 5, division 7.5, section 74117 in that
28

1 the institution's website does not include a School Performance Fact Sheet for each educational
2 program offered by the institution.

3 **EIGHTH CAUSE FOR DENIAL OF APPLICATION**

4 **(Failure to Submit Full Payment of 2017 Annual Fee)**


5 29. Respondent's application is subject to denial under Education Code sections 94930.5,
6 subdivision (d)(1)(A), and 94931, subdivisions (a)-(b), and California Code of Regulations, title
7 5, division 7.5, sections 74000 and 74006, subdivisions (a)-(c), in that Respondent failed to fully
8 pay the minimum annual fee of \$2,500.00.

9 **PRAYER**

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

- 13 1. Denying the application of School of Holistic Touch, Inc., Armando Reyna (owner)
14 for a Renewal of Approval to Operate a Non-Accredited Institution;
- 15 2. Taking such other and further action as deemed necessary and proper.

16
17 DATED: 5-2-17 May 2, 2017


18 JOANNE WENZEL
19 Chief
20 Bureau for Private Postsecondary Education
21 Department of Consumer Affairs
22 State of California
23 Complainant

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