

1 XAVIER BECERRA
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 SETH A. CURTIS
Deputy Attorney General
4 State Bar No. 236263
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 210-6121
Facsimile: (916) 324-5567
7 Attorneys for Complainant

8
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 Statement of Issues
Against:
14 **VIVEKANANDA YOGA UNIVERSITY**
15 **Application for Approval to Operate an**
16 **Institution Non-Accredited**
17 Respondent.

Case No. 1003920

STATEMENT OF ISSUES

18
19
20 **PARTIES**

- 21 1. Dr. Michael Marion, Jr. (Complainant) brings this Statement of Issues solely in his
22 official capacity as the Chief of the Bureau for Private Postsecondary Education (Bureau),
23 Department of Consumer Affairs.
24 2. On or about November 23, 2015, the Bureau received an application for an Approval
25 to Operate a Non-Accredited Institution from Vivekananda Yoga University (Respondent). On or
26 about November 17, 2015, Sreenath S.N. and Babulal Gandhi certified under penalty of perjury to
27 the truthfulness of all statements, answers, and representations in the application. The Bureau
28 denied the application on August 31, 2018.

1 3. On or about December 2, 2015, an initial review letter was sent to Respondent
2 advising that the application was found to be incomplete and requesting additional information
3 and documents.

4 4. On or about November 22, 2016, December 16, 2016, April 27, 2017, June 21, 2017,
5 and May 25, 2018, responses and additional documentation from Respondent were received by
6 the Bureau.

7 5. On or about November 30, 2016, March 10, 2017, and June 2, 2017, the Bureau sent
8 additional communications to Respondent identifying remaining deficiencies.

9 6. On or about April 26, 2018, the Bureau in its final letter to Respondent, identified
10 deficiencies in the application that would need to be resolved prior to approval by the Bureau.

11 7. On or about August 31, 2018, the Bureau issued a Notice of Denial of Application for
12 Approval to Operate a Non -Accredited Institution to the Respondent. The Bureau received from
13 Respondent a timely request for an administrative hearing. The causes for denial alleged herein
14 are based on the findings from the August 31, 2018, Denial letter to Respondent.

15 JURISDICTION

16 8. This Statement of Issues is brought before the Director of the Department of
17 Consumer Affairs (Director) for the Bureau, under the authority of the following laws. All
18 section references are to the California Education Code (Code) unless otherwise indicated.

19 9. Code section 94885 states:

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

22 (a) The content of each educational program can achieve its stated objective.

23 (b) The institution maintains specific written standards for student admissions
24 for each educational program and those standards are related to the particular
educational program.

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

26 (d) The institution maintains a withdrawal policy and provides refunds.

27 (e) The directors, administrators, and faculty are properly qualified.

28 (f) The institution is financially sound and capable of fulfilling its commitments

1 to students.

2 (g) That, upon satisfactory completion of an educational program, the
3 institution gives students a document signifying the degree or diploma awarded.

4 (h) Adequate records and standard transcripts are maintained and are available
5 to students.

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

8 10. Code section 94886 states:

9 Except as exempted in Article 4 (commencing with Section 94874) or in
10 compliance with the transition provisions in Article 2 (commencing with Section
11 94802), a person shall not open, conduct, or do business as a private postsecondary
12 educational institution in this state without obtaining an approval to operate under this
13 chapter.

14 11. Code section 94887 states:

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

21 **STATUTORY PROVISIONS**

22 12. Code section 94817.5 states:

23 ‘Approved to operate’ or ‘approved’ means that an institution has received
24 authorization pursuant to this chapter to offer to the public and to provide
25 postsecondary educational programs.

26 13. Code section 94828 states:

27 ‘Curriculum’ means an organized set of courses or modules of instruction that
28 are prerequisites to an award of a degree or diploma.

14. Code section 94837 states:

‘Educational program’ means a planned sequence composed of a single course
or module, or set of related courses or modules, that provides education, training,
skills, or experience, or a combination of these.

15. Code section 94841 states:

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

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16. Code section 94846 states:

Instruction' means an institution's specific, formal arrangements in which its faculty present a part of the curriculum.

