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

12 In the Matter of the Accusation and Petition to
Revoke Probation Against:

Case No. 997438

13 **BICH NGOC BEAUTY COLLEGE, INC.,**
14 **DBA DIAMOND BEAUTY COLLEGE,**
15 **TONY DO, SOLE OWNER**
16 **10301 Garvey Avenue, #200**
South El Monte, CA 91733

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

17 **Approval to Operate an Accredited
Institution No. 36348756**

18 Respondent.

19
20 **PARTIES**

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

24 2. On or about January 18, 2005, the former Bureau for Private Postsecondary and
25 Vocational Education¹ (BPPVE) issued a temporary Approval to Operate an Institution Number

26 ¹ The former Bureau for Private Post Secondary and Vocational Education sun-setted on July 1,
27 2007. Between July 1, 2007 and December 31, 2009, there was no regulatory body with
28 oversight of private postsecondary schools. On October 1, 2009, the California Private
Postsecondary Education Act of 2009 ("Act") was signed into law. (Educ. Code §§ 94800 *et*

1 36348765 to Diamond Beauty College with Tony Do as sole owner. On or about January 13,
2 2012, the Full Approval to Operate was issued and expired on June 27, 2016. On or about May 8,
3 2012, the Bureau for Private Postsecondary Education (Bureau) issued Approval to Operate an
4 Accredited Institution Number 36348756 to Bich Ngoc Beauty College, Inc., dba Diamond
5 Beauty College, Tony Do, as sole owner (Respondent). The Approval to Operate an Accredited
6 Institution was in full force and effect at all times relevant to the charges brought herein and will
7 expire on January 31, 2024, unless renewed. Respondent was granted approval by the Bureau to
8 offer cosmetology, barbering, cosmetology instructor training, esthetician, manicuring, and
9 message therapy courses in both English and Vietnamese.

10 3. In a disciplinary action entitled *In the Matter of the Accusation against Respondent,*
11 *Tony Do, Owner*, Case No. 997438, the Bureau for Private Postsecondary Education issued a
12 Decision and Order effective May 20, 2016, in which Respondent's Approval to Operate an
13 Accredited Institution was revoked. However, the revocation was stayed and Respondent's
14 Approval to Operate an Accredited Institution was placed on probation for three (3) years with
15 certain terms and conditions. A copy of that Decision and Order is attached as Exhibit A and is
16 incorporated by reference.

17 **JURISDICTION AND STATUTORY PROVISIONS FOR ACCUSATION**

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

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

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seq.) The Act became operative on January 1, 2010 and established the Bureau in its current
form.

1 6. Section 94932 of the Education Code states:

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

11 7. Section 94937 of the Code states:

12 (a) As a consequence of an investigation, which may incorporate any
13 materials obtained or produced in connection with a compliance inspection, and
14 upon a finding that an institution has committed a violation, the bureau may place an
15 institution on probation or may suspend or revoke an institution's approval to
16 operate for:

17 (1) Obtaining an approval to operate by fraud.

18 (2) A material violation or repeated violations of this chapter or regulations
19 adopted pursuant to this chapter that have resulted in harm to students. For purposes
20 of this paragraph, "material violation" includes, but is not limited to,
21 misrepresentation, fraud in the inducement of a contract, and false or misleading
22 claims or advertising, upon which a student reasonably relied in executing an
23 enrollment agreement and that resulted in harm to the student.

24 (b) The bureau shall adopt regulations, within one year of the enactment of
25 this chapter, governing probation and suspension of an approval to operate.

26 (c) The bureau may seek reimbursement pursuant to Section 125.3 of the
27 Business and Professions Code.

28 (d) An institution shall not be required to pay the cost of investigation to more
than one agency.

 8. California Code of Regulations, title 5, section 75100 states:

 (a) The Bureau may suspend, revoke or place on probation with terms and
conditions an approval to operate.

 (b) "Material violation" as used in section 94937 of the Code includes
committing any act that would be grounds for denial under section 480 of the
Business and Professions Code.

