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10 **BEFORE THE**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION**
STATE OF CALIFORNIA

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16 In the Matter of the Accusation Against:

Case No. 1003209

17 **STOCKTON BARBER COLLEGE;**
18 **DANIEL THAI, OWNER**

ACCUSATION

19 **410 E. Weber Avenue**
20 **Stockton, CA 95202**

21 **Approval to Operate No. 3900121**

22 Respondent.

23
24 **PARTIES**

25 1. Dr. Michael Marion, Jr. (Complainant) brings this Accusation solely in his official
26 capacity as the Chief of the Bureau for Private Postsecondary, Department of Consumer Affairs.

27 2. On or about March 30, 2005, the Bureau for Private Postsecondary Education
28 (Bureau) issued Approval to Operate Number 3900121 to Stockton Barber College; Daniel Thai,

1 Owner (Respondent). The Approval to Operate expired on July 10, 2018, and has not been
2 renewed. Respondent submitted a renewal application, which was denied and pending appeal in
3 Case Number 1005411.

4 **JURISDICTION**

5 3. This Accusation is brought before the Director of the Department of Consumer
6 Affairs (Director) for the Bureau for Private Postsecondary Education, under the authority of the
7 following laws. All section references are to the Education Code (Code) unless otherwise
8 indicated.

9 4. Section 94817 of the Code states:

10 Approval to operate' or 'approval' means the authorization pursuant to this chapter to offer
11 to the public and to provide postsecondary educational programs, as well as the written document
issued to an institution signifying its approval to operate.

12 5. Section 94933 of the Code states:

13
14 The bureau shall provide an institution with the opportunity to remedy noncompliance,
15 impose fines, place the institution on probation, or suspend or revoke the institution's approval to
operate, in accordance with this article, as it deems appropriate based on the severity of an
institution's violations of this chapter, and the harm caused to students.

16 6. Section 94937 of the Code states, in pertinent part:

17 (a) As a consequence of an investigation, and upon a finding that an institution has
18 committed a violation, the bureau may place an institution on probation or may suspend or revoke
an institution's approval to operate for:

19 (1) Obtaining an approval to operate by fraud.

20 (2) A material violation or repeated violations of this chapter or regulations adopted
21 pursuant to this chapter that have resulted in harm to students. For purposes of this
22 paragraph, "material violation" includes, but is not limited to, misrepresentation, fraud in
the inducement of a contract, and false or misleading claims or advertising, upon which a
23 student reasonably relied in executing an enrollment agreement and that resulted in harm to
24 the student.

25 ...

26 (c) The bureau may seek reimbursement pursuant to Section 125.3 of the Business and
27 Professions Code.

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STATUTORY PROVISIONS

7. Section 94897, subdivision (j)(3), of the Code states:

An institution shall not do any of the following:

...

(j) In any manner make an untrue or misleading change in, or untrue or misleading statement related to, a test score, grade or record of grades, attendance record, record indicating student completion, placement, employment, salaries, or financial information, including any of the following:

...

(3) Any other record or document required by this chapter or by the bureau.

8. Section 94900 of the Code states:

(a) An institution shall maintain records of the name, address, e-mail address, and telephone number of each student who is enrolled in an educational program in that institution.

(b) An institution shall maintain, for each student granted a degree or certificate by that institution, permanent records of all of the following:

(1) The degree or certificate granted and the date on which that degree or certificate was granted.

(2) The courses and units on which the certificate or degree was based.

(3) The grades earned by the student in each of those courses.

9. Section 94900.5 of the Code states:

An institution shall maintain, for a period of not less than five years, at its principal place of business in this state, complete and accurate records of all of the following information:

a) The educational programs offered by the institution and the curriculum for each.

(b) The names and addresses of the members of the institution's faculty and records of the educational qualifications of each member of the faculty.

(c) Any other records required to be maintained by this chapter, including, but not limited to, records maintained pursuant to Article 16 (commencing with Section 94928) . .

10. Section 94909, subdivision (a)(8)(B) of the Code states:

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

3 . . .

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

5 . . .