17. Code section 94891 states, in pertinent part:

...

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

18. Code section 94897 states, in pertinent part:

...

(p) Offer an associate, baccalaureate, master's, or doctoral degree without disclosing to prospective students prior to enrollment whether the institution or the degree program is unaccredited and any known limitation of the degree, including, but not limited to, all of the following:

...

(2) A statement that reads: "A degree program that is unaccredited or a degree from an unaccredited institution is not recognized for some employment positions, including, but not limited to, positions with the State of California."

(3) That a student enrolled in an unaccredited institution is not eligible for federal financial aid programs.

19. Code section 94909 states, in pertinent part:

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

....

(5) A description of the programs offered and a description of the instruction provided in each of the courses offered by the institution, the requirements for completion of each program, including required courses, any final tests or examinations, any required internships or externships, and the total number of credit hours, clock hours, or other increments required for completion.

...

(7) Information regarding the faculty and their qualifications.

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

....

(D) Attendance policies.

1 (E) Leave-of-absence policies.

2

3 (16) A statement specifying whether the institution, or any of its degree programs,
4 are accredited by an accrediting agency recognized by the United States Department of
5 Education. If the institution is unaccredited and offers an associate, baccalaureate,
6 master's, or doctoral degree, or is accredited and offers an unaccredited program for an
7 associate, baccalaureate, master's, or doctoral degree, the statement shall disclose the
8 known limitations of the degree program, including, but not limited to, all of the following:

9 ...

10 (B) A degree program that is unaccredited or a degree from an unaccredited
11 institution is not recognized for some employment positions, including, but not limited to,
12 positions with the State of California.

13 (C) That a student enrolled in an unaccredited institution is not eligible for federal
14 financial aid programs.

15 REGULATORY PROVISIONS

16 20. California Code of Regulations, title 5 (CCR) Section 71105, subdivision (a), states:

17 (a) For an application for approval to operate or a substantive change, the owner of an
18 unaccredited institution also requesting provisional approval to offer a degree program shall
19 submit to the Bureau, for its approval, a plan for achieving institutional accreditation by an
20 accrediting agency recognized by the United States Department of Education, with the
21 scope of that accreditation covering the offering of at least one degree program.

22 21. CCR, section 71210 states, in pertinent part:

23 (a) The institution shall identify and describe the educational program it offers, or
24 proposes to offer. If the educational program is a degree program, the institution shall
25 identify the full title which it will place on each degree awarded.

26 ...

27 (c) In addition, the institution shall list the following for each educational program
28 offered:

(1) The admissions requirements, including minimum levels of prior education,
preparation, or training;

...

(6) The graduation requirements.

22 22. CCR, section 71220 states, in pertinent part:

23 For each educational program that the institution offers or proposes to offer, the Form
24 Application 94886 shall contain a statement that the educational program meets the
25 requirements of section 71710, as well as the following:

26 (a) A description of the educational program.

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23. CCR, section 71310 states, in pertinent part:

(a) The Form Application 94886 shall contain a description of how records required by Article 9 of the Act or this chapter are or will be organized and maintained, the types of documents contained in student files, how the records are stored, and whether academic and financial records are maintained in separate files. The description shall include a statement of the institution's procedures for security and safekeeping of records.

24. CCR, section 71710 states:

In order to meet its mission and objectives, the educational program defined in section 94837 of the Code shall be comprised of a curriculum that includes:

(a) those subject areas that are necessary for a student to achieve the educational objectives of the educational program in which the student is enrolled;

(b) subject areas and courses or modules that are presented in a logically organized manner or sequence to student;

(c) course or module materials that are designed or organized by duly qualified faculty. For each course or module, each student shall be provided by with a syllabus or course outline that contains:

(1) a short, descriptive title of the educational program;

(2) a statement of educational objectives;

(3) length of the educational program;

(4) sequence and frequency of lessons or class sessions;

(5) complete citations of textbooks and other required written materials;

(6) sequential and detailed outline of subject matter to be addressed or a list of skills to be learned and how those skills are to be measured;

(7) instructional mode or methods.

