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

12 In the Matter of the Statement of Issues
Against:

Case No. 1001582

13 **THE BEAUTY WORLD COSMETOLOGY**
14 **ACADEMY USA**

STATEMENT OF ISSUES

15 **Application for Approval to Operate an**
16 **Institution Non-Accredited**

17 Respondent.

18 Complainant alleges:

19 PARTIES

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

23 2. On or about September 27, 2013, the Bureau for Private Postsecondary Education
24 (“Bureau”) received an Application for Approval to Operate for an Institution Non-Accredited
25 from the Beauty World Cosmetology Academy USA (“Respondent”). On or about July 17, 2015,
26 after Respondent offered additional information in support of its application, the Bureau issued a
27 deficiency letter to Respondent explaining the deficiencies in its application. Respondent
28 responded to the deficiency letter and provided additional information in support of its

1 application on or about September 22, 2015. On or about January 22, 2016, the Bureau issued
2 Respondent a Notice of Denial of Application for Approval to Operate. On or about March 12,
3 2016, Respondent sent the Bureau a letter requesting an administrative hearing regarding the
4 denial of its application.

5 3. Respondent is owned by Bonny Yau, also known as Bonny Chun Sau and Bonny
6 Chun Sau Yau. Ms. Yau is Respondent’s President; and holds Esthetician License No. Z 6144
7 and Cosmetology License No. KK 251061, both issued by the California Board of Barbering and
8 Cosmetology.

9 JURISDICTION

10 4. This Statement of Issues is brought before the Director of the Department of
11 Consumer Affairs (“Director”) for the Bureau for Private Postsecondary Education, under the
12 authority of the following laws. All section references are to the Education Code unless
13 otherwise indicated.

14 STATUTORY & REGULATORY PROVISIONS¹

15 5. **Section 94887** states:

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

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27 ¹ The California Private Postsecondary Education Act of 2009 was recently amended, effective
28 January 1, 2015. See Senate Bill No. 1247. This Statement of Issues is based on the pre-
amendment version of the Act.

1 6. **Section 94909** states, in part:

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

5 . . .

6 “(3) The following statements:

7 . . .

8 “(C) ‘A student or any member of the public may file a complaint about this institution with
9 the Bureau for Private Postsecondary Education by calling (toll-free telephone number) or by
10 completing a complaint form, which can be obtained on the bureau's Internet Web site (Internet
11 Web site address).’

12 . . .

13 “(6) If the educational program is designed to lead to positions in a profession, occupation,
14 trade, or career field requiring licensure in this state, a notice to that effect and a list of the
15 requirements for eligibility for licensure.

16 ”

17 7. **California Code of Regulations, title 5, section 71735** states:

18 “(a) An institution shall have sufficient facilities and necessary equipment to support the
19 achievement of the educational objectives of all of the courses and educational programs in which
20 students are enrolled. If an institution represents that the educational service will fit or prepare a
21 student for employment in a particular occupation or as described in particular job titles, either of
22 the following conditions shall be met:

23 “(1) The equipment used for instruction or provided to the student shall be comparable in
24 model type or features to equipment generally used in those occupations or job titles at the time
25 the instruction is offered.

26 “(2) The institution shall establish that the equipment used for instruction or provided to a
27 student is not obsolete and is sufficient for instructional purposes to reasonably assure that a
28 student acquires the necessary level of education, training, skill, and experience to obtain

1 employment in the field of training and to perform the tasks associated with the occupation or job
2 title to which the educational program was represented to lead.

3 “(b) An institution's facilities, including heating and cooling, ventilation, lighting,
4 classrooms, laboratories, and campus environs, shall be well-maintained. The institution shall
5 maintain all valid permits required by any public agencies relating to the health and safety of the
6 institution's facilities and equipment on file, and such permits shall be available to the Bureau
7 upon request.”

8 **8. California Code of Regulations, title 5, section 71745 states:**

9 “(a) The institution shall document that it has at all times sufficient assets and financial
10 resources to do all of the following:

11 “(1) Provide all of the educational programs that the institution represented it would
12 provide.

13 “(2) Ensure that all students admitted to its educational programs have a reasonable
14 opportunity to complete the programs and obtain their degrees or diplomas.

15 “(3) Maintain the minimum standards required by the Act and this chapter.

16 “(4) Pay timely refunds as required by Article 13 of the Act.

