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

12
13 In the Matter of the Statement of Issues
Against:

14 **CRESCENT COLLEGE, INC.**

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

17 **Institution No. 1935191**

18 Respondent.

Case No. BPPE23-0851

19 **STATEMENT OF ISSUES**

20
21 **PARTIES**

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

25 2. On or about August 21, 2020, the Bureau received an application for a Renewal of
26 Approval to Operate an Institution Non-Accredited from Crescent College, Inc. (“Respondent” or
27 “institution”), owned by Crescent College, Inc. (Angel Gutierrez). On or about August 19, 2020,

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1 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
2 representations in the application. The Bureau denied the application on September 21, 2023.

3 **JURISDICTION**

4 3. This Statement of Issues is brought before the Director of the Department of
5 Consumer Affairs (Director) for the Bureau for Private Postsecondary Education under the
6 authority of the following laws. Unless otherwise indicated, all section references are to the
7 Education Code (Code).

8 **STATUTORY PROVISIONS**

9 4. Section 94817 of the Code states:

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

13 5. Section 94817.5 of the Code states:

14 “Approved to operate’ or ‘approved’ means that an institution has received authorization
15 pursuant to this chapter to offer to the public and to provide postsecondary educational
16 programs.”

17 6. Section 94885, subdivision (a), of the Code, in pertinent part, states:

18 (a) The bureau shall adopt by regulation minimum operating standards for an
19 institution that shall reasonably ensure that all of the following occur:

20 (1) The content of each educational program can achieve its stated objective.

21 (2) The institution maintains specific written standards for student admissions
22 for each educational program and those standards are related to the particular
educational program.

23 (3) The facilities, instructional equipment, and materials are sufficient to enable
students to achieve the educational program’s goals.

24 (4) The institution maintains a withdrawal policy and provides refunds.

25 (5) The directors, administrators, and faculty are properly qualified.

26 (6) The institution is financially sound and capable of fulfilling its
27 commitments to students.

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

1 (8) Adequate records and standard transcripts are maintained and are available
to students.

2 (9) The institution is maintained and operated in compliance with this chapter
and all other applicable ordinances and laws.

3 ...

4 7. Section 94886 of the Code states:

5 Except as exempted in Article 4 (commencing with section 94874) or in
6 compliance with the transition provisions in Article 2 (commencing with Section
7 94802), a person shall not open, conduct, or do business as a private postsecondary
educational institution in this state without obtaining an approval to operate under this
chapter.

8 8. Section 94887 of the Code states:

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

13 9. Section 94891 of the Code, in pertinent part, states:

14 ...

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

16 10. Section 94932 of the Code states:

17 The bureau shall determine an institution's compliance with the requirements of
18 this chapter. The bureau shall have the power to require reports that institutions shall
file with the bureau in addition to the annual report, to send staff to an institution's
19 sites, and to require documents and responses from an institution to monitor
compliance. When the bureau has reason to believe that an institution may be out of
20 compliance, it shall conduct an investigation of the institution. If the bureau determines,
after completing an investigation, that an institution has violated any applicable law or
regulation, the bureau shall take appropriate action pursuant to this article.

21 **REGULATORY PROVISIONS**

22 11. California Code of Regulations, title 5, section 71475, in pertinent part, states:

23 (w)(2) The institution shall submit current, audited financial statements at the
24 time it applies for approval to operate. Each set of financial statements shall comply
with Section 74115 of this chapter.

25 ...

26 (kk) An incomplete application filed under this section will render the institution
27 ineligible for renewal.

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

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

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

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

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

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

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

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

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

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

13. California Code of Regulations, title 5, section 75050 states:

(a) If a cited institution or person that or who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond the institution's or person's control after the exercise of reasonable diligence, the institution or person may request an extension of time within which to complete the correction. Such a request shall be in writing and shall be made

1 within the time set forth for abatement.

2 (b) Failure of an applicant or institution issued an approval to operate to abate the
3 violation or to pay the fine within the time allowed is a ground for denial or discipline
4 of an approval to operate.

5 (c) If an informal conference or hearing is not requested, payment of the fine
6 and/or compliance with any order of abatement shall not constitute an admission of the
7 violation charged and shall be represented as satisfactory resolution of the matter for
8 purposes of public disclosure.