(d) if degree granting, require research of an appropriate degree that utilizes a library and other learning resources;

(e) specific learning outcomes tied to the sequence of the presentation of the material to measure the students' learning of the material; and

25. CCR, section 71715, states, in pertinent part:

(a) Instruction shall be the central focus of the resources and services of the institution.

(b) The institution shall document that the instruction offered leads to the achievement of the learning objectives of each course.

....

1 (d) Distance education as defined in section 94834 of the Code, does not require the
2 physical presence of students and faculty at the same location but provides for interaction
3 between students and faculty by such means as telecommunication, correspondence,
4 electronic and computer augmented educational services, postal service, and facsimile
5 transmission. In addition to the other requirements of this chapter and the Act, an institution
6 offering distance education shall:

7 (1) ensure that the educational program offered through distance education is
8 appropriate for delivery through distance education methods;

9 (2) assess each student, prior to admission, in order to determine whether each
10 student has the skills and competencies to succeed in a distance education environment;

11 (3) ensure that the materials and programs are current, well organized, designed
12 by faculty competent in distance education techniques and delivered using readily available,
13 reliable technology;

14 (4) provide for meaningful interaction with faculty who are qualified to teach
15 using distance education methods;

16 (5) maintain clear standards for satisfactory academic progress;

17 (6) timely complete student evaluations of learning outcomes by duly qualified
18 faculty, which are appropriate for use with the distance education methods used, and
19 evaluated by duly qualified faculty;

20 (7) employ a sufficient number of faculty to assure that (A) the institution's
21 response to, or evaluation of, each student lesson is returned to the student within 10 days
22 after the lesson is received by the institution; and (B) the institution's response to, or
23 evaluation of, each student project or dissertation is returned to the student within the time
24 disclosed in the catalog; and

25 (8) shall maintain a record of the dates on which lessons, projects, and
26 dissertations were received and responses were returned to each student.

27 26. CCR, section 71720 states:

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

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

...

(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. a degree from: an institution approved by the Bureau or previously approved

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

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

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

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

15 ...

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

21 27. CCR, section 71770 states, in pertinent part:

22 (a) The institution shall establish specific written standards for student admissions for
23 each educational program. These standards shall be related to the particular educational
24 program. An institution shall not admit any student who is obviously unqualified or who
25 does not appear to have a reasonable prospect of completing the program. In addition to any
26 specific standards for an educational program, the admissions standards must specify as
27 applicable that:

28 ...

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

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

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

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

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

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

28 28. CCR, section 71775 states, in pertinent part:

...

1 (c) The notice shall also be posted immediately preceding or following as to clearly
2 pertain to the description of the degree program, including, but not limited to, one or more
3 of the following; admissions requirements, length of program, courses offered or areas of
4 focus. Such notice shall be included, at a minimum, in the following locations:

(1) The institution's catalog where each degree program is described.

5 29. CCR, section 71800 states, in pertinent part:

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

...

(b) Period covered by the enrollment agreement.

10 30. CCR, section 71810 states, in pertinent part:

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

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

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

...

(4) Language proficiency information, including: (A) the level of English language
proficiency required of students and the kind of documentation of proficiency, such as the
Test of English as a Foreign Language (TOEFL), that will be accepted; and (B) whether
English language services, including instruction such as ESL, are provided and, if so, the
nature of the service and its cost;

...

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

(8) The institution's standards for student achievement;

...

(11) If the institution offers distance education, the approximate number of days that
will elapse between the institution's receipt of student lessons, projects, or dissertations and
the institution's mailing of its response or evaluation.

1 ...
2 (15) Policies on the retention of student records.

3 31. CCR, section 71850 states, in pertinent part:

4 Graduation requirements for an undergraduate degree program shall meet
5 minimum credit requirements and shall include provisions for general education
6 appropriate to the level and type of degree. The institution shall specify the
7 distribution of general education credit requirements by subject area for each
8 undergraduate degree program.

9 (a) A Bachelor's degree may be awarded to a student whom the institution can
10 document has achieved sequential learning equivalent in general education and
11 equivalent in depth of achievement in a designated major field to that acquired in four
12 years of study beyond high school, as measured by a minimum of 120 semester
13 credits or its equivalent. At least 25 percent of the credit requirements for a
14 Bachelor's degree shall be in general education.

