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

13 In the Matter of the Accusation Against:	Case No. 1003439
14 1st Academy of Beauty	A C C U S A T I O N
15 8819 – 8823 Garvey Avenue	
16 Unit A ½, B1, & B ½	
17 Rosemead, CA 91770	
18 Institution Code: 49488813	
19 Respondent.	

20 Complainant alleges:

21 **PARTIES**

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

25 2. On or about November 29, 2011, the Bureau for Private Postsecondary Education
26 (BPPE) issued Approval to Operate Institution Code 49488813 to 1st Academy of Beauty
27 (Respondent).

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1 JURISDICTION

2 3. This Accusation is brought before the Director of the Department of Consumer
3 Affairs (Director) under the authority of the following laws. All section references are to the
4 Education Code unless otherwise indicated.

5 4. Section 22 of the Business and Professions Code states:

6 "(a) 'Board' as used in any provisions of this Code, refers to the board in which the
7 administration of the provision is vested, and unless otherwise expressly provided, shall include
8 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and
9 'agency.'

10 "(b) Whenever the regulatory program of a board that is subject to review by the Joint
11 Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2
12 (commencing with Section 473), is taken over by the department, that program shall be
13 designated as a 'bureau.'"

14 5. Section 118, subdivision (b) of the Business and Professions Code provides that the
15 suspension/expiration/surrender/cancellation of a license shall not deprive the Director of
16 jurisdiction to proceed with a disciplinary action during the period within which the license may
17 be renewed, restored, reissued or reinstated.

18 STATUTORY PROVISIONS

19 6. Section 94893 of the Code states:

20 "If an institution intends to make a substantive change to its approval to operate, the
21 institution shall receive prior authorization from the bureau. Except as provided in subdivision
22 (a) of Section 94896, if the institution makes the substantive change without prior bureau
23 authorization, the institution's approval to operate may be suspended or revoked."

24 7. Section 94897 of the Code states:

25 "An institution shall not do any of the following:

26 ...

27 "(j) In any manner make an untrue or misleading change in, or untrue or misleading
28 statement related to, a test score, grade or record of grades, attendance record, record indicating

1 student completion, placement, employment, salaries, or financial information, including any of
2 the following:

3 “(1) A financial report filed with the bureau.

4 “(2) Information or records relating to the student’s eligibility for student financial aid at
5 the institution.

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

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8 “(k) Willfully falsify, destroy, or conceal any document of record while that document of
9 record is required to be maintained by this chapter.”

10 8. Section 94900 of the Code states:

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

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

15 9. Section 94906 of the Code states:

16 “(a) An enrollment agreement shall be written in language that is easily understood. If
17 English is not the student's primary language, and the student is unable to understand the terms
18 and conditions of the enrollment agreement, the student shall have the right to obtain a clear
19 explanation of the terms and conditions and all cancellation and refund policies in his or her
20 primary language.”

21 10. Section 94932 of the Code states:

22 “The bureau shall determine an institution's compliance with the requirements of this
23 chapter. The bureau shall have the power to require reports that institutions shall file with the
24 bureau in addition to the annual report, to send staff to an institution's sites, and to require
25 documents and responses from an institution to monitor compliance. When the bureau has reason
26 to believe that an institution may be out of compliance, it shall conduct an investigation of the
27 institution. If the bureau determines, after completing a compliance inspection or investigation,
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1 that an institution has violated any applicable law or regulation, the bureau shall take appropriate
2 action pursuant to this article.”

3 **REGULATORY PROVISIONS**

4 10. Title 5 of the California Code of Regulations (Regulations), section 71650 states:

5 “(a) An institution seeking to change its educational objectives shall complete the “Change
6 in Educational Objectives” form (OBJ rev. 2/10) to obtain prior authorization. The form shall be
7 submitted to the Bureau along with the appropriate fee as provided in Section 94930.5(c) of the
8 Code. For an institution approved under section 94885 of the Code it shall be signed and dated by
9 the signatory(ies) required by section 71380, and for an institution approved under section 94890
10 of the Code it shall be signed and dated by the signatory(ies) required by section 71390, and each
11 fact stated therein and each attachment thereto shall be declared to be true under penalty of
12 perjury, in the following form: “I declare _____

13 (Date) Signature.”