9 14. California Code of Regulations, title 5, section 71485 states:

10 Failure of an institution to have made current payments of the assessments to the
11 Student Tuition Recovery Fund as required by chapter 7 of this Division, and annual
12 fees as required by chapter 5 of this Division shall render the institution ineligible for
13 renewal.

14 **FACTUAL ALLEGATIONS**

15 *First Deficiency Letter*

16 15. On or about August 21, 2020, the Bureau received an application for a Renewal of
17 Approval to Operate an Institution Non-Accredited. The Bureau issued a Deficiency Letter to
18 Respondent on October 7, 2020, identifying deficiencies in the following sections of the
19 application: Section 3-Form of Business Organization; Section 4.1-Owner(s); Section 5-Agent
20 for Service of Process within California; Section 10-Exemplars of Student Agreements; Section
21 12-Advertising and Other Public Statements; Section 16-Financial Resources and Reports; and
22 Section 21-Catalog. The Bureau's letter also identified delinquency in payment of Annual Fees as
23 a deficiency to be resolved.

24 16. On November 18, 2020, the Bureau's Licensing Unit received a letter and documents
25 submitted to address deficiencies with the following sections of its application: Section 3-Form of
26 Business Organization; Section 4.1-Owner(s); Section 5-Agent for Service of Process within
27 California; Section 10-Exemplars of Student Agreements; Section 12-Advertising and Other
28 Public Statements; and Section 21-Catalog.

29 *Second Deficiency Letter*

30 17. On December 30, 2020, the Bureau's Licensing Unit sent a letter identifying
31 deficiencies in the following sections of the application: Section 3-Form of Business
32 Organization; Section 5-Agent for Service of Process within California; Section 10-Exemplars

1 of Student Agreements; Section 16-Financial Resources and Reports; and, Section 21-Catalog.
2 The Bureau's letter also identified the failure to submit a Student Tuition Recovery Fund
3 (STRF) Assessment Reporting Form for the third quarter of 2019 as a deficiency that needs to be
4 resolved.

5 18. On February 22, 2021, the Bureau's Licensing Unit received a letter and documents
6 submitted to address deficiencies with the following sections of its application: Section 3-Form of
7 Business Organization; Section 4.1-Owner(s); Section 5-Agent for Service of Process within
8 California; Section 10-Exemplars of Student Agreements; Section 12-Advertising and Other
9 Public Statements; 16-Financial Resources and Reports; and Section 21-Catalog. The received
10 letter and documents included a STRF Assessment Reporting form for the third quarter of 2019.

11 Third Deficiency Letter

12 19. On September 7, 2021, the Bureau's Licensing Unit sent a letter identifying
13 deficiencies in the following sections of the application: Section 3-Form of Business
14 Organization; Section 10-Exemplars of Student Agreements; and Section 21-Catalog.

15 20. On October 6, 2021, the Bureau's Licensing Unit received a letter and documents
16 submitted to address deficiencies with the following sections of its application: Section 3-Form of
17 Business Organization; Section 10-Exemplars of Student Agreements; and Section 21-Catalog.

18 Fourth Deficiency Letter

19 21. On April 3, 2023, the Bureau's Quality of Education Unit sent a letter identifying
20 deficiencies in the following sections of the application: Section 10-Exemplars of Student
21 Agreements; Section 11-Financial Aid Policies, Practices, and Disclosures; Section 13-
22 Instruction and Degrees Offered; Section 14-Description of Educational Programs; Section 16-
23 Financial Resources and Statements; and Section 21-Catalog.

24 22. On July 24, 2023, the Bureau's Quality of Education Unit received a letter and
25 documents submitted to address deficiencies with the following sections of its application:
26 Section 10-Exemplars of Student Agreements; Section 11-Financial Aid Policies, Practices, and
27 Disclosures; Section 13-Instruction and Degrees Offered; Section 14-Description of
28 Educational Programs; Section 16-Financial Resources and Statements; Section 21-Catalog.