17 “(5) Pay all operating expenses due within 30 days.

18 “(6) Maintain a ratio of current assets to current liabilities of 1.25 to 1.00 or greater at the
19 end of the most recent fiscal year when using generally accepted accounting principles, or for an
20 institution participating in Title IV of the federal Higher Education Act of 1965, meet the
21 composite score requirements of the U.S. Department of Education. For the purposes of this
22 section, current assets does not include: intangible assets, including goodwill, going concern
23 value, organization expense, startup costs, long-term prepayment of deferred charges, and non-
24 returnable deposits, or state or federal grant or loan funds that are not the property of the
25 institution but are held for future disbursement for the benefit of students. Unearned tuition shall
26 be accounted for in accordance with general accepted accounting principles.

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1 “(b) At an institution's request, the Bureau may consider the financial resources of a parent
2 company if the parent company, as defined by section 94853 of the Code, meets and maintains all
3 of the following provisions:

4 “(1) consents in writing to be sued in California;

5 “(2) consents in writing to be subject to the jurisdiction of the Bureau with respect to the
6 institution's regulation under the Act and this Chapter;

7 “(3) designates and maintains an agent for service of process, consistent with section
8 74190;

9 “(4) agrees in writing to pay any refund, claim, penalty, or judgment that the institution is
10 obligated to pay; and

11 “(5) files financial reports, maintains financial records, and consents in writing to permit
12 the inspection and copying of financial records to the same extent as is required of the institution.

13 “(c) An institution shall provide to the Bureau its most current financial statements upon
14 request.”

15 9. **California Code of Regulations, title 5, section 71810, subdivision (b)** states, in
16 part:

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

19 . . .

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

25 . . .

26 “(9) A description of the facilities and of the types of equipment and materials that will be
27 used for instruction;

28”

1 10. **California Code of Regulations, title 5, section 74115** states:

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

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

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

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

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

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

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

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

27 “(d) ‘Current’ with respect to financial statements means completed no sooner than 120
28 days prior to the time it is submitted to the Bureau, and covering no less than the most recent

1 complete fiscal year. If more than 8 months will have elapsed between the close of the most
2 recent complete fiscal year and the time it is submitted, the fiscal statements shall also cover no
3 less than five months of that current fiscal year.”

4 FIRST CAUSE FOR DENIAL OF APPLICATION

(Financial Resources and Statements)
5 (Educ. Code § 94887 and Cal. Code Regs., title 5, §§ 71745 and 74115)

6 11. Respondent’s application is subject to denial because the Bureau is unable to
7 independently verify the validity of the Independent Auditor’s Report, provided by Respondent,
8 because it does not contain information identifying the independent auditor who prepared the
9 report. (Educ. Code § 94887 and Cal. Code Regs., title 5, §§ 71745 and 74115). In particular:

10 a. Respondent initially submitted a financial statement authored by one of its
11 employees. Because this did not comply with the requirement that financial statements be
12 prepared by an independent certified public accountant (Cal. Code Regs., title 5, § 74115, subd.
13 (b)(1)), Respondent resubmitted financial information.

14 b. But the Bureau is not able to establish if this second submission (the
15 Independent Auditor’s Report) was prepared by an independent certified public accountant
16 because it does not contain a Certified Public Accountant (“CPA”) license number, makes no
17 reference to a CPA firm, the preparer’s name is illegibly signed, and the report’s signature block
18 does not contain the preparer’s name in printed form.

19 c. This seems peculiar given that the Accountancy Act and relevant regulations
20 require that audit documentation, prepared by a licensed accountant, identify the prepare(s) and
21 reviewer(s). (Cal. Bus. & Prof. Code § 5097, subd. (b) (“Audit documentation shall contain
22 sufficient documentation to enable a reviewer . . . to determine the identity of the persons who
23 performed and reviewed the work.”); and Cal. Code Regs., title 16, § 68.2, subd. (b) (“[A]udit
24 documentation . . . shall include the identity of the preparer(s) and any reviewer(s).”)).

