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8 **BEFORE THE**  
9 **STATE BOARD OF BARBERING AND COSMETOLOGY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 1002022010916

13 **NINH THI NGUYEN, DBA MILPITAS**  
14 **MASSAGE COLLEGE**  
15 **98-106 South Abel Street**  
16 **Milpitas, CA 95035**

**ACCUSATION**

17 **3110 Laguna Street #4**  
18 **San Francisco, CA 94123**

19 **School Code Number SC 16002**  
20 **Cosmetologist License No. KK 304581**  
21 **Electrologist License No. L 6183**

22 Respondent.

23 **PARTIES**

24 1. Carrie Harris (Complainant) brings this Accusation solely in her official capacity as  
25 the Deputy Executive Officer of the State Board of Barbering and Cosmetology (Board),  
26 Department of Consumer Affairs.

27 2. On or about April 15, 1992, the Board issued Electrologist License Number L 6183 to  
28 Ninh Thi Nguyen (Respondent). The Electrologist License was in full force and effect at all  
times relevant to the charges brought herein and will expire on April 30, 2024, unless renewed.

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1           3.     On or about January 11, 1995, the Board issued Cosmetologist License Number KK  
2 304581 to Respondent. The Cosmetologist License was in full force and effect at all times  
3 relevant to the charges brought herein and will expire on January 31, 2025, unless renewed.

4           4.     On or about January 28, 2016, the Board issued School Code Number SC 16002 to  
5 Respondent dba Milpitas Massage College.

6   **JURISDICTION**

7           5.     This Accusation is brought before the Board under the authority of the following  
8 laws. All sections references are to the Business and Professions Code (Code) unless otherwise  
9 indicated.

10           6.     Section 7403(a) of the Code provides, in pertinent part, that the Board may revoke,  
11 suspend or deny at any time any license required by the Barbering and Cosmetology Act (Bus. &  
12 Prof. Code, '7301, et seq.) on any of the grounds for disciplinary action provided in Article 11.

13           7.     Code section 118, subdivision (b) provides, in pertinent part, that the expiration of a  
14 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the  
15 period within which the license may be renewed, restored, reissued or reinstated. Under Code  
16 section 7417, an expired license may be renewed at any time within five years after the  
17 expiration.

18   **STATUTORY AND REGULATORY PROVISIONS**

19           8.     Section 7362 of the Code provides:

20           (a) A school approved by the board is one that is first approved by the board and  
21 subsequently approved by the Bureau for Private Postsecondary Education or is a public school in  
22 this state, and provides a course of instruction approved by the board. However, notwithstanding  
23 any other law, both the board and the Bureau for Private Postsecondary Education may  
24 simultaneously process a school's application for approval.

25           (b) Notwithstanding any other law, the board may revoke, suspend, or deny approval of a  
26 school, in a proceeding that shall be conducted in accordance with Chapter 5 (commencing with  
27 Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, when an owner or  
28 employee of the school has engaged in any of the acts specified in paragraphs (1) to (8), inclusive.

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1 (1) Unprofessional conduct which includes, but is not limited to, any of the following:

2 (A) Incompetence or gross negligence, including repeated failure to comply  
3 with generally accepted standards for the practice of barbering,  
4 cosmetology, or electrology, or disregard for the health and safety of  
5 patrons.

6 (B) Repeated similar negligent acts.

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8 (2) Repeated failure to comply with the rules governing health and safety adopted by  
9 the board and approved by the State Department of Public Health, for the regulation  
10 of board-approved schools.

11 (3) Repeated failure to comply with the rules adopted by the board for the regulation  
12 of board-approved schools.

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14 (8) Any action or conduct that would have warranted the denial of a school approval.

15 9. Section 7362.5 of the Code provides:

16 (a) A course in barbering or cosmetology established by a school shall consist of not less  
17 than 1,000 hours of practical and technical instruction in the practice of barbering or  
18 cosmetology, as defined in Section 7316.