6 (B) Cancellation, withdrawal, and refund policies, including an explanation that the
7 student has the right to cancel the enrollment agreement and obtain a refund of charges
8 paid through attendance at the first class session, or the seventh day after enrollment,
9 whichever is later. The text shall also include a description of the procedures that a
10 student is required to follow to cancel the enrollment agreement or withdraw from the
institution and obtain a refund consistent with the requirements of Article 13
(commencing with Section 94919).

11 **REGULATORY PROVISIONS**

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13 11. Section 71710 of title 5 of the California Code of Regulations (5 CCR), states, in
14 pertinent part:

15 . . .

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

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

- 21 (1) a short, descriptive title of the educational program;
- 22 (2) a statement of educational objectives;
- 23 (3) length of the educational program;
- 24 (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.

25 12. 5 CCR section 71715 states, in pertinent part:

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

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

1 (c) Direct instruction requires the physical presence of one or more students and one or
2 more faculty members at the same location. Direct instruction includes instruction
3 presented in a classroom, seminar, workshop, lecture, colloquium, laboratory, tutorial, or
4 other physical learning settings consistent with the mission, purposes, and objectives of the
5 institution.
6 ...

7 13. 5 CCR section 71760 states:

8 Each institution shall develop and maintain adequate procedures used by the
9 institution to assure that it is maintained and operated in compliance with the Act and this
10 Division.
11

12 14. 5 CCR section 71920 states, in pertinent part:

13 (a) The institution shall maintain a file for each student who enrolls in the institution
14 whether or not the student completes the educational service.

15 (b) In addition to the requirements of section 94900, the file shall contain all of the
16 following pertinent student records:

17 (1) Written records and transcripts of any formal education or training, testing, or
18 experience that are relevant to the student's qualifications for admission to the institution or
19 the institution's award of credit or acceptance of transfer credits including the following:

20 (A) Verification of high school completion or equivalency or other
21 documentation establishing the student's ability to do college level work, such as
22 successful completion of an ability-to-benefit test;

23 (B) Records documenting units of credit earned at other institutions that
24 have been accepted and applied by the institution as transfer credits toward the
25 student's completion of an educational program;

26 (C) Grades or findings from any examination of academic ability or
27 educational achievement used for admission or college placement purposes;

28 (D) All of the documents evidencing a student's prior experiential learning
upon which the institution and the faculty base the award of any credit;

(2) Personal information regarding a student's age, gender, and ethnicity if that
information has been voluntarily supplied by the student;

(3) Copies of all documents signed by the student, including contracts, instruments
of indebtedness, and documents relating to financial aid;

1 (4) Records of the dates of enrollment and, if applicable, withdrawal from the
2 institution, leaves of absence, and graduation; and

3 (5) In addition to the requirements of section 94900(b) of the Code, a transcript
4 showing all of the following:

5 (A) The courses or other educational programs that were completed, or
6 were attempted but not completed, and the dates of completion or withdrawal;

7 (B) Credit awarded for prior experiential learning, including the course title
8 for which credit was awarded and the amount of credit;

9 (C) Credit for courses earned at other institutions;

10 (D) Credit based on any examination of academic ability or educational
11 achievement used for admission or college placement purposes;

12 (E) The name, address, website address, and telephone number of the
13 institution.

14 (6) For independent study courses, course outlines or learning contracts
15 signed by the faculty and administrators who approved the course;

16 (7) The dissertations, theses, and other student projects submitted by graduate
17 students;

18 (8) A copy of documents relating to student financial aid that are required to be
19 maintained by law or by a loan guarantee agency;

20 (9) A document showing the total amount of money received from or on behalf of
21 the student and the date or dates on which the money was received;

22 (10) A document specifying the amount of a refund, including the amount
23 refunded for tuition and the amount for other itemized charges, the method of calculating
24 the refund, the date the refund was made, and the name and address of the person or entity
25 to which the refund was sent;

26 (11) Copies of any official advisory notices or warnings regarding the student's
27 progress; and

28 (12) Complaints received from the student.