 (c) The proceedings under this section shall be conducted in accordance with
Article 10 (commencing with Section 11445.10) of Chapter 4.5 or Chapter 5
(commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
Government Code, as requested by the institution.

STATUTES AND REGULATIONS

9. Section 94897 states, in pertinent part:

An institution shall not do any of the following:

(j) In any manner make an untrue or misleading change in, or untrue or misleading statement related to, a test score, grade or record of grades, attendance record, record indicating student completion, placement, employment, salaries, or financial information, including any of the following:

(1) A financial report filed with the bureau.

(2) Information or records relating to the student's eligibility for student financial aid at the institution.

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

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

10. Section 94900 states:

(a) An institution shall maintain records of the name, address, e-mail address, and telephone number of each student who is enrolled in an educational program in that institution.

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

(1) The degree or certificate granted and the date on which that degree or certificate was granted.

(2) The courses and units on which the certificate or degree was based.

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

11. Section 94904 states:

(a) Except as provided in subdivision (c), before an ability-to-benefit student may execute an enrollment agreement, the institution shall have the student take an independently administered examination from the list of examinations prescribed by the United States Department of Education pursuant to Section 484(d) of the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1070a et seq.). The student shall not enroll unless the student achieves a score, as specified by the United States Department of Education, demonstrating that the student may benefit from the education and training being offered.

(b) If the United States Department of Education does not have a list of relevant examinations that pertain to the intended occupational training, the bureau may publish its own list of acceptable examinations and required passing scores.

(c) The bureau shall, on or before July 1, 2016, review the list of examinations prescribed by the United States Department of Education. If the bureau determines there is no examination on the list appropriate for ability-to-benefit students with limited English proficiency, the bureau shall approve an alternative examination for these students. When approving the alternative examination, the bureau may consider the Comprehensive Adult Student Assessment System examination.

12. Section 94910 states, in pertinent part:

Except as provided in subdivision (d) of Section 94909 and Section 94910.5, prior to enrollment, an institution shall provide a prospective student with a School Performance Fact Sheet containing, at a minimum, the following information, as it relates to the educational program:

(a) Completion rates, as calculated pursuant to Article 16 (commencing with Section 94928).

(b) Placement rates for each educational program, as calculated pursuant to Article 16 (commencing with Section 94928), if the educational program is designed to lead to, or the institution makes any express or implied claim related to preparing students for, a recognized career, occupation, vocation, job, or job title.

(c) License examination passage rates for programs leading to employment for which passage of a state licensing examination is required, as calculated pursuant to Article 16 (commencing with Section 94928).

(d) Salary or wage information, as calculated pursuant to Article 16 (commencing with Section 94928).

(e) If a program is too new to provide data for any of the categories listed in this subdivision, the institution shall state on its fact sheet: "This program is new. Therefore, the number of students who graduate, the number of students who are placed, or the starting salary you can earn after finishing the educational program are unknown at this time. Information regarding general salary and placement statistics may be available from government sources or from the institution, but is not equivalent to actual performance data."

(f) All of the following:

(1) A description of the manner in which the figures described in subdivisions (a) to (d), inclusive, are calculated or a statement informing the reader of where he or she may obtain a description of the manner in which the figures described in subdivisions (a) to (d), inclusive, are calculated.

(2) A statement informing the reader of where he or she may obtain from the institution a list of the employment positions determined to be within the field for which a student received education and training for the calculation of job placement rates as required by subdivision (b).

(3) A statement informing the reader of where he or she may obtain from the institution a list of the objective sources of information used to substantiate the salary disclosure as required by subdivision (d).

(g) The following statements:

(1) "This fact sheet is filed with the Bureau for Private Postsecondary Education. Regardless of any information you may have relating to completion rates, placement rates, starting salaries, or license exam passage rates, this fact sheet contains the information as calculated pursuant to state law."

(2) "Any questions a student may have regarding this fact sheet that have not been satisfactorily answered by the institution may be directed to the Bureau for Private Postsecondary Education at (address), Sacramento, CA (ZIP Code), (Internet Web site address), (telephone and fax numbers)."

(h) If the institution participates in federal financial aid programs, the most recent three-year cohort default rate reported by the United States Department of

1 Education for the institution and the percentage of enrolled students receiving
2 federal student loans.

3 (i) Data and information disclosed pursuant to subdivisions (a) to (d), inclusive,
4 is not required to include students who satisfy the qualifications specified in
5 subdivision (d) of Section 94909, but an institution shall disclose whether the data,
6 information, or both provided in its fact sheet excludes students pursuant to this
7 subdivision. An institution shall not actively use data specific to the fact sheet in its
8 recruitment materials or other recruitment efforts of students who are not California
9 residents and do not reside in California at the time of their enrollment.”

10 13. Section 94929 states:

11 (a) An institution shall annually report to the bureau, as part of the annual
12 report, and publish in its School Performance Fact Sheet, the completion rate for
13 each program. Except as provided in subdivision (b), the completion rate shall be
14 calculated by dividing the number of on-time graduates by the number of students
15 available for graduation.

16 (b) In lieu of calculating graduation data pursuant to subdivision (a), an
17 institution may report graduation data reported to, and calculated by, the Integrated
18 Postsecondary Education Data System of the United States Department of
19 Education.

20 14. Section 94929.5 states, in pertinent part:

21 (a) An institution shall annually report to the bureau, as part of the annual
22 report, and shall publish in its School Performance Fact Sheet, all of the following:

23 (1) The job placement rate, calculated by dividing the number of graduates
24 employed in the field by the number of graduates available for employment for each
25 program that is either (1) designed, or advertised, to lead to a particular career, or (2)
26 advertised or promoted with any claim regarding job placement.

27 (2) The license examination passage rates for the immediately preceding two
28 years for programs leading to employment for which passage of a state licensing
examination is required, calculated by dividing the number of graduates who pass
the examination by the number of graduates who take the licensing examination the
first time that the examination is available after completion of the educational
program. The institution shall use state agency licensing data to calculate license
examination passage rates. If those data are unavailable, the institution shall
calculate the license examination passage rate in a manner consistent with
regulations adopted by the bureau.

(3) Salary and wage information, consisting of the total number of graduates
employed in the field and the annual wages or salaries of those graduates stated in
increments of five thousand dollars (\$5,000).

(4) If applicable, the most recent official three-year cohort default rate reported
by the United States Department of Education for the institution and the percentage
of enrolled students receiving federal student loans.

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15. Section 94929.7 states, in pertinent part:

(a) The information used to substantiate the rates and information calculated pursuant to Sections 94929 and 94929.5 shall do both of the following:

(1) Be documented and maintained by the institution for five years from the date of the publication of the rates and information.

(2) Be retained in an electronic format and made available to the bureau upon request.

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16. Section 94934 states, in pertinent part:

(a) As part of the compliance program, an institution shall submit an annual report to the bureau, under penalty of perjury, signed by a responsible corporate officer, by July 1 of each year, or another date designated by the bureau, and it shall include the following information for educational programs offered in the reporting period:

(1) The total number of students enrolled by level of degree or for a diploma.

(2) The number of degrees, by level, and diplomas awarded.

(3) The degree levels and diplomas offered.

(4) The School Performance Fact Sheet, as required pursuant to Section 94910.

(5) The school catalog, as required pursuant to Section 94909.

(6) The total charges for each educational program by period of attendance.

(7) A statement indicating whether the institution is, or is not, current in remitting Student Tuition Recovery Fund assessments.

(8) A statement indicating whether an accrediting agency has taken any final disciplinary action against the institution.

(9) Additional information deemed by the bureau to be reasonably required to ascertain compliance with this chapter.

17. California Code of Regulations, title 5, section 71730 states, in pertinent part:

(a) Each institution shall have a chief executive officer, a chief operating officer and chief academic officer. One person may serve more than one function.

...
(e) The chief academic officer shall possess a degree or equivalent acceptable experience at least equal to the highest qualifications required of the institution's faculty. Chief academic officers employed on the date of implementation of these regulations, who do not meet the qualifications for their positions, shall have three years to earn the necessary degrees or experience to qualify them for their position.

18. California Code of Regulations, title 5, section 71770 states, in pertinent part:

“(a) The institution shall establish specific written standards for student admissions for each educational program. These standards shall be related to the particular educational program. An institution shall not admit any student who is obviously unqualified or who does not appear to have a reasonable prospect of

1 completing the program. In addition to any specific standards for an educational
2 program, the admissions standards must specify as applicable that:

3 (1) Each student admitted to an undergraduate degree program, or a diploma
4 program, shall possess a high school diploma or its equivalent, or otherwise
5 successfully take and pass the relevant examination as required by section 94904 of
6 the Code.”

7 19. California Code of Regulations, title 5, section 71920 states, in pertinent part:

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

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

14 (A) Verification of high school completion or equivalency or other
15 documentation establishing the student's ability to do college level work, such as
16 successful completion of an ability-to-benefit test.

17 20. California Code of Regulations, title 5, section 71930 states:

18 (a) An institution shall maintain all records required by the Act and this
19 chapter. The records shall be maintained in this state.

20 (b)

21 (1) In addition to permanently retaining a transcript as required by section
22 94900(b) of the Code, the institution shall maintain for a period of 5 years the
23 pertinent student records described in Section 71920 from the student's date of
24 completion or withdrawal.

25 (2) Notwithstanding (b)(1), the institution shall maintain records relating to
26 federal financial aid programs as provided by federal law.

27 (c) A record is considered current for three years following a student's
28 completion or withdrawal. A record may be stored on microfilm, microfiche,
computer disk, or any other method of record storage only if all of the following
apply:

(1) The record may be stored without loss of information or legibility for the
period within which the record is required to be maintained by the Act;

(2) For a record that is current, the institution maintains functioning devices
that can immediately reproduce exact, legible printed copies of stored records. The
devices shall be maintained in reasonably close proximity to the stored records at the
institution's primary administrative location in California. For a record that is no
longer current, the institution shall be able to reproduce exact, legible printed copies
within two (2) business days.

(3) The institution has personnel scheduled to be present at all times during
normal business hours who know how to operate the devices and can explain the
operation of the devices to any person authorized by the Act to inspect and copy
records; and

(4) Any person authorized by the Act or this chapter to inspect and copy
records shall be given immediate access to the document reproduction devices for

1 the purpose of inspecting and copying stored records and shall, upon request,
2 reimburse the institution for the reasonable cost of using the institution's equipment
and material to make copies at a rate not to exceed ten cents (\$ 0.10) per page.

3 (d) The institution shall maintain a second set of all academic and financial
4 records required by the Act and this chapter at a different location unless the original
5 records, including records stored pursuant to subdivision (b) of this section, are
6 maintained in a manner secure from damage or loss. An acceptable manner of
7 storage under this subsection would include fire resistant cabinets.

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

12 (f) If an institution closes, the institution and its owners are jointly and
13 severally responsible to arrange at their expense for the storage and safekeeping in
14 California of all records required to be maintained by the Act and this chapter for as
15 long as; those records must be maintained. The repository of the records shall make
16 these records immediately available for inspection and copying, without charge
17 except as allowed under subdivision (c)(4) of this section, during normal business
18 hours by any entity authorized by law to inspect and copy records.

19 21. California Code of Regulations, title 5, section 76140 states:

20 (a) A qualifying institution shall collect and maintain records of student
21 information to substantiate the data reported on the STRF² Assessment Reporting
22 Form and records of the students' eligibility under the Fund. Such records shall
23 include the following for each student:

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

(b) The qualifying institution shall maintain the data required under this section
in an electronic format that is readily available and open to inspection by the Bureau
upon request. The institution shall make the records immediately available to a
Bureau representative conducting a site inspection or, upon written request, shall

² The Student Tuition Recovery Fund (STRF) is a fund administered by the Bureau that
relieves or mitigates economic loss suffered by a student while enrolled in a qualifying institution
– generally one that is approved or registered by the Bureau. At the time of his or her enrollment,
the student must have been a California resident or enrolled in a California residency program,
prepaid tuition, and suffered economic loss.

1 provide a copy within 14 calendar days of the request. All records shall be provided
2 to the Bureau in an intelligible and orderly manner and in an electronic format.

3 **COST RECOVERY**

4 22. Code section 94937 states, in pertinent part:

5 (c) The bureau may seek reimbursement pursuant to Section 125.3 of the Business
6 and Professions Code.

7 (d) An institution shall not be required to pay the cost of investigation to more than
8 one agency.

9 23. Section 125.3 of the Business and Professions Code provides, in pertinent part, that
10 the Board may request the administrative law judge to direct a licentiate found to have committed
11 a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
12 investigation and enforcement of the case, with failure of the licentiate to comply subjecting the
13 license to not being renewed or reinstated. If a case settles, recovery of investigation and
14 enforcement costs may be included in a stipulated settlement.

15 **FACTUAL BACKGROUND**

16 24. In March 2018, Tony Do, Respondent's original owner, died. Since Tony Do's death,
17 Selenas Do (S. Do), Tony Do's daughter, and Cindy Cho (Cho), the Director of the school, have
18 been operating Diamond Beauty College. S. Do and Cho, on behalf of Respondent, did not notify
19 the Bureau of the owner's death until April 9, 2018. On August 13, 2018, the Bureau received an
20 Application for Change of Business Organization/Control/Ownership for Respondent, which
21 included a document filed in Superior Court of California, County of Los Angeles, dated June 28,
22 2018, indicating S. Do was appointed as the administrator of the decedent's estate.

23 25. On April 12, 2019, the Bureau and the Board of Barbering and Cosmetology (BBC)
24 conducted a joint compliance inspection and investigation of Respondent's facility, located at
25 10301 Garvey Avenue, #200, 204, 300, 302, South El Monte, California 91733 (the inspection).
26 The inspection revealed that all official school documents, including Proof of Training
27 documents, which were generated after Tony Do's death, contained false signatures of Tony Do,
28

1 as recent as two days prior to the inspection. During the inspection, the investigators spoke with
2 students and administrators and collected records. As a result of the inspection, the Bureau
3 Investigator determined that there were numerous violations of the Education Code.

4 26. After the inspection, the BBC notified the Bureau and Respondent that, due to the
5 false signatures of Tony Do on Proof of Training documents, BBC will not process any incoming
6 Proof of Trainings from Respondent and that students may be denied licensure. As such, the
7 Respondent's actions are causing student harm as its students will not be able to sit for their State
8 Board exam due to the falsification of records.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Making Untrue or Misleading Statements)**

11 27. Respondent is subject to disciplinary action under Code section 94932 and California
12 Code of Regulations, title 5, section 75100, and section 94897, subdivision (j), in that Respondent
13 made untrue or misleading statements related to test scores. Specifically, Respondent provided to
14 prospective students ATB examination booklets that contained marks indicating the correct
15 answers for the students to successfully pass. Providing the answers to the test questions created
16 false entrance examination scores, resulting in Respondent benefiting from the tuition payments
17 from the enrolled students. Complainant refers to, and by this reference incorporates, the
18 allegations set forth in paragraphs 24 through 26, above, as though set forth fully herein.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Willfully Falsifying Records)**

21 28. Respondent is subject to disciplinary action under Code section 94897, subdivision
22 (k), in that Respondent willfully falsified records, as follows:

23 a. Respondent willfully falsified ATB test scores by providing prospective students
24 ATB examination booklets that contained marks indicating the correct answers for the students to
25 successfully pass.

26 b. In August 2018, S. Do submitted to the Bureau on behalf of Respondent an
27 Application for Change of Business Organization/Control/Ownership with a false signature of
28 Tony Do, who died in March 2018.

1 c. Respondent submitted Proof of Training documents for its students to the BBC, dated
2 June 18, 2018, and January 16, 2019, which contained under the penalty of perjury false
3 signatures of Tony Do, who died in March 2018.

4 Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs
5 24 to 27, above, as though set forth fully herein.

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Violation of Enrollment Requirements)**

8 29. Respondent is subject to disciplinary action under Code section 94932 and California
9 Code of Regulations, title 5, section 75100, and Code section 94904, subdivision (a), by enrolling
10 ability-to-benefit students who had not passed a properly administered ATB examination.

11 Respondent provided to prospective students ATB examination booklets that contained marks
12 indicating the correct answer for the students to successfully pass. Complainant refers to, and by
13 this reference incorporates, the allegations set forth in paragraphs 24 through 26, above, as though
14 set forth fully herein.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Violation of Student Records Requirements)**

17 30. Respondent is subject to disciplinary action under Code section 94932 and California
18 Code of Regulations, title 5, section 75100, and Code section 94900, subdivision (a)(2), in that
19 Respondent failed to accurately document students' training and clocked hours. The random
20 selection of time cards reviewed during the inspection revealed inaccurate or missing time periods
21 of instruction and time cards documenting training periods for subjects that were not covered by
22 the instructors' lectures. Complainant refers to, and by this reference incorporates, the allegations
23 set forth in paragraphs 24 through 26, above, as though set forth fully herein.

24 **FIFTH CAUSE FOR DISCIPLINE**

25 **(Violation of School Performance Fact Sheet Requirements)**

26 31. Respondent is subject to disciplinary action under Code section 94932 and California
27 Code of Regulations, title 5, section 75100, and Code section 94910, subdivisions (a) through (d),
28 in that Respondent failed provide to prospective students with a School Performance Fact Sheet

1 containing accurate completion rates, placement rates, license examination passage rates, and
2 salary or wage information, as they relate to the educational programs. The information in
3 Respondent's 2015/2016 School Performance Fact Sheet is inconsistent with its 2016 Annual
4 Report.

5 32. For example, the 2016 Annual Report states that the 150% completion rate for the
6 Cosmetology 1600 Hours program is 91%, but the calculation is not reflected in the 2015/2016
7 Student Performance Fact Sheet. The 2016 Annual Report states that the placement rate
8 percentage for the Esthetician 600 hours program is 72%, but the 2015/2016 School Performance
9 Fact Sheet documents a placement rate for 2015 as 76% and 69% for 2016. The 2016 Annual
10 Report states there were 13 graduates in the Cosmetology 1600 Hours program, but the
11 2016/2016 Student Performance Fact Sheet states that the number of graduates taking the State
12 Exam in that program was 37 in 2015 and 33 for 2016. The 2016 Annual Report reports one (1)
13 student earning the annual salary in the \$30,000 to \$35,000 range. However, the 2015/2016
14 Student Performance Fact Sheet does not include any students in that wage range. Complainant
15 refers to, and by this reference incorporates, the allegations set forth in paragraphs 24 through 26,
16 above, as though set forth fully herein.

17 **SIXTH CAUSE FOR DISCIPLINE**

18 **(Violation of Annual Report Requirements)**

19 33. Respondent is subject to disciplinary action under Code section 94932 and California
20 Code of Regulations, title 5, section 75100, and Code section 94934, in that the information
21 reported in the Respondent's 2016 Annual Report is inconsistent with its 2015/2016 Student
22 Performance Fact Sheet. Complainant refers to, and by this reference incorporates, the allegations
23 set forth in paragraphs 24 through 26, and 32, above, as though set forth fully herein.

24 **SEVENTH CAUSE FOR DISCIPLINE**

25 **(Violation of Performance Data Requirements)**

26 34. Respondent is subject to disciplinary action under Code section 94932 and California
27 Code of Regulations, title 5, section 75100, and Code section 94929.7, subdivision (a)(1) and (2),
28 in that Respondent failed to provide the documentation of its performance data, which is used to

1 substantiate rates reported in its 2016 Annual Report and 2015/2016 Student Performance Fact
2 Sheet, upon request during the inspection, as required. Complainant refers to, and by this
3 reference incorporates, the allegations set forth in paragraphs 24 through 26, above, as though set
4 forth fully herein.

5 **EIGHTH CAUSE FOR DISCIPLINE**

6 **(Violation of STRF Data Requirements)**

7 35. Respondent is subject to disciplinary action under Code section 94932 and California
8 Code of Regulations, title 5, sections 75100 and 76140, subdivisions (a) and (b), in that
9 Respondent failed to provide records of student information to substantiate the data reported on
10 the STRF Assessment Reporting Form and records of the students' eligibility under the Fund
11 upon request during the inspection, as required. Complainant refers to, and by this reference
12 incorporates, the allegations set forth in paragraphs 24 through 26, above, as though set forth fully
13 herein.

14 **NINTH CAUSE FOR DISCIPLINE**

15 **(Violation of Administration Requirements)**

16 36. Respondent is subject to disciplinary action under Code section 94932 and California
17 Code of Regulations, title 5, sections 75100 and 71730, subdivision (a) and (e), in that from at
18 least March 2018 through April 2019, Respondent did not employ a Chief Academic Officer.
19 Tony Do held this title prior to his death. This title was not filled after his death and remained
20 unfilled as of April 2019. As such, Respondent did not have a Chief Academic Officer employed
21 where the degree or equivalent acceptable experience can be evaluated. Complainant refers to,
22 and by this reference incorporates, the allegations set forth in paragraphs 24 through 26, above, as
23 though set forth fully herein.

24 **TENTH CAUSE FOR DISCIPLINE**

25 **(Violation of Admissions Standards)**

26 37. Respondent is subject to disciplinary action under Code section 94932 and California
27 Code of Regulations, title 5, sections 75100 and 71770, subdivision (a)(1), in that Respondent
28 admitted unqualified students. Respondent provided to prospective students ATB examination

1 booklets that contained marks indicating the correct answer for the students to successfully pass.
2 Respondent circumvented the admission process by providing the answers to the ATB exam to
3 prospective students resulting in negligent enrollments, as the students did not possess a high
4 school diploma or equivalent. Complainant refers to, and by this reference incorporates, the
5 allegations set forth in paragraphs 24 through 26, above, as though set forth fully herein.

6 **ELEVENTH CAUSE FOR DISCIPLINE**

7 **(Violation of Verification Requirements)**

8 38. Respondent is subject to disciplinary action under Code section 94932 and California
9 Code of Regulations, title 5, section 75100, and section 71920, subdivision (b)(1)(A), in that
10 Respondent failed to maintain verification records of successful completion of an ability-to-
11 benefit test for the prospective students who took the ATB exam. Respondent circumvented the
12 admission process by providing the answers to the (ATB) exam to prospective students resulting
13 in negligent enrollments as the students did not possess a high school diploma or equivalent.
14 Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs
15 24 through 26, above, as though set forth fully herein.

16 **TWELFTH CAUSE FOR DISCIPLINE**

17 **(Violation of Recordkeeping Requirements)**

18 39. Respondent is subject to disciplinary action under Code section 94932 and California
19 Code of Regulations, title 5, section 75100, and section 71930, subdivisions (a)(3) and (e), in that
20 Respondent's staff who were present during the inspection could not produce the STRF backup
21 data upon request. Respondent's administrative staff stated they do not have access to the data
22 base operating system used by Respondent. Complainant refers to, and by this reference
23 incorporates, the allegations set forth in paragraphs 24 through 26, above, as though set forth fully
24 herein.

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1 refers to, and by this reference incorporates, the allegations set forth in paragraphs 24 through 26,
2 above, as though set forth fully herein.

3 **FOURTH CAUSE TO REVOKE PROBATION**

4 **(Failure to Notify Prospective Students of its Probation)**

5 47. At all times after the effective date of Respondent's probation, Condition 5 stated:

6 5. NOTIFICATION TO PROSPECTIVE STUDENTS -- When currently
7 soliciting or enrolling (or re-enrolling) a student for any program, respondent
8 shall provide notification of this action to each current or prospective student
9 prior to accepting their enrollment, and to those students who were enrolled
10 at the time of the conduct that is the subject of this action as directed by the
Bureau. This notification shall include a copy of the Accusation and
Stipulated Settlement.

11 48. Respondent's probation is subject to revocation because it failed to comply with
12 Probation Condition 5, referenced above. Specifically, Respondent failed to advise each
13 prospective student prior to enrolling into Respondent of its current probation. Complainant refers
14 to, and by this reference incorporates, the allegations set forth in paragraphs 24 through 26,
15 above, as though set forth fully herein.

16 **FIFTH CAUSE TO REVOKE PROBATION**

17 **(Failure to Provide Approved Instruction)**

18 49. At all times after the effective date of Respondent's probation, Condition 7 stated:

19 7. INSTRUCTION REQUIREMENTS AND LIMITATIONS -- During
20 probation, Respondent shall provide approved instruction in the State of
21 California. If respondent is not providing instruction, the period of probation
shall be tolled during that time.

22 50. Respondent's probation is subject to revocation because it failed to comply with
23 Probation Condition 7, referenced above. Specifically, Respondent failed to provide approved
24 instruction for students currently enrolled at Respondent. During the inspection, the BBC
25 inspector observed three nonapproved textbooks (Hair 900, Facial 900 and Nails 900) in use by
26 students during the cosmetology, esthetician and manicurist courses. The BPC requires all
27 textbooks to be approved by the National Interstate Council of State Boards of Cosmetology
28

1 (NIC), pursuant to California Code of Regulations, title 16, section 961, subdivision (b)(1). The
2 Hair 900, Facial 900 and Nails 900 textbooks are not approved by NIC.

3 **SIXTH CAUSE TO REVOKE PROBATION**

4 **(Failure to Provide ABT Exam Scores)**

5 51. At all times after the effective date of Respondent's probation, Condition 16 stated:

6 16. ABILITY TO BENEFIT TESTING -- Throughout the probationary
7 period, Respondent shall provide to the Bureau the following documents and
8 information related to students enrolled through Ability to Benefit ("ATB")
9 testing:

- 10 • A list of all current students who were enrolled by using the ATB
11 exam;
- 12 • Quarterly progress updates of any students enrolled using the ATB
13 exam;
- 14 • Copies of any contracts between Respondent and ATB exam proctors
15 and/or administrators of any kind;
- 16 • Copies of ATB exam scores and examination timeframe printouts for
17 all current students who were enrolled by using the ATB exam.

18 52. Respondent's probation is subject to revocation because it failed to comply with
19 Probation Condition 16, referenced above. Specifically, Respondent failed to provide accurate
20 ATB examination results for students who enrolled by using the ATB exam to the Bureau.
21 Respondent gave students taking the ATB exam an exam booklet with the correct answers
22 marked, resulting in achieving a passing score. Respondent exceeded the California average with
23 passing rates of 98.3% and a failure rate of 1.7% based on only 557 students. Respondent had
24 2,771 less students with a higher pass rate by 4.4 % and a lower fail rate of 4.4%. The passing
25 rate is exceeding high for non-English speaking students who completed an English only based
26 examination. During the onsite investigation, M.T., the admissions representative for Diamond
27 Beauty College, provided the inspectors with an ATB examination that she translated into
28 Vietnamese. She indicated it was to help the non-English speaking Vietnamese students with their
testing. The recorded passing rates of 98.3% and a failure rate of 1.7% are not indicative of
students needing a translated version of the ATB examination.

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PRAAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation and Petition to Revoke Probation, and that following the hearing, the Director of the Department of Consumer Affairs issue a decision:

1. Revoking the probation that was granted by the Bureau for Private Postsecondary Education in Case No. 997438 and imposing the disciplinary order that was stayed thereby revoking Approval to Operate an Accredited Institution No. 36348756 issued to Bich Ngoc Beauty College, Inc., dba Diamond Beauty College;

2. Revoking or suspending Approval to Operate an Accredited Institution No. 36348756, issued to Bich Ngoc Beauty College, Inc., dba Diamond Beauty College;

3. Ordering Bich Ngoc Beauty College, Inc., dba Diamond Beauty College 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

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

DATED: 5/16/19



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

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Exhibit A

Decision and Order

Bureau for Private Postsecondary Education Case No. 997438