1 *Fifth Deficiency Letter*

2 23. On July 31, 2023, the Bureau’s Quality of Education Unit sent a letter identifying
3 deficiencies in the following sections of the application: Section 10-Exemplars of Student
4 Agreements; Section 13-Instruction and Degrees Offered; Section 14-Description of
5 Educational Programs; Section 16-Financial Resources and Statements.

6 *Citation and Order of Abatement*

7 24. On August 15, 2023, the Bureau issued Respondent Citation Number 2324062, an
8 assessment of a fine of \$2,501.00 for violating the Cal. Code of Regs., tit. 5, section 74110, in
9 conjunction with Code § 94934, for failure to submit all components of the 2021 annual report
10 due to the Bureau by December 1, 2022. The Bureau issued an order of abatement for Respondent
11 to submit all components of the 2021 annual report by December 1, 2022. Also, Respondent
12 violated Cal. Code of Regs., tit. 5, § 74006, subds. (a) and (b), in conjunction with Code § 94931,
13 subd. (b), because Respondent failed to pay its annual fee for the 2022 calendar year. The Bureau
14 assessed an administrative fine of \$1,000.00 with an order of abatement to pay its annual fee and
15 90-day late payment penalty fee. The total administrative fines were \$3,501.00. The deadline for
16 payment was 30 days from the citation issuance date.

17 *Notice of Denial Letter*

18 25. On September 21, 2023, the Bureau’s Quality of Education Unit sent a Notice of
19 Denial of Application for Renewal of Approval to Operate letter identifying deficiencies in the
20 following sections of the application: Section 16- Financial Statements; Nonpayment of the
21 2022 Annual Fee and penalty; and Noncompliance with Citation Number 2324062 issued on
22 August 15, 2023, for payment of the fine and Orders of Abatement within 30 days of issuance
23 [September 18, 2023]. The Bureau determined that Respondent’s application was incomplete and
24 not compliant with regulatory law. The Bureau denied Respondent’s application.

25 26. On October 17, 2023, the Bureau notified Respondent that it received the payment of
26 \$3,501.00 for Citation Number 2324062; however, Respondent failed to comply with the orders
27 of abatement as to the 2021 financial statements and submission of payment of the 2022 annual
28 fee. The Bureau provided a new due date of November 10, 2023.

1 27. On November 6, 2023, the Bureau received Respondent’s notice of appeal and
2 request for an administrative hearing with mitigation documents submitted to address the
3 deficiencies for the following sections of its application: Section 16-Financial Statements; proof
4 of \$625.00 payment for the 2022 Annual Report Fee; and proof of payment of \$3,501.00 of the
5 administrative fine for Citation Number 234062.

6 28. On November 15, 2023, the Bureau issued Respondent a Demand for Abatement
7 Documents for Citation Number 2324062 with a due date of November 30, 2023.

8 Mitigation Review Memo of November 21, 2023

9 29. On November 21, 2023, the Bureau emailed Respondent acknowledging receipt of
10 Respondent’s correspondence of November 6, 2023, and notified of the remaining deficiencies:
11 Section 16-Financials Resource Statements based on the ratio of current assets to current
12 liabilities of .091 at the end of the most recent fiscal year, the financial statements did not
13 establish that the institution meets the requirements for financial resources required by Cal. Code
14 of Regs, tit. 5, §§ 71745 and 74115, subd. (b).

15 30. Also, when Respondent submitted financial statements for the year ending December
16 31, 2022, more than eight months had elapsed between the close of the most recent complete
17 fiscal year, as the financial statements were not “current” under regulatory law. The applicant did
18 not address this deficiency in the documents provided on November 6, 2023, violating Cal. Code
19 Regs., tit. 5, § 74115, subd (d), and § 71475, subd. (w)(2).

20 31. In addition, as of November 15, 2023, Respondent remained non-compliant with
21 Citation Number 2324062 orders of abatement for nonpayment of the 2022 annual fees and the
22 90-day penalty. Further, as of November 21, 2023, the Bureau had not received Respondent’s
23 complete submission of 2021 financial statements according to reporting requirements.

24 32. On December 15 and 20, 2023, the Bureau received a check for \$2,500.00 for
25 payment of the institution’s 2022 annual fees and a check for \$875.00 for the 90-day late payment
26 penalty, respectively.