15. 5 CCR section 71930 states:

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

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

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

5 (c) A record is considered current for three years following a student's completion or
6 withdrawal. A record may be stored on microfilm, microfiche, computer disk, or any other
7 method of record storage only if all of the following apply:

8 (1) The record may be stored without loss of information or legibility for the period
9 within which the record is required to be maintained by the Act;

10 (2) For a record that is current, the institution maintains functioning devices that can
11 immediately reproduce exact, legible printed copies of stored records. The devices shall be
12 maintained in reasonably close proximity to the stored records at the institution's primary
administrative location in California. For a record that is no longer current, the institution
shall be able to reproduce exact, legible printed copies within two (2) business days.

13 (3) The institution has personnel scheduled to be present at all times during normal
14 business hours who know how to operate the devices and can explain the operation of the
devices to any person authorized by the Act to inspect and copy records; and

15 (4) Any person authorized by the Act or this chapter to inspect and copy records
16 shall be given immediate access to the document reproduction devices for the purpose of
17 inspecting and copying stored records and shall, upon request, reimburse the institution for
18 the reasonable cost of using the institution's equipment and material to make copies at a rate
not to exceed ten cents (\$0.10) per page.

19 (d) The institution shall maintain a second set of all academic and financial records required
20 by the Act and this chapter at a different location unless the original records, including
21 records stored pursuant to subdivision (b) of this section, are maintained in a manner secure
22 from damage or loss. An acceptable manner of storage under this subsection would include
fire resistant cabinets.

23 (e) All records that the institution is required to maintain by the Act or this chapter shall be
24 made immediately available by the institution for inspection and copying during normal
business hours by the Bureau and any entity authorized to conduct investigations.

25 (f) If an institution closes, the institution and its owners are jointly and severally responsible
26 to arrange at their expense for the storage and safekeeping in California of all records
27 required to be maintained by the Act and this chapter for as long as those records must be
28 maintained. The repository of the records shall make these records immediately available
for inspection and copying, without charge except as allowed under subdivision (c)(4) of

1 this section, during normal business hours by any entity authorized by law to inspect and
2 copy records.

3 16. 5 CCR section 74112, subdivision (m) states:

4 Documentation supporting all data reported shall be maintained electronically by the
5 institution for at least five years from the last time the data was included in either an
6 Annual Report or a Performance Fact Sheet and shall be provided to the Bureau upon
7 request; the data for each program shall include at a minimum:

8 (1) the list of job classifications determined to be considered gainful employment
9 for the educational program;

10 (2) student name(s), address, phone number, email address, program completed,
11 program start date, scheduled completion date, and actual completion date;

12 (3) graduate's place of employment and position, date employment began, date
13 employment ended, if applicable, actual salary, hours per week, and the date employment
14 was verified;

15 (4) for each employer from which employment or salary information was obtained,
16 the employer name(s) address and general phone number, the contact person at the
17 employer and the contact's phone number and email address, and all written
18 communication with employer verifying student's employment or salary;

19 (5) for students who become self-employed, all documentation necessary to
20 demonstrate self-employment;

21 (6) a description of all attempts to contact each student or employer;

22 (7) any and all documentation used to provide data regarding license examinations
23 and examination results;

24 (8) for each student determined to be unavailable for graduation or unavailable for
25 employment, the identity of the student, the type of unavailability, the dates of
26 unavailability, and the documentation of the unavailability; and

27 (9) the name, email address, phone number, and position or title of the institution's
28 representative who was primarily responsible for obtaining the students' completion,
placement, licensing, and salary and wage data, the date that the information was gathered,
and copies of notes, letters or emails through which the information was requested and
gathered.

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COST RECOVERY

17. Under section 94937(c) of the Code and section 125.3 of the Business and Professions Code, the Bureau may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL BACKGROUND

18. In or about January 2018, the Bureau was forwarded an anonymous complaint by the California Board of Barbering and Cosmetology regarding Respondent’s business practices. On or about July 23, 2019, a Bureau investigator and Bureau inspector conducted an in-person visit and compliance inspection of Respondent’s institution in Stockton. Supplemental investigation followed. The inspection and investigation established deficiencies regarding Respondent’s compliance with state mandated requirements, including but not limited to, student instruction, maintenance of student files and records, institutional documentation and representations and curriculum components. The evidence showed that students were not being provided instruction sufficient to pass the Board of Barbering and Cosmetology (BBC) state exam. Data collected from the BBC evidences that Respondent’s students have higher failure rates on state exams than average (in comparison with other schools), and Respondent’s students have to take the state exam multiple times to receive a passing grade.

