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

In the Matter of the Accusation Against:

Case No. 997438

DIAMOND BEAUTY COLLEGE; TONY DO, OWNER 10301 Garvey Avenue, #200 South El Monte, CA 91733

Approval to Operate an Accredited Institution No. 36348756 OAH No. 2015070590

**ORDER OF DECISION** 

Respondent.

## DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted by the Director of the Department of Consumer Affairs as the Decision in the above entitled matter.

MAY 2 0 2016

The Decision shall become effective

DATED: \_\_\_\_\_APR 1 2 2016

DOREATHEA JOHNSON Deputy Director, Legal Affairs Department of Consumer Affairs

1 2	KAMALA D. HARRIS Attorney General of California ARMANDO ZAMBRANO Supervising Deputy Attorney General WILLIAM D. GARDNER		
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4	Deputy Attorney General		
5	State Bar No. 244817 300 So. Spring Street, Suite 1702		
	Los Angeles, CA 90013 Telephone: (213) 897-2114		
6	Facsimile: (213) 897-2804 Attorneys for Complainant		
7		RE THE	
8	DEPARTMENT OF CONSUMER AFFAIRS FOR THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION		
9	STATE OF C	CALIFORNIA	
10			
11	In the Matter of the Accusation Against:	Case No. 997438	
12	DIAMOND BEAUTY COLLEGE, TONY DO, OWNER	OAH No. 2015070590 STIPULATED SETTLEMENT AND	
13	10301 Garvey Avenue, #200 South El Monte, CA 91733	DISCIPLINARY ORDER	
14	Approval to Operate an Accredited		
15	Institution No. 36348756		
16	Respondent.		
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18	IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-		
19	entitled proceedings that the following matters are true:		
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21	PARTIES		
22	1. Joanne Wenzel ("Complainant") is the Chief of the Bureau for Private Postsecondary		
23	Education. She brought this action solely in her official capacity and is represented in this matter		
24	by Kamala D. Harris, Attorney General of the State of California, by William D. Gardner, Deputy		
25	Attorney General.		
26	2. Respondent Diamond Beauty Colleg	e, Tony Do, owner, is represented in this	
27	proceeding by attorney Brandon M. Smith, whose address is 105 West "F" Street, Third Floor,		
28	San Diego, CA 92101.		
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		STIPULATED SETTLEMENT (997438)	

1. On or about January 18, 2005, the former Bureau for Private Postsecondary and 1 Vocational Education<sup>1</sup> ("Bureau") issued a temporary Approval to Operate an Institution Number 2 36348765 to Diamond Beauty College with Tony Do as sole owner ("Respondent"). On or about 3 4 March 29, 2007, the Bureau issued a Full Approval to Operate to Respondent. On or about 5 January 13, 2012, the Full Approval to Operate expired and has not been renewed. On or about May 8, 2012, the Bureau issued an Accredited Institutional Approval, which was in full force and 6 effect at all times alleged herein and will expire on January 31, 2018, unless renewed. 7 JURISDICTION 8 3. 9 Accusation No. 997438 was filed before the Director of the Department of Consumer Affairs (Director), for the Bureau for Private Postsecondary Education, and is currently pending 10 against Respondent. The Accusation and all other statutorily required documents were properly 11 served on Respondent on June 5, 2015. Respondent timely filed his Notice of Defense contesting 12 the Accusation. 13 4. A copy of Accusation No. 997438 is attached as Exhibit A and incorporated herein by 14 reference. 15 ADVISEMENT AND WAIVERS 16 5 Respondent has carefully read, fully discussed with counsel, and understands the 17 charges and allegations in Accusation No. 997438. Respondent has also carefully read, fully 18 19 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order. 20 6. Respondent is fully aware of his legal rights in this matter, including the right to a 21 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at 22 his own expense; the right to confront and cross-examine the witnesses against him; the right to 23 present evidence and to testify on his own behalf, the right to the issuance of subpoenas to compel 24 25 <sup>1</sup> The former Bureau for Private Post Secondary and Vocational Education sun-setted on July 1, 2007. Between July 1, 2007 and December 31, 2009, there was no regulatory body with 26 oversight of private postsecondary schools. On October 1, 2009, the California Private Postsecondary Education Act of 2009 ("Act") was signed into law. (Educ. Code §§ 94800 et seq.) The Act became operative on January 1, 2010 and established the Bureau in its current 27 form. 28 2

STIPULATED SETTLEMENT (997438)

the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
every right set forth above.