15 **FIRST CAUSE FOR DENIAL OF APPLICATION**

16 (Failure to meet Minimum Operating Standards – Exemplars of Student Agreements)

17 32. Respondent's application is subject to denial under Code section 94887, and CCR
18 section 71800, subdivision (b), in that Respondent failed to demonstrate that its student
19 enrollment agreement met minimum operating standards. In particular, Respondent failed to
20 provide a complete and valid enrollment agreement in that the enrollment agreement provided to
21 the Bureau on April 27, 2017, does not contain a period covered by the enrollment agreement.

22 **SECOND CAUSE FOR DENIAL OF APPLICATION**

23 (Failure to Meet Minimum Operating Standards – Instruction and Degrees Offered)

24 33. Respondent's application is subject to denial under Code section 94887, in that
25 Respondent failed to demonstrate that its instruction and degrees offered meet minimum
26 operating standards as follows:

27 a. **CCR section 71715(d)(1) through (8)**: Respondent failed to provide remote access
28 log-in information which prevented remote access to proposed courses, a description of student
assessment prior to admission, and a copy of the assessment tool to be utilized. As a result, the
Bureau was unable to determine whether Respondent's proposed distance education instruction
meets minimum operating standards, as follows:

1. Whether the programs are appropriate for delivery by distance education;

1 2. Whether each educational program's information and student assignments are
2 ready for online delivery;

3 3. How the faculty will achieve meaningful interactions with students;

4 4. Whether each student admitted to the program has the skills and competencies
5 to succeed in a distance education program.

6 b. **CCR section 71770(c)(1) and (c)(2)**: Respondent failed to provide a detailed
7 explanation of what the institution will consider as equivalent to a Bachelor's degree for
8 admission into the MS in Yoga program and the evaluation criteria used by Respondent to
9 determine the degree equivalency.

10 c. **CCR section 71210(c)(1)**: The prerequisites for entry into MS in Yoga and BS in
11 Yoga programs, listed in the sections 28A and 28B of Respondent's application, are inconsistent
12 with the prerequisites listed in the course catalogue provided by Respondent.

13 d. **CCR sections 71850 and 71210(c)(6)**: Respondent failed to provide a detailed list of
14 general education graduation requirements a student must have to complete the Bachelor of
15 Science degree including the level of coursework and number of credits required in each subject
16 area.

17 e. **CCR section 71105, subdivision (a)**: Respondent failed to submit an accreditation
18 plan by an accrediting body approved by the Department of Education.

19 f. **CCR section 71220(a)**: Respondent failed to provide lesson plans for the Personal
20 Contact Program including the duration and intervals for personal contact.

21 **THIRD CAUSE FOR DENIAL OF APPLICATION**

22 (Failure to Meet Minimum Operating Standards - Faculty)

23 34. Respondent's application is subject to denial under Code section 94887, and CCR
24 section 71720, subdivisions (a)(1), (a)(4), (a)(5), and (a)(9), in that the Bureau was unable to
25 determine whether the institution employs a sufficient number of qualified faculty, whether the
26 faculty possess a degree equivalent to the level of instruction being taught, and whether the
27 faculty have sufficient expertise to support the institution's awarding of a degree identifying a
28 specialty or major field of emphasis.

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FOURTH CAUSE FOR DENIAL OF APPLICATION

(Failure to Meet Minimum Operating Standards -- Educational Program Description)

35. Respondent's application is subject to denial under Code section 94887, and CCR, section, 71710, subdivisions (a) through (e), in that Respondent failed to establish that its curriculum met the minimum operating standards as follows:

a. As a result of Respondent's failure to provide a syllabus containing all the requirement components for each course or module in the educational program, the Bureau was unable to determine if Respondent's application satisfied the legally required minimum operating standards

b. Respondent failed to provide the proposed curriculum for each proposed educational program. As a result, the Bureau was unable to determine if the educational program included sequential and logically organized subject areas necessary for students to achieve the program's educational objectives. Additionally, the Bureau could not determine if the curriculum included specific learning outcomes tied to the sequence of the presentation of the material that would allow the institution to measure the students' learning of the material.

c. The Bureau was unable to determine whether the proposed degree programs include student research projects or assignments of an appropriate level that utilizes a library and other learning resources.