FIRST CAUSE FOR DISCIPLINE

(Educational Program Deficiencies - Failure to Offer Course Lectures)

19. Complainant incorporates herein paragraph 18, above.

20. Respondent is subject to disciplinary action pursuant to Code section 94937 and 5 CCR section 71710, subdivision (b), in that subject areas and course modules are not presented in a logically organized manner or sequence to students. The circumstances are as follows:

21. During the site inspection and investigation, two students reported to the investigator that no lectures were offered during the students’ program, and no lectures were witnessed by the investigator or inspector; rather, students generally study on their own.

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SECOND CAUSE FOR DISCIPLINE

(Educational Program Deficiencies - Failure to Offer/Produce Course or Module Materials, Syllabus, Curriculum, or Course Outlines)

22. Complainant incorporates herein paragraphs 18 and 21, above.

23. Respondent is subject to disciplinary action pursuant to Code section 94937 and 5 CCR section 71710, subdivision (c), in that subject areas and course modules are not designed and organized by duly qualified faculty, each student is not provided with a syllabus or course outline in conformance with required standards, and Respondent’s staff could not provide the Bureau inspector or investigator with the curriculum or syllabus for its education program at the site inspection, or afterwards. The circumstances are as follows:

24. During the site inspection and investigation, the Bureau investigator observed: (1) that Respondent failed to provide students or inspector or investigator with a syllabus, curriculum or course outline, (2) that students studied independently or with other students; there were insufficient lectures and little guidance, (3) that the available textbook was outdated, (4) that students were not provided current educational information, and (5) that there were generally no instructors on the barbering floor teaching or supervising students.

THIRD CAUSE FOR DISCIPLINE

(Failure of Instruction)

25. Complainant incorporates herein paragraphs 18, 21, and 24, above.

26. Respondent is subject to disciplinary action pursuant to Code section 94937 and 5 CCR section 71715, subdivision (a), in that instruction is not the central focus of the resources of Respondent. The circumstances are as follows:

27. During the site inspection and investigation, no instruction was witnessed or reported as taking place. Students studied independently or with other students. Instructors present were not teaching. Students reported ongoing lack of personal instruction; rather, instruction was predominantly from an outdated Exam Guide. No course curriculum or syllabus was available or provided.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Failure of Self-Monitoring Procedures)

3 28. Complainant incorporates herein paragraph 18, above.

4 29. Respondent is subject to disciplinary action pursuant to Code section 94937 and 5
5 CCR section 71760, in that it failed to develop and/or maintain adequate procedures to assure that
6 it is in compliance with applicable laws. The circumstances are as follows:

7 30. During the site inspection and investigation, when asked to produce self-monitoring
8 procedures, Respondents did not provide or evidence maintenance of self-monitoring procedures
9 for its use in assuring its operation in compliance with law.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 (Failure to Maintain Student Records)

12 31. Complainant incorporates herein paragraphs 18, 21, and 24, above.

13 32. Respondent is subject to disciplinary action pursuant to Code section 94937 and 5
14 CCR section 71920, subdivision (b)(1)(A), subdivision (b)(4), and subdivision (b)(5)(A-E), and
15 Code section 94900, subdivision (a)(1)-(3) and subdivision (b)(1), in that Respondent failed to
16 maintain legally sufficient student records, as follows:

17 33. During the site inspection and investigation, Respondent was not able to provide or
18 show evidence of maintaining the following student records:

- 19 a. proof of students' high school graduation, GED, and/or Ability to Benefit tests.
20 b. proof of students' withdrawal, graduation, or dates of graduation.
21 c. student transcripts, courses or educational programs completed or attempted (with
22 dates if completion or withdrawal), credit awarded for prior experiential learning (including
23 course title and amount of credit), credit for courses at other institutions, credit based on
24 examination of academic ability or educational achievement used for admission or college
25 placement purposes, and the name, address, website address, and telephone number for the
26 institution.
27 d. a student roster containing student names, enrollment dates and attended
28 programs.

1 e. certificates for graduated students.