### CULPABILITY

Respondent understands and agrees that the charges and allegations in Accusation
 No. 997438, if proven at a hearing, constitute cause for imposing discipline upon his Approval to
 Operate an Institution.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

14 10. Respondent agrees that his Approval to Operate an Institution is subject to discipline
15 and he agrees to be bound by the Director's probationary terms as set forth in the Disciplinary
16 Order below.

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#### <u>CONTINGENCY</u>

11. This stipulation shall be subject to approval by the Director of the Department of 18 Consumer Affairs or the Director's designee. Respondent understands and agrees that counsel for 19 Complainant and the staff of the Bureau for Private Postsecondary Education may communicate 20 directly with the Director and staff of the Department of Consumer Affairs regarding this 21 22stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his 23 agreement or seek to rescind the stipulation prior to the time the Director considers and acts upon 24 25 it. If the Director fails to adopt this stipulation as the Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall 26 27 be inadmissible in any legal action between the parties, and the Director shall not be disqualified from further action by having considered this matter. 28

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

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This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
integrated writing representing the complete, final, and exclusive embodiment of their agreement.
It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
writing executed by an authorized representative of each of the parties.

10 14. In consideration of the foregoing admissions and stipulations, the parties agree that
11 the Director may, without further notice or formal proceeding, issue and enter the following
12 Disciplinary Order:

## DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Approval to Operate an Accredited Institution No.
36348756, issued to Respondent Diamond Beauty College with Tony Do as sole owner
("Respondent"), is revoked. However, the revocation is stayed and Respondent is placed on
probation for three (3) years on the following terms and conditions.

OBEY ALL LAWS -- Respondent shall obey all federal, state and local laws and
 regulations governing the operation of a private postsecondary educational institution in
 California. Respondent shall submit, in writing, a full detailed account of any and all violations of
 the law to the Bureau for Private Postsecondary Education ("Bureau") within five (5) days of
 discovery.

Criminal Court Order: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an Accusation and/or Petition to Revoke Probation.

2. COMPLIANCE WITH PROBATION AND QUARTERLY REPORTING ---

27 Respondent shall fully comply with the terms and conditions of probation established by the

28 Bureau and shall cooperate with representatives of the Bureau in its monitoring and investigation

of the respondent's compliance with probation. Respondent, within ten (10) days of completion of the quarter, shall submit quarterly written reports to the Bureau.

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3. PERSONAL APPEARANCES -- Upon reasonable notice by the Bureau, respondent shall report to and make personal appearances at times and locations as the Bureau may direct.

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NOTIFICATION OF ADDRESS AND TELEPHONE NUMBER CHANGE(S) ---Respondent shall notify the Bureau, in writing, within five (5) days of a change of name, title, physical home address, email address, or telephone number of each person, as defined in section 94855 of the Code, who owns or controls 25% or more of the stock or an interest in of the institution and, to the extent applicable, each general partner, officer, corporate director, corporate member or any other person who exercises substantial control over the institution's management or policies.

5. NOTIFICATION TO PROSPECTIVE STUDENTS -- When currently soliciting or 12 enrolling (or re-enrolling) a student for any program, respondent shall provide notification of this 13 action to each current or prospective student prior to accepting their enrollment, and to those 14 students who were enrolled at the time of the conduct that is the subject of this action as directed 15 by the Bureau. This notification shall be in the form attached hereto as Exhibit B. . 16

6. STUDENT ROSTER -- Within 15 days of the effective date of this Decision, and 17 with the Quarterly Reports thereafter, provide to the Bureau the names, addresses, phone 18 numbers, email addresses, and the programs in which they are or were enrolled, of all persons 19 who are currently or were students of the institution within 60 days prior to the effective date of 20 21 the Decision, and those students who were enrolled at the time of the conduct that is the subject of this action. 22

7. INSTRUCTION REQUIREMENTS AND LIMITATIONS -- During probation, 23 Respondent shall provide approved instruction in the State of California. If respondent is not 24 providing instruction, the period of probation shall be tolled during that time. 25

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8. RECORD STORAGE -- Within 5 days of the effective date of this Decision, provide the Bureau with the location of the repository for all records as they are required to be maintained pursuant to Title 5, California Code of Regulations, section 71930.