14 11. Regulations, section 71660 states:

15 “An institution shall notify the Bureau of a non-substantive change including: change of
16 location of less than 10 miles; addition of a program related to the approved programs offered by
17 the institution; addition of a new branch five miles or less from the main or branch campus;
18 addition of a satellite; and change of mailing address. All such notifications shall be made within
19 30 days of the change and sent to the Bureau, in writing, to the address listed in section 70020.”

20 12. Regulations, section 71920 states:

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

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

25 (1) Written records and transcripts of any formal education or training, testing, or
26 experience that are relevant to the student's qualifications for admission to the institution or
27 the institution's award of credit or acceptance of transfer credits including the following:
28

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

4 ...

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

8 (C) Grades or findings from any examination of academic ability or educational
9 achievement used for admission or college placement purposes”.

10 13. Regulations, section 71930 states:

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

15 14. Regulations, section 74112, subsection (m) states:

16 ...

17 “(m) Documentation supporting all data reported shall be maintained electronically by the
18 institution for at least five years from the last time the data was included in either an Annual
19 Report or a Performance Fact Sheet, and shall be provided to the Bureau upon request; and the
20 data for each program shall include at a minimum:

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22 (2) student name(s), address, phone number, email address, program completed, program
23 start date, scheduled completion date, and actual completion dates.”

24 15. Regulations, section 76140 states:

25 “(a) A qualifying institution shall collect and maintain records of student information to
26 substantiate the data reported on the STRF Assessment Reporting Form and records of the
27 students' eligibility under the Fund. Such records shall include the following for each student:

28 (1) Student identification number,

- 1 (2) First and last names,
- 2 (3) Email address,
- 3 (4) Local or mailing address,
- 4 (5) Address at the time of enrollment,
- 5 (6) Home address,
- 6 (7) Date enrollment agreement signed,
- 7 (8) Courses and course costs,
- 8 (9) Amount of STRF assessment collected,
- 9 (10) Quarter in which the STRF assessment was remitted to the Bureau,
- 10 (11) Third-party payer identifying information,
- 11 (12) Total institutional charges charged, and
- 12 (13) Total institutional charges paid.

13 (b) The qualifying institution shall maintain the data required under this section in an
14 electronic format that is readily available and open to inspection by the Bureau upon request. The
15 institution shall make the records immediately available to a Bureau representative conducting a
16 site inspection or, upon written request, shall provide a copy within 14 calendar days of the
17 request. All records shall be provided to the Bureau in an intelligible and orderly manner and in
18 an electronic format.”

19 **COST RECOVERY**

20 16. Section 125.3 of the Code provides, in pertinent part, that the Bureau may request the
21 administrative law judge to direct a licentiate found to have committed a violation or violations of
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
24 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
25 included in a stipulated settlement.

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1 **FACTUAL BACKGROUND**

2 17. On April 19, 2018, BPPE received a complaint from the State Board of Barbering and
3 Cosmetology (BBC) regarding Respondent's students' attendance records. On May 16, 2018, a
4 joint investigation with BPPE and BBC was conducted, which revealed numerous systematic
5 violations of the California Code of Regulations and the California Education Code.

6 18. During the joint investigation between BPPE and BBC staff, it was discovered that
7 (1) Respondent failed to provide BPPE with their School Performance Fact Sheets (SPFS) and
8 Student Tuition Recovery Fund (STRF) supporting data reports; (2) Respondent falsified six
9 students' Ability to Benefit (ATB) Certificates; (3) Respondent failed to report Substantive
10 Change for instruction being conducted in Vietnamese, and disclosures not being provided to
11 students in Vietnamese, and (4) Respondent failed to notify BPPE that the school was no longer
12 offering instruction at one of their locations.

13 19. On April 18, 2018, Nevada State Board of Cosmetology (NSBC) sent an email to
14 BBC regarding an applicant for reciprocity with a California Cosmetology licensc #340806.
15 NSBC provided BBC with a copy of a Proof of Training (POT) document for student T.K.L.H.
16 dated September 30, 2017, a copy of T.K.L.H.'s school time card for the week of August 1-5,
17 2017, and a copy of T.K.L.H.'s Nevada Driver's License (NDL) issued on August 4, 2017. NSBC
18 noticed that T.K.L.H.'s NDL was issued on the same day that T.K.L.H. was reported to have been
19 in class in California.