25 SECOND CAUSE FOR DENIAL OF APPLICATION

(Faculty)
26 (Educ. Code § 94887 and Cal. Code Regs., title 5, § 71720, subd. (b)(1))

27 12. Respondent’s application is subject to denial because, based on the information about
28 faculty Respondent offered in its application, the institution has not contracted with duly qualified

1 faculty, and Respondent did not provide evidence of teaching assignments and it is unclear which
2 individuals are meant to teach in each specific program. (Educ. Code § 94887 and Cal. Code
3 Regs., title 5, § 71720, subd. (b)(1)). In particular, faculty members, identified here by initials
4 BW, WWY, SYP, and FXFC, do not meet the criteria required for duly qualified faculty:

5 a. BW's resume reflects the required minimum of three years of experience in the
6 subject area of professional cosmetology, but there is no evidence of academic, experiential, or
7 professional qualifications to teach. There is also no evidence of education or training in current
8 practices through continuing education or other relevant means. In addition, there is no evidence
9 that BW possesses any experience in Massage Therapy even though her license indicates that she
10 has been certified as a massage therapist since 2011.

11 b. WWY's resume does not reflect any applicable experience or education.
12 Although WWY is currently a Certified Massage Therapist, he has only held that certification
13 since April 2015 and does not possess the minimum of three years of experience, education, or
14 training required. In addition, his resume does not indicate any evidence of academic,
15 experiential, or professional qualifications to teach.

16 c. SYP appears to have held a Certified Massage Therapist license since 2010, but
17 the Bureau is unable to determine her qualifications as a duly-qualified instructor because the
18 institution has not provided sufficient information. The only supporting documentation provided
19 by the institution is a copy of SYP's Certified Massage Therapist identification card.

20 d. FXFC has held a cosmetology license since 1999, but the Bureau is unable to
21 determine her qualifications as a duly-qualified instructor because the institution has not provided
22 sufficient information. The only supporting documentation provided by the institution is a copy
23 of FXFC's Cosmetology license.

24
25 THIRD CAUSE FOR DENIAL OF APPLICATION
(Catalog)

26 (Educ. Code §§ 94887 and 94909, subds. (a)(3)(C) and (a)(6); and
27 Cal. Code Regs., title 5, §§ 71735 and 71810, subds. (b)(4) and (b)(9))

28 13. Respondent's application is subject to denial because the proposed catalog
Respondent offered does not include the requisite information. As a result, Respondent has failed

1 to demonstrate that it has the capacity to meet the minimum operating standards, as required by
2 Section 94887. In particular:

3 a. Respondent's proposed catalog indicates "BWCA is comprised of modern
4 facilities devoted to teaching the science and art of beauty and wellness. Equipped with
5 professional equipment commonly used in professional salons and spas across the country, our
6 campus is carefully designed and furnished" The proposed catalog does not provide any
7 further description of the type of equipment and materials at the institution. Nor does the
8 proposed catalog provide any details or evidence to support its statement that it is equipped with
9 "equipment commonly used in professional salons and spas." The information contained in the
10 catalog is so general, the Bureau is unable to determine if the institution has sufficient facilities
11 and the equipment necessary to support the achievement of the educational objectives of its
12 educational programs. (Cal. Code Regs., title 5, §§ 71735 and 71810, subd. (b)(9)).

13 b. The proposed catalog does not contain the requisite language mandated by
14 Education Code section 94909, subdivision (a)(3)(C). (Educ. Code § 94909, subd. (a)(3)(C)).

15 c. The catalog does not contain the language-proficiency text required by Code of
16 Regulations, title 5, section 71810, subdivision (b)(4). (Cal. Code Regs., title 5, § 71810, subd.
17 (b)(4)).

18 d. The catalog's list of requirements for eligibility for licensure from the Board of
19 Barbering and Cosmetology is not compliant because it misrepresents licensure requirements.
20 Specifically, page 17 of the catalog indicates that licensure requirements include graduating from
21 Respondent's institution. This is misleading because it implies a direct relationship or
22 endorsement of the institution by the State of California and/or the California Board of Barbering
23 and Cosmetology, when no such relationship or endorsement exists. Page 17 of the catalog also
24 indicates that exam applicants must have a valid social security number, when the Board of
25 Barbering and Cosmetology clearly indicates, on its website, that it is authorized to accept a tax
26 identification number in lieu of a social security number. (Educ. Code § 94909, subd. (a)(6)).

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PRAYER

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

1. Denying Respondent's Application for Approval to Operate an Institution Non-Accredited in California; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 10/23/16



JOANNE WENZEL
Chief
Bureau for Private Postsecondary Education
Department of Consumer Affairs
State of California
Complainant

SF2016900308