2 **SIXTH CAUSE FOR DISCIPLINE**

3 (Failure to Maintain Institutional Records)

4 34. Complainant incorporates herein paragraphs 18, 21, and 24, above.

5 35. Respondent is subject to disciplinary action pursuant to Code section 94937 and 5
6 CCR section 71930, subdivisions (c) and (d), and Code section 94900.5, in that it failed to
7 maintain academic and financial records secure from damage or loss, failed to securely maintain a
8 second set of copies of the original records, and failed to produce the curriculum or syllabus for
9 its educational program when requested by investigators. The circumstances are as follows:

10 36. During the site inspection and investigation, Respondent could not show that it
11 maintained its records in a manner protecting them from loss or damage. Rather, its student
12 records were stored in unlocked non fire resistant cabinets, with no second set of copies, and the
13 records for withdrawn or graduated students were stored in boxes in an unlocked back room.
14 Additionally, during the site inspection, Respondent failed to produce the curriculum or syllabus
15 for its educational program, its Self-Monitoring Procedures, and back-up data.

16 **SEVENTH CAUSE FOR DISCIPLINE**

17 (Prohibited Business Practices - False or Misleading Statements)

18 37. Complainant incorporates herein paragraph 18, above.

19 38. Respondent is subject to disciplinary action pursuant to Code section 94897,
20 subdivision (j)(3), in that it made or caused to be made untrue or misleading statements/changes
21 related to records or documents required by law or the Bureau. The circumstances are as
22 follows:

23 39. During the site inspection and investigation, Respondent produced documents that it
24 provided to students for signature enabling them to opt out of providing required post-graduate
25 School Performance Facts Sheets (SPFS) information. The omission of this required information
26 created false and misleading SPFS placement rate information to the Bureau. Additionally,
27 Respondent routinely provided students with a document regarding limited attendance due to
28

1 childcare, and approved such documentation in circumstances where attendance was not in fact
2 limited due to childcare.

3 **EIGHTH CAUSE FOR DISCIPLINE**

4 (Failure to Maintain Uniform Data - Annual Report, Performance Fact Sheet)

5 40. Complainant incorporates herein paragraph 18 above.

6 41. Respondent is subject to disciplinary action pursuant to Code section 94937 and 5
7 CCR section 74112, subdivision (m)(1-9), in that it failed to maintain and provide documentation
8 and supporting data regarding its Annual Reports or Performance Fact Sheets as required by law.

9 The circumstances are as follows:

10 42. During the site inspection and investigation, Respondent could not provide any
11 supporting documentation for the SPFS, stated that such documentation did not exist, and was not
12 being properly collected, maintained or reported. Respondent also could not provide a current
13 SPFS. Upon investigation, further documentation provided by Respondent in regard to Annual
14 Report and Performance Facts Sheet data was inaccurate and deficient in meeting the applicable
15 legal standards and requirements set forth in paragraph 16 above, among others.

16 **NINTH CAUSE FOR DISCIPLINE**

17 (Failure to Meet Minimum Requirements for School Catalog)

18 43. Complainant incorporates herein paragraph 18 above.

19 44. Respondent is subject to disciplinary action pursuant to Code sections 94937 and
20 94909, subdivision (1)(8)(B), in that its catalog fails to meet the minimum requirement regarding
21 cancellation policies. The circumstances are as follows:

22 45. During the site inspection and investigation, Respondent produced a catalog that
23 failed to include the complete required cancellation language and failed to include a provision
24 that the cancellation notice shall be in writing.

25 **PRAYER**

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

1 1. Revoking or suspending Approval to Operate Number 3900121, issued to Stockton
2 Barber College; Daniel Thai, Owner;

3 2. Ordering Stockton Barber College; Daniel Thai, Owner, to pay the Bureau for Private
4 Postsecondary Education the reasonable costs of the investigation and enforcement of this case,
5 pursuant to Code section 94937, subdivision (c) and Business and Professions Code section
6 125.3; and,

7 3. Taking such other and further action as deemed necessary and proper.

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DATED: “8/26/2020”

“Original signature on file”
DR. MICHAEL MARION, JR.
Chief
Bureau for Private Postsecondary
Education
Department of Consumer Affairs
State of California
Complainant

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