20 20. On May 16, 2018, BPPE conducted a compliance inspection at the Respondent's
21 school. When the inspectors arrived, a manicuring theory class was being conducted. There were
22 twenty-two students attending the class. There was one instructor teaching the class in
23 Vietnamese; however, the lesson on the board was written in English.

24 21. The students' timesheets were in the classroom, however, four of the students'
25 timesheets were missing Theory Hours (T.H.) and Practical Operations (P.O). Respondent
26 provided the inspectors a student roster. Inspectors selected six students' names, and requested
27 to copy the students' records. When asked how T.K.L.H. could have been in class on the same
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1 day she was in Nevada for a driver's license, Respondent stated that possibly the student
2 clocked in and left.

3 22. When the Bureau staff examined the file of student P.C., they discovered that out of
4 nine timesheets in the file, one had a different student's name, two of them did not have a
5 student's name, and all of the timesheets were missing school and/or student signatures.
6 Additionally, the timesheets were missing TH/PO entries.

7 23. When the Bureau staff examined the file of student E.B., they discovered that eight
8 timesheets did not have a student's name, they were missing signatures, and there were no
9 TH/PO entered on the timesheets.

10 24. When the inspectors examined the file of student C.N., they discovered that her ten
11 timesheets were missing student/school signatures, and TH/PO entries.

12 25. During the visit, Investigator J. requested the manicuring students participate
13 in a BPPE survey. The instructor had to translate her request from English into Vietnamese, and
14 sixteen of the students requested copies of surveys in Vietnamese.

15 26. On May 21, 2018, BPPE Investigator J. received from BBC a list of 2017-2018
16 students that took the California State Board exam. There were 259 applicants; 36 of the
17 applicants took the exam in English, 222 took the exam in Vietnamese, and one requested a
18 translator.

19 27. On May 22, 2018, Investigator J. consulted the Association of Classroom Teacher
20 Testers (ACTT). ACTT was able to verify five of the six certificates, however it was not able
21 to verify the ATB certificate for student L.T.

22 28. On May 24, 2018, Investigator J. received copies of the ATB certificates from ACTT
23 that were provided to the Respondent by ACTT and compared the documents. Investigator J.
24 determined that the exams scores matched; however, the certificate dates and the exam dates
25 did not match. Additionally, when Investigator J. reviewed the students' school records and
26 their Institutional Certification of Admission (ICA) documents, she found the "Date
27 Administered" information matched the falsified ATB Certificates and not the original ATB
28 Certificates provided by ACTT.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Failure to Obtain Authorization from the Bureau for a Substantive Change in Operation)**

3 29. Respondent is subject to disciplinary action under Regulations section 71650,
4 subdivision (a) and section 94893 of the California Education Code, in that Respondent failed to
5 obtain authorization from BPPE for a substantive change in operation of the institution. The
6 circumstances are as follows:

7 30. On or about May 16, 2018, Respondent taught a class in Vietnamese; however,
8 Respondent did not have approval from BPPE to provide instruction in a language other than
9 English. Specifically, instructors taught the manicuring students in Vietnamese, the instructor
10 had to translate for the students to complete a BPPE survey, and some of the students
11 requested the Vietnamese version of the survey. Complainant refers to, and by this reference
12 incorporates, the allegations set forth above in paragraphs 18 through 30, as though set forth fully
13 herein.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Failure to Notify the Bureau of Non-Substantive Changes)**

16 31. Respondent is subject to disciplinary action under Regulations section 71660, in that
17 Respondent failed to notify BPPE of a non-substantive change. On or about May 16, 2018,
18 Respondent admitted the building space at 8819 Garvey Avenue was sub-leased, because she
19 was no longer offering the massage program, and no longer needed the space. Respondent
20 failed to notify BPPE that she was no longer offering the massage instruction at the 8819
21 Garvey Avenue location. Complainant refers to, and by this reference incorporates, the
22 allegations set forth above in paragraphs 18 through 30, as though set forth fully herein.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Failure to Maintain and Provide Student Records)**

