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8  
9 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION**  
**STATE OF CALIFORNIA**  
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12 In the Matter of the Accusation Against:

Case No. 1001841

13 **THE COSMO FACTORY**  
14 **COSMETOLOGY ACADEMY; JAMES**  
15 **FISHER, OWNER**  
16 **131 B Front Street**  
**Santa Cruz, CA 95060**

**ACCUSATION**

17 **Approval to Operate an Institution Non-**  
18 **Accredited, Institution Code Number**  
**98311708**

Respondent.

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20 **PARTIES**

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

24 2. On or about October 13, 2011, the Bureau for Private Postsecondary Education issued  
25 Approval to Operate an Institution Non-Accredited, Institution Code Number 98311708 to The  
26 Cosmo Factory Cosmetology Academy; James Fisher, Owner (Respondent).

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**JURISDICTION**

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

6           4.     Business and Professions Code section 118, subdivision (b) states:

7           “(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a  
8 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by  
9 order of a court of law, or its surrender without the written consent of the board, shall not, during  
10 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its  
11 authority to institute or continue a disciplinary proceeding against the licensee upon any ground  
12 provided by law or to enter an order suspending or revoking the license or otherwise taking  
13 disciplinary action against the licensee on any such ground.”

14          5.     Section 94875 states, in part:

15          “. . . . [The Bureau for Private Postsecondary Education] shall regulate private  
16 postsecondary educational institutions through the powers granted, and duties imposed, by this  
17 chapter. In exercising its powers, and performing its duties, the protection of the public shall be  
18 the bureau's highest priority. If protection of the public is inconsistent with other interests sought  
19 to be promoted, the protection of the public shall be paramount..”

20          6.     Section 94932 states:

21          “The bureau shall determine an institution’s compliance with the requirements of this  
22 chapter. The bureau shall have the power to require reports that institutions shall file with the  
23 bureau in addition to the annual report, to send staff to an institution's sites, and to require  
24 documents and responses from an institution to monitor compliance. When the bureau has reason  
25 to believe that an institution may be out of compliance, it shall conduct an investigation of the

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1 institution. If the bureau determines, after completing a compliance inspection or investigation,  
2 that an institution has violated any applicable law or regulation, the bureau shall take appropriate  
3 action pursuant to this article.”

4 7. California Code of Regulations, title 5, section 74000, subdivision (e) states:

5 “(e)(1) If an institution fails to pay any fee and any penalty fees timely, the Bureau may  
6 initiate proceedings to revoke the institution's approval to operate for failure to pay fees.

7 “(2) Any proceeding to revoke an institution's approval to operate is subject to the  
8 provisions of Chapter 5 of the Administrative Procedures Act. If a hearing is requested, it shall be  
9 limited to the issues of whether any fee or penalty was owed and, if so, whether the fee or penalty  
10 were paid when originally due.

11 “(3) The procedure specified in this subdivision is cumulative to any other right or remedy  
12 the Bureau may invoke against an institution which fails to pay its annual fee or a penalty fee  
13 when originally due. Nothing in this subdivision restricts the Bureau's authority to bring other  
14 administrative or judicial action against an institution that fails to pay its fees when due.

15 “(4) An institution whose approval to operate was revoked because of nonpayment of an  
16 annual fee or penalty fee may seek to obtain approval to operate only by filing an application for  
17 a new approval to operate.”

18 8. California Code of Regulations, title 5, section 75050, subdivision (b) states:

19 “(b) Failure of an applicant or institution issued an approval to operate to abate the violation  
20 or to pay the fine within the time allowed is a ground for denial or discipline of an approval to  
21 operate.”

### 22 **COST RECOVERY**

23 9. Business and Professions Code section 125.3 and Section 94937, subdivision (c)  
24 provide, in part, that the Bureau may request the administrative law judge to direct a licentiate  
25 found to have committed a violation or violations of the licensing act to pay a sum not to exceed  
26 the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate  
27 to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of  
28 investigation and enforcement costs may be included in a stipulated settlement.

