

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

In the Matter of the Statement of Issues Against:

**SYLVIA LEE, d.b.a.
CALIFORNIA NURSING ACADEMY**

Applicant for Approval to Operate an Institution
Not Accredited

Application No. 22160

Respondent.

Case No. 997117

OAH No. 2012120224

DECISION


The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Director of Consumer Affairs as the Decision and Order in the above entitled matter.

This Decision shall become effective on _____

JUN 06 2013

IT IS SO ORDERED _____

MAY 02 2013



DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, on March 21, 2013, in Oakland, California.

Complainant Laura Metune, Chief of the Bureau for Private Postsecondary Education, Department of Consumer Affairs, was represented by Deputy Attorney General Aspasia A. Papavassiliou.

Respondent Sylvia Lee represented herself.

The matter was submitted for decision on March 21, 2013.

SUMMARY

Sylvia Lee submitted an application to operate a private postsecondary institution known as California Nursing Academy. Although she was given several opportunities to correct deficiencies noted in the application, Lee failed to do so. Grounds for denial of her application thereby exist.

FACTUAL FINDINGS

1. On March 24, 2010, respondent Sylvia Lee filed with the Bureau for Private Postsecondary Education an application for approval to operate an Institution Not Accredited known as California Nursing Academy. Over the next two years, the bureau five times sent notices advising respondent that her application could not be approved because it did not meet the applicable statutory and regulatory requirements. Each of these "deficiency letters" listed the areas of concern and requested additional information. Five times respondent sent additional information in an effort to clear the deficiencies. Finally, on April 17, 2012, the bureau denied the application.

2. The application showed that respondent was the sole owner and the program director of California Nursing Academy, which was to have a one campus in San Francisco and another in San Mateo. Both campuses were to offer vocational certification programs in four areas: Certified Nursing Assistant, Home Health Assistant, Acute Care Assistant and Senior Nursing Assistant.

3. The statutes and regulations under which the bureau operates are complex and detailed. Among other things, they require that institutions provide students and prospective students with catalogs and enrollment agreements, each of which must contain specific and highly detailed information about the school and its programs, policies, costs and more. As a result, the application itself is complex and detailed. It contains 24 sections, many of which require the applicant to provide information in great depth and some of which require the applicant to attach exemplars, including of the catalog and the enrollment agreement. In reviewing applications, the bureau's licensing analysts use detailed checklists to ensure that all statutory and regulatory requirements are met.

4. Respondent's application was handled by licensing analyst Drew Saeteune. His initial review of the application did not begin until January 3, 2011, more than eight months after the application had been submitted.¹ On his initial review, Saeteune found that respondent's application was deficient in 12 of its 24 sections. On January 13, 2011, he sent respondent a deficiency letter listing the areas of deficiency and requesting additional information.²

¹ The reason for this delay was not explained. However, it is noted that the bureau had been "sunsetting" out of existence on June 30, 2007, and did not resume operations, under the new Private Postsecondary Education Act of 2009, until January 1, 2010. When it reopened, most of its employees were new to the bureau. Saeteune himself was not hired until November 22, 2010.

² The deficiency letter, like all the deficiency letters in this case, was essentially a form letter that for each section of the application deemed deficient listed the issue and a citation to the code or regulations. Because of the somewhat cryptic format of the letter, the bureau's exact concern, and the information it needed to satisfy that concern, was not always clear. But Saeteune attached to the deficiency letters all or portions of the "Catalog

5. Respondent sent in additional information that cleared some of the deficiencies cited on January 13, 2011, but not all of them. On March 7, 2011, Saeteune sent respondent a second deficiency letter. Believing respondent might have some difficulty coming into compliance with the requirements, Saeteune had a long telephone conversation with her in which he specified the information the bureau was looking for, answered her questions, and advised her that there were outside consultants who could help her in completing the application.

6. After respondent submitted additional information in response to the second deficiency letter on July 5, 2011, Saeteune sent a third deficiency letter on August 2, 2011. Respondent submitted additional information on August 10, 2011, after which Saeteune sent a fourth deficiency letter on August 12, 2011. Saeteune had another telephone conversation with respondent about this time. Respondent again submitted additional information on October 6, 2011. Saeteune issued a fifth deficiency letter on December 8, 2011. This letter noted deficiencies still existed in nine of the 24 sections of the application. Respondent submitted a response to this deficiency letter on January 19, 2012.