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1 Mitigation Review Memo of January 26, 2024

2 33. On January 26, 2024, the Bureau emailed Respondent acknowledging receipt of
3 Respondent’s correspondence on January 18, 2024, and notified of the remaining deficiencies:
4 Section 16-Financials Statements in that when Respondent submitted financial statements for the
5 year ending December 31, 2022, more than eight months had elapsed between the close of the
6 most recent complete fiscal year, as the financial statements were not “current” under regulatory
7 law; and the applicant did not address this deficiency in the documents provided on January 18,
8 2024, violating Cal. Code Regs., tit. 5, § 74115, subd (d), and § 71475, subd. (w)(2).

9 34. Before denying Respondent’s application for renewal of approval to operate on
10 September 21, 2023, the institution had not provided compliant, reviewed financial statements for
11 2021 and 2022. Although on January 18, 2024, the Bureau received Respondent’s 2021 financial
12 statements as required for annual reporting requirements, as of November 6, 2023, Respondent’s
13 reviewed 2022 financial statements remained deficient.

14 **FIRST CAUSE FOR DENIAL OF APPLICATION**

15 (Financial Resources and Statements)

16 35. Respondent’s application is subject to denial because it failed to comply with Cal.
17 Code of Regs., tit. 5, §§ 74115, subd.(d), and 71475, subds.(w)(2) and (kk). The circumstances of
18 noncompliance are as follows:

19 (a) When the institution provided reviewed financial statements for the year ending
20 December 31, 2022, more than eight months had elapsed between the close of the most recent
21 complete fiscal year and were not current. (Cal. Code Regs., tit. 5, § 74115, subd. (d).)

22 (b) The institution did not address the preceding deficiency in the documents provided on
23 November 6, 2023, or January 18, 2024; thus, the application remained deficient. (Cal. Code
24 Regs., tit. 5, § 71475, subds. (w)(2) and (kk).) Complainant refers to, and by this reference
25 incorporates, the allegations set forth above in paragraphs 15 to 23, 25 to 34, as though set forth fully.

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1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 (Compliance with Citation Number 2324062 and Orders of Abatement)

3 36. Respondent’s application is subject to denial because it failed to comply with Cal.
4 Code of Regs., tit. 5, § 75050, subd. (b). The circumstances of noncompliance are as follows:

5 (a) On October 12, 2023, the Bureau received payment of the administrative fine of
6 \$3,501.00 for Citation Number 2324062 issued on August 15, 2023, and payment by check for
7 \$625.00. The institution claimed that the check payment of \$625.00 was for the 2022 annual fees
8 [2022 invoice number 900367418]; however, the invoice number in the note section of the check
9 referenced a different invoice number, invoice number 900373601, which was for annual fees for
10 May 1, 2023.

11 (b) As of November 15, 2023, the institution had not paid its 2022 annual fees invoiced
12 on May 2, 2022 (invoice number 900367418), nor had it paid its 90-day late payment penalty fee.
13 On December 15 and 20, 2023, the Bureau received a check for \$2,500.00 for payment of its
14 2022 annual fees and a check for \$875.00 for the 90-day late payment penalty, respectively.
15 However, before the Bureau’s September 21, 2023 denial letter, Respondent was not compliant
16 with the order of abatement under Citation Number 2324062.

17 (c) As of November 21, 2023, the Bureau had not received the 2021 financial statements
18 required as part of the institution’s 2021 annual reporting requirements. On January 18, 2024, the
19 Bureau received the 2021 financial statements required as part of the institution’s 2021 annual
20 reporting requirements. However, before the September 21, 2023 denial letter, Respondent was
21 not compliant with the order of abatement under Citation Number 2324062.

22 Complainant refers to, and by this reference incorporates, the allegations set forth above in
23 paragraphs 15 to 34, as though set forth fully.

24 **PRAYER**

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

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1. Denying the application of Crescent College, Inc., for a Renewal of Approval to Operate an Institution Non-Accredited;

2. Taking such other and further action as deemed necessary and proper.

DATED: _____

DEBORAH COCHRANE
Chief
Bureau for Private Postsecondary
Education
Department of Consumer Affairs
State of California
Complainant

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