9. MAINTENANCE OF CURRENT AND ACTIVE APPROVAL TO OPERATE -5 Respondent shall, at all times while on probation, maintain a current and active approval to
6 operate with the Bureau including any period during which approval is suspended or probation is
7 tolled.

8 10. COMPLY WITH CITATIONS -- Respondent shall comply with all final orders
9 resulting from citations issued by the Bureau.

10 11. COST RECOVERY -- Respondent shall pay to the Bureau its costs of investigation
and enforcement in the amount of \$4,888.00 no later than one year before the termination of
probation. Such costs shall be payable to the Bureau and are to be paid regardless of whether the
probation is tolled. Failure to pay such costs shall be considered a violation of probation.

Except as provided above, the Bureau shall not renew or reinstate the approval to operate of any respondent who has failed to pay all the costs as directed in a Decision.

16 12. VIOLATION OF PROBATION -- If respondent violates probation in any respect, the
Bureau, after giving respondent notice and opportunity to be heard, may revoke probation and
carry out the disciplinary order which was stayed. If an Accusation or a Petition to Revoke
Probation is filed against respondent during probation, the Bureau shall have continuing
jurisdiction until the matter is final, and the period of probation shall be extended, and respondent

21 shall comply with all probation conditions, until the matter is final.

13. FUTURE APPROVALS TO OPERATE -- If respondent subsequently obtains other
approvals to operate during the course of this probationary order, this Decision shall remain in
full force and effect until the probationary period is successfully terminated. Future approvals
shall not be granted, however, unless respondent is currently in compliance with all of the terms
and conditions of probation.

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1	14. COMPLY WITH ALL ACCREDITATION STANDARDS - As applicable,		
2	respondent shall comply with all standards set by its accreditor in order to maintain its		
3	accreditation. Respondent shall submit to the Bureau, in writing, a full detailed account of any		
4	and all actions taken by any accrediting agency against respondent regarding any institution		
5	operated by respondent, including an order to show cause, or conditions or restrictions placed or		
6	accreditation, within five (5) days of occurrence.		
7	15. COMPLETION OF PROBATION Upon successful completion of probation,		
8	respondent's approval to operate will be fully restored.		
9	16. ABILITY TO BENEFIT TESTING - Throughout the probationary period,		
10	Respondent shall provide to the Bureau the following documents and information related to		
11	students enrolled through Ability to Benefit ("ATB") testing:		
12	• A list of all current students who were enrolled by using the ATB exam;		
13	• Quarterly progress updates of any students enrolled using the ATB exam;		
14	<ul> <li>Copies of any contracts between Respondent and ATB exam proctors and/or</li> </ul>		
15	administrators of any kind;		
16	• Copies of ATB exam scores and examination timeframe printouts for all current		
1.7	students who were enrolled by using the ATB exam.		
18	ACCEPTANCE		
19	I have carefully read the above Stipulated Settlement and Disciplinary Order and have full		
20	discussed it with my attorney, Brandon M. Smith. I understand the stipulation and the effect it		
21	will have on my Approval to Operate an Institution. I enter into this Stipulated Settlement and		
22	Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the		
23	Beeislon and Order of the Director of the Department of Consumer Affairs		
24			
25	DATED: 02/24/2016 127 100		
26	DIAMOND BEAUTY COLLEGE, TONY DO, OWNER		
27	Respondent		

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STIPULATED SETTLEMENT (997438)

1	I have read and fully discussed with Respondent Diamond Beauty College, Tony Do,		
2	owner, the terms and conditions and other matters contained in the above Stipulated Settlement		
3	and Disciplinary Order. I approve its form and content.		
4	DATED: 3/24/16	BD-	
5		Brandon M, Smith Attorney for Respondent	
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7	ENDORSEMENT		
8	The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully		
9	submitted for consideration by the Director of the Department of Consumer Affairs		
10	Dated: 2/26/16		
11	Dated: $\alpha/\alpha 5/16$	Respectfully submitted,	
12		KAMALA D. HARRIS Attorney General of California	
13		ARMANDO ZAMBRANO Supervising Deputy Attorney General	
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15		William D, Gardner	
16		Deputy Attorney General Attorneys for Complainant	
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