**FIRST CAUSE FOR DISCIPLINE**

(Failure to Comply with Orders of Abatement)

10. Respondent subjected its approval to operate to disciplinary action for failing to comply with Stipulated Settlement and Withdrawal of Accusation and Issuance of Citation No. 1920063 (the Citation), which became final and issued on September 5, 2019. (Cal. Code of Regs., title 5, § 75050, subd. (b).) In particular, Respondent failed to comply with the following orders of abatement issued through the Citation:

a. Order 1: Pay the Bureau its cost recovery of \$9,949.99 in six equal monthly payments, with the first payment due 30 days from the issuance of the Citation; each subsequent payment due on or before the first day of the month following the initial payment; and the cost recovery paid in full within six months of issuance of the Citation. Respondent paid the first payment on November 4, 2019, nearly 30 days after the date on which it was due, and subsequently failed to make any further payments.

b. Order 2: Within 30 days of issuance of the Citation, submit an updated school catalog which accurately defines the term “approval,” does not include language which could persuade a student to not report unlawful activity or complain to the Bureau, and is compliant with Section 94909 and California Code of Regulations, title 5, section 71810.

c. Order 3: Within 30 days of issuance of the Citation, provide the Bureau with a list of all programs offered and approved by the Bureau and submit an application to the Bureau to add an unapproved program if Respondent wishes to add a program.

d. Order 4: Within 30 days of issuance of the Citation, submit to the Bureau Respondent’s policy or procedure for calculating Student Tuition Recovery Act (STRF) assessment fees in compliance with California Code of Regulations, title 5, section 76120.

e. Order 5: Within 30 days of issuance of the Citation, submit a refund policy to the Bureau that complies with Section 94919.

f. Order 6: Within 30 days of issuance of the Citation, submit proof to the Bureau that Respondent’s school catalog contains information regarding the policies and procedures related to accepting credit for prior experiential training and that it is in compliance with Section 94909 and California Code of Regulations, title 5, section 71810.

1 g. Order 7: Within 30 days of issuance of the Citation, submit to the Bureau a  
2 policy or procedure for how Respondent will disclose required information to students and the  
3 policy and procedure for how students and the institution will initial and date such information  
4 prior to executing their enrollment agreements.

5 h. Order 8: Within 30 days of the issuance of the Citation, submit proof to the  
6 Bureau that Respondent's school catalog meets the minimum requirements of Section 94909 and  
7 California Code of Regulations, title 5, section 71810.

8 i. Order 9: Within 30 days of the issuance of the Citation, submit proof to the  
9 Bureau that each of its faculty members participates in continuing education.

10 j. Order 10: Within 30 days of issuance of the Citation, submit to the Bureau the  
11 names, addresses, and records of the educational qualifications of each member of its faculty.

12 k. Order 11: Within 30 days of issuance of the Citation, submit proof to the  
13 Bureau that Respondent's website has been updated and is in compliance with Section 94913 and  
14 California Code of Regulations, title 5, section 74117.

15 l. Order 12: Within 30 days of issuance of the Citation, submit to the Bureau a  
16 policy or procedure in compliance with Section 94900.

17 m. Order 13: Within 30 days of issuance of the Citation, submit to the Bureau  
18 Respondent's policy and procedure for maintaining compliance with California Code of  
19 Regulations, title 5, section 71930.

20 n. Order 14: Within 30 days of issuance of the Citation, submit a policy or  
21 procedure to the Bureau of how Respondent will maintain compliance with California Code of  
22 Regulations, title 5, section 74112, subdivision (h) and Section 94929 and 94929.5.

23 o. Order 15: Within 30 days of issuance of the Citation, submit to the Bureau  
24 Respondent's policy or procedure for maintaining compliance with California Code of  
25 Regulations, title 5, section 74100 and Section 94934.

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1 enforcement of this case, pursuant to Business and Professions Code section 125.3 and Education  
2 Code section 94937; and

3 3. Taking such other and further action as deemed necessary and proper.  
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DATED: "3/3/2020"

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

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