FIFTH CAUSE FOR DENIAL OF APPLICATION

(Failure to Meet Minimum Operating Standards -- Catalog)

36. Respondent's application is subject to denial under Code section 94887 in that Respondent's Catalog failed to meet minimum operating standards as follows:

a. **CCR section 71810(b)(1)**: The catalog provided to the Bureau on April 27, 2017, does not contain the specific month-day-year beginning and ending dates defining the time period covered by the catalog.

b. **CCR section 71775(c)(1)**: The catalog provided to the Bureau on April 27, 2017, does not contain the required pre-enrollment disclosure notice to prospective degree program students.

1 c. CCR section 71810(b)(7): The catalog provided to the Bureau on April 27, 2017,
2 does not contain the Institution's policies and procedures for the award of credit for prior
3 experiential learning.

4 d. CCR section 71810(b)(4): The catalog provided to the Bureau on April 27, 2017,
5 does not contain the level of English language proficiency required of students and the kind of
6 documentation of proficiency, such as the Test of English as a Foreign Language (TOEFL), that
7 will be accepted; and whether English language services, including instruction such as ESL, are
8 provided, and, if so, the nature of the service and its cost.

9 e. Code sections 94909(a)(16)(B) and (a)(16)(C), and 94897 (p)(2) and (p)(3): The
10 catalog provided to the Bureau on April 27, 2017, does not contain a statement that the institution
11 and its degree programs are not accredited by an accrediting agency recognized by the United
12 States Department of Education. In addition, the catalog does not disclose the known limitations
13 of the degree program including that a degree program that is unaccredited or a degree from an
14 unaccredited institution is not recognized for some employment positions, including, but not
15 limited to, positions with the State of California, and a student enrolled in an unaccredited
16 institution is not eligible for federal financial aid programs.

17 f. CCR section 71810(b)(8): The catalog provided to the Bureau on April 27, 2017,
18 does not contain clear standards for student achievement including the institution's grading scale
19 and numerical values used to calculate a student's GPA.

20 g. Code section 94909(a)(8)(D): The catalog does not contain a complete attendance
21 policy, fails to define an unexcused or excused absence, and fails to describe the process the
22 student must follow to receive an excused absence.

23 h. Code section 94909(a)(8)(E): The catalog contains an incomplete leave-of-absence
24 policy and how a student may request a leave of absence.

25 i. CCR section 71810(b)(15): The catalog provided to the Bureau on April 27, 2017,
26 does not contain the Institution's policies on the retention of student records.

27 j. CCR section 71810(b)(11): The catalog provided to the Bureau on April 27, 2017,
28 does not contain the number of days that will elapse between the institution's receipt of distance

1 education student lessons, projects, or dissertations and the institution providing its response or
2 evaluation.

3 k. CCR section 94909(a)(5): The catalog provided to the Bureau on April 27, 2017,
4 does not contain the specific general education graduation requirements a student must transfer in
5 to complete the Bachelor of Science in Yoga degree, including the level of coursework, and
6 number of credits required in each subject area.

7 **SIXTH CAUSE FOR DENIAL OF APPLICATION**

8 (Recordkeeping)

9 37. Respondent's application is subject to denial under CCR section, 71310, subdivision
10 (a), in that Respondent failed to provide the requested information as outlined in the April 26,
11 2018, deficiency letter.

12 **PRAYER**

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

- 16 1. Denying the application of Vivekananda Yoga University for an Approval to Operate
17 a Non-Accredited Institution;
- 18 2. Taking such other and further action as deemed necessary and proper.
- 19

20
21 DATED: 7/15/19 

22 DR. MICHAEL MARION, JR.
23 Chief
24 Bureau for Private Postsecondary Education
25 Department of Consumer Affairs
26 State of California
27 Complainant

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