25 32. Respondent is subject to disciplinary action under Regulations section 71930,
26 subdivision (e), in that on or about May 16, 2018, Respondent failed to provide BPPE the
27 complete SPFS and STRF supporting documents during the unannounced compliance
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1 inspection Complainant refers to, and by this reference incorporates, the allegations set forth
2 above in paragraphs 18 through 30, as though set forth fully herein.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Failure to Maintain Records)**

5 33. Respondent is subject to disciplinary action under Regulations section 71920,
6 subdivision (b)(1)(A), in that Respondent failed to maintain accurate student records. On or
7 about May 16, 2018, during the compliance inspection, it was discovered that the dates on six
8 ATB Certificates from the student files did not match the ATB certificates provided to
9 Respondent by ACTT. Five original ATB Certificates provided to Respondent by ACTT were
10 not in the student files at the time of the inspection. Additionally, there was a certificate issued
11 to one of the students while there was no evidence he took the ACTT ATB exam. Complainant
12 refers to, and by this reference incorporates, the allegations set forth above in paragraphs 18
13 through 30, as though set forth fully herein.

14 **FIFTH CAUSE FOR DISCIPLINE**

15 **(Failure to Comply with Uniform Record-Keeping Requirements and Uninformed Date)**

16 34. Respondent is subject to disciplinary action under Regulations sections 76140,
17 subdivision (a) and 74112, subdivision (m)(2), in that Respondent failed to maintain
18 documentation supporting all data and failed to provide it to BPPE upon request. On or about
19 May 16, 2018, Respondent failed to provide BPPE complete supporting data for 2015/2016
20 SPFS. Respondent was not able to provide the report or demonstrate that they maintained the
21 supporting data electronically prior to the end of the inspection. Complainant refers to, and
22 by this reference incorporates, the allegations set forth above in paragraphs 18 through 30, as
23 though set forth fully herein.

24 **SIXTH CAUSE FOR DISCIPLINE**

25 **(Falsifying, Destroying or Concealing Student Records)**

26 35. Respondent is subject to disciplinary action under California Education Code section
27 94897, subdivisions (j) and (k), in that Respondent falsified student records. The circumstances
28 are as follows:

1 36. On or about May 16, 2018, Respondent falsified six ATB Certificates in the
2 student files. Specifically, the dates on the ATB Certificates in the student files did not match
3 the documents provided by ACTT. The five original ATB Certificates provided to
4 Respondent by ACTT were not in the student files at the time of the inspection. According to
5 ACTT, there was no record for one student indicating he/she took the ACTT ATB exam. The
6 administered dates on the students' ICA documents, matched the falsified ATB Certificates
7 and not the original ATB Certificates. Additionally, upon review of eleven student files, BPPE
8 discovered forty-three student timesheets missing their TH/PO entries and twenty-three
9 timesheets were missing student names to verify the students' attendance. Complainant refers
10 to, and by this reference incorporates, the allegations set forth above in paragraphs 18 through 30,
11 as though set forth fully herein.

12 **SEVENTH CAUSE FOR DISCIPLINE**

13 **(Failure to Maintain Student Records)**

14 37. Respondent is subject to disciplinary action under California Education Code section
15 94900, subdivision (b)(3), in that on or about May 16, 2018, Respondent failed to maintain
16 accurate and complete records of TH/PO on forty-three student timesheets. Complainant
17 refers to, and by this reference incorporates, the allegations set forth above in paragraphs 18
18 through 30, as though set forth fully herein.

19 **EIGHTH CAUSE FOR DISCIPLINE**

20 **(Language of Enrollment Agreement)**

21 38. Respondent is subject to disciplinary action under California Education Code section
22 94906, subdivision (a), in that on May 16, 2018, Respondent enrolled students whose primary
23 language was not English but provided required disclosures in English, and failed to provide
24 required disclosures and/or Enrollment Agreements in the student's native language.
25 Complainant refers to, and by this reference incorporates, the allegations set forth above in
26 paragraphs 18 through 30, as though set forth fully herein.


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PRAYER

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

1. Revoking or suspending Approval to Operate Number Institution Number 49488813, issued to 1st Academy of Beauty;
2. Ordering Respondent to pay the Bureau for Private Postsecondary Education the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 1/10/19


DR. MICHAEL MARION, JR.
Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

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