7. On April 17, 2012, the bureau formally denied respondent's application, citing deficiencies in seven sections of the application (Exemplars of Student Agreements, Instruction and Degrees Offered, Description of Each Educational Program, Financial Resources and Statements, Facilities and Equipment, Catalog, and Self-Monitoring Procedures.) Respondent appealed.

8. Respondent is no longer interested in receiving approval to operate California Nursing Academy. She feels she is a victim of bureaucracy and said she has been driven into homelessness. Respondent came to the hearing primarily "to vent" and she offered no evidence to refute the allegations that her application failed to satisfy statutory and regulatory requirements.

Discussion

9. Despite what appeared to be sincere efforts to do so, respondent ultimately failed to submit a complete application that met the statutory and regulatory requirements. In one of the most serious failures, respondent failed to provide an exemplar of a student enrollment agreement that complied with the requirements. (Application section 9.) In the final deficiency letter, respondent was told she needed to include in the enrollment agreement specific language required by Education Code section 94911. The necessary language was included in the deficiency letter. Despite these explicit instructions, respondent failed to include all the required language in the exemplar she subsequently submitted. In another serious failure, respondent failed, despite being repeatedly advised to do so, to submit

Certification Checklist" and the "Enrollment Agreement Checklist" on which he highlighted in bold text and/or circled the information that still needed to be provided for those two documents.

financial statements that were reviewed by a certified public accountant as required by California Code of Regulations, title 5, section 74115. (Application section 15.) In a third serious failure, respondent failed to submit a catalog that complied with the requirements. (Application section 20.) Despite many requests in the deficiency letters, respondent's final submission still failed to meet requirements in a number of areas.

10. Respondent also failed to provide supporting documentation regarding instruction and certificates offered (Application section 12), supporting documentation regarding each educational program offered (Application section 13), sufficient documentation regarding the institution's facilities and equipment (Application section 17), and sufficient policies and procedures regarding self-monitoring (Application section 23).

LEGAL CONCLUSIONS

1. Education Code section 94887 provides that an approval to operate shall be granted only after an applicant has presented sufficient evidence to the bureau that the applicant has the capacity to satisfy the minimum operating standards. An application that does not satisfy those standards shall be denied. California Code of Regulations, title 5, section 71100, provides that an application that fails to contain all information required by sections 71100-71380 is incomplete.

2. First Cause for Denial (Application Section 9 – Exemplars of Student Agreements) – Cause for denial of respondent's application exists under Education Code section 94887 and California Code of Regulations, title 5, section 71100, in that respondent failed to provide an exemplar of a student enrollment agreement that met the requirements of Education Code section 94911.

3. Second Cause for Denial (Application Section 12 – Instruction and Degrees Offered) – Cause for denial of respondent's application exists under Education Code section 94887 and California Code of Regulations, title 5, section 71100, in that respondent failed to provide the required supporting documentation regarding instruction and degrees or certificates offered.

4. Third Cause for Denial (Application Section 13 – Description of Each Educational Program) – Cause for denial of respondent's application exists under Education Code section 94887 and California Code of Regulations, title 5, section 71100, in that respondent failed to provide the required supporting documentation regarding each educational program offered as required by California Code of Regulations, title 5, section 71220.

5. Fourth Cause for Denial (Application Section 15 – Financial Resources and Statements) – Cause for denial of respondent's application exists under Education Code section 94887 and California Code of Regulations, title 5, section 71100, in that respondent

failed to provide reviewed financial statements as required by California Code of Regulations, title 5, section 74115.

6. Fifth Cause for Denial (Application Section 17 – Facilities and Equipment) – Cause for denial of respondent’s application exists under Education Code section 94887 and California Code of Regulations, title 5, section 71100, in that respondent failed to provide sufficient documentation regarding the institution’s facilities and equipment as required by California Code of Regulations, title 5, section 71260.


7. Sixth Cause for Denial (Application Section 20 – Catalog) – Cause for denial of respondent’s application exists Education Code section 94887 and California Code of Regulations, title 5, section 71100, in that respondent failed to provide a catalog that meets the requirements of Education Code section 94909 and California Code of Regulations, title 5, section 71810.

8. Seventh Cause for Denial (Application Section 23 – Self-Monitoring Procedures) – Cause for denial of respondent’s application exists Education Code section 94887 and California Code of Regulations, title 5, section 71100, in that respondent failed to provide sufficient policies and procedures regarding self-monitoring as required by California Code of Regulations, title 5, section 71760.

ORDER

The application of Sylvia Lee for approval to operate an Institution Not Accredited known as California Nursing Academy is denied.

DATED: April 15, 2013



MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings