

Agenda Item #6.A.1.



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS

2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833-2945

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COVER SHEET

SUBJECT: Institute of Medical Education, Oakland, Vocational Nursing Program – Consideration of Revocation of Program Approval (Director: VACANT, Oakland, Alameda County, Private)

Institute of Medical Education, San Jose, Vocational Nursing Program – Consideration of Revocation of Program Approval (Director: VACANT, San Jose, Santa Clara County, Private)

Recommendations:

1. Issue a Notice of Correction requiring Institute of Medical Education, Oakland and San Jose, Vocational Nursing Programs, to, within seven (7) days of the notice, present written evidence that it has approval to operate from the Bureau for Private Postsecondary Education. (See Attachments N and O)
2. In the event the Board does not receive a response to the above notices, delegate to the Acting Executive Officer authority to revoke approval of one or both of the vocational nursing programs offered by the Institute of Medical Education in Oakland and San Jose, such revocation to be effective immediately.
3. In the event the delegated authority noted above is exercised, delegate the authority to the Acting Executive Officer to remove the appropriate vocational nursing program(s) from the *List of Approved Vocational Nursing Programs*.

Rationale: On February 22, 2012, the Board suspended approval of the Institute of Medical Education Vocational Nursing Programs, one in San Jose and one in Oakland. Those suspensions resulted from action taken by the Bureau for Private Postsecondary Education by which the institutions were ordered to cease instruction for all programs, cease enrollment of new students, and cease the collection of tuition or fees. The Board issued notices to each respective program requiring a correction that each must obtain legal authority to operate to continue its approval by the Board. Neither has done so.

On May 28, 2015, the Board was notified that IME had tried to surrender its Bureau – issued approval to operate on October 1, 2012, indicating it had no intention to continue to operate. Further, effective January 2, 2014, IME's Bureau – issued approval to operate was formally revoked.

Given the foregoing, if the IME programs cannot demonstrate the lawful ability to operate in California, the Board's approval of each program should be revoked as soon as possible.

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DATE: August 5, 2015

TO: Board Members

FROM: 
Cheryl C. Anderson, M.S., R.N.
Supervising Nursing Education Consultant

SUBJECT: Institute of Medical Education, Oakland, Vocational Nursing Program –
Consideration of Revocation of Program Approval (Director: VACANT, Oakland,
Alameda County, Private)

Institute of Medical Education, San Jose, Vocational Nursing Program –
Consideration of Revocation of Program Approval (Director: VACANT, San Jose,
Santa Clara County, Private)

Effective February 16, 2012, the Bureau for Private Postsecondary Education (Bureau) of the Department of Consumer Affairs ordered the Institute of Medical Education (IME) to cease enrollment of new students, cease instruction, and cease collection of tuition or fees. The Bureau took such action pursuant to Education Code section 94937 and title 5, California Code of Regulations section 75150. The Bureau's order was issued as an emergency and was temporary pending final action taken by the Bureau. The order applied to both the San Jose and Oakland campuses. (See Attachments C and D) As a result of the Bureau's order, IME was prohibited from instructing students in its vocational nursing (VN) programs. Further, IME was prohibited from enrolling new VN classes into those programs.

On February 17, 2012, the Board issued a Notice of Required Correction to the IME requesting it provide evidence of IME's authority to instruct students in the vocational nursing programs at the San Jose and Oakland campuses. (See Attachments E and F) IME failed to provide evidence of the approval from the Bureau to instruct existing vocational nursing students or to enroll new students.

In response to the Bureau's action, the Board took the following actions on February 22, 2012.

1. Suspend the Institute of Medical Education's approvals at the San Jose and Oakland campuses during the period of time the programs lack the ability to instruct students, pursuant to the Bureau's Order. In the event the Bureau's Order is set aside or modified, the suspension will be automatically lifted and the approval reinstated or modified consistent with any revised Order.

2. Any prior permission issued by the Board authorizing the Institute of Medical Education to start a new **[VN]** class at either location is expressly withdrawn. Should the Order prohibiting the Institute of Medical Education from enrolling new students be set aside or modified, the Institute of Medical Education shall submit a new request for each class to the Board.

(See Attachment G)

On March 16, 2012, the Board forwarded correspondence, per certified and regular mail, informing IME of the approval status of the Oakland and San Jose vocational nursing programs. (See Attachments H and I)

Since early 2012, the above actions have been posted on the Board's website.

On May 28, 2015, the Board received the following additional information from the Bureau.

- On October 1, 2012, IME tried to surrender to the Bureau its approval to operate the IME, San Jose, and IME, Oakland campuses.
- On September 20, 2013, the IME's Bureau – issued approval to operate was formally revoked by disciplinary action [**Bureau Case No. 997952; OAH No. 2012030566**]. Additionally, IME was ordered to:
 1. Provide official IME transcripts to all students who completed a course at IME.
 2. Pay restitution to 112 students.
 3. Pay to the Bureau investigative costs in the amount of \$39,974.38, and attorneys' fees in the amount of \$99, 292.50.

The Bureau's orders became effective January 2, 2014. Further, IME's owner, current or former IME agents, and administrative personnel were deemed ineligible to apply for approval to operate a private postsecondary educational institution or be a member of the board of directors or an officer in a postsecondary educational institution in California until such time as IME complied with the terms and conditions set forth in the Order. (See Attachments J and K)

On July 9, 2015, the Board sent a letter to IME to determine if it had complied with the Order. The letters were sent per certified and regular mail to IME program directors and president. A response was requested no later than Friday, July 17, 2015. (See Attachments L and M)

The Board's letters sent to IME program directors and president per certified mail were unclaimed and returned by the U.S. Postal Service on July 24, 2015. A stamp was affixed to each letter stating, "Unable to Forward."

After issuing a Notice of Change in Program Status, specifying identified deficiencies and required corrections, the Board is authorized to revoke a program's approval and remove the programs from the *List of Approved Programs*.

Recommendations:

1. Issue a Notice of Correction requiring Institute of Medical Education, Oakland and San Jose, Vocational Nursing Programs, to, within seven (7) days of the notice, present written evidence that it has approval to operate from the Bureau for Private Postsecondary Education. (See Attachments N and O)
2. In the event the Board does not receive a response to the above notices, delegate to the Acting Executive Officer authority to revoke approval of one or both of the vocational nursing programs offered by the Institute of Medical Education in Oakland and San Jose, such revocation to be effective immediately.
3. In the event the delegated authority noted above is exercised, delegate the authority to the Acting Executive Officer to remove the appropriate vocational nursing program(s) from the *List of Approved Vocational Nursing Programs*.

Rationale: On February 22, 2012, the Board suspended approval of the Institute of Medical Education Vocational Nursing Programs, one in San Jose and one in Oakland. Those suspensions resulted from action taken by the Bureau for Private Postsecondary Education by which the institutions were ordered to cease instruction for all programs, cease enrollment of new students, and cease the collection of tuition or fees. The Board issued notices to each respective program requiring a correction that each must obtain legal authority to operate to continue its approval by the Board. Neither has done so.

On May 28, 2015, the Board was notified that IME had tried to surrender its Bureau – issued approval to operate on October 1, 2012, indicating it had no intention to continue to operate. Further, effective January 2, 2014, IME's Bureau – issued approval to operate was formally revoked.

Given the foregoing, if the IME programs cannot demonstrate the lawful ability to operate in California, the Board's approval of each program should be revoked as soon as possible.

- Attachment A: IME San Jose VN Program – History of Prior Board Actions.
- Attachment B: IME Oakland VN Program – History of Prior Board Actions.
- Attachment C: Amended Notice of Emergency Decision Dated February 14, 2012.
- Attachment D: Decision after Opportunity to Be Heard, Dated February 15, 2012.
- Attachment E: Notice of Required Correction Issued to IME Oakland, Dated February 17, 2012.
- Attachment F: Notice of Required Correction Issued to IME San Jose, Dated February 17, 2012.
- Attachment G: Board Report Dated February 17, 2012.
- Attachment H: Board Correspondence to IME Oakland, Dated March 16, 2012.
- Attachment I: Board Correspondence to IME San Jose, Dated March 16, 2012.
- Attachment J: First Amended Accusation, Dated June 7, 2012.
- Attachment K: Decision and Order, Case No. 997952, Dated September 20, 2013.
- Attachment L: Board Correspondence to IME Oakland, Dated July 9, 2015.
- Attachment M: Board Correspondence to IME San Jose, Dated July 9, 2015.
- Attachment N: Draft Notice of Correction, IME Oakland.
- Attachment O: Draft Notice of Correction, IME San Jose.

Agenda Item #6.A.1., Attachment A

Institute of Medical Education, San Jose Vocational Nursing Program

History of Prior Board Actions

- On May 12, 2006, the Board approved the Institute of Medical Education to begin a vocational nursing program with an initial class of 60 students on May 22, 2006 only, with a completion date of April 6, 2007.

Subsequently, the Board learned that the school had admitted 85 students without prior Board approval.

- **On June 18, 2006, a new program director was approved.**
- On June 29, 2006, a Board representative made an unannounced visit to the program as a result of numerous student complaints. Ten (10) violations were identified. On August 22, 2006, the school submitted a plan to correct the identified violations. The submitted plan of correction was approved.
- On September 8, 2006, the Board considered a report relative to the program's violations. A full survey was scheduled for October 2006. A report relative to the survey visit and status of corrections was scheduled for presentation at the February 2, 2007 Board meeting.
- On January 11, 2007, the Board approved full accreditation for the Institute of Medical Education, San Jose, Vocational Nursing Program for the period February 2, 2007, through February 1, 2011, and issued a certificate accordingly. Additionally, the Board approved the program's request to admit 60 students on February 5, 2007, with a projected completion date of April 11, 2008, to replace students graduating April 6, 2007, only. Additionally, the Board directed that the program submit a follow-up report by January 4, 2008 relative to program compliance with its grading and remediation policies and student pass rates
- On June 5, 2007, the Board approved the program's request to commence a 14-month evening class on June 25, 2007 only, graduating August 2008, with a class of 60 students.
- The program reported that commencement of the June 25, 2007 evening class was delayed to August 15, 2007.
- On September 20, 2007, the Board approved the program's request to commence a full-time day class of 60 students commencing October 29, 2007 and graduating November 21, 2008.
- On December 18, 2007, the Board received the program's follow-up report relative to compliance with its Remediation Policy and pass rates on the NCLEX/PN®. Information contained therein confirmed that commencement of the June 25, 2007 evening class was delayed to August 15, 2007.

- On March 19, 2008, the Board approved the program's request to admit a full-time evening class of 60 students commencing March 24, 2008 only, graduating May 13, 2009. Additionally, the Board required the program's submission of a follow-up report by June 1, 2008, relative to the effectiveness of its Remediation Policy and program pass rates on the licensure examination.
- On March 24, 2008, correspondence was sent to the director stating the Board's concerns relative to the status of the program. A follow-up report and analysis were requested by June 1, 2008 relative to the effectiveness of the program's Remediation Policy and the program's ability to prepare students to pass the National Council Licensure Examination for Practical/Vocational Nurses (NCLEX/PN®) as evidenced by quarterly and annual pass percentage rates.
- On May 28, 2008, the Executive Officer approved the program's request to admit a full-time day class of 60 students commencing June 16, 2008 only, graduating July 3, 2009, to **replace** students graduating April 12, 2008.
- On July 22, 2008, the Bureau received electronic correspondence from the Director confirming the submission of her resignation effective July 31, 2008.
- **On September 15, 2008, a new program director was approved.**
- On September 16, 2008, the program was notified that the program's pass rates on the NCLEX/PN® had fallen below 10 percentage points of the state average pass rate for the **past four (4) quarters**. The director was requested to submit a written plan for improving the program's pass rates by October 16, 2008.
- On September 17, 2008, the Bureau received electronic correspondence advising that the Assistant Director had resigned.
- On October 6, 2008, the Bureau received the program's plan for improving its pass rates on the NCLEX/PN®.
- On October 8, 2008, the Executive Officer approved the program's request to admit an evening class of 60 students commencing November 3, 2008 only, graduating December 18, 2009, to **replace** students graduating September 25, 2008.
- **On October 29, 2008, the assigned consultant met with the new program director relative to the program's plan for improving pass rates and other critical areas impacting student achievement.** The director advised that commencement of the November 3, 2008 evening class had been delayed to November 10, 2008.
- On October 30, 2008, the Executive Officer approved the program's request to admit a full-time evening class of 60 students commencing November 3, 2008 only, graduating December 18, 2009, to **replace** students graduating September 5, 2008. The program was required to submit a follow-up report relative to student achievement, grading and remediation policies, and student pass rates on the licensure examination February 1, 2009.

- On January 5, 2009, the program was issued a Notice of Violation for its use of an instructor that had not been approved by the Board. The director was requested to submit a plan of correction that would prevent reoccurrence of the violation.
- On January 15, 2009, the program was notified that the program's pass rates on the NCLEX/PN® had fallen below 10 percentage points of the state average pass rate for the **past five (5) quarters**. The director was requested to submit a report relative to actions taken to correct previously identified program deficits, the effectiveness of the previously submitted plan, including any and all modifications made as a result of an administrative analysis.
- On January 23, 2009, the program submitted its plan of correction for the identified violation. Additionally, the program submitted a report relative to actions taken to address the low program pass rates on the NCLEX/PN®.
- On February 17, 2009, the assigned consultant met with the program director and school director relative to the program analysis, plans to improve pass rates on the NCLEX/PN®, and plans to address program deficits and other critical areas impacting student achievement.
- On February 27, 2009, the Executive Officer approve the Institute of Medical Education, San Jose, Vocational Nursing Program's request to admit a full-time day class of sixty (60) students and six (6) alternates commencing March 2, 2009 only, with a projected date of graduation of May 21, 2010, to **replace** students who completed course requirements on December 19, 2008. Additionally, the program was required to submit a follow-up report by March 31, 2009. The report should include, but not be limited to, a full analysis of the program, identification of factors contributing to the program's low pass rates on the NCLEX/PN®, and specific actions the program will take to improve its pass rates.
- On March 3, 2009, the Executive Officer reconsidered the February 27, 2009 decision. The Executive Officer **approved** the Institute of Medical Education, San Jose, Vocational Nursing Program's request to admit a full-time day class of sixty (60) students and six (6) alternates commencing March 2, 2009 only, with a projected date of graduation of May 21, 2010, to **replace** students who completed course requirements on December 19, 2008. Additionally, the program was required to submit a follow-up report by March 31, 2009. The report should include, but not be limited to, a full analysis of the program, identification of factors contributing to the program's low pass rates on the NCLEX/PN®, and specific actions the program will take to improve its pass rates. Correspondence was sent to the director advising of the decisions.
- On March 18, 2009, the program submitted the required follow-up report.
- On March 18, 2009, the program was notified that the program's pass rates on the NCLEX/PN® had fallen below 10 percentage points of the state average pass rate for the **past six (6) quarters**. The director was requested to submit documentation verifying that elements of the program's plan of correction are being carried out and the effects of the employed interventions.

- On April 14, 2009, the program submitted a revised plan of action to improve its pass rate on the NCLEX/PN®.
- On April 29, 2009, the assigned consultant met with the program director and school director relative to the program's plans addressing program deficits and other critical areas impacting student achievement.
- On May 28, 2009, the Executive Officer approved the program's request to admit a full-time evening class of sixty (60) students and six (6) alternates commencing June 1, 2009 only, with a projected date of graduation of September 3, 2010, to **replace** students who completed course requirements on April 24, 2009.
- On September 3, 2009, the Executive Officer approved the program's request to admit a full-time day class of sixty (60) students and six (6) alternates commencing September 14, 2009 only, with a projected date of graduation of February 4, 2011, to **replace** students scheduled to complete course requirements on September 4, 2009.
- On March 1, 2010, the Executive Officer approved the Institute of Medical Education, San Jose, Vocational Nursing Program's request to admit a full-time evening class of sixty (60) students and six (6) alternates commencing March 1, 2010 only, with a projected date of graduation of June 6, 2011, to **replace** students who completed course requirements on February 12, 2010.
- On July 8, 2010, the Executive Officer approved the Institute of Medical Education, San Jose, Vocational Nursing Program's request to admit a full-time evening class of sixty (60) students and six (6) alternates commencing June 28, 2010 only, with a projected date of graduation of June 6, 2011, to **replace** students who completed course requirements on May 21, 2010; **and** approved the program's request to admit a full-time evening class of sixty (60) students and six (6) alternates commencing October 18, 2010 only, with a projected date of graduation of October 28, 2011, to **replace** students scheduled to complete course requirements September 3, 2010; **and** required the program to submit a status report relative to student progress to include identification of students requiring remediation, the establishment of remediation plans, and their effectiveness by August 31, 2010; and required the program to obtain Board approval prior to the admission of all classes.
- On July 8, 2010, the Board forwarded correspondence informing the director of decisions rendered by the Executive Officer.
- On July 30, 2010, the Board received the program's plan to revise its curriculum to improve student achievement.
- On October 25, 2010, the Board received the completed Program Records Survey and supporting documents.
- On December 8, 2010, the assigned consultant forwarded correspondence notifying the director that the program's pass rates on the NCLEX/PN® had fallen below 10 percentage points of the state average pass rate for the past five (5) quarters.

- On December 17, 2010, the Board received the program's request for approval of a major curriculum revision.
- On February 17, 2011, the assigned consultant forwarded correspondence notifying the director that the program pass rates on the NCLEX/PN® had fallen below 10 percentage points of the state average pass rate for the past six (6) quarters. The director was requested to submit documentation verifying that elements of the program's plan of correction are being carried out and the effects of the employed interventions.
- On February 18, 2011, the Executive Officer approved continued full accreditation for the Institute of Medical Education, San Jose, Vocational Nursing Program for the four – year period from February 2, 2011 through February 1, 2015, and issued a certificate accordingly; **and** required the program to obtain Board approval prior to the admission of each class. The Executive Officer denied the program's request to admit a full-time day class of sixty (60) students and six (6) alternates commencing February 17, 2011; **and** approved the program's admission of a full – time day class of forty (40) students and four (4) alternates on February 17, 2011 only, with a projected date of graduation of June 15, 2012, to **replace** students who completed course requirements on February 4, 2011; **and** approved the program's proposed curriculum for 1,578 hours, Theory Hours – 606; Clinical Hours – 972); **and** required the program to demonstrate sustained improvement in its average annual pass rates on the NCLEX/PN.
- On February 18, 2011, the Board forwarded correspondence informing the director of decisions rendered by the Executive Officer.
- On May 11, 2011, the Board received electronic correspondence advising of the director's resignation effective May 20, 2011.
- On May 17, 2011, the assigned consultant forwarded correspondence notifying the director that the program pass rates on the NCLEX/PN® had fallen below 10 percentage points of the state average pass rate for the past seven (7) quarters. Additionally, the director was notified of the program's placement on the agenda for the September 9, 2011 meeting, at which time the Board would consider placement of the program on provisional accreditation. The program was requested to submit information by July 15, 2011, relative to the program's enrollment; current faculty and clinical facilities; clinical rotation schedules for all enrolled students; and an analysis of the program's previously submitted plan of correction, identifying the effectiveness of each element and planned alterations.
- **On June 9, 2011, the Board approved a new program director.**
- **On June 23, 2011, the Board approved a new program director.**
- On June 28, 2011, the Board received electronic correspondence dated June 24, 2011, and documents, requesting Board approval to admit class on July 5, 2011, graduating November 2, 2012, to **replace** students graduating June 24, 2011.

- On July 1, 2011, the SNEC discussed the program's request with the program manager. Due to the date the request was received, the SNEC recommended revision of the proposed date of class commencement to July 18, 2011.
- On July 12, 2011, the Executive Officer deferred action on the Institute of Medical Education, San Jose, Vocational Nursing Program's request to admit 40 students commencing July 18, 2011 only, with a projected date of graduation of November 2, 2012, to **replace** students who completed course requirements on June 27, 2011, for consideration by the Board at the September 9, 2011 meeting; **and** continued the program's requirement to obtain Board approval prior to the admission of each class.
- On July 13, 2011, the Board forwarded correspondence informing the director of decisions rendered by the Executive Officer.
- On July 13, 2011, the Board received correspondence from Sunil Vethody, IME Vice President of Operations requesting reconsideration of the Executive Officer's decision.
- On July 14, 2011, the Board received correspondence from IME's Vice President of Operations requesting reconsideration of the Executive Officer's decision.
- On July 15, 2011, the Board received correspondence from IME's Vice President of Operations requesting reconsideration of the Executive Officer's decision.
- On July 15, 2011, the SNEC and NEC met with the program director and manager relative to the program's request for reconsideration of the EO's decision. The director submitted a four (4) page document dated July 13, 2011 and titled, "Action Plan for Provisional Accreditation.
- On July 18, 2011, the Board received faxed and electronic correspondence from Seth W. Wiener, IME legal counsel, and S. Vethody questioning the EO's decision and the impact on students.
- On July 19, 2011, the Board received electronic correspondence from S. Vethody. This correspondence included communication between Mr. Vethody and Mr. Wiener relative to the EO's decision deferring action on the program's request and pending Board action.

Additionally, the Board received faxed correspondence from Mr. Wiener dated July 19, 2011, requesting discussion of IME's accreditation status, and commencement of the proposed correspondence.

- On July 19, 2011, the Board forwarded correspondence to S. Wiener and S. Vethody in response to correspondence received July 13, 14, 15, and 18, 2011, relative to the program's June 28, 2011 Request to Admit a New Class and Provisional Accreditation.
- On July 20, 2011, the Board received electronic correspondence from the program director relative to the Executive Officer's decision to defer action on the program's request to admit students.

- On July 25, 2011, the Board received electronic correspondence, dated July 23, 2011, from S. Vethody acknowledging receipt of the Board's correspondence.
- On August 2, 2011, the Board received electronic correspondence, dated August 1, 2011, from the director relative to an update in the program's action plan and progress.
- On August 10, 2011, the Board received electronic correspondence, dated August 1, 2011, from the director relative to an update in the program's action plan and progress.
- On August 10, 2011, the Supervising Nursing Education Consultant sent correspondence to the director requesting the submission of documents for Board presentation.
- On August 18, 2011, the Board received the program's documents for dissemination to Board members.
- On September 9, 2011, the Board placed Institute of Medical Education, San Jose, Vocational Nursing Program on provisional accreditation for the one - year period from September 9, 2011 through September 30, 2012, and issue a notice to the program to identify specific areas of noncompliance and requirements for correction as referenced in Section 2526.1 (e) of the California Code of Regulations; **and** denied the program's request to admit 40 students July 18, 2011.

Rationale: Board records and program enrollment data, submitted July 13, 2011 and August 18, 2011, substantiate that the program's current number of Board – approved faculty totals 11, including the program director. Based on information reported on the program's Annual Report, the director works full time and has 100% administrative duties. **Of the total faculty, nine (9) are approved to provide clinical instruction.**

Based upon the current reported enrollment and the 40 proposed students, the program would have a maximum enrollment of 183 students if the requested class were approved for admission. To ensure compliance with existing regulatory requirements relative to clinical instruction, **ten (10) instructors are required for the current enrollment of 142 students. Thirteen (13) instructors would be required for the maximum projected enrollment of 183 students.** Given the foregoing, submitted information substantiates that the program's current number of approved faculty is **inadequate** for the **current and proposed enrollment.**

Additionally, the Board required the program to admit no additional students unless specifically approved by the full Board; **and** required the program to show documented progress by submitting follow-up reports in three (3) months, but no later than December 1, 2011, and nine (9) months, but no later than June 1, 2012. The report must include a comprehensive analysis of the program, specific actions taken to improve program pass rates, timelines for implementation, and the effect of employed interventions. The following elements must be addressed in the analysis:

- a. Current Enrollment.

- b. Admission Criteria.
- c. Screening and Selection Criteria.
- d. Terminal Objectives.
- e. Curriculum Objectives.
- f. Instructional Plan.
- g. Theory and Clinical Objectives for Each Course.
- h. Lesson Plans for Each Course.
- i. Textbooks.
- j. Attendance Policy.
- k. Remediation Policy.
- l. Evaluations of Theory and Clinical Faculty.
- m. Evaluations of Theory Presentations.
- n. Evaluations of Clinical Rotations and Their Correlation to Theory Presentations.
- o. Evaluation of Student Achievement.

The program shall notify all enrolled students of actions taken by the Board relative to the program's accreditation status, and expected time for resolution.

Further, the Board required the program to comply with all accreditation standards in Article 4 of the Vocational Nursing Practice Act, commencing at Business and Professions Code Section 2880, and Article 5 of the Board's Regulations, commencing at California Code of Regulations, Title 16, Section 2526; and required the program to demonstrate incremental progress in correcting the violations. If the program fails to satisfactorily demonstrate incremental progress, the full Board may revoke the program's accreditation.

The Board specified that the program's failure to take any of these corrective actions may cause the full Board to revoke the program's accreditation. Reconsideration of the program's provisional accreditation was placed on the **September 2013** Board agenda.

Rationale: The Board has serious concerns relative to the program's non-compliance with regulations for pass rates on the NCLEX-PN®.

As noted previously, the program has had marked difficulty in achieving and maintaining acceptable average annual program pass rates. Board consultants have met with the director and program representatives on several occasions relative to the inadequate achievement of its student population. A number of strategies and critical interventions have been recommended. Reportedly, those interventions were implemented. However, the program's average annual pass rates remain noncompliant with regulatory requirements.

The current director was approved June 23, 2011. On July 13, 2011, the director submitted a document entitled, "Action Plan for Provisional Accreditation." It is noted that much of the document lists actions previously reported as completed by prior program administration. Information was not reported relative to the effectiveness of those interventions. Further, published program performance statistics evidence the impact of reported interventions on student achievement.

Despite such evidence, submitted program documents fail to delineate modifications to be made in the plan of correction. This may be somewhat impacted by the director's recent date of employment.

Given the sustained severity of program noncompliance, the director must have sufficient time to complete a thorough analysis of all program elements, identify deficiencies, and implement strategies required for correction.

- On February 17, the Board mailed, per certified and regular mail, a *Notice of Required Correction* to the program.
- On February 22, 2012, the Board suspended the Institute of Medical Education's approvals at the San Jose and Oakland campuses during the period of time the programs lack the ability to instruct students pursuant to the Bureau's Order. In the event the bureau's Order is set aside or modified, the suspension will be automatically lifted and the approval reinstated or modified consistent with any revised Order. Additionally, the Board expressly withdrew any prior permission issued by the Board authorizing the Institute of Medical Education to start a new class at either location is expressly withdrawn. Should the Order prohibiting the Institute of Medical Education from enrolling new students be set aside or modified, the Institute of Medical Education shall submit a new request for each class to the Board.

Rationale: To have approval, the program must give a course of instruction in vocational nursing. Without authority from the Bureau to instruct students the program, IME cannot give such course of instruction. As such, to protect the students from harm that may come of them enrolling or participating in unauthorized instruction, the Board takes this action.

- On March 16, 2012, the Board mailed, per certified and regular mail, correspondence regarding the program's approval status.
- On May 28, 2015, the Board received the following information from BPPE regarding the program's status
 1. On October 1, 2012, IME tried to surrender to the Bureau its approval to operate the IME, San Jose, and IME, Oakland campuses.
 2. On September 20, 2013, the IME's Bureau – issued approval to operate was formally revoked by disciplinary action [**Bureau Case No. 997952; OAH No. 2012030566**]. Additionally, IME was ordered to:
 - a. Provide official IME transcripts to all students who completed a course at IME.
 - 1) Pay restitution to 112 students.
 - 2) Pay to the Bureau investigative costs in the amount of \$39,974.38, and attorneys' fees in the amount of \$99, 292.50.

- On July 9, 2015, the Board sent correspondence per certified and regular mail to IME program directors and president to determine if it had complied with the Order. A response was requested no later than Friday, July 17, 2015.

Agenda Item #6.A.1., Attachment B

Institute of Medical Education, Oakland Vocational Nursing Program

History of Prior Board Actions

- On August 6, 2010, the Executive Officer approved Institute of Medical Education, San Leandro's request to begin a vocational nursing program with an initial class of 50 students on August 9, 2010 only, with a projected graduation date of September 2, 2011; **and**, approved the program curriculum for 1578 hours, including 606 theory and 972 clinical hours; **and**, required the program to obtain Board approval prior to the admission of each class.
- On October 24, 2011, Board representatives inspected the Institute of Medical Education, Oakland (also known as San Leandro), Vocational Nursing Program was inspected to determine compliance with Article 5 of the Vocational Nursing Rules and Regulations. Six (6) violations were noted.
- On October 31, 2011, the program was sent a follow up to the on-site survey visit and required the program to submit written documentation relative to the six (6) areas of deficiency cited in the report **by November 18, 2011**.
- On December 15, 2011, the Executive Officer approved full accreditation for Institute of Medical Education, Oakland, Vocational Nursing Program for the four (4) year period from August 9, 2010 through August 10, 2014, and directed staff to issue a certificate accordingly; **and** denied the program's request to start a class of 30 students on January 30, 2012 with a projected completion date of January 30, 2012 to **replace** students graduating on December 16, 2011, at this time; **and** approved the program to admit a class of 20 students on January 30, 2012, **pending Board approved Pediatric clinical site(s) adequate to accommodate the 20 students**. The projected completion date is February 25, 2013. This class will **replace** students graduating on December 16, 2011.

Rationale: Six (6) violations were identified during the onsite visit. Approving a smaller group of students will allow the program director time to focus on familiarizing herself with Article Five of the Vocational Nursing Practice Act. This will also allow the director time to focus on preparing the outgoing students for the licensure examination and ensuring that all elements of the program and clinical sites are in place for the new students.

Additionally, the program was required to submit a written plan to decrease attrition **by January 6, 2012**; **and** required to obtain Board approval prior to the admission of each class.

Rationale: A review of program documents and on-site visit revealed the program's non-compliance in six (6) areas. They are as follows: failure of the program to follow the Board approved instructional plan, failure of the program to notify the Board of terminated faculty within the required time limit, failure of the program to have adequate resources, admission of a student without proof of 12th grade in the United States, unapproved admission of students, and lack of clinical sites appropriate for care of the sick child. The Board has serious concerns relative to the program's non-compliance with the California Rules and Regulations.

The remaining uncorrected violations are related to the lack of adequate Pediatric clinical rotations. The director is actively working on correcting the remaining violation. Board staff will continue to monitor the program by tracking the correction of the remaining uncorrected violation and its licensure examination pass rate quarterly, monitor annual reports and perform accreditation surveys every four years.

- On February 17, the Board mailed, per certified and regular mail, a *Notice of Required Correction* to the program.
- On February 22, 2012, the Board suspended the Institute of Medical Education's approvals at the San Jose and Oakland campuses during the period of time the programs lack the ability to instruct students pursuant to the Bureau's Order. In the event the bureau's Order is set aside or modified, the suspension will be automatically lifted and the approval reinstated or modified consistent with any revised Order. Additionally, the Board expressly withdrew any prior permission issued by the Board authorizing the Institute of Medical Education to start a new class at either location is expressly withdrawn. Should the Order prohibiting the Institute of Medical Education from enrolling new students be set aside or modified, the Institute of Medical Education shall submit a new request for each class to the Board.

Rationale: To have approval, the program must give a course of instruction in vocational nursing. Without authority from the Bureau to instruct students the program, IME cannot give such course of instruction. As such, to protect the students from harm that may come of them enrolling or participating in unauthorized instruction, the Board takes this action.

- On March 16, 2012, the Board mailed, per certified and regular mail, correspondence regarding the program's approval status.
- On May 28, 2015, the Board received the following information from BPPE regarding the program's status
 1. On October 1, 2012, IME tried to surrender to the Bureau its approval to operate the IME, San Jose, and IME, Oakland campuses.
 2. On September 20, 2013, the IME's Bureau – issued approval to operate was formally revoked by disciplinary action [**Bureau Case No. 997952; OAH No. 2012030566**]. Additionally, IME was ordered to:

- a. Provide official IME transcripts to all students who completed a course at IME.
 - 1) Pay restitution to 112 students.
 - 2) Pay to the Bureau investigative costs in the amount of \$39,974.38, and attorneys' fees in the amount of \$99,292.50.
- On July 9, 2015, the Board sent correspondence per certified and regular mail to IME program directors and president to determine if it had complied with the Order. A response was requested no later than Friday, July 17, 2015.

Agenda Item #6.A.1., Attachment C



Bureau for Private Postsecondary Education
2535 Capitol Oaks Drive, Suite 400, Sacramento, CA 95833
P.O. Box 980818, West Sacramento, CA 95798-0818
P (916) 431-6969 F (916) 263-1897 www.bppe.ca.gov



AMENDED NOTICE OF EMERGENCY DECISION

February 14, 2012

TO: Bindu Baburajan, Owner
Institute of Medical Education

Sunil Vethody, Agent for Service of Record
Institute of Medical Education

Pursuant to California Code of Regulations, Title 5, section 75150, subdivision (d) and Government Code section 11460.40, the Bureau for Private Postsecondary Education (Bureau) hereby notifies the Institute of Medical Education, Bindu Baburajan, Owner (Institute), located at 130 S. Almaden Blvd., San Jose, CA 95113 (School Code No. 69608217) and 7901 Oakport Street, Oakland, CA 94621 (School Code No. 81701347), that on February 16, 2012, at 12:01 a.m., the attached Emergency Decision will become effective. The Emergency Decision will order the Institute to:

- (1) Cease enrollment of new students in all of the Institute's programs;
- (2) Cease all instruction for all of the Institute's programs; and
- (3) Cease collection of tuition and fees for all of the Institute's programs.

You have the right to be heard before the Director of Consumer Affairs, or her designee, regarding the allegations in the Emergency Decision prior to the effective date of the Emergency Decision. If you would like to be heard before the Director, please submit a request by fax to Yvette Johnson, Enforcement Manager, Bureau for Private Postsecondary Education, 2535 Capitol Oaks Drive, Suite 400, Sacramento, CA 95833, (916) 263-1895 (fax). Alternatively, you may request a hearing before the Director, or her designee, by telephoning Yvette Johnson at (916) 431-6915. Unless the Bureau receives your request by 3:00 p.m. on February 13, 2012, you will be deemed to have waived your right to be heard before the Director, or her designee.

If requested, the hearing before the Director of Consumer Affairs, or her designee, will be held on February 14, 2012, at 11:00 a.m. at the Department of Consumer Affairs Executive Office, located at 1625 North Market Blvd., Suite S-308, Sacramento, CA 95834.

Within 10 days after issuance of the Emergency Decision, the Bureau will file an accusation on the charges and allegations set forth in the Emergency Decision. The adjudicative proceedings 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 you.

Upon issuance of the Emergency Decision, you have the right under Government Code section 11460.80 to obtain judicial review of the Decision.

The Emergency Decision shall remain in effect until such time as the Accusation has been fully adjudicated or upon issuance of the final decision following judicial review.



Joanne Wenzel, Deputy Bureau Chief
Bureau for Private Postsecondary Education

2/14/12

Date



Bureau for Private Postsecondary Education
2535 Capitol Oaks Drive, Suite 400, Sacramento, CA 95833
P.O. Box 980818, West Sacramento, CA 95798-0818
P (916) 431-6959 F (916) 263-1897 www.bppe.ca.gov



AMENDED EMERGENCY DECISION

Pursuant to Education Code section 94938, California Code of Regulations, Title 5, section 75150, and article 13 (commencing with section 11460.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, the Bureau for Private Postsecondary Education (Bureau) issues the following Emergency Decision:

The Bureau hereby orders the Institute of Medical Education, Bindu Baburajan, Owner (Institute), located at 130 S. Almaden Blvd., San Jose, CA 95113 (School Code No. 69608217) and 7901 Oakport Street, Oakland, CA 94621 (School Code No. 81701347), to:

- (1) Cease enrollment of new students in all of the Institute's programs;
- (2) Cease all instruction for all of the Institute's programs; and
- (3) Cease collection of tuition and fees for all of the Institute's programs.

This order is based on an immediate danger to the public health, safety, and welfare. Specifically, the Bureau has determined that:

- The Institute is not an accredited institution. Nonetheless, the Institute is advertising, or indicating in promotional material, that it is accredited;
- The Institute is no longer financially viable in that it has withdrawn from the Federal Financial Aid Program. The Institute relies on student federal financial aid in order to operate;
- The Institute is in default of its enrollment agreement under Education Code section 94927 in that the junior class of the Institute's Dental Hygiene Program was discontinued on February 3, 2012. Also, on February 6, 2012, the Institute's Dental Hygiene Program Director resigned. In addition, on February 2, 2012, the Commission on Dental Accreditation (CODA) withdrew its accreditation of the Institute's Dental Hygiene Program;
- Most of the Institute's financial aid staff have left the Institute or been terminated; and
- The Institute has enrolled students in its MRI and Ultrasound programs even though the Bureau has not approved these programs.

As a result of the Institute's financial difficulties and the loss of its Dental Hygiene Program Director and financial aid staff, the Institute can no longer provide adequate educational and administrative services to the students enrolled in its programs, including those students enrolled in the Institute's Dental Hygiene Program who are still receiving instruction. In addition, the Institute is misrepresenting to its students and the public that it is an accredited institution. Also, because the Institute's MRI and Ultrasound programs are not approved by the Bureau, they are being operated unlawfully. Finally, the Bureau has reason to believe that despite the Institute's misrepresentations and unapproved MRI and Ultrasound programs, the Institute continues to enroll students in its programs and accept tuition payments.

These circumstances require immediate action by the Bureau to protect students, prevent misrepresentations to the public, and prevent the loss of public funds or monies paid by students.

You have the right to be heard before the Director of Consumer Affairs, or her designee, regarding the allegations in the Proposed Emergency Decision prior to the effective date of the Emergency Decision. If you would like to be heard before the Director, please submit a request by fax to Yvette Johnson, Enforcement Manager, Bureau for Private Postsecondary Education, 2535 Capitol Oaks Drive, Suite 400, Sacramento, CA 95833, (916) 263-1895 (fax). Alternatively, you may request a hearing before the Director, or her designee, by telephoning Yvette Johnson at (916) 431-6915. Unless the Bureau receives your request by 3:00 p.m. on February 13, 2012, you will be deemed to have waived your right to be heard before the Director, or her designee.

If requested, the hearing before the Director of Consumer Affairs, or her designee, will be held on February 14, 2012, at 11:00 a.m. at the Department of Consumer Affairs Executive Office, located at 1625 North Market Blvd., Suite S-308, Sacramento, CA 95834.

Within 10 days after issuance of the Emergency Decision, the Bureau will file an accusation on the charges and allegations set forth in the Emergency Decision. The adjudicative proceedings 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 you.

Upon issuance of the Emergency Decision, you have the right under Government Code section 11460.80 to obtain judicial review of the Decision.

The Emergency Decision shall remain in effect until such time as the Accusation has been fully adjudicated or upon issuance of the final decision following judicial review.



Joanne Wenzel, Deputy Bureau Chief
Bureau for Private Postsecondary Education

2/14/12

Date

Agenda Item #6.A.1., Attachment D



STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDWARD G. BROWN JR.

Executive Office
1625 N. Market Boulevard, Suite S-308, Sacramento, CA 95834
P (916) 574-8200 F (916) 574-8613 | www.dca.ca.gov



Decision after Opportunity to be Heard

On February 13, 2012, the Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs (DCA or Department) served an Emergency Decision (Decision) on Institute for Medical Education (IME) pursuant to its authority contained in Education Code section 94937 and 5 California Code of Regulations (C.C.R.) section 75150. That Decision ordered IME to:

- (1) Cease enrollment of new students in all of IME's programs;
- (2) Cease instruction for all of IME's programs;
- (3) Cease collection of tuition or fees for all of IME's programs.

Pursuant to 5 C.C.R. section 75150(d), IME requested an opportunity to be heard before the effective date of the Decision on February 16, 2012, at 12:01 a.m. That opportunity to be heard was before DCA's Chief Deputy Director Awet Kidane on February 14, 2012, at about 11:30 a.m. IME appeared through counsel, Mark Good. Also present from IME were Sunil Vethody, Chief Executive Officer, and Khoi Lam, Program Director.

The Bureau made the Decision upon a determination of an immediate danger to the public health, safety, or welfare, based upon the following factual allegations:

- The Institute is not an accredited institution. Nonetheless, the Institute is advertising, or indicating in promotional material, that it is accredited;
- The Institute is no longer financially viable in that it has withdrawn from the Federal Financial Aid Program. The Institute relies on student federal financial aid in order to operate;
- The Institute is in default of its enrollment agreement under Education Code section 94927 in that the junior class of the Institute's Dental Hygiene Program was discontinued on February 3, 2012. Also, on February 6, 2012, the Institute's Dental Hygiene Program Director resigned. In addition, on February 2, 2012, the Commission on Dental Accreditation (CODA) withdrew its accreditation of the Institute's Dental Hygiene Program;
- Most of the Institute's financial aid staff have left the Institute or been terminated; and
- The Institute has enrolled students in its MRI and Ultrasound programs even though the Bureau has not approved these programs.

These allegations can be categorized into three areas of (1) accreditation; (2) financial resources; and (3) program operation.

IME disputed that it is not an accredited institution, and asserts that it is accredited through June 30, 2016, by Western Association of Schools and Colleges – Accrediting Commission for Schools (WASC – Schools). IME presented a letter from WASC – Schools, its Certificate of

Accreditation, and an email from Lee Duncan, WASC – Schools. It also argues that it has placed a disclaimer on its website, indicating that its accreditor is no longer participating in Department of Education (DOE), and that IME is not eligible to participate in Title IV Financial Aid. IME maintains that it is exempt from Bureau oversight by virtue of its “WASC” accreditation.

The California Private Postsecondary Education Act of 2009, which regulates private, postsecondary institutions in California, defines “Accredited”:

“‘Accredited’ means an institution is recognized or approved by an accrediting agency recognized by the United States Department of Education.” (Ed. Code § 94813.)

It is undisputed that WASC – Schools is no longer a nationally recognized accrediting agency. IME argues that it has lost nothing except DOE recognition, that this definition of accredited is only relevant with respect to Title IV (federal financial aid funding), and is not to being a sound educational program.

Even assuming, without finding, that DOE recognition is not strictly related to sound educational quality, it is true that IME is not accredited under the definition that governs its operation. IME’s accreditation by WASC – Schools, and no nationally recognized accrediting agency means that it is not accredited under the law.

IME also argues that it is exempt from Bureau regulation, since “WASC” schools have always been exempt from Bureau regulation.

Certain institutions are exempt from regulation under the California Private Postsecondary Education Act of 2009, including:

“An institution that is accredited by the Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges, or the Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges.” (Ed. Code § 94874(i).)

These accrediting agencies are sometimes referred to as WASC -- Senior, and WASC -- Junior. IME acknowledges that it is accredited by neither WASC – Senior, nor WASC -- Junior. It seems to rely upon a very broad usage of “WASC” to claim some exemption. Without some documentation of other accreditation by a regional accrediting agency, or some other basis for exemption (see Ed. Code §§ 91874, 94874.1), IME is not exempt from Bureau regulation.

Therefore, IME is not accredited, and cannot represent itself to be so, disclaimer notwithstanding. Nor is it exempt from regulation, since its accreditor is not “WASC,” but is WASC – Schools, neither WASC -- Senior nor WASC -- Junior. Accordingly, IME cannot represent that it is accredited. Nor is it exempt from regulation.

Because its accreditor has lost DOE recognition, IME will no longer participate in Title IV funding as of April 26, 2012. IME submits that it is still financially viable since a "percentage" of its students are still interested in enrollment and will pay tuition "out-of-pocket"; it is reducing tuition by 50% to assist students in doing that; it is downsizing its payroll; it is reducing its program offering to its "grass roots" programs; it is consolidating its 2 campuses in San Jose and Oakland to one campus near Fremont to help downsizing. IME also indicated that it is trying to secure funding for its students with a private financial company, and that it obtained private funding of \$450,000, which went toward overhead, and making a clean transition toward consolidated campuses. In addition, IME stated that it did not operate with Title IV funding until 2008, and therefore is able to operate without it now.

Although IME said that approximately 150 (out of approximately 350) students had confirmed that they wanted to continue in their programs, IME could not provide any evidence that it had sufficient funds to continue to provide their grass-roots programs, and was no clear on which programs those were. In addition, IME had not yet sought or obtained the required approval from the Bureau for a change in location for the two campuses. It indicated that it could not seek that approval without a lease, and that it was about to sign a lease for the Fremont location, but did not want to do that after it received the Emergency Decision.

There is no indication that IME was required to submit a signed lease for a new location to the Bureau to obtain approval. (See 5 C.C.R. § 71500.) There is no evidence that – even assuming that 150 students will continue in their programs without outside funding – that operating with less than half its student body at a 50% tuition reduction can give them sufficient assets and financial resources to operate according to the law. (See 5 C.C.R. § 71745.)

Lastly, with respect to the programs that it is operating, IME says that its students in the "junior" dental hygiene program have been moved to other sites. They presented no evidence, however, that that change due to a closure of the program was approved by the Bureau. (See 5 C.C.R. § 76240.) With respect to its MRI and Ultrasound programs, IME indicated that it had filed applications to add the programs before the former Bureau sunset on June 30, 2007. Although IME may have lawfully begun the programs after the time the former Bureau ceased operations, IME was required to seek approval of those programs after the current Bureau was in operation. (See 5 C.C.R. § 71655.) There is no evidence that it has done so.

Because IME has lost its institutional accreditation, cannot demonstrate that it has sufficient funds to operate at this time, and is has not either closed or operated certain programs with approval, there is an immediate danger to the public health, safety, or welfare of the students if IME continues to enroll and instruct its students. Accordingly, the Emergency Decision of the Bureau shall become effective as noticed on. This Decision shall remain in effect until withdrawn or modified, or there is a decision on the action filed by the Bureau to resolve the under-lying issues.

DATED: 2/15/2012


AWET KIDANE
Chief Deputy Director
Department of Consumer Affairs

Agenda Item #6.A.1., Attachment E



STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR

BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS
2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833-2945
Phone (916) 263-7800 Fax (916) 263-7859 Web www.bvnpt.ca.gov



CERTIFIED MAIL

February 17, 2012

Mary Ann Haeuser, M.S., R.N.
Director, Vocational Nursing Program
Institute of Medical Education – Oakland
7901 Oakport Street
Oakland, CA 94621

SUBJECT: Notice of Required Correction

Dear Ms. Haeuser:

The Board was recently made aware that the Institute of Medical Education's (IME's) ability to enroll new students and instruct existing students has been temporarily prohibited by the Bureau for Private Postsecondary Education. Copies of the Bureau's February 14, 2012 Emergency Order and the Department of Consumer Affairs' Decision after Opportunity to be Heard, dated February 15, 2012, are attached to this notice.

Pursuant to section 2883 of the Business and Professions Code, the Institute of Medical Education must be able to give a course of instruction in vocational nursing in order to maintain its prior accreditation/approval by the Board. In addition, the Institute of Medical Education must show that it is permitted to enroll new students.

By this Notice, you are requested to provide evidence to the Board that you have authority to instruct students in the vocational nursing programs at the San Jose and Oakland campuses. In the event you cannot show the ability to instruct students, the Board may suspend your accreditation/approval during the period that you lack the ability to instruct and it may revoke any prior authorizations to start new classes.

The full Board may take these actions at its meeting on Wednesday, February 22, 2012, at 4:00 P.M. A copy of the meeting notice is attached.

Sincerely,

TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer

Attachments



SPECIAL BOARD MEETING

DATE: Wednesday, February 22, 2012

PLACE: Radisson Hotel at Los Angeles Airport
Laguna Room
6225 W. Century Blvd.
Los Angeles, CA 90045
Telephone: (310) 670-9000
Fax: (310) 337-6555

TIME: 4:00 p.m.

1. Institute of Medical Education Vocational Nursing Programs.
 - a. Finding Regarding Special Board Meeting.

The Board will consider whether the delay necessitated by provided notice of the meeting 10 days in advance would cause a substantial hardship on the Board and/or that immediate action is required to protect the public interest.

- b. Consideration of Temporary Revocation of Approval During Effect of the Bureau for Private Postsecondary Education's Emergency Decision.
Cheryl Anderson, Supervising Nursing Education Consultant.

The mission of the Board of Vocational Nursing and Psychiatric Technicians (Board) is to protect the public. Public protection is paramount to the Board and its highest priority in exercising its licensing, regulatory, and disciplinary functions. Toward this end, the Board ensures that only qualified persons are licensed vocational nurses and psychiatric technicians by enforcing educational requirements, standards of practice, and by educating consumers of their rights.

All Board meeting dates and locations are subject to change. Meeting times are approximate. Agenda items may be taken out of order. These meetings conform to the Open Meetings Act.

This meeting facility is accessible to the physically disabled. Persons needing a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Linda Ruyters at (916) 263-7848 or email linda.ruyters@dca.ca.gov, or for the hearing impaired, TDD (916) 322-1700; or by sending a written request to the Board office at 2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833, attention: Linda Ruyters. Providing your request at least five business days before the meeting helps to ensure availability of the requested accommodation.

The Board makes every effort to meet in facilities that can accommodate the estimated 300 – 1400 members of the public who wish to observe its proceedings at any given location; however, at times attendees may be asked to exchange seats with individuals waiting outside the room to ensure that all interested parties have an opportunity to observe the proceedings. The Board appreciates your cooperation should this occur.

Government Code Section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by a state body. Total time allocated for public comment may be limited.

Interested parties should call the Board at (916) 263-7845 to confirm the date and specific meeting site of any Board meeting or access the Board's web site at <http://www.bvnpt.ca.gov>. Requests for further information should be directed to Linda Ruyters at (916) 263-7848 or at the email address above.

(2/17/12)



STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.

BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS
2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833-2945
Phone (916) 263-7800 Fax (916) 263-7859 Web www.bvnpt.ca.gov



DATE: February 17, 2012

TO: Board Members

FROM: Cheryl C. Anderson, M.S., R. N.
Supervising Nursing Education Consultant

SUBJECT: Institute of Medical Education, San Jose, Vocational Nursing Program –
Consideration of Temporary Revocation of Accreditation/Approval During
Effect of the Bureau for Private Postsecondary Education's Emergency
Decision (Director: Mary Pedro, San Jose, Santa Clara County, Private)

Institute of Medical Education, Oakland, Vocational Nursing Programs –
Consideration of Temporary Revocation of Accreditation/Approval During
Effect of the Bureau for Private Postsecondary Education's Emergency
Decision (Director: Mary Ann Haeuser, Oakland, Alameda County, Private)

Effective February 16, 2012, the Bureau for Private Postsecondary Education (Bureau) of the Department of Consumer Affairs ordered the Institute for Medical Education (IME) to:

- "(1) Cease enrollment of new students in all of IME's programs;
- (2) Cease instruction for all of IME's programs; [and]
- (3) Cease collection of tuition or fees for all of IME's programs."

This Order (see Attachments A, B, C) was made pursuant to Education Code section 94937 and title 5, California Code of Regulations, section 75150. It was issued as an emergency and is temporary until further action is taken by the Bureau. The order applies to both the San Jose and Oakland campuses. In both campuses, IME has vocational nursing programs (VN Programs) which are approved¹ by the Board.

In light of the Bureau's order, IME will be prohibited from instructing students in its VN Programs at both San Jose and Oakland campuses. It is also prohibited from enrolling new classes into those programs.

The Board is authorized to approve schools offering vocational nursing programs in California. (Bus. & Prof. Code, § 2880) Once approved, graduates of such programs meet

¹ Prior to January 1, 2012, references in article 4 of the Vocational Nursing Practice Act, commencing with section 2880, provided that the Board "accredited" the program rather than "approved" it. Despite the change, there was no substantive change to the Board's authority and the terms are used interchangeably here.

one qualification for licensure. (*Id.*) The Board's law, in section 2881 of the Business and Professions Code, provides in pertinent part,

"An approved school of vocational nursing is one which has been approved by the Board of Vocational Nursing and Psychiatric Technicians of the State of California, gives a course of instruction in vocational nursing of not less than 1,530 hours or 50 semester units approved by the board pursuant to Section 2882 whether the same be established by the State Board of Education, other educational institutions, or other public or private agencies or institutions and is affiliated or conducted in connection with one or more hospitals." [Emphasis added.]

Section 2883 of the Business and Professions Code provides authority for the Board to take action against the Board's approval.

In order to provide clarity and consistency to students in the Vocational Nursing Programs, Institute of Medical Education is presented to the Board for consideration of suspension of its accreditation/approval during the period of time that the Bureau's order is in effect.

Recommendations:

1. The Board suspend the Institute of Medical Education's approvals at the San Jose and Oakland campuses during the period of time the programs lack the ability to instruct students pursuant to the Bureau's Order. In the event the bureau's Order is set aside or modified, the suspension will be automatically lifted and the approval reinstated or modified consistent with any revised Order.
2. Any prior permission issued by the Board authorizing the Institute of Medical Education to start a new class at either location is expressly withdrawn. Should the Order prohibiting the Institute of Medical Education from enrolling new students be set aside or modified, the Institute of Medical Education shall submit a new request for each class to the Board.

Rationale: To have approval, the program must give a course of instruction in vocational nursing. Without authority from the Bureau to instruct students the program, IME cannot give such course of instruction. As such, to protect the students from harm that may come of them enrolling or participating in unauthorized instruction, the Board takes this action.

Attachment A: Order Dated February 15, 2012.

Attachment B: Amended Notice of Emergency Decision Dated February 14, 2012.

Attachment C: Amended Emergency Decision Dated February 14, 2012.



Decision after Opportunity to be Heard

On February 13, 2012, the Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs (DCA or Department) served an Emergency Decision (Decision) on Institute for Medical Education (IME) pursuant to its authority contained in Education Code section 94937 and 5 California Code of Regulations (C.C.R.) section 75150. That Decision ordered IME to:

- (1) Cease enrollment of new students in all of IME's programs;
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- (3) Cease collection of tuition or fees for all of IME's programs.

Pursuant to 5 C.C.R. section 75150(d), IME requested an opportunity to be heard before the effective date of the Decision on February 16, 2012, at 12:01 a.m. That opportunity to be heard was before DCA's Chief Deputy Director Awet Kidane on February 14, 2012, at about 11:30 a.m. IME appeared through counsel, Mark Good. Also present from IME were Sunil Vethody, Chief Executive Officer, and Khoi Lam, Program Director.

The Bureau made the Decision upon a determination of an immediate danger to the public health, safety, or welfare, based upon the following factual allegations:

- The Institute is not an accredited institution. Nonetheless, the Institute is advertising, or indicating in promotional material, that it is accredited;
- The Institute is no longer financially viable in that it has withdrawn from the Federal Financial Aid Program. The Institute relies on student federal financial aid in order to operate;
- The Institute is in default of its enrollment agreement under Education Code section 94927 in that the junior class of the Institute's Dental Hygiene Program was discontinued on February 3, 2012. Also, on February 6, 2012, the Institute's Dental Hygiene Program Director resigned. In addition, on February 2, 2012, the Commission on Dental Accreditation (CODA) withdrew its accreditation of the Institute's Dental Hygiene Program;
- Most of the Institute's financial aid staff have left the Institute or been terminated; and
- The Institute has enrolled students in its MRI and Ultrasound programs even though the Bureau has not approved these programs.

These allegations can be categorized into three areas of (1) accreditation; (2) financial resources; and (3) program operation.

IME disputed that it is not an accredited institution, and asserts that it is accredited through June 30, 2016, by Western Association of Schools and Colleges – Accrediting Commission for Schools (WASC – Schools). IME presented a letter from WASC – Schools, its Certificate of

Accreditation, and an email from Lee Duncan, WASC – Schools. It also argues that it has placed a disclaimer on its website, indicating that its accreditor is no longer participating in Department of Education (DOE), and that IME is not eligible to participate in Title IV Financial Aid. IME maintains that it is exempt from Bureau oversight by virtue of its “WASC” accreditation.

The California Private Postsecondary Education Act of 2009, which regulates private, postsecondary institutions in California, defines “Accredited”:

“‘Accredited’ means an institution is recognized or approved by an accrediting agency recognized by the United States Department of Education.” (Ed. Code § 94813.)

It is undisputed that WASC – Schools is no longer a nationally recognized accrediting agency. IME argues that it has lost nothing except DOE recognition, that this definition of accredited is only relevant with respect to Title IV (federal financial aid funding), and is not to being a sound educational program.

Even assuming, without finding, that DOE recognition is not strictly related to sound educational quality, it is true that IME is not accredited under the definition that governs its operation. IME’s accreditation by WASC – Schools, and no nationally recognized accrediting agency means that it is not accredited under the law.

IME also argues that it is exempt from Bureau regulation, since “WASC” schools have always been exempt from Bureau regulation.

Certain institutions are exempt from regulation under the California Private Postsecondary Education Act of 2009, including:

“An institution that is accredited by the Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges, or the Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges.” (Ed. Code § 94874(i).)

These accrediting agencies are sometimes referred to as WASC -- Senior, and WASC -- Junior. IME acknowledges that it is accredited by neither WASC – Senior, nor WASC -- Junior. It seems to rely upon a very broad usage of “WASC” to claim some exemption. Without some documentation of other accreditation by a regional accrediting agency, or some other basis for exemption (see Ed. Code §§ 91874, 94874.1), IME is not exempt from Bureau regulation.

Therefore, IME is not accredited, and cannot represent itself to be so, disclaimer notwithstanding. Nor is it exempt from regulation, since its accreditor is not “WASC,” but is WASC – Schools, neither WASC -- Senior nor WASC -- Junior. Accordingly, IME cannot represent that it is accredited. Nor is it exempt from regulation.

Because its accreditor has lost DOE recognition, IME will no longer participate in Title IV funding as of April 26, 2012. IME submits that it is still financially viable since a "percentage" of its students are still interested in enrollment and will pay tuition "out-of-pocket"; it is reducing tuition by 50% to assist students in doing that; it is downsizing its payroll; it is reducing its program offering to its "grass roots" programs; it is consolidating its 2 campuses in San Jose and Oakland to one campus near Fremont to help downsizing. IME also indicated that it is trying to secure funding for its students with a private financial company, and that it obtained private funding of \$450,000, which went toward overhead, and making a clean transition toward consolidated campuses. In addition, IME stated that it did not operate with Title IV funding until 2008, and therefore is able to operate without it now.

Although IME said that approximately 150 (out of approximately 350) students had confirmed that they wanted to continue in their programs, IME could not provide any evidence that it had sufficient funds to continue to provide their grass-roots programs, and was not clear on which programs those were. In addition, IME had not yet sought or obtained the required approval from the Bureau for a change in location for the two campuses. It indicated that it could not seek that approval without a lease, and that it was about to sign a lease for the Fremont location, but did not want to do that after it received the Emergency Decision.

There is no indication that IME was required to submit a signed lease for a new location to the Bureau to obtain approval. (See 5 C.C.R. § 71500.) There is no evidence that – even assuming that 150 students will continue in their programs without outside funding – that operating with less than half its student body at a 50% tuition reduction can give them sufficient assets and financial resources to operate according to the law. (See 5 C.C.R. § 71745.)

Lastly, with respect to the programs that it is operating, IME says that its students in the "junior" dental hygiene program have been moved to other sites. They presented no evidence, however, that that change due to a closure of the program was approved by the Bureau. (See 5 C.C.R. § 76240.) With respect to its MRI and Ultrasound programs, IME indicated that it had filed applications to add the programs before the former Bureau sunset on June 30, 2007. Although IME may have lawfully begun the programs after the time the former Bureau ceased operations, IME was required to seek approval of those programs after the current Bureau was in operation. (See 5 C.C.R. § 71655.) There is no evidence that it has done so.

Because IME has lost its institutional accreditation, cannot demonstrate that it has sufficient funds to operate at this time, and is has not either closed or operated certain programs with approval, there is an immediate danger to the public health, safety, or welfare of the students if IME continues to enroll and instruct its students. Accordingly, the Emergency Decision of the Bureau shall become effective as noticed on. This Decision shall remain in effect until withdrawn or modified, or there is a decision on the action filed by the Bureau to resolve the under-lying issues.

Institute of Medical Education
Emergency Decision
Page 4

DATED: 2/15/2012


AWET KIDANE
Chief Deputy Director
Department of Consumer Affairs



Bureau for Private Postsecondary Education
2535 Capitol Oaks Drive, Suite 400, Sacramento, CA 95833
P.O. Box 980818, West Sacramento, CA 95798-0818
P (916) 431-6959 F (916) 263-1897 www.bppe.ca.gov



AMENDED NOTICE OF EMERGENCY DECISION

February 14, 2012

TO: Bindu Baburajan, Owner
Institute of Medical Education

Sunil Vethody, Agent for Service of Record
Institute of Medical Education

Pursuant to California Code of Regulations, Title 5, section 75150, subdivision (d) and Government Code section 11460.40, the Bureau for Private Postsecondary Education (Bureau) hereby notifies the Institute of Medical Education, Bindu Baburajan, Owner (Institute), located at 130 S. Almaden Blvd., San Jose, CA 95113 (School Code No. 69608217) and 7901 Oakport Street, Oakland, CA 94621 (School Code No. 81701347), that on February 16, 2012, at 12:01 a.m., the attached Emergency Decision will become effective. The Emergency Decision will order the Institute to:

- (1) Cease enrollment of new students in all of the Institute's programs;
- (2) Cease all instruction for all of the Institute's programs; and
- (3) Cease collection of tuition and fees for all of the Institute's programs.

You have the right to be heard before the Director of Consumer Affairs, or her designee, regarding the allegations in the Emergency Decision prior to the effective date of the Emergency Decision. If you would like to be heard before the Director, please submit a request by fax to Yvette Johnson, Enforcement Manager, Bureau for Private Postsecondary Education, 2535 Capitol Oaks Drive, Suite 400, Sacramento, CA 95833, (916) 263-1895 (fax). Alternatively, you may request a hearing before the Director, or her designee, by telephoning Yvette Johnson at (916) 431-6915. Unless the Bureau receives your request by 3:00 p.m. on February 13, 2012, you will be deemed to have waived your right to be heard before the Director, or her designee.

If requested, the hearing before the Director of Consumer Affairs, or her designee, will be held on February 14, 2012, at 11:00 a.m. at the Department of Consumer Affairs Executive Office, located at 1625 North Market Blvd., Suite S-308, Sacramento, CA 95834.

Within 10 days after issuance of the Emergency Decision, the Bureau will file an accusation on the charges and allegations set forth in the Emergency Decision. The adjudicative proceedings 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 you.

Upon issuance of the Emergency Decision, you have the right under Government Code section 11460.80 to obtain judicial review of the Decision.

The Emergency Decision shall remain in effect until such time as the Accusation has been fully adjudicated or upon issuance of the final decision following judicial review.



Joanne Wenzel, Deputy Bureau Chief
Bureau for Private Postsecondary Education

2/14/12
Date



Bureau for Private Postsecondary Education
2535 Capitol Oaks Drive, Suite 400, Sacramento, CA 95833
P.O. Box 980818, West Sacramento, CA 95798-0818
P (916) 431-6959 F (916) 263-1897 www.bppe.ca.gov



AMENDED EMERGENCY DECISION

Pursuant to Education Code section 94938, California Code of Regulations, Title 5, section 75150, and article 13 (commencing with section 11460.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, the Bureau for Private Postsecondary Education (Bureau) issues the following Emergency Decision:

The Bureau hereby orders the Institute of Medical Education, Bindu Baburajan, Owner (Institute), located at 130 S. Almaden Blvd., San Jose, CA 95113 (School Code No. 69608217) and 7901 Oakport Street, Oakland, CA 94621 (School Code No. 81701347), to:

- (1) Cease enrollment of new students in all of the Institute's programs;
- (2) Cease all instruction for all of the Institute's programs; and
- (3) Cease collection of tuition and fees for all of the Institute's programs.

This order is based on an immediate danger to the public health, safety, and welfare. Specifically, the Bureau has determined that:

- The Institute is not an accredited institution. Nonetheless, the Institute is advertising, or indicating in promotional material, that it is accredited;
- The Institute is no longer financially viable in that it has withdrawn from the Federal Financial Aid Program. The Institute relies on student federal financial aid in order to operate;
- The Institute is in default of its enrollment agreement under Education Code section 94927 in that the junior class of the Institute's Dental Hygiene Program was discontinued on February 3, 2012. Also, on February 6, 2012, the Institute's Dental Hygiene Program Director resigned. In addition, on February 2, 2012, the Commission on Dental Accreditation (CODA) withdrew its accreditation of the Institute's Dental Hygiene Program;
- Most of the Institute's financial aid staff have left the Institute or been terminated; and
- The Institute has enrolled students in its MRI and Ultrasound programs even though the Bureau has not approved these programs.

As a result of the Institute's financial difficulties and the loss of its Dental Hygiene Program Director and financial aid staff, the Institute can no longer provide adequate educational and administrative services to the students enrolled in its programs, including those students enrolled in the Institute's Dental Hygiene Program who are still receiving instruction. In addition, the Institute is misrepresenting to its students and the public that it is an accredited institution. Also, because the Institute's MRI and Ultrasound programs are not approved by the Bureau, they are being operated unlawfully. Finally, the Bureau has reason to believe that despite the Institute's misrepresentations and unapproved MRI and Ultrasound programs, the Institute continues to enroll students in its programs and accept tuition payments.

These circumstances require immediate action by the Bureau to protect students, prevent misrepresentations to the public, and prevent the loss of public funds or monies paid by students.

You have the right to be heard before the Director of Consumer Affairs, or her designee, regarding the allegations in the Proposed Emergency Decision prior to the effective date of the Emergency Decision. If you would like to be heard before the Director, please submit a request by fax to Yvette Johnson, Enforcement Manager, Bureau for Private Postsecondary Education, 2535 Capitol Oaks Drive, Suite 400, Sacramento, CA 95833, (916) 263-1895 (fax). Alternatively, you may request a hearing before the Director, or her designee, by telephoning Yvette Johnson at (916) 431-6915. Unless the Bureau receives your request by 3:00 p.m. on February 13, 2012, you will be deemed to have waived your right to be heard before the Director, or her designee.

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Upon issuance of the Emergency Decision, you have the right under Government Code section 11460.80 to obtain judicial review of the Decision.

The Emergency Decision shall remain in effect until such time as the Accusation has been fully adjudicated or upon issuance of the final decision following judicial review.



Joanne Wenzel, Deputy Bureau Chief
Bureau for Private Postsecondary Education

2/14/12
Date

Agenda Item #6.A.1., Attachment F



STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.

BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS
2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833-2945
Phone (916) 263-7800 Fax (916) 263-7859 Web www.bvnpt.ca.gov



CERTIFIED MAIL

February 17, 2012

Mary Pedro, B.S., R.N.
Director, Vocational Nursing Program
Institute of Medical Education – ~~Oakland~~ San Jose
130 Almaden Boulevard
San Jose, CA 95113

SUBJECT: Notice of Required Correction

Dear Ms. Pedro:

The Board was recently made aware that the Institute of Medical Education's (IME's) ability to enroll new students and instruct existing students has been temporarily prohibited by the Bureau for Private Postsecondary Education. Copies of the Bureau's February 14, 2012 Emergency Order and the Department of Consumer Affairs' Decision after Opportunity to be Heard, dated February 15, 2012, are attached to this notice.

Pursuant to section 2883 of the Business and Professions Code, the Institute of Medical Education must be able to give a course of instruction in vocational nursing in order to maintain its prior accreditation/approval by the Board. In addition, the Institute of Medical Education must show that it is permitted to enroll new students.

By this Notice, you are requested to provide evidence to the Board that you have authority to instruct students in the vocational nursing programs at the San Jose and Oakland campuses. In the event you cannot show the ability to instruct students, the Board may suspend your accreditation/approval during the period that you lack the ability to instruct and it may revoke any prior authorizations to start new classes.

The full Board may take these actions at its meeting on Wednesday, February 22, 2012, at 4:00 P.M. A copy of the meeting notice is attached.

Sincerely,

TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer

Attachments



SPECIAL BOARD MEETING

DATE: Wednesday, February 22, 2012

PLACE: Radisson Hotel at Los Angeles Airport
Laguna Room
6225 W. Century Blvd.
Los Angeles, CA 90045
Telephone: (310) 670-9000
Fax: (310) 337-6555

TIME: 4:00 p.m.

1. Institute of Medical Education Vocational Nursing Programs.

a. Finding Regarding Special Board Meeting.

The Board will consider whether the delay necessitated by provided notice of the meeting 10 days in advance would cause a substantial hardship on the Board and/or that immediate action is required to protect the public interest.

b. Consideration of Temporary Revocation of Approval During Effect of the Bureau for Private Postsecondary Education's Emergency Decision.
Cheryl Anderson, Supervising Nursing Education Consultant.

The mission of the Board of Vocational Nursing and Psychiatric Technicians (Board) is to protect the public. Public protection is paramount to the Board and its highest priority in exercising its licensing, regulatory, and disciplinary functions. Toward this end, the Board ensures that only qualified persons are licensed vocational nurses and psychiatric technicians by enforcing educational requirements, standards of practice, and by educating consumers of their rights.

All Board meeting dates and locations are subject to change. Meeting times are approximate. Agenda items may be taken out of order. These meetings conform to the Open Meetings Act.

This meeting facility is accessible to the physically disabled. Persons needing a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Linda Ruyters at (916) 263-7848 or email linda.ruyters@dca.ca.gov, or for the hearing impaired, TDD (916) 322-1700; or by sending a written request to the Board office at 2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833, attention: Linda Ruyters. Providing your request at least five business days before the meeting helps to ensure availability of the requested accommodation.

The Board makes every effort to meet in facilities that can accommodate the estimated 300 – 1400 members of the public who wish to observe its proceedings at any given location; however, at times attendees may be asked to exchange seats with individuals waiting outside the room to ensure that all interested parties have an opportunity to observe the proceedings. The Board appreciates your cooperation should this occur.

Government Code Section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by a state body. Total time allocated for public comment may be limited.

Interested parties should call the Board at (916) 263-7845 to confirm the date and specific meeting site of any Board meeting or access the Board's web site at <http://www.bvnpt.ca.gov>. Requests for further information should be directed to Linda Ruyters at (916) 263-7848 or at the email address above.



STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.

BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS
2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833-2945
Phone (916) 263-7800 Fax (916) 263-7859 Web www.bvnpt.ca.gov



DATE: February 17, 2012

TO: Board Members

FROM: Cheryl C. Anderson, M.S., R. N.
Supervising Nursing Education Consultant

SUBJECT: Institute of Medical Education, San Jose, Vocational Nursing Program –
Consideration of Temporary Revocation of Accreditation/Approval During
Effect of the Bureau for Private Postsecondary Education's Emergency
Decision (Director: Mary Pedro, San Jose, Santa Clara County, Private)

Institute of Medical Education, Oakland, Vocational Nursing Programs –
Consideration of Temporary Revocation of Accreditation/Approval During
Effect of the Bureau for Private Postsecondary Education's Emergency
Decision (Director: Mary Ann Haeuser, Oakland, Alameda County, Private)

Effective February 16, 2012, the Bureau for Private Postsecondary Education (Bureau) of the Department of Consumer Affairs ordered the Institute for Medical Education (IME) to:

- “(1) Cease enrollment of new students in all of IME's programs;
- (2) Cease instruction for all of IME's programs; [and]
- (3) Cease collection of tuition or fees for all of IME's programs.”

This Order (see Attachments A, B, C) was made pursuant to Education Code section 94937 and title 5, California Code of Regulations, section 75150. It was issued as an emergency and is temporary until further action is taken by the Bureau. The order applies to both the San Jose and Oakland campuses. In both campuses, IME has vocational nursing programs (VN Programs) which are approved¹ by the Board.

In light of the Bureau's order, IME will be prohibited from instructing students in its VN Programs at both San Jose and Oakland campuses. It is also prohibited from enrolling new classes into those programs.

The Board is authorized to approve schools offering vocational nursing programs in California. (Bus. & Prof. Code, § 2880) Once approved, graduates of such programs meet

¹ Prior to January 1, 2012, references in article 4 of the Vocational Nursing Practice Act, commencing with section 2880, provided that the Board “accredited” the program rather than “approved” it. Despite the change, there was no substantive change to the Board's authority and the terms are used interchangeably here.

one qualification for licensure. (*Id.*) The Board's law, in section 2881 of the Business and Professions Code, provides in pertinent part,

“An approved school of vocational nursing is one which has been approved by the Board of Vocational Nursing and Psychiatric Technicians of the State of California, gives a course of instruction in vocational nursing of not less than 1,530 hours or 50 semester units approved by the board pursuant to Section 2882 whether the same be established by the State Board of Education, other educational institutions, or other public or private agencies or institutions and is affiliated or conducted in connection with one or more hospitals.” [Emphasis added.]

Section 2883 of the Business and Professions Code provides authority for the Board to take action against the Board's approval.

In order to provide clarity and consistency to students in the Vocational Nursing Programs, Institute of Medical Education is presented to the Board for consideration of suspension of its accreditation/approval during the period of time that the Bureau's order is in effect.

Recommendations:

1. The Board suspend the Institute of Medical Education's approvals at the San Jose and Oakland campuses during the period of time the programs lack the ability to instruct students pursuant to the Bureau's Order. In the event the bureau's Order is set aside or modified, the suspension will be automatically lifted and the approval reinstated or modified consistent with any revised Order.
2. Any prior permission issued by the Board authorizing the Institute of Medical Education to start a new class at either location is expressly withdrawn. Should the Order prohibiting the Institute of Medical Education from enrolling new students be set aside or modified, the Institute of Medical Education shall submit a new request for each class to the Board.

Rationale: To have approval, the program must give a course of instruction in vocational nursing. Without authority from the Bureau to instruct students the program, IME cannot give such course of instruction. As such, to protect the students from harm that may come of them enrolling or participating in unauthorized instruction, the Board takes this action.

Attachment A: Order Dated February 15, 2012.

Attachment B: Amended Notice of Emergency Decision Dated February 14, 2012.

Attachment C: Amended Emergency Decision Dated February 14, 2012.



Decision after Opportunity to be Heard

On February 13, 2012, the Bureau for Private Postsecondary Education (Bureau), Department of Consumer Affairs (DCA or Department) served an Emergency Decision (Decision) on Institute for Medical Education (IME) pursuant to its authority contained in Education Code section 94937 and 5 California Code of Regulations (C.C.R.) section 75150. That Decision ordered IME to:

- (1) Cease enrollment of new students in all of IME's programs;
- (2) Cease instruction for all of IME's programs;
- (3) Cease collection of tuition or fees for all of IME's programs.

Pursuant to 5 C.C.R. section 75150(d), IME requested an opportunity to be heard before the effective date of the Decision on February 16, 2012, at 12:01 a.m. That opportunity to be heard was before DCA's Chief Deputy Director Awet Kidane on February 14, 2012, at about 11:30 a.m. IME appeared through counsel, Mark Good. Also present from IME were Sunil Vethody, Chief Executive Officer, and Khoi Lam, Program Director.

The Bureau made the Decision upon a determination of an immediate danger to the public health, safety, or welfare, based upon the following factual allegations:

- The Institute is not an accredited institution. Nonetheless, the Institute is advertising, or indicating in promotional material, that it is accredited;
- The Institute is no longer financially viable in that it has withdrawn from the Federal Financial Aid Program. The Institute relies on student federal financial aid in order to operate;
- The Institute is in default of its enrollment agreement under Education Code section 94927 in that the junior class of the Institute's Dental Hygiene Program was discontinued on February 3, 2012. Also, on February 6, 2012, the Institute's Dental Hygiene Program Director resigned. In addition, on February 2, 2012, the Commission on Dental Accreditation (CODA) withdrew its accreditation of the Institute's Dental Hygiene Program;
- Most of the Institute's financial aid staff have left the Institute or been terminated; and
- The Institute has enrolled students in its MRI and Ultrasound programs even though the Bureau has not approved these programs.

These allegations can be categorized into three areas of (1) accreditation; (2) financial resources; and (3) program operation.

IME disputed that it is not an accredited institution, and asserts that it is accredited through June 30, 2016, by Western Association of Schools and Colleges – Accrediting Commission for Schools (WASC – Schools). IME presented a letter from WASC – Schools, its Certificate of

Accreditation, and an email from Lee Duncan, WASC – Schools. It also argues that it has placed a disclaimer on its website, indicating that its accreditor is no longer participating in Department of Education (DOE), and that IME is not eligible to participate in Title IV Financial Aid. IME maintains that it is exempt from Bureau oversight by virtue of its “WASC” accreditation.

The California Private Postsecondary Education Act of 2009, which regulates private, postsecondary institutions in California, defines “Accredited”:

“‘Accredited’ means an institution is recognized or approved by an accrediting agency recognized by the United States Department of Education.” (Ed. Code § 94813.)

It is undisputed that WASC – Schools is no longer a nationally recognized accrediting agency. IME argues that it has lost nothing except DOE recognition, that this definition of accredited is only relevant with respect to Title IV (federal financial aid funding), and is not to being a sound educational program.

Even assuming, without finding, that DOE recognition is not strictly related to sound educational quality, it is true that IME is not accredited under the definition that governs its operation. IME’s accreditation by WASC – Schools, and no nationally recognized accrediting agency means that it is not accredited under the law.

IME also argues that it is exempt from Bureau regulation, since “WASC” schools have always been exempt from Bureau regulation.

Certain institutions are exempt from regulation under the California Private Postsecondary Education Act of 2009, including:

“An institution that is accredited by the Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges, or the Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges.” (Ed. Code § 94874(i).)

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Therefore, IME is not accredited, and cannot represent itself to be so, disclaimer notwithstanding. Nor is it exempt from regulation, since its accreditor is not “WASC,” but is WASC – Schools, neither WASC -- Senior nor WASC -- Junior. Accordingly, IME cannot represent that it is accredited. Nor is it exempt from regulation.

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There is no indication that IME was required to submit a signed lease for a new location to the Bureau to obtain approval. (See 5 C.C.R. § 71500.) There is no evidence that – even assuming that 150 students will continue in their programs without outside funding – that operating with less than half its student body at a 50% tuition reduction can give them sufficient assets and financial resources to operate according to the law. (See 5 C.C.R. § 71745.)

Lastly, with respect to the programs that it is operating, IME says that its students in the "junior" dental hygiene program have been moved to other sites. They presented no evidence, however, that that change due to a closure of the program was approved by the Bureau. (See 5 C.C.R. § 76240.) With respect to its MRI and Ultrasound programs, IME indicated that it had filed applications to add the programs before the former Bureau sunset on June 30, 2007. Although IME may have lawfully begun the programs after the time the former Bureau ceased operations, IME was required to seek approval of those programs after the current Bureau was in operation. (See 5 C.C.R. § 71655.) There is no evidence that it has done so.

Because IME has lost its institutional accreditation, cannot demonstrate that it has sufficient funds to operate at this time, and is has not either closed or operated certain programs with approval, there is an immediate danger to the public health, safety, or welfare of the students if IME continues to enroll and instruct its students. Accordingly, the Emergency Decision of the Bureau shall become effective as noticed on. This Decision shall remain in effect until withdrawn or modified, or there is a decision on the action filed by the Bureau to resolve the under-lying issues.

Institute of Medical Education
Emergency Decision
Page 4

DATED: 2/15/2012


AWET KIDANE
Chief Deputy Director
Department of Consumer Affairs



Bureau for Private Postsecondary Education
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AMENDED NOTICE OF EMERGENCY DECISION

February 14, 2012

TO: Bindu Baburajan, Owner
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Sunil Vethody, Agent for Service of Record
Institute of Medical Education

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Upon issuance of the Emergency Decision, you have the right under Government Code section 11460.80 to obtain judicial review of the Decision.

The Emergency Decision shall remain in effect until such time as the Accusation has been fully adjudicated or upon issuance of the final decision following judicial review.



Joanne Wenzel, Deputy Bureau Chief
Bureau for Private Postsecondary Education

2/14/12

Date



Bureau for Private Postsecondary Education
2535 Capitol Oaks Drive, Suite 400, Sacramento, CA 95833
P.O. Box 980818, West Sacramento, CA 95798-0818
P (916) 431-6959 F (916) 263-1897 www.bppe.ca.gov



AMENDED EMERGENCY DECISION

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This order is based on an immediate danger to the public health, safety, and welfare. Specifically, the Bureau has determined that:

- The Institute is not an accredited institution. Nonetheless, the Institute is advertising, or indicating in promotional material, that it is accredited;
- The Institute is no longer financially viable in that it has withdrawn from the Federal Financial Aid Program. The Institute relies on student federal financial aid in order to operate;
- The Institute is in default of its enrollment agreement under Education Code section 94927 in that the junior class of the Institute's Dental Hygiene Program was discontinued on February 3, 2012. Also, on February 6, 2012, the Institute's Dental Hygiene Program Director resigned. In addition, on February 2, 2012, the Commission on Dental Accreditation (CODA) withdrew its accreditation of the Institute's Dental Hygiene Program;
- Most of the Institute's financial aid staff have left the Institute or been terminated; and
- The Institute has enrolled students in its MRI and Ultrasound programs even though the Bureau has not approved these programs.

As a result of the Institute's financial difficulties and the loss of its Dental Hygiene Program Director and financial aid staff, the Institute can no longer provide adequate educational and administrative services to the students enrolled in its programs, including those students enrolled in the Institute's Dental Hygiene Program who are still receiving instruction. In addition, the Institute is misrepresenting to its students and the public that it is an accredited institution. Also, because the Institute's MRI and Ultrasound programs are not approved by the Bureau, they are being operated unlawfully. Finally, the Bureau has reason to believe that despite the Institute's misrepresentations and unapproved MRI and Ultrasound programs, the Institute continues to enroll students in its programs and accept tuition payments.

These circumstances require immediate action by the Bureau to protect students, prevent misrepresentations to the public, and prevent the loss of public funds or monies paid by students.

You have the right to be heard before the Director of Consumer Affairs, or her designee, regarding the allegations in the Proposed Emergency Decision prior to the effective date of the Emergency Decision. If you would like to be heard before the Director, please submit a request by fax to Yvette Johnson, Enforcement Manager, Bureau for Private Postsecondary Education, 2535 Capitol Oaks Drive, Suite 400, Sacramento, CA 95833, (916) 263-1895 (fax). Alternatively, you may request a hearing before the Director, or her designee, by telephoning Yvette Johnson at (916) 431-6915. Unless the Bureau receives your request by 3:00 p.m. on February 13, 2012, you will be deemed to have waived your right to be heard before the Director, or her designee.

If requested, the hearing before the Director of Consumer Affairs, or her designee, will be held on February 14, 2012, at 11:00 a.m. at the Department of Consumer Affairs Executive Office, located at 1625 North Market Blvd., Suite S-308, Sacramento, CA 95834.

Within 10 days after issuance of the Emergency Decision, the Bureau will file an accusation on the charges and allegations set forth in the Emergency Decision. The adjudicative proceedings 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 you.

Upon issuance of the Emergency Decision, you have the right under Government Code section 11460.80 to obtain judicial review of the Decision.

The Emergency Decision shall remain in effect until such time as the Accusation has been fully adjudicated or upon issuance of the final decision following judicial review.



Joanne Wenzel, Deputy Bureau Chief
Bureau for Private Postsecondary Education

2/14/12
Date

Agenda Item #6.A.1., Attachment G



STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.

BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS

2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833-2945

Phone (916) 263-7800 Fax (916) 263-7859 Web www.bvnpt.ca.gov



DATE: February 17, 2012

TO: Board Members

FROM: Cheryl C. Anderson, M.S., R. N.
Supervising Nursing Education Consultant

SUBJECT: Institute of Medical Education, San Jose, Vocational Nursing Program –
Consideration of Temporary Revocation of Accreditation During Effect of the
Bureau for Private Postsecondary Education's Emergency Decision (Director:
Mary Pedro, San Jose, Santa Clara County, Private)

Institute of Medical Education, Oakland, Vocational Nursing Programs –
Consideration of Temporary Revocation of Accreditation During Effect of the
Bureau for Private Postsecondary Education's Emergency Decision (Director:
Mary Ann Haeuser, Oakland, Alameda County, Private)

Effective February 16, 2012, the Bureau for Private Postsecondary Education (Bureau) of the Department of Consumer Affairs ordered the Institute for Medical Education (IME) to:

- "(1) Cease enrollment of new students in all of IME's programs;
- (2) Cease instruction for all of IME's programs; [and]
- (3) Cease collection of tuition or fees for all of IME's programs."

This Order (see Attachments A, B, C) was made pursuant to Education Code section 94937 and title 5, California Code of Regulations, section 75150. It was issued as an emergency and is temporary until further action is taken by the Bureau. The order applies to both the San Jose and Oakland campuses. In both campuses, IME has vocational nursing programs (VN Programs) which are approved¹ by the Board.

In light of the Bureau's order, IME will be prohibited from instructing students in its VN Programs at both San Jose and Oakland campuses. It is also prohibited from enrolling new classes into those programs.

The Board is authorized to approve schools offering vocational nursing programs in California. (Bus. & Prof. Code, § 2880) Once approved, graduates of such programs meet

¹ Prior to January 1, 2012, references in article 4 of the Vocational Nursing Practice Act, commencing with section 2880, provided that the Board "accredited" the program rather than "approved" it. Despite the change, there was no substantive change to the Board's authority and the terms are used interchangeably here.

one qualification for licensure. (*Id.*) The Board's law, in section 2881 of the Business and Professions Code, provides in pertinent part,

"An approved school of vocational nursing is one which has been approved by the Board of Vocational Nursing and Psychiatric Technicians of the State of California, **gives a course of instruction in vocational nursing** of not less than 1,530 hours or 50 semester units approved by the board pursuant to Section 2882 whether the same be established by the State Board of Education, other educational institutions, or other public or private agencies or institutions and is affiliated or conducted in connection with one or more hospitals." [Emphasis added.]

Section 2883 of the Business and Professions Code provides authority for the Board to take action against the Board's approval.

In order to provide clarity and consistency to students in the Vocational Nursing Programs, Institute of Medical Education is presented to the Board for consideration of suspension of its accreditation during the period of time that the Bureau's order is in effect.

Recommendations:

1. The Board suspend the Institute of Medical Education's approvals at the San Jose and Oakland campuses during the period of time the programs lack the ability to instruct students pursuant to the Bureau's Order. In the event the bureau's Order is set aside or modified, the suspension will be automatically lifted and the approval reinstated or modified consistent with any revised Order.
2. Any prior permission issued by the Board authorizing the Institute of Medical Education to start a new class at either location is expressly withdrawn. Should the Order prohibiting the Institute of Medical Education from enrolling new students be set aside or modified, the Institute of Medical Education shall submit a new request for each class to the Board.

Rationale: To have approval, the program must give a course of instruction in vocational nursing. Without authority from the Bureau to instruct students the program, IME cannot give such course of instruction. As such, to protect the students from harm that may come of them enrolling or participating in unauthorized instruction, the Board takes this action.

Attachment A: Order Dated February 15, 2012.

Attachment B: Amended Notice of Emergency Decision Dated February 14, 2012.

Attachment C: Amended Emergency Decision Dated February 14, 2012.

Agenda Item #6.A.1., Attachment H



STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.

BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS
2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833-2945
Phone (916) 263-7800 Fax (916) 263-7859 Web www.bvnpt.ca.gov



CERTIFIED MAIL

March 16, 2012

Mary Ann Hauser, M.S., R.N.
Director, Vocational Nursing Program
Institute of Medical Education, Oakland
7901 Oakport Street
Oakland, CA 94621

Subject: Accreditation Status

Dear Ms. Hauser:

The Board of Vocational Nursing and Psychiatric Technicians (Board) considered a report relative to the ***Institute of Medical Education, Oakland, Vocational Nursing Program – Consideration of Temporary Revocation of Accreditation During Effect of the Bureau for Private Postsecondary Education's Emergency Decision***, at its February 24, 2012 meeting.

At its meeting, the Board considered the consultant's report and representations and the presentation by Chaka C. Okadigbo, attorney for the Institute of Medical Education (IME).

The consultant's written report was dated February 17, 2012, and included documents from the Bureau for Private Postsecondary Education of the Department of Consumer Affairs (Bureau). Those documents included an emergency order (Emergency Order) issued February 14, 2012, effective February 16, 2012, as well as a Decision after Opportunity to be Heard (Decision) dated February 15, 2012, signed by Chief Deputy Director of the Department of Consumer Affairs. The effect of the Emergency Order and Decision was that, effective February 16, 2012, the Bureau issued an emergency order to IME prohibiting IME from offering instruction in any of its programs, enrolling new students in any of its programs, and from collecting tuition or fees. As an Emergency Order, the orders therein are temporary until final action is taken by the Bureau. IME must have authority by the state to operate its programs, which authority is granted by the Bureau; without that permission, the programs have no lawful authority to operate programs in the state. The Board's accreditation allows graduates from the program to educationally qualify for licensure.

The Board also reviewed letters dated February 17, 2012 sent to each Board-accredited IME vocational nursing program (Oakland and San Jose) by the Executive Officer. The Executive Officer's February 17, 2012 letter explained that, pursuant to section 2883 of

the Business and Professions Code, IME must be able to provide a course of instruction in vocational nursing in order to maintain its accreditation/approval by the Board. In addition, to obtain Board authorization to begin future classes, IME must have authority from the Bureau to enroll new students.

In her February 17, 2012 letter, the Executive Officer asked IME to provide evidence that, in light of the Emergency Order, IME had authority to instruct students in the vocational nursing programs at the San Jose and Oakland campuses.

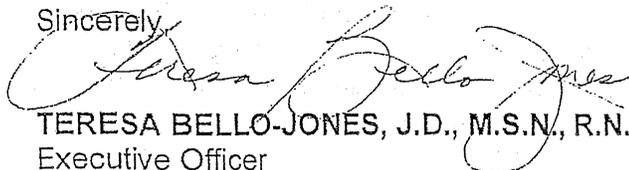
In his presentation, Mr. Okadigbo explained IME was in the process of challenging the Bureau's Emergency Order. He indicated that IME had not filed any action in superior court. Mr. Okadigbo indicated that IME was instructing the students and that he urged the Board to delay taking action against the vocational nursing programs so IME could finish teaching and graduate the students. He explained that IME had approximately 48 students that would graduate from its vocational nursing programs in 8 days, and 17 more students that would graduate in 12 days. Due to the short notice, he was unable to provide details of the students' progress in the curriculum. Mr. Okadigbo did not provide evidence that IME had authority from the Bureau to instruct the existing vocational nursing students or to enroll new ones.

The Board considered the Nursing Education Consultant's report, the Executive Officer's letters, the presentation of Mr. Okadigbo, and it then took the following actions:

1. The Board temporarily suspended the Institute of Medical Education's approvals at the San Jose and Oakland campuses during the period of time the programs lack the ability to instruct students pursuant to the Bureau for Private Postsecondary Education's Order (Order). In the event the Bureau's Order is set aside or modified, the suspension will be automatically lifted and the approval reinstated or modified consistent with any revised Order.
2. Any prior permission issued by the Board authorizing the Institute of Medical Education to start a new class at either location is expressly withdrawn. Should the Order prohibiting the Institute of Medical Education from enrolling new students be set aside or modified, the Institute of Medical Education shall submit a new request for each class to the Board.

Please contact the Board should further clarification be needed.

Sincerely,



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer

cc: Chaka C. Okadigbo, 700 N. Central Avenue, Ste. 570, Glendale, CA 91203

Agenda Item #6.A.1., Attachment I



STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.

BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS
2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833-2945
Phone (916) 263-7800 Fax (916) 263-7859 Web www.bvnpt.ca.gov



CERTIFIED MAIL

March 16, 2012

Mary Pedro, B.S., R.N.
Director, Vocational Nursing Program
Institute of Medical Education – Oakland
130 Almaden Boulevard
San Jose, CA 95113

Subject: Accreditation Status

Dear Ms. Pedro:

The Board of Vocational Nursing and Psychiatric Technicians (Board) considered a report relative to the *Institute of Medical Education, San Jose, Vocational Nursing Program – Consideration of Temporary Revocation of Accreditation During Effect of the Bureau for Private Postsecondary Education's Emergency Decision*, at its February 24, 2012 meeting.

At its meeting, the Board considered the consultant's report and representations and the presentation by Chaka C. Okadigbo, attorney for the Institute of Medical Education (IME).

The consultant's written report was dated February 17, 2012, and included documents from the Bureau for Private Postsecondary Education of the Department of Consumer Affairs (Bureau). Those documents included an emergency order (Emergency Order) issued February 14, 2012, effective February 16, 2012, as well as a Decision after Opportunity to be Heard (Decision) dated February 15, 2012, signed by Chief Deputy Director of the Department of Consumer Affairs. The effect of the Emergency Order and Decision was that, effective February 16, 2012, the Bureau issued an emergency order to IME prohibiting IME from offering instruction in any of its programs, enrolling new students in any of its programs, and from collecting tuition or fees. As an Emergency Order, the orders therein are temporary until final action is taken by the Bureau. IME must have authority by the state to operate its programs, which authority is granted by the Bureau; without that permission, the programs have no lawful authority to operate programs in the state. The Board's accreditation allows graduates from the program to educationally qualify for licensure.

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The Board considered the Nursing Education Consultant's report, the Executive Officer's letters, the presentation of Mr. Okadigbo, and it then took the following actions:

1. The Board temporarily suspended the Institute of Medical Education's approvals at the San Jose and Oakland campuses during the period of time the programs lack the ability to instruct students pursuant to the Bureau for Private Postsecondary Education's Order (Order). In the event the Bureau's Order is set aside or modified, the suspension will be automatically lifted and the approval reinstated or modified consistent with any revised Order.
2. Any prior permission issued by the Board authorizing the Institute of Medical Education to start a new class at either location is expressly withdrawn. Should the Order prohibiting the Institute of Medical Education from enrolling new students be set aside or modified, the Institute of Medical Education shall submit a new request for each class to the Board.

Please contact the Board should further clarification be needed.

Sincerely,



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer

cc: Chaka C. Okadigbo, 700 N. Central Avenue, Ste. 570, Glendale, CA 91203

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 NICHOLAS TSUKAMAKI
Deputy Attorney General
4 State Bar No. 253959
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1188
6 Facsimile: (415) 703-5480
E-mail: Nicholas.Tsukamaki@doj.ca.gov
7 *Attorneys for Complainant*

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

11 In the Matter of the First Amended Accusation
12 Against:

Case No. 997952

13 **INSTITUTE OF MEDICAL EDUCATION**
14 **BINDU BABURAJAN, Owner**
15 **130 S. Almaden Blvd.**
San Jose, CA 95113
Institution Code No. 69608217

FIRST AMENDED ACCUSATION

16 **7901 Oakport Street**
17 **Oakland, CA 94621**
School Code No. 81701347

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Laura Metune (Complainant) brings this First Amended Accusation solely in her
23 official capacity as the Bureau Chief of the Bureau for Private Postsecondary Education (Bureau),
24 Department of Consumer Affairs.

25 2. On or about November 1, 2004, the former Bureau for Private Postsecondary and
26 Vocational Education¹ (BPPVE) issued a Temporary Approval to Operate the Institute of Medical
27

28 ¹ The former Bureau for Private Postsecondary and Vocational Education sunsetted on
(continued...)

1 Education, Bindu Baburajan, Owner (Institution Code No. 69608217) (Respondent or Institute).

2 On or about October 27, 2005, BPPVE issued a Full Approval to Operate the Institute.

3 3. On or about February 8, 2005, BPPVE issued an Approval to Operate a Phlebotomy
4 program and an EKG Technician program at the Institute.

5 4. On or about May 16, 2006, BPPVE issued an Approval to Operate a Vocational
6 Nursing program at the Institute.

7 5. On or about March 22, 2007, BPPVE issued a Full Approval to Operate a satellite
8 location at the Institute located at 2235 Polvorosa Avenue, Suite 200, San Leandro, CA 94577
9 (School Code No. 81701347). On this same date, BPPVE issued an Approval to Operate a
10 Physical Therapy Aide program and a Nursing Assistant program at the Institute.

11 6. On or about April 11, 2007, BPPVE issued an Approval to Operate a Medical
12 Assistant program at the Institute.

13 7. On or about May 7, 2010, the Bureau issued an Approval to Operate an Associate of
14 Science in Nursing degree and an Associate of Arts in Dental Hygiene degree at the Institute.

15 8. On or about May 11, 2010, the Bureau issued an Approval to Operate an Associate of
16 Applied Science in Physical Therapy degree at the Institute.

17 **JURISDICTION**

18 9. This First Amended Accusation is brought before the Bureau under the authority of
19 the following laws. All section references are to the Education Code unless otherwise indicated.

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

24 ///

25 ///

26
27 July 1, 2007. On October 11, 2009, the Private Postsecondary Education Act of 2009 (AB 48)
28 was signed into law. The Act, which became operative on January 1, 2010, established the
Bureau for Private Postsecondary Education.

STATUTORY PROVISIONS

1
2 11. Section 94813 states: “ ‘Accredited’ means an institution is recognized or approved
3 by an accrediting agency recognized by the United States Department of Education.”

4 12. Section 94814 states: “ ‘Accrediting agency’ is an agency recognized by the United
5 States Department of Education.”

6 13. Section 94836 states: “ ‘Educational materials’ means textbooks, supplies,
7 implements, tools, machinery, computers, electronic devices, or other goods related to any
8 education, training, or experience required for participation in an educational program.”

9 14. Section 94839 states: “ ‘Enrollment’ means the execution of an enrollment
10 agreement.”

11 15. Section 94862 states: “ ‘Satellite location’ means an auxiliary classroom or teaching
12 site within 50 miles of the branch or main location.”

13 16. Section 94885 provides in pertinent part:

14 “The bureau shall, by January 1, 2011, adopt by regulation minimum operating standards
15 for an institution that shall reasonably ensure that all of the following occur:

16 ...

17 “(h) Adequate records and standard transcripts are maintained and are available to
18 students.”

19 17. Section 94886 states: “Except as exempted in Article 4 (commencing with Section
20 94874) or in compliance with the transition provisions in Article 2 (commencing with Section
21 94802), a person shall not open, conduct, or do business as a private postsecondary educational
22 institution in this state without obtaining an approval to operate under this chapter.”

23 18. Section 94893 states: “If an institution intends to make a substantive change to its
24 approval to operate, the institution shall receive prior authorization from the bureau. Except as
25 provided in subdivision (a) of Section 94896, if the institution makes the substantive change
26 without prior bureau authorization, the institution’s approval to operate may be suspended or
27 revoked.”

28 ///

1 19. Section 94894 provides in pertinent part:

2 "The following changes to an approval to operate are considered substantive changes and
3 require prior authorization:

4 "(a) A change in educational objectives, including an addition of a new diploma or a degree
5 educational program unrelated to the approved educational programs offered by the institution."

6 20. Section 94897 provides in pertinent part:

7 "An institution shall not do any of the following:

8 ...

9 "(e) Advertise, or indicate in promotional material, that the institution is accredited, unless
10 the institution has been accredited by an accrediting agency.

11 ...

12 "(m) Direct any individual to perform an act that violates this chapter, to refrain from
13 reporting unlawful conduct to the bureau or another government agency, or to engage in any
14 unfair act to persuade a student not to complain to the bureau or another government agency."

15 21. Section 94898 provides in pertinent part:

16 "(b) After a student has enrolled in an educational program, the institution shall not do
17 either of the following:

18 "(1) Make any unscheduled suspension of any class unless caused by circumstances beyond
19 the institution's control."

20 22. Section 94909 provides in pertinent part:

21 "(a) Prior to enrollment, an institution shall provide a prospective student, either in writing
22 or electronically, with a school catalog containing, at a minimum, all of the following:

23 ..."

24 23. Section 94927 states:

25 "An institution shall be considered in default of the enrollment agreement when an
26 educational program is discontinued or canceled or the institution closes prior to completion of
27 the educational program. When an institution is in default, student institutional charges may be
28 refunded on a pro rata basis if the bureau determines that the school has made provision for

1 students enrolled at the time of default to complete a comparable educational program at another
2 institution at no additional charge to the students beyond the amount of the total charges in the
3 original enrollment agreement. If the institution does not make that provision, a total refund of all
4 institutional charges shall be made to students.”

5 24. Section 94930.5 provides in pertinent part:

6 “An institution shall remit to the bureau for deposit in the Private Postsecondary Education
7 Administration Fund the following fees, in accordance with the following schedule:

8 ...

9 “(d)(1) In addition to any fees paid to the bureau pursuant to subdivisions (a) to (c),
10 inclusive, each institution that is approved to operate pursuant to this chapter shall remit both of
11 the following:

12 “(A) An annual institutional fee, in an amount equal to three-quarters of 1 percent of the
13 institution’s annual revenues derived from students in California, but not exceeding a total of
14 twenty-five thousand dollars (\$25,000) annually.

15 ...”

16 25. Section 94937 provides in pertinent part:

17 “(a) As a consequence of an investigation, and upon a finding that an institution has
18 committed a violation, the bureau may place an institution on probation or may suspend or revoke
19 an institution’s approval to operate for:

20 ...

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

26 26. Section 94941, subdivision (d) states: “If the bureau finds that an institution’s
27 violation of this chapter has caused damage or loss to a student or group of students, the bureau
28 shall order the institution to provide appropriate restitution to that student or group of students.”

1 27. Business and Professions Code section 477 states:

2 "As used in this division:

3 "(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,'
4 'examining committee,' 'program,' and 'agency.'

5 "(b) 'License' includes certificate, registration or other means to engage in a business or
6 profession regulated by this code."

7 28. Business and Professions Code section 480 provides in pertinent part:

8 "(a) A board may deny a license regulated by this code on the grounds that the applicant
9 has one of the following:

10 ...

11 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
12 benefit himself or herself or another, or substantially injure another."

13 **REGULATORY PROVISIONS**

14 29. California Code of Regulations, title 5, section 71717, subdivision (b) provides: "[An]
15 institution shall not maintain any permanent student records [at a satellite location]."

16 30. California Code of Regulations, title 5, section 71720 provides in relevant part:

17 "(a) An Educational Program Leading to a Degree.

18 "(1) An institution offering an educational program that leads to a degree shall employ duly
19 qualified faculty sufficient in number to provide the instruction, student advisement, and learning
20 outcomes evaluation necessary for the institution to document its achievement of its stated
21 mission and objectives, and for students to achieve the specific learning objectives of each course
22 offered"

23 31. California Code of Regulations, title 5, section 71730, subdivision (f) states: "The
24 institution shall employ administrative personnel who have the expertise to ensure the
25 achievement of the institution's mission and objectives and the operation of the educational
26 programs."

27 32. California Code of Regulations, title 5, section 71745 provides in relevant part:
28

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

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

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

7 ...

8 “(6) . . . [F]or an institution participating in Title IV of the federal Higher Education Act of
9 1965, meet the composite score requirements of the U.S. Department of Education. . . .”

10 33. California Code of Regulations, title 5, section 71810 provides in relevant part:

11 “(a) Each institution shall provide a catalog pursuant to section 94909 of the Code, which
12 shall be updated annually.

13 ...”

14 34. California Code of Regulations, title 5, section 71920, subdivision (a) states: “The
15 institution shall maintain a file for each student who enrolls in the institution whether or not the
16 student completes the educational service.”

17 35. California Code of Regulations, title 5, section 71930, subdivision (e) states: “All
18 records that the institution is required to maintain by the Act or this chapter shall be made
19 immediately available by the institution for inspection and copying during normal business hours
20 by the Bureau and any entity authorized to conduct investigations.”

21 36. California Code of Regulations, title 5, section 74000 provides in relevant part:

22 “(a) An institution shall pay the fees established by Article 17 of the Act. . . .

23 ...

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

26 37. California Code of Regulations, title 5, section 74002 states:

27 “(a) ‘Annual fee’ or ‘annual institutional fee’ is the fee required by subdivision (d) of
28 section 94930.5 of the Code.

1 “(b) ‘Annual gross revenue’ means all revenue such as tuition, fees, and other charges
2 derived by an institution, during its last fiscal year ending before the due date of an annual fee
3 payment, from any source for any education, instruction, training, or any services incident
4 thereto. ‘Annual gross revenue’ does not include unearned tuition and refunds. An institution
5 shall account for ‘annual gross revenue’ in accordance with generally accepted accounting
6 principles.”

7 38. California Code of Regulations, title 5, section 74006 states:

8 “(a) An institution’s annual fee is due within 30 days of the date on which the institution
9 originally receives its approval to operate and each year thereafter on the anniversary of the date
10 of the original approval.

11 “(b) An institution shall pay its annual fee in addition to any other applicable fees.

12 “(c) The annual institutional fee is based on the institution’s annual revenue. For purposes
13 of this article, annual revenue is annual gross revenue.”

14 39. California Code of Regulations, title 5, section 74200 states: “Every institution shall
15 notify the Bureau in writing at least 30 days before the institution ceases to offer to the public any
16 educational program.”

17 40. California Code of Regulations, title 5, section 75100 provides in relevant part:

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

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

22 41. California Code of Regulations, title 5, section 76020, subdivision (a) provides in
23 relevant part:

24 “The [Student Tuition Recovery Fund (STRF)] exists to relieve or mitigate economic losses
25 suffered by a student in an educational program as defined in section 94837 of the Code at a
26 qualifying institution, who is or was a California resident or was enrolled in a residency program,
27 if the student enrolled in the institution, prepaid tuition, paid the assessment, and suffered loss as
28 a result of any of the following:

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...”

42. California Code of Regulations, title 5, section 76120, subdivision (a) provides in relevant part: “Each qualifying institution shall collect an assessment of two dollars and fifty cents (\$2.50) per one thousand dollars (\$1,000) of institutional charges, rounded to the nearest thousand dollars, from each student in an educational program who is a California resident or is enrolled in a residency program. . . .”

43. California Code of Regulations, title 5, section 76130 provides in relevant part:

“(a) A qualifying institution shall collect the [Student Tuition Recovery Fund] assessment from each student in an educational program at the time it collects the first payment from or on behalf of the student at or after enrollment. The assessment shall be collected for the entire period of enrollment, regardless of whether the student pays the institutional charges in increments.

“(b) A qualifying institution shall complete the STRF Assessment Reporting Form (Rev. 2/10) and remit it with the STRF assessments collected from students to be received by the Bureau no later than the last day of the month following the close of the quarter as follows”

COSTS

44. Business and Professions Code section 125.3 provides that a board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

45. Section 94937, subdivision (c) states: “The bureau may seek reimbursement pursuant to Section 125.3 of the Business and Professions Code.”

FIRST CAUSE FOR DISCIPLINE

(Unauthorized Substantive Change to Approval to Operate)

46. Respondent is subject to disciplinary action under Education Code sections 94893, 94894, subdivision (a), and 94937, subdivision (a)(2), and California Code of Regulations, title 5,

1 section 75100, subdivisions (a) and (b) in that the Institute added programs in MRI Technology
2 and Ultrasound Technology without obtaining prior authorization from the Bureau. The MRI
3 Technology and Ultrasound Technology programs are unrelated to the approved educational
4 programs offered by the Institute. This conduct resulted in harm to students. The circumstances
5 of Respondent's conduct are as follows:

6 47. On its website, the Institute advertises that it offers programs in "MRI Technology"
7 and "Ultrasound Technology".

8 48. The Institute's "2010-2011 Catalog & Student Handbook" states that the Institute
9 offers programs in MRI Technology and Ultrasound Technology.
10

11 49. The Institute enrolled students in its MRI Technology program in 2008, 2009, 2010,
12 2011, and 2012. The Institute enrolled students in its Ultrasound Technology program in 2009,
13 2010, and 2011. On or about October 27, 2011, Sunil Vethody (Sunil), the Institute's Chief
14 Executive Officer, informed an investigator from the Division of Investigation that prospective
15 students had registered for the next MRI Technology and Ultrasound Technology courses, and
16 that these courses were scheduled to begin soon.
17

18 50. Neither BPPVE nor the Bureau has ever issued the Institute an approval to operate
19 either an MRI Technology program or an Ultrasound Technology (Diagnostic Medical
20 Sonography) program.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(False Advertising of Accreditation)**

23 51. Respondent is subject to disciplinary action under Education Code sections 94813,
24 94814, 94897, subdivision (e), and 94937, subdivision (a)(2), and California Code of Regulations,
25 title 5, section 75100, subdivisions (a) and (b) in that the Institute advertised on its website that it
26 was accredited at a time when it was not accredited by an accrediting agency. This conduct
27
28

1 resulted in harm to students. The circumstances of Respondent's conduct are as follows:

2 52. As an institution the Institute is, and at all times pertinent to this Accusation has been,
3 accredited by the Western Association of Schools and Colleges Accrediting Commission for
4 Schools (WASC-ACS). As an institution the Institute is not, nor at any time pertinent to this
5 Accusation was it, accredited by any other accrediting commission, association, agency, or
6 organization.

7 53. As of October 26, 2010, WASC-ACS ceased to be recognized by the United States
8 Department of Education (USDOE). As a result, WASC-ACS has not been an "accrediting
9 agency" for purposes of section 94814 since that date. Consequently, the Institute has not been
10 "accredited" for purposes of section 94813 since October 26, 2010. Nonetheless, since October
11 26, 2010, the Institute represented to enrolled and prospective students that it is accredited.
12

13 54. The Institute maintains a website. The website contains an "Accreditations" tab. The
14 top portion of the "Accreditations" section of the website contains a check mark with the word
15 "ACCREDITATIONS" next to it. Beneath this word the website states the following: "The
16 Institute of Medical Education is approved and accredited by the following: Western Association
17 of Schools and Colleges (WASC) Accrediting Commission of Schools and Colleges:
18 [http://www.acswasc.org/ . . .](http://www.acswasc.org/)"
19

20 55. The Institute has enrolled numerous students in several of its educational programs
21 since October 26, 2010.

22 56. On or about January 17, 2012, Bindu Vethody (Bindu), the Institute's Chief Financial
23 Officer, wrote a letter to USDOE in which she stated the following:
24

25 a. "With the withdrawal of our accreditation from WASC (or withdrawal of WASC
26 approval from [USDOE]), we could not start (not allowed by the respective Board) any classes
27 for Associate Degree in Nursing, and forced to cancel our Medical lab Technician program. We
28

1 are also given a notice to withdraw our approval of our Associate Degree in Dental Hygiene by
2 [the Commission on Dental Accreditation]. There are already students who are ready to graduate
3 in 4 months.”

4 b. “Being an unaccredited school, we have started to see our enrollment and the
5 corresponding revenue slashed by 50% of the original revenue (before the withdrawal of
6 WASC).”

7 c. “Thirdly and most importantly, the current students are going to graduate from a
8 non-accredited school. This is not something they signed up for.”

9
10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Defaulting on Enrollment Agreement and Failure to Pay Refund)**

12 57. Respondent is subject to disciplinary action under Education Code sections 94927 and
13 94937, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, subdivision
14 (a) in that the Institute discontinued or canceled its Dental Hygiene program as to its junior class
15 prior to completion of the program and failed to refund the students in the Dental Hygiene
16 program the institutional charges they incurred. This conduct resulted in harm to students. The
17 circumstances of Respondent’s conduct are as follows:
18

19 58. On or about February 3, 2012, Sunil sent a letter to the Institute’s Dental Hygiene
20 program students in which he stated the following: “In light of the recent change in accreditation
21 status, IME is no longer financially viable. As a result, we are sorry to inform you of the change
22 to the IME Dental Hygiene Program. This letter serves as notice that the Institute of Medical
23 Education Dental Hygiene program will be closing on February 03, 2012.”

24
25 59. On or about February 6, 2012, Sunil sent a follow-up letter to the Institute’s Dental
26 Hygiene program students in which he stated the following: “To clarify, the letter dated on
27 February 3, 2012, regarding the closure of the Dental Hygiene program at IME, pertains to only
28

1 the Junior Class of 2013 (Batch 2). However, the Senior Class of 2012 (Batch 1), will continue
2 classes and clinic until graduation, with the expected date being the 15th of March, 2012.”

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Maintenance of Permanent Student Records at Satellite Location)**

5 60. Respondent is subject to disciplinary action under Education Code section 94937,
6 subdivision (a)(2) and California Code of Regulations, title 5, sections 71717, subdivision (b) and
7 75100, subdivision (a) in that the Institute maintained permanent student records at its satellite
8 location in Oakland, California. This conduct resulted in harm to students. The circumstances of
9 Respondent’s conduct are as follows:
10

11 61. During a meeting with an investigator from the Division of Investigation on or about
12 October 27, 2011, Sunil disclosed that all student records for students enrolled at the Institute’s
13 Oakland campus are stored at the Institute’s Oakland campus. Sunil acknowledged that storing
14 student records at a satellite location is “a violation.”

15 **FIFTH CAUSE FOR DISCIPLINE**

16 **(Failure to Employ Sufficient Number of Qualified Faculty)**

17 62. Respondent is subject to disciplinary action under Education Code section 94937,
18 subdivision (a)(2) and California Code of Regulations, title 5, sections 71720, subdivision (a)(1)
19 and 75100, subdivision (a) in that the Institute failed to employ qualified faculty in its Dental
20 Hygiene and Ultrasound programs sufficient in number to provide the instruction, student
21 advisement, and learning outcomes evaluation necessary for the Institute to document its
22 achievement of its stated mission and objectives, and for Dental Hygiene and Ultrasound program
23 students to achieve the specific learning objectives of the courses offered. This conduct resulted
24 in harm to students. The circumstances of Respondent’s conduct are as follows:
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1 subdivision (a)(2) and California Code of Regulations, title 5, sections 71730, subdivision (f) and
2 75100, subdivision (a) in that the Institute failed to employ sufficient administrative personnel to
3 adequately service the Institute's students. This conduct resulted in harm to students. The
4 circumstances of Respondent's conduct are as follows:

5 69. In her January 17, 2012, letter to USDOE, Bindu stated the following:

6 a. "I know that there are several Federal regulations to meet but I really want you to
7 know that ours is a unique situation here and our lack of trained personnel to administer [financial
8 aid] has occurred due to no fault of ours."

9 b. "Our employee turnover in the last 12 months has been very high and most of the
10 trained staff in the financial aid department did leave or got terminated."

11 70. In 2011 and 2012 the Institute experienced a high rate of turnover of administrative
12 personnel.

13
14 **SEVENTH CAUSE FOR DISCIPLINE**

15 **(Failure to Document Sufficient Assets and Financial Resources)**

16 71. Respondent is subject to disciplinary action under Education Code section 94937,
17 subdivision (a)(2) and California Code of Regulations, title 5, sections 71745, subdivision (a) and
18 75100, subdivision (a) in that the Institute failed to document that it has sufficient assets and
19 financial resources to do the following: (1) provide all of the educational programs that the
20 Institute represented it would provide; (2) ensure that all students admitted to its educational
21 programs have a reasonable opportunity to complete the programs and obtain their degrees or
22 diplomas; and (3) meet the composite score requirements of the United States Department of
23 Education. This conduct resulted in harm to students. The circumstances of Respondent's
24 conduct are as follows:
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1 72. On or about May 14, 2011, Martina Fernandez-Rosario, an employee with USDOE,
2 wrote a letter to Bindu stating the following:

3 a. As of October 26, 2010, WASC-ACS, which is the Institute's primary accreditor,
4 is no longer a nationally recognized accrediting agency.

5 b. Since the Institute is no longer accredited by a nationally recognized accrediting
6 agency, the Institute no longer qualifies as an "eligible institution" for purposes of participation in
7 federal financial aid programs.

8
9 73. On or about November 2, 2011, Patricia Dickerson, an employee with USDOE, wrote
10 a letter to Bindu stating the following:

11 a. A team from USDOE completed a review of audited financial statements from the
12 Institute for the fiscal year ending on December 31, 2010.

13 b. In assessing the Institute's financial strength, a USDOE financial analyst reviewed
14 the financial statements using the indicators set forth in 34 Code of Federal Regulations section
15 668.171.

16 c. The Institute's financial statements yielded a composite score of 0.7 out of a
17 possible 3.0. "A minimum score of 1.5 is necessary to meet the requirement of the financial
18 standards. Accordingly, IME fails to meet the standards of financial responsibility as described in
19 34 C.F.R. § 668.172, Financial Ratios."

20
21 74. On or about January 19, 2012, Martina Fernandez-Rosario wrote a letter to Bindu
22 stating the following:

23 a. USDOE transferred the Institute "from the Advance method of payment to the
24 Heightened Cash Monitoring 2 (HCM2) method of payment effective January 12, 2012."

25
26 ///

27 ///

28

1 b. USDOE instituted this change “because as of October 26, 2010 IME was no longer
2 accredited by a nationally recognized accrediting agency for purposes of participation in the Title
3 IV financial aid programs.”

4 c. The Institute is allowed to continue to participate in the financial aid programs
5 under provisional certification for a period of 18 months until April 26, 2012, by which time the
6 Institute must have secured accreditation from a nationally recognized accrediting agency.

7 d. “[A] program review initiated at IME on January 11, 2012, indicates that IME has
8 not fulfilled its fiduciary responsibilities in administering the Title IV programs. In particular,
9 IME has unsubstantiated cash draws and unreconciled records for Title IV expenditures. As a
10 fiduciary of Federal funds, IME is required to reconcile expenditures on a monthly basis, and
11 must have records readily available that unquestionably support all Title IV drawdowns and
12 disbursements to students. The review team found that IME did not have such records available
13 for the team’s review.”

14
15 75. In her January 17, 2012, letter to USDOE, Bindu stated the following:

16 a. USDOE’s placement of the Institute on the HCM2 method of payment “is going to
17 affect us terribly.”

18 b. “As a result of [our] expansion plan, we have signed leases for 30+K square
19 footage of space for [certain] programs and our rent went up to \$70k (extra space not being used)
20 which is just draining out of our current revenue.”

21 c. “[W]e have started to see our enrollment and the corresponding revenue slashed by
22 50% of the original revenue (before the withdrawal of WASC). I am sure you have the resources
23 to verify the reduction in our student community who have applied for financial aid in the last 6
24 months.”

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26
27 ///

1 d. "[I]t is very crucial and critical that US DOE allow us to draw down the funds for
2 the current student on a HCM1 basis. We cannot move forward in HCM II as we do not have
3 current capability to wait for a month to get the funds as well as to advance the student the money
4 before we get paid from US DOE. In the event that US DOE freezes this account till we finish
5 our reconciliation, we will have no choice but to close our doors to 380+ students as well to 90+
6 employees of ours. We are really concerned about our student community"

7
8 76. On or about January 30, 2012, Sunil sent a letter to the Institute's students in which
9 he stated the following: "It has come to my attention that the default rate for student tuition is
10 alarmingly high. Please understand that IME is not a financing agency in any manner and cannot
11 afford to have a high default rate from tuition payment. . . . Failure to pay tuition by the 5th of
12 each month will put our institution in a great financial difficulty."

13 77. On or about February 3, 2012, Sunil sent a letter to the Institute's Dental Hygiene
14 program students in which he stated the following: "In light of the recent change in accreditation
15 status, IME is no longer financially viable. As a result, we are sorry to inform you of the change
16 to the IME Dental Hygiene Program. This letter serves as notice that the Institute of Medical
17 Education Dental Hygiene program will be closing on February 03, 2012."

18
19 78. On or about February 6, 2012, Sunil sent a follow-up letter to the Institute's Dental
20 Hygiene program students in which he stated the following: "To clarify, the letter dated on
21 February 3, 2012, regarding the closure of the Dental Hygiene program at IME, pertains to only
22 the Junior Class of 2013 (Batch 2). However, the Senior Class of 2012 (Batch 1), will continue
23 classes and clinic until graduation, with the expected date being the 15th of March, 2012."

24
25 79. Effective February 7, 2012, the Institute lost its eligibility to participate in the Title IV
26 federal financial aid programs due to its voluntary relinquishment of its participation in the
27 programs.
28

EIGHTH CAUSE FOR DISCIPLINE

(Failure to Make Records Available for Inspection and Copying)

1
2
3 80. Respondent is subject to disciplinary action under Education Code section 94937,
4 subdivision (a)(2) and California Code of Regulations, title 5, sections 71920, subdivision (a),
5 71930, subdivision (e), and 75100, subdivision (a) in that the Institute failed to make student
6 records available for inspection and copying by a Bureau representative and an investigator from
7 the Division of Investigation. This conduct resulted in harm to students. The circumstances of
8 Respondent's conduct are as follows:
9

10 81. On or about December 7, 2011, Sunil met with an investigator from the Division of
11 Investigation and a Bureau enforcement analyst. During this meeting, the investigator asked to
12 inspect student records. Sunil informed the investigator that the student records were available
13 but he refused to release them unless the investigator or the enforcement analyst agreed in writing
14 that the Institute was exempt from Bureau regulation during a specific time period. Sunil did not
15 allow the investigator or the enforcement analyst to review the requested student records.
16

NINTH CAUSE FOR DISCIPLINE

(Failure to Pay Annual Institutional Fee)

17
18
19 82. Respondent is subject to disciplinary action under Education Code section 94930.5,
20 subdivision (d)(1)(A) and California Code of Regulations, title 5, sections 74000, subdivisions (a)
21 and (e)(1), and 75100, subdivision (a) in that the Institute (1) failed to remit the correct annual fee
22 to the Bureau for 2010 and (2) failed to remit the required annual fee to the Bureau for 2011.
23 This conduct resulted in harm to students.
24

TENTH CAUSE FOR DISCIPLINE

(Failure to Collect and Remit Student Tuition Recovery Fund Assessments)

25
26
27 83. Respondent is subject to disciplinary action under Education Code section 94937,
28

1 subdivision (a)(2) and California Code of Regulations, title 5, sections 76120, subdivision (a),
2 76130, subdivisions (a) and (b), and 75100, subdivision (a) in that in 2010 and 2011 the Institute
3 failed to collect Student Tuition Recovery Fund assessments from its students and remit those
4 assessments to the Bureau. This conduct resulted in harm to students.

5 **ELEVENTH CAUSE FOR DISCIPLINE**

6 **(Failure to Notify Bureau of Educational Program Closure)**

7
8 84. Respondent is subject to disciplinary action under Education Code section 94937,
9 subdivision (a)(2) and California Code of Regulations, title 5, sections 74200 and 75100,
10 subdivision (a) in that the Institute failed to notify the Bureau in writing before closing its Dental
11 Hygiene program. This conduct resulted in harm to students. The circumstances of Respondent's
12 conduct are as follows:

13 85. On or about February 3, 2012, Sunil sent a letter to the Institute's Dental Hygiene
14 program students in which he stated the following: "In light of the recent change in accreditation
15 status, IME is no longer financially viable. As a result, we are sorry to inform you of the change
16 to the IME Dental Hygiene Program. This letter serves as notice that the Institute of Medical
17 Education Dental Hygiene program will be closing on February 03, 2012."

18
19 86. On or about February 6, 2012, Sunil sent a follow-up letter to the Institute's Dental
20 Hygiene program students in which he stated the following: "To clarify, the letter dated on
21 February 3, 2012, regarding the closure of the Dental Hygiene program at IME, pertains to only
22 the Junior Class of 2013 (Batch 2). However, the Senior Class of 2012 (Batch 1), will continue
23 classes and clinic until graduation, with the expected date being the 15th of March, 2012."

24
25 87. At no point before February 3, 2012, did the Institute notify the Bureau in writing that
26 it would be closing its Dental Hygiene program.

27 ///

TWELFTH CAUSE FOR DISCIPLINE

(Committing a Dishonest and/or Deceitful Act)

1
2
3 88. Respondent is subject to disciplinary action under Education Code section 94937,
4 subdivision (a)(2), Business and Professions Code section 480, subdivision (a)(2), and California
5 Code of Regulations, title 5, section 75100, subdivisions (a) and (b) in that Respondent
6 committed an act involving dishonesty and/or deceit with the intent to substantially benefit itself
7 or another. This conduct resulted in harm to students. The circumstances of Respondent's
8 conduct are as follows:

9
10 89. USDOE approves private postsecondary institutions to participate in USDOE's
11 Financial Aid Program. In order for a private postsecondary institution that offers degree-
12 granting programs to obtain USDOE approval for financial aid, that institution's institutional
13 accreditor must accredit the institution to offer degree-granting programs. If an institution is not
14 accredited to offer degree-granting programs, that institution cannot participate in USDOE's
15 Financial Aid Program for its degree-granting programs. Said otherwise, such an institution
16 cannot receive USDOE financial aid for students enrolled in the institution's degree-granting
17 programs.
18

19 90. WASC-ACS is and has been Respondent's only institutional accreditor. WASC-ACS
20 only accredits institutions that offer non-degree-granting programs. It does not, and cannot,
21 accredit institutions that offer degree-granting programs.

22 91. In or around May 2008, Respondent applied to USDOE to participate in USDOE's
23 Financial Aid Program. At the time of application, Respondent represented to USDOE that it
24 offered only non-degree-granting programs. On this basis, USDOE, in or around October 2008,
25 approved Respondent's application to participate in the Financial Aid Program. Because
26 Respondent is accredited by WASC-ACS, USDOE would not, and could not, have approved
27
28

1 Respondent's application as to those programs that were degree-granting.

2 92. In or around 2009, Respondent represented to WASC-ACS that Respondent intended
3 to offer a non-degree-granting program in dental hygiene.

4 93. In or around 2010, Respondent misrepresented to USDOE that Respondent's Dental
5 Hygiene Program was non-degree-granting. In reality, Respondent's Dental Hygiene Program
6 was degree-granting. Based on this misrepresentation, USDOE approved Respondent's
7 participation in the Financial Aid Program for students enrolled in Respondent's Dental Hygiene
8 Program. USDOE would not have approved Respondent's participation in the Financial Aid
9 Program for students enrolled in Respondent's Dental Hygiene Program had USDOE known that
10 the program was degree-granting.
11

12 **THIRTEENTH CAUSE FOR DISCIPLINE**

13 **(Directing an Individual to Perform an Act that Violates the California Private**
14 **Postsecondary Education Act of 2009)**

15 94. Respondent is subject to disciplinary action under Education Code sections 94897,
16 subdivision (m), 94930.5, subdivision (d)(1)(A), and 94937, subdivision (a)(2), and California
17 Code of Regulations, title 5, section 75100, subdivision (a) in that Respondent or one of
18 Respondent's officers or directors directed Respondent's former accounts manager to submit to
19 the Bureau the incorrect 2010 annual institutional fee for the Institute. This conduct resulted in
20 harm to students. The circumstances of Respondent's conduct are as follows:
21

22 95. As an approved private postsecondary institution, the Institute is required to submit to
23 the Bureau an annual institutional fee along with an Annual Institutional Fee Reporting Form. In
24 November 2010, Heidi Formoso (Formoso), Respondent's accounts manager, was in charge of
25 preparing the Institute's Annual Institutional Fee Reporting Form. Formoso determined that
26 based on the Institute's annual gross revenue for 2010, which exceeded \$6,000,000, the Institute
27
28

1 owed at least \$25,000 in annual institutional fees to the Bureau for 2010. In or around June 2011,
2 Sunil directed Formoso to write a check for \$10,266.66 for the Institute's 2010 annual
3 institutional fee. The Institute submitted this check to the Bureau. In this way, the Institute paid
4 the incorrect annual institutional fee for 2010.

5 **FOURTEENTH CAUSE FOR DISCIPLINE**

6 **(Making an Unscheduled Suspension of a Class)**

7 96. Respondent is subject to disciplinary action under Education Code sections 94898,
8 subdivision (b)(1) and 94937, subdivision (a)(2), and California Code of Regulations, title 5,
9 section 75100, subdivision (a) in that in or around September or October 2011, Respondent made
10 an unscheduled suspension of its Oral Biology class, which Respondent offered as part of its
11 Dental Hygiene Program. This conduct resulted in harm to students.
12

13 **FIFTEENTH CAUSE FOR DISCIPLINE**

14 **(Failure to Provide School Catalog)**

15 97. Respondent is subject to disciplinary action under Education Code sections 94909,
16 subdivision (a) and 94937, subdivision (a)(2), and California Code of Regulations, title 5, sections
17 71810, subdivision (a) and 75100, subdivision (a) in that Respondent failed to provide
18 prospective students with a school catalog prior to enrollment. This conduct resulted in harm to
19 students.
20

21 **SIXTEENTH CAUSE FOR DISCIPLINE**

22 **(Failure to Make Records and/or Transcripts Available to Students)**

23 98. Respondent is subject to disciplinary action under Education Code sections 94885,
24 subdivision (h) and 94937, subdivision (a)(2), and California Code of Regulations, title 5, section
25 75100, subdivision (a) in that Respondent failed to make records and/or transcripts available to
26 students. This conduct resulted in harm to students.
27

PRAYER

1
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Director of the Department of Consumer Affairs issue a
4 decision:

5 1. Revoking or suspending the Approval to Operate the Institute of Medical Education,
6 Bindu Baburajan, Owner (Institution Code No. 69608217 and School Code No. 81701347)
7 (Respondent);

8 2. Ordering Respondent to pay the Bureau the reasonable costs of the investigation and
9 enforcement of this case pursuant to Education Code section 94937, subdivision (c) and Business
10 and Professions Code section 125.3;

11 3. Ordering Respondent to provide appropriate restitution to its students and former
12 students;

13 4. Taking such other and further action as deemed necessary and proper.
14

15
16
17 DATED: June 7, 2012



18 LAURA METUNE
19 Bureau Chief
20 Bureau for Private Postsecondary Education
21 Department of Consumer Affairs
22 State of California
23 Complainant
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Agenda Item #6.A.1., Attachment K

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

In the Matter of the Accusation Against:

**INSTITUTE OF MEDICAL EDUCATION
BINDU BABURAJAN, a.k.a. BINDU
VETHODY, Owner**

130 S. Almaden Blvd.
San Jose, CA 95113
Institution Code No. 69608217,

7901 Oakport Street
Oakland, CA 94621
School Code No. 81701347,

Respondent.

Bureau Case No. 997952

OAH No. 2012030566

DECISION

Pursuant to subdivision (c)(2)(C) of section 11517 of the Government Code, the attached Corrected Proposed Decision (dated September 20, 2013) of the Administrative Law Judge is hereby adopted by the Director of Consumer Affairs as the Decision and Order in the above-entitled matter with the following minor changes:

1. On page 2, first full paragraph, the comma is deleted after the word Respondent in the fourth sentence.
2. On page 2, third full paragraph, the word "bureau" is replaced with the word "department."
3. On page 4, paragraph 7.f., the last word of the paragraph is modified to read "programs" (plural).
4. On page 5, paragraph 8.a., the word "nursing" is modified to make the whole word lower case.
5. On page 5, paragraph 13, the beginning of the second sentence is modified to read, "However, because IME's approval to operate an MRI technology program was fraudulently obtained, students in the MRI technology program ..."
6. On page 7, paragraph 19, in the first sentence, a comma is added after the word "website."

7. On page 7, paragraph 20, in the last sentence, the apostrophe is deleted from the word "externship's."
8. On page 8, paragraph 26, in the second sentence, a comma is added after the year "2007."
9. On page 8, paragraph 27, in the first sentence, a comma is added after the year "2007."
10. On page 8, paragraph 27, in the second sentence, a comma is added after the year "2010."
11. On page 8, paragraph 28, in the last sentence, a comma is added after the year "2010."
12. On page 8, paragraph 31, first sentence, the word "hygiene" is modified to make the whole word lower case.
13. On page 8, paragraph 33, in the second to last sentence, the word "intuition" is replaced with the word "institutions."
14. On page 14, paragraph 59, in the first sentence, a comma is added after the year "2011."
15. On page 14, paragraph 60, in the first sentence, the word "will" is replaced with the word "with."
16. On page 17, paragraph 13, in the last sentence, the apostrophe is deleted from the word "program's."
17. On page 17, after the paragraph number "14," the comma is replaced with a period.
18. On page 17, paragraph 16, in the first sentence, a comma is added after the second reference to "(a)."
19. On page 19, paragraph 21, in the second sentence, the word "failed" is modified to the word "failure."
20. On page 20, paragraph 23, in the last sentence, the word "institutions" is modified to "institution's" (possessive).
21. On page 20, paragraph 25, in the second sentence, a comma is added after the year "2011."
22. On page 21, paragraph 27, in the second sentence, a comma is added after the phrase, "but not limited to."

This Decision shall become effective on JAN 02 2014.

IT IS SO ORDERED NOV 25 2013.


 DOREATHEA JOHNSON
 Deputy Director, Legal Affairs
 Department of Consumer Affairs

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

In the Matter of the Accusation Against:

**INSTITUTE OF MEDICAL EDUCATION
BINDU BABURAJAN, a.k.a. BINDU
VETHODY, Owner**

130 S. Almaden Blvd.
San Jose, CA 95113
Institution Code No. 69608217,

7901 Oakport Street
Oakland, CA 94621
School Code No. 81701347,

Respondent.

Bureau Case No. 997952

OAH No. 2012030566

NOTICE TO THE PARTIES

Please be advised that, on behalf of the Director of the Department of Consumer Affairs, on August 23, 2013, the Office of Administrative Hearings was requested to make minor typographical changes to the August 5, 2013, Proposed Decision in this matter. On September 20, 2013, the administrative law judge issued a Corrected Proposed Decision. A copy of both the request for correction and the Corrected Proposed Decision are being provided with this Notice.

Dated _____

10/2/13



LAURA FREEDMAN
Attorney III, Legal Affairs
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

INSTITUTE OF MEDICAL EDUCATION
BINDU BABURAJAN, Owner

Institution Code No. 69608217

School Code No. 81701347,

Respondent.

Case No. 997952

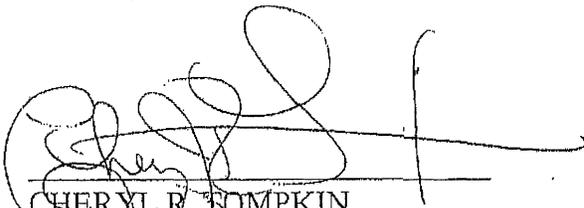
OAH No. 2012030566

ORDER CORRECTING PROPOSED
DECISION

On August 5, 2013, Administrative Law Judge Dianna L. Albin of the Office of Administrative Hearings issued a proposed decision in the above-captioned case. On August 23, 2013, Laura Freedman, from the Legal Division of the Department of Consumer Affairs filed an application to correct the proposed decision. No opposition to the application was filed.

GOOD CAUSE appearing, the Corrected Proposed Decision is attached to this Order.

Dated: September 20, 2013


CHERYL R. TOMPKIN
Presiding Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
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School Code No. 81701347,

Respondent.

Case No. 997952

OAH No. 2012030566

CORRECTED PROPOSED DECISION

Administrative Law Judge Dianna L. Albini, State of California, Office of Administrative Hearings, heard this matter on June 21 through 29, 2012, August 2, 3, 7, 24, 30, 2012, and September 19, 2012, in Oakland, California.

Nicholas Tsukamaki, Deputy Attorney General, represented complainant Laura Metune.

Kimberly C. Culp, Colt & Wallerstein LLP, Attorneys at Law, represented respondent Institute of Medical Education Inc., Bindu Baburajan, owner.

On August 2, 2012, Nicholas Tsukamaki, attorney for complainant, appeared at hearing. Neither Kimberly I. Culp, attorney for respondent, nor respondent appeared on August 2, 2012. Culp confirmed by phone that her firm was still the attorney of record for respondent and that pursuant to respondent's instruction no attorney would be appearing for the hearing. Culp confirmed that respondent was aware that the complainant intended to proceed with the hearing and that respondent had notice of the August 2, 2012 hearing. The hearing proceeded on August 2 and 3, 2012, without respondent's attendance. Respondent was ordered to appear on August 13, 2012, and produce all Institute of Medical Education Inc. (IME) student records, including but not limited to, payments and disbursements regarding the Student Tuition Recovery Fund, student transcripts, enrollment contracts, and all other student records. Respondent agreed to produce the documents to the bureau on September 17, 2012, and the hearing was scheduled to resume on September 28, 2012. The complainant requested additional time to review the voluminous documents produced by respondent on September 17, 2012, and if necessary, schedule additional hearing time on the

evidence. On October 29, 2012, complainant produced the following documents which were marked for identification as follows:

Exhibit 87	52 page list of IME students
Exhibit 88	Declaration and summary of the identity of IME students seeking restitution for tuition payments to IME in the amount of \$2,116,180.86
Exhibit 89	Declaration of investigative costs
Exhibit 90	Declaration of prosecution costs
Exhibit 91	Amended certification of investigative costs

Additional information was necessary regarding the restitution amount requested by complainant in Exhibit 88. On January 7, 2013, the additional information was received and attached to what was previously marked as Exhibit 88. Respondent was provided with an opportunity to respond to Exhibits 87 through 91. Respondent, failed to object or otherwise respond to Exhibits 88 through 91. Exhibits 88 through 91 were admitted into evidence. On January 7, 2013, the record was closed and the matter was deemed submitted. The proposed decision was issued on August 5, 2013.

On August 13, 2013, complainant submitted a request to the Office of Administrative Hearings seeking to have Exhibit 88 (declaration and summary of the identity of IME students seeking restitution for tuition payments to IME in the amount of \$2,116,180.86) withdrawn and substituted in its place an amended Exhibit 88 (documents supporting a corrected restitution amount of \$1,614,150, and limiting the restitution to only those students identified in amended Exhibit 88). Additionally, complainant requested that Exhibit 92 (declaration of Joanne Wenzel dated July 22, 2013, in support of amended Exhibit 88), be marked for identification and admitted into evidence. The amended Exhibit 88 and Exhibit 92 were neither marked for identification nor admitted into evidence due to the Office of Administrative Hearings' lack of jurisdiction following the issuance of the proposed decision. (Govt. Code § 11521.)

On August 23, 2013, a letter was received from the bureau requesting a correction of clerical errors.

FACTUAL FINDINGS

Legislative history

1. A private postsecondary educational institution is defined as a private entity with a physical presence in California that offers postsecondary education to the public for an institutional charge. (Ed. Code, § 94858). A postsecondary education is defined as a formal

institutional educational program whose curriculum is designed primarily for students who have completed or terminated their secondary education or are beyond the age of compulsory high school, including programs whose purpose is academic, vocational, or continuing professional education. (Ed. Code, § 94857). In order to operate, a private postsecondary education institution must obtain an "approval to operate" from the Bureau of Private Postsecondary Education.

2. The Private Postsecondary and Vocational Education Reform Act of 1989, created the Bureau of Private Postsecondary and Vocational Education (BPPVE). The BPPVE's responsibilities included regulatory oversight of private postsecondary and vocational education institutions. In 2007, more than 400,000 Californians attended more than 1,500 private postsecondary and vocational schools in California. On June 30, 2007, the laws and regulatory oversight of private postsecondary and vocational schools expired and the BPPVE sunsetted. On October 11, 2009, the Private Postsecondary Education Act of 2009 (AB 48) was enacted and became operative on January 1, 2010. This Act established the Bureau for Private Postsecondary Education (bureau).

There was no regulatory oversight in California for private postsecondary education institutions from July 1, 2007 through December 31, 2009.

Jurisdiction and procedural background

3. Complainant Laura Metune, Bureau Chief of the Bureau for Private Postsecondary Education, Department of Consumer Affairs, filed the first amended accusation against respondent Bindu Baburajan, also known as Bindu Vethody, licensee of the Institute of Medical Education, Inc., (IME). Complainant seeks to suspend or revoke the approval of IME to operate, to recover reasonable costs to the bureau, and to recover restitution for IME's former students. Respondent denies any wrong doing.

4. At hearing complainant amended the first amended accusation by adding the following paragraph to page 6, line 14:

28.5. California Code of Regulations Title 5, Section 71655, Subdivision (a), provides: An institution that made a substantive change as defined in Section 94894 of the Code between July 1, 2007, and December 31, 2009, may continue to operate, but shall comply with, and is subject to, the Code and this Division, and shall submit an application for a substantive change for approval to operate to the bureau pursuant to this article within six months of that application becoming available.

5. Respondent's husband and IME Chief Executive Officer, Sunil Vethody, directed, managed and oversaw the day-to-day operations at IME. Respondent Bindu Baburajan acted as the chief financial officer for IME.

IME is a Delaware Corporation that was established in March 2003 to do business in California as a healthcare training institute.

Former Bureau of Private Postsecondary and Vocational Education (BPPVE)

6. On November 1, 2004, BPPVE issued IME a temporary approval to operate (Institution Code number 69608217) a private postsecondary-institution.¹ On October 27, 2005, BPPVE issued IME a full approval to operate an educational institution at 130 Almaden Avenue in San Jose, California.

Authorized educational programs

7. The BPPVE authorized IME to offer the following educational programs:
 - a. On November 1, 2004, a medical assistant program; this non-degree granting program was discontinued on April 11, 2007.
 - b. On February 8, 2005, a phlebotomy program and an electrocardiogram (EKG) technician program. These programs were non-degree granting programs;
 - c. On October 9, 2005, an occupational therapy aide/physical therapy aide program that was discontinued on March 21, 2007. This was a non-degree granting program;
 - d. On May 16, 2006, a non-degree granting vocational nursing program ; and,
 - e. On March 22, 2007, the BPPVE granted full approval for IME to operate a satellite location² at 2235 Polvorosa Avenue, Suite 200, San Leandro, California (School Code number 81701347). The evidence did not establish that IME opened a satellite location in San Leandro, California. However, the evidence did establish that IME operated a satellite location in Oakland, California. There was no evidence submitted that established IME was granted approval to operate a satellite location in Oakland, California.
 - f. On March 22, 2007, IME was also granted approval to operate a physical therapy aide program and a nursing assistant program. These programs were non-degree granting program.

¹ Pursuant to Education Code section 94802, an institution that had a valid approval to operate on June 30, 2007, issued by BPPVE, maintains that approval to operate for three calendar years after the expiration date of the approval.

² Pursuant to Education Code section 94862, a satellite location means an auxiliary classroom or teaching site within 50 miles of the institution's main location.

8. The current bureau approved IME to offer the following programs:

a. On May 7, 2010, an Associate of Science degree program in Nursing and an Associate of Arts degree program in dental hygiene.

b. On May 11, 2010, an Associate of Applied Science degree program in physical therapy.

9. On February 16, 2012, following a hearing before the Department of Consumer Affairs, the bureau issued an amended emergency decision ordering respondent Bindu Baburajan to cease IME's enrollment of new students at all of its locations, to cease all instruction and to cease collection of tuition and fees.

10. On February 16, 2012, IME ceased operating its private postsecondary educational institution in San Jose, California, and the Oakland, California, satellite location. On July 19, 2012, respondent surrendered IME's approval to operate to the bureau.

Unauthorized substantive change to IME's approval to operate

11. On November 17, 2010, respondent provided the bureau with copies of 2006 approval to operate documents, purportedly from the BPPVE, that authorized IME to operate an MRI technology program and an ultrasound technology program. These documents were in fact documents issued to another institution that were intentionally altered by IME representatives. At no time did the BPPVE or the current bureau issue IME an approval to operate an MRI technology or ultrasound technology program. IME never paid the bureau approval to operate fees for an MRI technology program or an ultrasound technology program.

MAGNETIC RESONANCE IMAGING (MRI) PROGRAM

12. The evidence established that in approximately 2006 and 2007 IME's employees acting on behalf of respondent, fraudulently altered bureau documents to present the appearance that IME was approved to operate an MRI technology program. Thereafter, IME used these fraudulent documents to secure accreditation for the MRI technology program from the American Registry of Magnetic Resonance Imaging Technologists and the Western Association of Schools and Colleges (WASC). IME solicited students for the MRI technology program knowing that IME's accreditation was fraudulently obtained.

13. IME's 2009 - 2010 website solicited students for the MRI technology program by representing to potential students that graduates from the MRI technology program would be eligible to sit for the American Registry of Magnetic Resonance Imaging Technologists National Certification Examination. However, because IME's approval to operate an MRI Technology program was fraudulently obtained, student's in the MRI Technology program were precluded from sitting for the American Registry of Magnetic Resonance Imaging

Technologists National Certification Examination due to IME's unaccredited and unapproved status.

14. IME's 2010 - 2011 school catalog and student handbook identified the cost of the MRI technology program as \$27,000, with approximately \$400 in additional incidental expenses. Completion of the MRI technology program required completion of 1972 hours (972 theory and lab hours and 1000 clinical hours) of course work.

15. IME enrolled students in the MRI technology program in 2008, 2009, 2010, 2011 and 2012. During that five year period, approximately 120 students enrolled and participated in the MRI technology program at IME.

16. Gary De Lozier paid \$14,665.20 to enroll in respondent's MRI technology program. The MRI technology program consisted of a classroom education and an externship. IME was responsible for locating healthcare professionals that would allow IME students to earn hands on experience while fulfilling the requisite externship hours necessary for the student to take the state and national examinations. After completing the classroom hours De Lozier was cleared by IME's financial aid office to attend a clinical externship.³ IME did not offer De Lozier an externship program. Without completing an externship, De Lozier could not sit for the national exam nor obtain employment in California as an MRI technologist.

17. Blessilia Quioambao attended IME's 2009 - 2010 MRI technology program. Quioambao completed all classroom hours and was cleared by IME's financial aid office to attend a clinical externship. IME did not provide an externship to Quioambao. Without completing an externship, Quioambao could not sit for the national exam nor obtain employment as an MRI technologist.

18. IME enrolled 120 MRI technology students in its non-accredited program. These 120 students paid tuition and incidental fees to IME, relied on respondent's fraudulent advertisement and representations that the MRI program was accredited. These 120 MRI technology students were unable to complete their program due to respondent's closure of the institution. As a result of respondent's intentional misrepresentations, these 120 students enrolled in respondent's MRI technology program. In addition, the 120 students do not qualify to take the state and national examinations, nor are they eligible for employment as an MRI technologist in the State of California. Consequently, these 120 students were harmed.

³ IME would not allow students to attend externships or off-site clinics unless the student's tuition was paid in full.

ULTRASOUND TECHNOLOGY PROGRAM

19. IME's website copyrighted in 2009 – 2010, solicited students for the ultrasound technology program. IME's website advertised the ultrasound program as a certificate program that allowed those graduates with a bachelor's degree to sit for the American Registry of Diagnostic Sonography exam. IME solicited students for the ultrasound technology program knowing that IME's accreditation was fraudulently obtained.

20. The 2010 – 2011 IME catalog and student handbook identified the cost of the ultrasound technologist program as \$29,900 and approximately \$400 in incidental expenses. In order to receive IME's ultrasound technology certification, a student was required to complete a 25 month program that included 960 hours of clinical externship hours. IME was responsible for locating externship's for the students to complete the required 960 hours.

21. IME enrolled students in the ultrasound technology program in 2009-2010, and 2011. During that three year period, approximately 254 students enrolled and participated in the unaccredited ultrasound technology program.

22. Arthur Chen was present and testified at hearing. Chen, a student in IME's August 2008 ultrasound technology program, paid \$22,105 to IME. Chen completed the coursework in November 2009 and in December 2009 started the 300 hours of clinical study at the IME San Jose location. Prior to Chen's ultrasound technology program, IME did not have an on-campus ultrasound technology clinic. The IME program on-campus clinic was started because of IME's difficulty placing its students in an ultrasound externship. Approximately 40 percent of the on-campus ultrasound clinic Chen attended consisted of practicing ultrasound techniques without patients to examine. The remaining clinical time was spent without instruction. After completing IME's on-campus clinic, Chen was given the opportunity to attend an offsite externship at a chiropractic office in Livermore. The clinic consisted of approximately five ultrasound students observing the chiropractor perform an ultrasound procedure on one patient. Chen was frustrated by the poor quality of instruction at the offsite clinic and concerned that the clinical hours would not meet the minimum standards required for licensure by the California Department of Public Health. Based on IME's failure to provide appropriate externship opportunities for IME's ultrasound students, Chen was unable to obtain his ultrasound certification and employment as an ultrasound technologist in California.

23. Another IME ultrasound student received a certificate of completion from IME for the ultrasound program. In approximately 2011, the student learned that the 51 credits (units) earned for the IME certificate of completion did not meet the 60 semester units or 84 quarterly credits necessary for the student to sit for the American Registry for Diagnostic Medical Sonography (national) exam.

24. In September 2010, two additional IME ultrasound technology students enrolled in and paid for IME's ultrasound technology program. These two students completed their classroom courses, but IME did not provide the students with externships.

25. IME enrolled 254 ultrasound technology students in its non-accredited program. These 254 students paid tuition and incidental fees to IME. Each of the 254 students relied on respondent's fraudulent advertisement and representations that the ultrasound program was accredited. As a result of IME's non-accredited program status, the 254 students did not qualify to take the state and national examinations, nor were they eligible for employment as an ultrasound technologist in the State of California. And these 254 ultrasound technology students were unable to complete their program due to respondent's closure of the institution. Consequently, these 254 students were harmed.

False advertising of accreditation

26. In order for a private postsecondary education institution to receive federal financial aid funding for its students, the institution must be credentialed by an accrediting agency recognized by the United States Department of Education. In 2007 Western Association of Schools and Colleges (WASC) was recognized by the United States Department of Education as an accrediting agency.

27. In April 2007 IME received initial accreditation from the Accrediting Commission for Schools of the Western Association of Schools and Colleges (ACS-WASC). In May 2010 ACS-WASC granted IME full accreditation for six-years. ACS-WASC is a division of WASC that is responsible for accrediting vocational non-profit educational institutions. ACS-WASC's accreditation of IME allowed IME students to obtain federal financial aid funding.

28. ACS-WASC does not accredit "for profit" educational institutions or degree granting institutions. In 2010, Vethody misrepresented to ACS-WASC that IME was a not-for-profit organization that provided non-degree granting programs, knowing that ACS-WASC would not provide accreditation to for-profit institutions or degree granting programs. In May 2010, IME notified ACS-WASC that the bureau issued IME approval to operate two degree programs. In August 2010, WASC notified IME that IME needed to find another accrediting agency based on IME's failure to acknowledge their "for-profit" status and IME's degree granting programs. On October 26, 2010, ACS-WASC withdrew from the Department of Education. In October 2010 IME was notified by the Department of Education that IME had 18 months (until April 2012) to transition to a recognized accrediting agency in order for IME to continue its ability to provide its students with federal financial aid funding.

29. Commencing in November 2010 through January 2012, IME's website contained the following fraudulent representations:

IME is approved and accredited by the following:

Western Association of Schools and Colleges (WASC) accrediting
Commission of Schools and Colleges: <http://www.acswasc.org/>.

The State of California Bureau for Private Postsecondary and Vocational
Education.

[]

American Registry of MRI Technologists.

Defaulting on student enrollment agreements and failure to pay student refunds

30. In October 2011, IME had approximately 500 students enrolled at its institution.

31. On February 3, 2012, Sunil Vethody sent a letter to IME's dental Hygiene program students informing them that IME would be closing the dental hygiene program on February 3, 2012.

32. On February 16, 2012, the bureau closed IME's San Jose facility and IME's Oakland satellite location.

33. The 112 IME students set forth in complainant's exhibit 88 paid tuition and fees to IME in varying amounts for a total tuition payment of \$2,116,180.86. The identity and amount of tuition paid by each of the 112 students entitled to restitution are set forth in complainant's exhibit 88 and incorporated herein by reference. These 112 students were unable to complete their education due to IME's lack of proper accreditation and its closure. IME has not refunded any money to these 112 former students. The coursework these 112 students completed at IME is not transferable to other intuition. Consequently, if these students want to complete the educational program commenced at IME, the students will have to start a new program from the beginning and incur the additional expense of paying for that new program.

Maintenance of permanent student records at a satellite location

34. On October 27, 2011, Sunil Vethody informed a bureau investigator that all student records for students enrolled at IME's Oakland campus were maintained at the Oakland IME campus. Sunil Vethody acknowledged to the bureau investigator that he was aware that maintaining student records at a satellite location was "a violation".

35. In December 2011, the bureau's investigator determined that the student files for the MRI and ultrasound programs were not maintained at IME's San Jose facility, but were stored at IME's satellite facility in Oakland, California.

36. The bureau did not approve IME to operate a satellite facility in Oakland, California.

Failure to employ sufficient number of qualified faculty

37. In 2011 and 2012, IME had a large turnover rate of employees in the financial aid office.

38. Respondent admitted IME staff was not sufficiently trained to properly administer financial aid at its institution. Respondent also admitted IME had a high employee turnover of "most of the trained staff in the financial aid department".

39. In September 2011, IME's school director left the institution and had not been replaced as of October 27, 2011. The Dental Hygiene Director at IME was terminated in October 2011 and was not replaced. Instructors in the dental hygiene program quit because of concerns over IME's lack of accreditation. The loss of instructors resulted in three dental hygiene class cancellations.

Failure to document sufficient assets and financial resources

40. On May 14, 2011, respondent was notified by the United States Department of Education that since IME was no longer accredited by a nationally recognized accrediting agency that IME was no longer qualified as an "eligible institution" for purposes of participation in federal financial aid programs. However, the United States Department of Education allowed IME to participate in the financial aid programs under provisional certification for a period of 18 months, until April 26, 2012. The United States Department of Education informed IME that the failure to secure accreditation from a nationally recognized accrediting agency prior to April 26, 2012, would preclude IME students from participating in federal financial aid programs.

41. In order for a private postsecondary institution to participate in the federal financial aid program, an institution must maintain the standards of financial responsibility set forth in section 498, subdivision (c), of the Higher Education Act of 1965 (ACT). The financial responsibility of an institution is determined through a composite score of three ratios derived from an institution's audited financial statements. The three ratios are a primary reserve ratio, an equity ratio, and a net income ratio. The composite score of these three ratios reflect the overall financial health of an institution.

On November 2, 2011, respondent was notified by the United States Department of Education, that following an audit of IME's 2010 financial statements, the Department determined that IME failed to meet the minimum standards of financial responsibility

necessary for an institution to participate in federal financial aid funding. In other words, IME's composite scores reflected the institution was not operating in a financially responsible manner. As a result, in order for IME to continue to participate in the federal financial aid programs, IME had to submit an irrevocable letter of credit in the amount of \$2,759,420 (50 percent of the financial aid program funds received by IME during the 2010 fiscal year), or in the alternative, post a letter of credit in the amount of \$551,884, to be provisionally certified for three years and comply with all of the provisional certification requirements.

42. Effective January 12, 2012, the United States Department of Education altered the method by which IME disbursed federal financial aid to its students. IME was transferred from an advance method of payment to a "heightened cash monitoring" method of payment. Under the cash monitoring payment method, IME had to first make a fund disbursement to eligible students and parents prior to requesting or receiving reimbursement of those funds from the United States Department of Education.

43. On January 13, 2012, the United States Department of Education suspended IME's ability to access financial aid funds based on IME's unsubstantiated cash draws and unreconciled records for federal financial aid (Title IV) expenditures. IME is responsible for reconciling Title IV expenditures (drawdowns and disbursements to students) on a monthly basis. IME is also required to have such records available for review upon request. IME failed to produce the Title IV expenditure documents to United States Department of Education investigators on January 7, 2012. Respondent did not explain the \$800,000 loan to shareholders or the \$159,938.67 loan to "AAS" entries on IME's 2010 profit and loss statement.

44. On February 7, 2012, IME lost its eligibility to participation in the Title IV Federal Student Aid Programs based on respondent's voluntary relinquishment of its participation in the federal financial aid programs.

45. On February 3, 2012, Sunil Vethody sent a letter informing IME's dental hygiene program students that IME was no longer financially viable and that the February 3, 2012 letter served as notice that the dental hygiene program would immediately close.

46. IME did not notify the bureau prior to February 3, 2012, that IME would be closing its dental hygiene program.

Failure to make records available for inspection and copying

47. On December 7, 2011, Sunil Vethody refused to provide the bureau analysts access to requested student records unless the enforcement analyst agreed in writing that IME was exempt from bureau regulation during the time the bureau sunsetted, from July 1, 2007 through October 26, 2010.

48. Numerous students requested copies of their files, transcripts and related school records. IME refused to provide these records to students.

Failure to pay annual institution fee to the bureau

49. Private postsecondary education institutions are required to pay the bureau annual fees. The annual institutional fee is calculated based on an amount equal to three-quarters of one percent of the institution's annual revenues derived from students in California, but not to exceed \$25,000. Respondent reported IME's gross annual revenue as \$1,235,554.66 on the 2010 annual fee report to the bureau. Based on IME's reported annual revenues of \$1,235,554.66, IME's annual fee was \$9,266.66, for its San Jose facility and \$1,000 for its satellite location. However, IME's actual annual revenue for 2010, as reflected on IME's 2010 profit and loss statement, was \$6,648,844.87. Consequently, the 2010 annual fees⁴ IME was required to pay the bureau are \$25,000 for its main facility and \$1,000 for its satellite location.

50. In November 2010, Heidi Formoso (Formoso), respondent's accounts manager, was in charge of preparing the IME's Annual Institutional Fee Reporting Form. Formoso determined that based on the Institute's annual gross revenue for 2010, which exceeded \$6,000,000, IME owed \$25,000 in annual institutional fees for the San Jose facility and \$1,000 in annual fees for the satellite location to the bureau for 2010. In June 2011, Sunil Vethody directed Formoso to write the bureau a check for \$10,266.66 for IME's 2010 annual institutional fee, despite Vethody's knowledge that the 2010 institutional fee was \$25,000. The outstanding balance of \$14,733.34 for 2010 institutional fees and the bureau's assessment of a 35 percent penalty fee remain outstanding.

51. IME did not pay the 2011 annual fee of \$25,000, or the 2011 satellite fee of \$1,000, to the bureau.

Failure to collect and remit student tuition recovery fund assessments

52. The Student Tuition Recovery Fund (STRF) exists to mitigate economic losses suffered by a student in a qualified educational program. IME is a qualified educational program. STRF requires IME to collect an assessment from each student in the amount of \$2.50 per \$1,000 of institutional charges. IME was required to then pay that STRF assessment to the bureau.

53. IME did not collect STRF funds from IME students in 2010. IME collected STRF assessments from some, but not all of its students in 2011. However, IME did not remit any of the collected STRF funds to the bureau.

⁴ Application of the bureau's annual fee calculation (.0075% of the institution's annual revenue) to IME's annual revenue (\$6,648,844.87) results in a fee of \$49,866.34. However, the bureau's annual institution fee is not to exceed \$25,000.

Committing a dishonest and/or deceitful act

54. The United States Department of Education approves private postsecondary institutions to participate in the United States Department of Education's Financial Aid Program. The United States Department of Education provides federal financial aid to both degree-granting and non-degree granting programs. In order for a private postsecondary institution that offers degree-granting programs to obtain approval to offer students federal financial aid, that institution must first obtain accreditation from a United States Department of Education degree-granting accrediting agency. If an institution is not accredited to offer degree-granting programs, that institution cannot participate in the United States Department of Education's Financial Aid Program for its degree-granting programs.

55. There are different agencies that accredit private postsecondary institution for degree granting institutions and non-degree granting institutions. A private postsecondary institution that provides both degree-granting and non-degree granting programs must have accreditation from the proper accrediting agency that is recognized by the United States Department of Education. Consequently, a private postsecondary institution only accredited to offer non-degree granting programs, cannot receive United States Department of Education financial aid for students enrolled in the institution's degree-granting programs.

56. In May 2008, respondent applied to the United States Department of Education to participate in the United States Department of Education's Financial Aid Program. At the time of application, respondent represented to the United States Department of Education that IME only offered non-degree granting programs. Based on respondent's representations and IME's accreditation from ASC-WASC, the United States Department of Education approved respondent's application to participate in the federal financial aid program for non-degree granting programs.

57. In 2009, respondent notified ASC-WASC that IME intended to offer a non-degree granting dental hygiene program. On June 26, 2009, respondent applied to BPPVE to add a degree-granting program and paid an application fee in the amount of \$2,375. In 2010, IME started its first associate degree-granting program in dental hygiene. Additionally, in 2010 the bureau granted IME an approval to operate two other degree granting programs (physical therapy and nursing).

58. In 2010, respondent fraudulently reported to the United States Department of Education that respondent's dental hygiene program was non-degree-granting. Based on respondent's intentional misrepresentation, the United States Department of Education approved respondent's participation in the non-degree granting financial aid program for students enrolled in IME's dental hygiene program. The United States Department of Education would not have approved IME's dental hygiene program participation in the financial aid program had respondent truthfully disclosed the degree granting status of the dental hygiene program. IME allowed its degree-granting dental hygiene program students to receive financial aid reserved for non-degree granting programs.

Making an unscheduled suspension of a class

59. In October 2011 respondent made an unscheduled suspension of an oral biology class, offered as part of the dental hygiene program. The oral biology class was suspended because respondent did not employ a sufficient number of instructors to teach the course. The suspension of the oral biology class delayed the education of dental hygiene students. This class was paid for by the students. The class was not rescheduled and the students were not provided with a refund for the suspended class.

Failure to provide school catalog

60. Respondent was required to provide all IME students will a school catalog prior to enrolling in the institution. Respondent failed to provide some students with a school catalog prior to the students' enrollment.

Failure to make records and/or transcripts available to students

61. Following the February 2012 closure of IME, respondent failed to provide students with their records or transcripts. As a result of respondent's conduct, students were precluded from enrolling in other institutions because they lacked their transcripts. Additionally, other institutions did not given IME student's credit for IME courses the students paid for and completed. Consequently, students were required to either pay for and retake the courses at the other institutions, or not continue their education and achieve their career goal.

Costs

62. Complainant submitted a certification of investigative costs in the amount of \$39,974.38, and attorneys' fees in the amount of \$99,292.50. These costs and fees were not disputed and are deemed reasonable.

LEGAL CONCLUSIONS

Unauthorized substantive change to approval to operate

1. Pursuant to Education Code section 94893, if an institution intends to make a substantive change to its approval to operate, the institution shall receive prior authorization from the bureau. Except as provided in Education Code section 94896, subdivision (a), if the institution makes a substantive change without prior bureau authorization, the institution's approval to operate may be suspended or revoked.

2. Pursuant to Education Code section 94894, subdivision (a), a change in the educational objectives of a private postsecondary educational institution, including the addition of a new diploma or a degree educational program unrelated to the approved

educational program offered by the institution, constitutes a substantive change that requires the bureau's authorization.

3. Pursuant to Education Code section 94937, subdivision (a), the bureau may place an institution on probation or may suspend or revoke an institution's approval to operate for a material violation or repeated violations that have resulted in harm to students. A material violation includes, but is not limited to, misrepresentation, fraud in the inducement of a contract, and false or misleading claims or advertising, upon which a student reasonably relied in executing an enrollment agreement and that resulted in harm to the student.

4. California Code of Regulations, title 5, section 75100, subdivision (a), authorizes the bureau to discipline a licensee, including license suspension, license revocation or placing a private postsecondary education institution on probation with terms and conditions on its approval to operate.

5. By reason of the matters set forth in Findings 11 through 27, pursuant to Education Code sections 94893, 94894, subdivision (a), 94937, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, cause exists to suspend or revoke respondent's approval to operate a private postsecondary educational institution due to respondent's actions of adding programs in MRI technology and ultrasound technology without obtaining prior authorization from the bureau.

False advertising of accreditation

6. Pursuant to Education Code section 94813, "accredited" means an institution is recognized or approved by an "accrediting agency". Education Code section 94814, defines "accrediting agency" as an agency recognized by the United States Department of Education.

7. Education Code section 94897, subdivision (e), prohibits an institution from advertising or indicating in promotional material that the institution is accredited, unless the institution has been accredited by an accrediting agency. Education Code section 94937, subdivision (a)(2), authorizes the bureau to discipline an institution's approval to operate for an institution's misrepresentation, fraud in the inducement of a contract, and false or misleading claims or advertising, upon which a student reasonably relied in executing an enrollment agreement and that resulted in harm to the student.

8. California Code of Regulations, title 5, section 75100, subdivision (a), authorizes the bureau to discipline a licensee, including license suspension, license revocation or placing a private postsecondary education institution on probation with terms and conditions on its approval to operate.

9. Respondent used false and misleading advertising to entice students to their institution. Respondent's website falsely claimed that the MRI technology and ultrasound technology programs were accredited by the bureau and ASC-WASC. Respondent's use of the false and misleading advertisement induced students to enroll in these programs. Respondent knew or should have known that students would reasonably rely on IME's representations about the quality and accreditation of these programs. As a result of respondent's false and misleading advertisement, 120 students enrolled in and paid for the MRI technology program and 254 students enrolled in and paid for the ultrasound technology program. Students that attended the MRI and ultrasound technology programs were harmed due to respondent's fraudulent advertisement and inducement to enroll in these IME programs and the students' inability to complete the programs due to the closure of the institution.

By reason of the matters set forth in Findings 11 through 14, and 18 through 27, pursuant to Education Code sections 94813, 94814, 94897, subdivision (e), 94937, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, cause exists to suspend or revoke respondent's approval to operate a private postsecondary educational institution.

Defaulting on student enrollment agreements and failure to pay student refunds

10. Pursuant to Education Code section 94927, an institution shall be considered in default of the enrollment agreement when an educational program is discontinued or canceled or the institution closes prior to completion of the educational program. When an institution is in default, unless the institution has made provisions for students enrolled at the time of default to complete a comparable educational program at another institution at no additional charge to the students beyond the amount of the total charges in the original enrollment agreement, the institution shall refund all institutional charges to the students.

11. Respondent canceled its dental hygiene program as to its 2013 junior and senior class prior to completion of the program and failed to refund to those students the institutional charges they incurred. As a result of respondent's conduct, these dental hygiene students paid for a dental hygiene education they were unable to complete due to IME's closure. The coursework these students completed at IME is not transferable to another institution and consequently, these students are required to retake and pay for the same classes previously completed at IME. By reason of the matters set forth in Findings 30 through 33, pursuant to Education Code sections 94927, and 94937, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, subdivision (a), cause exists to suspend or revoke respondent's approval to operate a private postsecondary educational institution.

Maintenance of permanent student records at a satellite location

12. California Code of Regulations, title 5, section 71717, subdivision (b), provides that an institution shall not maintain any permanent student records at a satellite location. Respondent maintained student records at the IME satellite facility in Oakland,

California. By reason of the matters set forth in Findings 34 through 36, cause exists pursuant to Education Code section 94937, subdivision (a)(2), California Code of Regulations, title 5, sections 71717, subdivision (b), and 75100, subdivision (a), to discipline respondent's approval to operate a private postsecondary educational institution.

Failure to employ sufficient number of qualified faculty and administrative staff

13. California Code of Regulations, title 5, section 71720, subdivision (a)(1), requires an institution offering a degree granting program to employ a sufficient number of qualified faculty, to provide the instruction, student advisement, and learning outcome objectives necessary for the student's achievement of the institution's stated mission and objectives. IME failed to document the dental hygiene and ultrasound programs' student achievements of specific learning objectives. As a result, IME could not establish that the dental hygiene and ultrasound programs' met its stated mission and objectives.

IME failed to provide adequate educational materials for the students enrolled in the dental hygiene program and several dental hygiene program instructors left IME. As a result, dental hygiene classes had to be cancelled and respondent's students were harmed.

14. California Code of Regulations, title 5, section 71730, subdivision (f), requires the institution to employ administrative personnel who have the expertise to ensure the achievement of the institution's mission and objectives and the operation of the educational programs. Respondent also failed to employ sufficient numbers of qualified and trained administrative personnel to assist IME students in the financial aid office.

By reason of the matters set forth in Findings 37 through 39, pursuant to Education Code section 94937, subdivision (a)(2), and California Code of Regulations, title 5, sections 71717, subdivision (b), 75100, subdivision (a), 71720, subdivision (a)(1), and 71730, subdivision (f), cause exists to discipline respondent's approval to operate a private postsecondary educational institution.

Failure to document sufficient assets and financial resources

15. California Code of Regulations, title 5, section 71745, subdivision (a), requires respondent to document sufficient assets and financial resources to provide all of the educational programs the institution represented it would provide and to ensure that all students admitted to its educational programs have a reasonable opportunity to complete the programs and obtain their degrees or diplomas. In order for IME to participate in the federal financial aid program, IME has to meet the composite score requirement set by the United States Department of Education (Cal. Code Regs., tit. 5 § 71745, subd. (a)(6)).

16. Respondent is subject to disciplinary action pursuant to Education Code section 94937, subdivision (a)(2), and California Code of Regulations, title 5, sections 71745, subdivision (a) and 75100, subdivision (a), due to respondent's failure to document and maintain sufficient assets and financial resources. Specifically, in 2012, respondent

failed to secure accreditation from a nationally recognized accrediting agency for its participation in the federal financial aid programs. As a result, IME students were precluded from participating in any federal financial aid programs. On February 3, 2012, dental hygiene students were notified that their program was immediately closing because IME was no longer financially viable. IME students were harmed based on respondent's failure to maintain sufficient assets and financial resources. By reason of the matters set forth in Findings 40 through 46, and 54 through 56, pursuant to Education Code section 94937, subdivision (a)(2), and California Code of Regulations, title 5, sections 71745, subdivision (a), and 75100, subdivision (a), cause exists to discipline respondent's approval to operate a private postsecondary educational institution.

Failure to make records available for inspection and copying

17. Pursuant to California Code of Regulations, title 5, section 71920, subdivision (a), an institution must maintain a file for each student who enrolls in the institution whether or not the student completes the educational service. Pursuant to California Code of Regulations, title 5, section 71930, subdivision (e), IME is required to immediately make all student records available to the bureau for inspection and copying. Respondent failed to make student records available to the bureau and IME students despite requests for records to be produced. By reason of the matters set forth in Findings 47 and 48, pursuant to Education Code section 94937, subdivision (a)(2), and California Code of Regulations, title 5, sections 71920, subdivision (a), 71930, subdivision (e), and 75100, subdivision (a), cause exists to discipline respondent's approval to operate a private postsecondary educational institution.

Failure to pay annual institution fee to the bureau

18. Pursuant to Education Code section 94930.5, subdivision (d)(1)(A), respondent was required to pay the bureau an annual institution fee in the amount of \$25,000. In 2010, respondent paid an annual institution fee of \$10,266.66 to the bureau, less than the required \$25,000 required fee. Respondent did not pay the 2011 annual institution fee. Respondent did not pay the bureau the \$39,733.34 institution fee,⁵ and a 35 percent penalty fee, and a 2011 satellite fee of \$1,000.

California Code of Regulations, title 5, section 74000, subdivision (e)(1), authorizes the bureau to revoke an institution's approval to operate for failure to pay its annual fees. By reason of the matters set forth in Findings 49 and 51, pursuant to Education Code section 94930.5, subdivision (d)(1)(A), and California Code of Regulations, title 5, sections 74000, subdivisions (a) and (e)(1), and 75100, subdivision (a), cause exists to discipline respondent's approval to operate a private postsecondary educational institution.

⁵ In 2010 respondent paid an institution fee of \$10,266.66. There is a remaining unpaid balance owed in 2010 of \$14,733.33. In 2011 respondent failed to pay the \$25,000 fee. The total fee amount owed by respondent for 2010 and 2011 is \$39,733.34.

Failure to collect and remit student tuition recovery fund assessments

19. Pursuant to California Code of Regulations, title 5, section 76120, subdivision (a), the Student Tuition Recovery Fund (STRF) exists to relieve or mitigate economic losses suffered by a student attending an educational program, if the student enrolled in the institution, prepaid tuition, paid the STRF assessment, and suffered loss. California Code of Regulations, title 5, section 76120, subdivision (a) requires respondent to collect an assessment of two dollars and fifty cents (\$2.50) per one thousand dollars (\$1,000) of institutional charges. California Code of Regulations, title 5, section 76130, subdivision (a), requires IME to collect a STRF assessment from each student at the time IME collects the first payment from or on behalf of the student upon enrollment. IME is required to complete a STRF assessment report that is remitted with the STRF assessments collected from students and submitted to the bureau. (Cal. Code Regs., tit. 5 § 76130, subd. (b).)

20. IME failed collect STRF assessments from IME students in 2010. IME collected STRF assessments from some, but not all of its students in 2011; however, IME did not turn over any of the collected STRF funds to the bureau. By reason of the matters set forth in Findings 52 and 53, pursuant to Education Code section 94937, subdivision (a)(2), and California Code of Regulations, title 5, sections 76120, subdivision (a), 76130, subdivision (a) and (b), and 75100, subdivision (a), cause exists to discipline respondent's approval to operate a private postsecondary educational institution.

Failure to notify bureau of educational program closure

21. Pursuant to California Code of Regulations, title 5, section 74200, IME is required to notify the bureau in writing at least 30 days prior to ceasing to offer an education program. Respondent's failed to notify the bureau prior to IME closing its facilities in February 2012. By reason of the matters set forth in 45 and 46, pursuant to Education Code section 94937, subdivision (a)(2), and California Code of Regulations, title 5, sections 74200, and 75100, subdivision (a), cause exists to discipline respondent's approval to operate a private postsecondary educational institution.

Committing a dishonest and/or deceitful act

22. Pursuant to Business and Professions Code section 480, subdivision (a)(2), the bureau can discipline respondent for committing acts involving dishonesty, fraud, or deceit with the intent to substantially benefit respondent or substantially injure another. Sunil Vethody, acting on behalf of respondent, presented fraudulent documents purporting to show the bureau's approval to operate an IME technology program and an ultrasound technology program in order to obtain accreditation and access to federal financial aid funds. In 2010, Vethody misrepresented to ASC-WASC that IME was a not-for-profit organization that provided non-degree granting programs, knowing that ASC-WASC would not provide accreditation to for-profit institutions or degree granting programs. In 2010, respondent misrepresented to the United States Department of Education that IME's dental hygiene program was a non-degree granting program knowing this representation was false. In 2010

the bureau granted IME an approval to operate three degree granting programs (dental hygiene, physical therapy and nursing). As a result of the dishonest representations made by respondent's agent, IME was able to obtain ASC-WASC accreditation which allowed IME to obtain federally funded financial aid, not otherwise available to IME's students. By reason of the matters set forth in Findings 54 through 58, pursuant to Education Code section 94937, subdivision (a)(2), Business and Professions Code section 480, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, subdivisions (a) and (b), cause exists to discipline respondent's approval to operate a private postsecondary educational institution.

Directing an Individual to Perform an Act that Violates the California Private Postsecondary Education Act of 2009

23. Pursuant to Education Code section 94897, subdivision (m), an institution shall not direct any individual to perform an act that violates the California Private Postsecondary Education Act of 2009, or direct an individual to refrain from reporting to the bureau or another governmental agency, a private postsecondary educational institutions unlawful conduct.

24. Acting on behalf of respondent, Sunil Vethody, respondent's chief executive officer, instructed an employee in the IME financial aid staff to pay less than the amount owed for the 2010 annual institutional fee. By reason of the matters set forth in Findings 50 and 51, pursuant to Education Code sections 94897, subdivision (m), 94930.5, subdivision (d)(1)(A), 94937, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, subdivision (a), cause exists to discipline respondent's approval to operate a private postsecondary educational institution.

Making an unscheduled suspension of a class

25. Pursuant to Education Code section 94898, after a student has enrolled in an educational program, an institution shall not make an unscheduled suspension of any class unless caused by circumstances beyond the institution's control. In October 2011 respondent made an unscheduled suspension of an oral biology class, offered as part of the dental hygiene program. The oral biology class was suspended because respondent did not employ a sufficient number of instructors to teach the course. The suspension of the oral biology class delayed the education of dental hygiene students. By reason of the matters set forth in Finding 59, pursuant to Education Code sections 94898, subdivision (b)(1) and 94937, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, subdivision (a), cause exists to discipline respondent's approval to operate a private postsecondary educational institution.

Failure to provide students with a school catalog

26. By reason of the matters set forth in Finding 60, pursuant to Education Code sections 94909, subdivision (a), 94937, subdivision (a)(2), and California Code of Regulations, title 5, sections 71810, subdivision (a) and 75100, subdivision (a), cause exists

to discipline respondent for failing to provide prospective IME students with a school catalog prior to enrollment.

Failure to make records and/or transcripts available to students

27. Education Code section 94885, subdivision (h), requires an institution to maintain adequate records and provide students with standard transcripts. Respondent failed to provide numerous IME students with standard transcripts which resulted in harm to the student, including, but not limited to preventing students from continuing their education and requiring students to pay for and complete similar classes at other institutions that were previously successfully completed at IME. By reason of the matters set forth in Finding 61, pursuant to Education Code sections 94885, subdivision (h) 94937, subdivision (a)(2), and California Code of Regulations, title 5, section 75100, subdivision (a), cause exists to discipline respondent's approval to operate a private postsecondary educational institution for failing to provide IME students with copies of their standard transcripts.

Restitution

28. Education Code section 94941, subdivision (d), authorizes the bureau to order the institution to provide appropriate restitution to the student or group of students caused damage or loss as a result of the institution's violation of the California Private Postsecondary Education Act of 2009. By reason of the matters set forth in Findings 30 through 33, respondent shall pay restitution to the 112 students identified in Exhibit 88, in a total amount of \$2,116,180.86.

Costs

29. Business and Professions Code section 125.3 provides that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth the factors to be considered in determining the reasonableness of costs. Those factors include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. Having considered all of the evidence and after applying the *Zuckerman* factors, it is determined that there are no mitigating factors that would warrant a reduction in costs. Consequently, by reason of the matters set forth in Finding 62, respondent shall pay the bureau investigative costs of \$39,974.38, and attorneys' fees in the total amount of \$99,292.50.

ORDER

1. The approval to operate the Institute of Medical Education, issued to respondent Bindu Baburajan, also known as Bindu Vethody, (Institution Code No. 69608217, and School Code No. 81701347), is revoked.
2. Respondent shall provide official Institute of Medical Education transcripts to all students that completed a course at IME, including, but not limited to the students who are listed in Exhibit 87.
3. Respondent shall pay restitution in the amount set forth in Exhibit 88 to the 112 students listed therein.
4. Respondent shall pay to the bureau investigative costs in the amount of \$39,974.38, and attorneys' fees in the amount of \$99,292.50.
5. Respondent Bindu Baburajan, also known as Bindu Vethody, or any current or former Institute of Medical Education officer, agent or administrative personnel shall not be eligible to apply for an approval to operate a private postsecondary educational institution or be a member of the board of directors or an officer in a postsecondary educational institution in California, until such time that respondent Bindu Baburajan fully complies with the terms and conditions set forth in this Order.

DATED: September 20, 2013


DIANNA L. ALBINI
Administrative Law Judge
Office of Administrative Hearings

Agenda Item #6.A.1., Attachment L



BUSINESS CONSUMER SERVICES AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS
2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833-2945
Phone (916) 263-7800 Fax (916) 263-7855 Web www.bvnpt.ca.gov



CERTIFIED MAIL

July 9, 2015

Mary Ann Hauser, M.S., R.N.
Director, Vocational Nursing Program
Institute of Medical Education, Oakland
7901 Oakport Street
Oakland, CA 94621

SUBJECT: *Program Approval Status*

Dear Ms. Hauser:

The Board of Vocational Nursing and Psychiatric Technicians (Board) recently learned that Institute of Medical Education's (IME's) approval to operate issued by the Bureau for Private Postsecondary Education (Bureau) was revoked on January 2, 2014. In the absence of the Bureau's approval, there appears to be no lawful way for IME to offer a vocational nursing program consistent with California law. (Bus. & Prof. Code, § 2880, *et seq.*; Ed. Code § 94937; and title 5, C.C.R. § 75150.) Please indicate by **Friday, July 17, 2015** how IME plans to resolve this violation.

Please also be advised that, in the absence of any corrective action to resolve the above violation, the Board may revoke its approval for the Institute of Medical Education, Oakland, Vocational Nursing Program.

Please contact the Board should further information be needed.

Sincerely,

CHERYL C. ANDERSON, M.S., R.N.
Supervising Nursing Education Consultant

cc: Bindu Baburajan, President
Institute of Medical Education
130 Park Center Plaza
San Jose, CA 95113

Agenda Item #6.A.1., Attachment M



BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS
2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833-2945
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CERTIFIED MAIL

July 9, 2015

Mary Pedro, B.S., R.N.
Director, Vocational Nursing Program
Institute of Medical Education, San Jose
130 Almaden Boulevard
San Jose, CA 95113

SUBJECT: Program Approval Status

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Please also be advised that, in the absence of any corrective action to resolve the above violation, the Board may revoke its approval for the Institute of Medical Education, San Jose, Vocational Nursing Program.

Please contact the Board should further information be needed.

Sincerely,


CHERYL C. ANDERSON, M.S., R.N.
Supervising Nursing Education Consultant

cc: Bindu Baburajan, President
Institute of Medical Education
130 Park Center Plaza
San Jose, CA 95113

Agenda Item #6.A.1., Attachment N



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

Board of Vocational Nursing and Psychiatric Technicians
2535 Capitol Oaks Drive Suite 205, Sacramento, CA 95833-2945
Phone 916-263-7800 Fax 916-263-7855 Web www.bvnpt.ca.gov



CERTIFIED MAIL

August XX, 2015

Mary Ann Hauser, M.S., R.N.
Director, Vocational Nursing Program
Institute of Medical Education, Oakland
7901 Oakport Street
Oakland, CA 94621

Subject: Notice of Required Corrections

Dear Ms. Hauser:

Pursuant to the action of the Board of Vocational Nursing and Psychiatric Technicians (Board) on February 22, 2012, the Board of Vocational Nursing and Psychiatric Technicians (Board) suspended its approval of the Institute of Medical Education to operate vocational nursing programs at the San Jose and Oakland campuses during the period of time the program lacked the ability to instruct students, pursuant to the order of the Bureau for Private Postsecondary Education (Bureau). The Bureau revoked its approval of the Institute of Medical Education, Oakland, to operate effective January 2, 2014.

The purpose of this letter is to explain the areas of non-compliance identified and the corrections required to avoid losing approval completely.

Once you have reviewed this letter, please sign and return the enclosed "Acknowledgement of Change in Approval Status" form by **Friday, September 4, 2015**.

AREAS OF NON-COMPLIANCE (VIOLATION(S))

Section 2881 of Division 2, Chapter 6.5, Article 4 of the California Business and Professions Code, provides in pertinent part,

"An approved school of vocational nursing is one which has been approved by the Board of Vocational Nursing and Psychiatric Technicians, gives a course of instruction in vocational nursing of not less than 1530 hours or 50 semester units approved by the board pursuant to Section 2882 whether the same be established by the State Board of Education, other educational institutions, or other public or private agencies or institutions and is affiliated or conducted in connection with one or more hospitals."

IME, Oakland, Vocational Nursing Program

Notice of Required Corrections

August X, 2015

Page 2 of 3

Section 2883 of the California Business and Professions Code, states:

"It shall be the duty of the board, through an official representative, to inspect or review all schools of vocational nursing in this state at such times as the board shall deem necessary. Written reports of the inspection or review shall be made to the board, which shall thereupon approve the schools of vocational nursing that meet the requirements provided by the board.

Upon receiving the report of the representative, if the board determines that any approved school of vocational nursing is not maintaining the standard required by the board, notice thereof in writing specifying the defect or defects shall be immediately given to the school. If the defects are not corrected within a reasonable time, the school of nursing may be removed from the approved list and notice thereof in writing given to it"

In accordance with Section 2527(a) of title 16 of the California Code of Regulations,

"The Board shall require such reports by schools and conduct such investigations as necessary to determine whether or not approval will be continued."

REQUIRED CORRECTION(S)

1. The Institute of Medical Education, Oakland, Vocational Nursing Program shall submit, written documentation substantiating current approval by the Bureau for Private Postsecondary Education by **September 30, 2015**.
2. The program shall comply with all approval standards in Article 4 of the Vocational Nursing Practice Act, commencing at Business and Professions Code Section 2880, and Article 5 of the Vocational Nursing Rules and Regulations, commencing at California Code of Regulations, Title 16, section 2525.
3. Failure to make any of these corrective actions may cause the Board to revoke the program's approval.

FUTURE BOARD ACTION

Your program will be placed on the **November 2015** Board Meeting agenda, at which point the Board may revoke, suspend, or extend the program's approval. If you have additional information that you wish considered beyond the required corrections listed on page 2, you must submit this documentation by the fifteenth day of the second month prior to the Board meeting.

IME, Oakland, Vocational Nursing Program

Notice of Required Corrections

August X, 2015

Page 3 of 3

OTHER IMPORTANT INFORMATION

Please be advised that, pursuant to the Board's regulations, the program will not be authorized to admit new classes beyond the established pattern of admissions previously approved by the Board. The established pattern of admissions approved by the Board is as follows: **Prior approval by the Board is required to admit classes.**

In the event your program is required to submit any report(s) as a corrective action pursuant to this notice, such reports are required in addition to any other reports required pursuant to 2527 of the Board's regulations.

The program may no longer advertise that it has full approval, and should take steps to correct any ongoing advertisements or publications in that regard.

A copy of title 16, California Code of Regulations, section 2526.1, regarding provisional approval is attached for your reference. A complete copy of the Board's laws and regulations can be found on the Board's web site at www.bvnpt.ca.gov.

Should you have questions, please do not hesitate to contact the Board.

Sincerely,

JOHN BROOKS

Acting Executive Officer

Enclosures

cc: Bindu Baburajan, President
Institute of Medical Education
130 Park Center Plaza
San Jose, CA 95113

Board Members

JB: cca

Agenda Item #6.A.1., Attachment O



BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.



Board of Vocational Nursing and Psychiatric Technicians
2535 Capitol Oaks Drive Suite 205, Sacramento, CA 95833-2945
Phone 916-263-7800 Fax 916-263-7855 Web www.bvnpt.ca.gov

CERTIFIED MAIL

August XX, 2015

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Director, Vocational Nursing Program
Institute of Medical Education, San Jose
130 Almaden Boulevard
San Jose, CA 95113

Subject: Notice of Required Corrections

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"An approved school of vocational nursing is one which has been approved by the Board of Vocational Nursing and Psychiatric Technicians, gives a course of instruction in vocational nursing of not less than 1530 hours or 50 semester units approved by the board pursuant to Section 2882 whether the same be established by the State Board of Education, other educational institutions, or other public or private agencies or institutions and is affiliated or conducted in connection with one or more hospitals."

IME, San Jose, Vocational Nursing Program

Notice of Required Corrections

August X, 2015

Page 2 of 3

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Upon receiving the report of the representative, if the board determines that any approved school of vocational nursing is not maintaining the standard required by the board, notice thereof in writing specifying the defect or defects shall be immediately given to the school. If the defects are not corrected within a reasonable time, the school of nursing may be removed from the approved list and notice thereof in writing given to it"

In accordance with Section 2527(a) of title 16 of the California Code of Regulations,

"The Board shall require such reports by schools and conduct such investigations as necessary to determine whether or not approval will be continued."

REQUIRED CORRECTION(S)

1. The Institute of Medical Education, San Jose, Vocational Nursing Program shall submit, written documentation substantiating current approval by the Bureau for Private Postsecondary Education by **September 30, 2015**.
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3. Failure to make any of these corrective actions may cause the Board to revoke the program's approval.

FUTURE BOARD ACTION

Your program will be placed on the **November 2015** Board Meeting agenda, at which point the Board may revoke, suspend, or extend the program's approval. If you have additional information that you wish considered beyond the required corrections listed on page 2, you must submit this documentation by the fifteenth day of the second month prior to the Board meeting.

IME, San Jose, Vocational Nursing Program

Notice of Required Corrections

August X, 2015

Page 3 of 3

OTHER IMPORTANT INFORMATION

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Should you have questions, please do not hesitate to contact the Board.

Sincerely,

JOHN BROOKS

Acting Executive Officer

Enclosures

cc: Bindu Baburajan, President
Institute of Medical Education
130 Park Center Plaza
San Jose, CA 95113

Board Members

JB: cca