19 (b) The curriculum for a barbering course shall, at a minimum, include technical and  
20 practical instruction in the following areas:

21 (1) One hundred hours in health and safety, which includes hazardous substances,  
22 chemical safety, safety data sheets, protection from hazardous chemicals, preventing  
23 chemical injuries, health and safety laws and regulations, and preventing communicable  
24 diseases.

25 (2) One hundred hours in disinfection and sanitation, which includes disinfection  
26 procedures to protect the health and safety of consumers as well as the technician and  
27 proper disinfection procedures for equipment used in establishments.

28 (3) Two hundred hours in chemical hair services, which includes coloring,  
straightening, waving, bleaching, hair analysis, predisposition and strand tests, safety  
precautions, formula mixing, and the use of dye removers.

(4) Two hundred hours in hairstyling services, which includes arranging, blow drying,  
cleansing, curling, dressing, hair analysis, shampooing, waving, and nonchemical  
straightening, and hair cutting, including the use of shears, razors, electrical clippers and  
trimmers, and thinning shears, for wet and dry cutting.

(5) Two hundred hours in shaving and trimming of the beard, which includes  
preparing the client's hair for shaving, assessing the condition of the client's skin,  
performing shaving techniques, applying aftershave antiseptic following facial services, and  
massaging the face and rolling cream massages.

1 (c) The curriculum for a cosmetology course shall, at a minimum, include technical and  
practical instruction in the following areas:

2 (1) One hundred hours in health and safety, which includes hazardous substances,  
3 chemical safety, safety data sheets, protection from hazardous chemicals, preventing  
4 chemical injuries, health and safety laws and regulations, and preventing communicable  
diseases.

5 (2) One hundred hours in disinfection and sanitation, which includes disinfection  
6 procedures to protect the health and safety of consumers as well as the technician and  
proper disinfection procedures for equipment used in establishments.

7 (3) Two hundred hours in chemical hair services, which includes coloring,  
8 straightening, waving, bleaching, hair analysis, predisposition and strand tests, safety  
precautions, formula mixing, and the use of dye removers.

9 (4) Two hundred hours in hairstyling services, which includes arranging, blow drying,  
10 cleansing, curling, dressing, hair analysis, shampooing, waving, and nonchemical  
11 straightening, and hair cutting, including the use of shears, razors, electrical clippers and  
trimmers, and thinning shears, for wet and dry cutting.

12 (5) One hundred fifty hours in skin care services, which includes chemical and  
13 manual facials and massaging, stimulating, exfoliating, cleansing, or beautifying the face,  
14 scalp, neck, or body by the use of hands, esthetic devices, cosmetic products, antiseptics,  
lotions, tonics, or creams that do not result in the ablation or destruction of the live tissue.

15 (6) Fifty hours in hair removal and lash and brow beautification, which includes  
16 tinting and perming eyelashes and brows and applying eyelashes to any person, and  
17 includes removing superfluous hair from the body of any person by use of depilatories,  
tweezers, sugaring, nonprescription chemicals, or waxing, or by the use of devices and  
18 appliances of any kind or description, except by the use of lasers or light waves, which are  
commonly known as rays.

19 (7) One hundred hours in manicure and pedicure, which includes water and oil  
20 manicures, hand and arm massage, foot and ankle massage, nail analysis, and artificial nail  
21 services, including, but not limited to, acrylic, liquid and powder brush-ons, dip, tips,  
wraps, and repairs.

22 10. Section 7389 of the Code provides:

23 (a) The board shall develop or adopt a health and safety course on hazardous substances,  
24 basic labor laws, as specified in Section 7314.3, and physical and sexual assault awareness, as  
25 specified in Section 7314.3, which shall be taught in schools approved by the board. Course  
26 development shall include pilot testing of the course and training classes to prepare instructors to  
effectively use the course.

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11. California Building Code section 1253.1.1 provides:

The minimum floor space in any school of cosmetology premises shall be 3,000 square feet (279 m<sup>2</sup>), not less than 2,000 square feet (185.8 m<sup>2</sup>) of which shall be provided for the working, practice and classroom areas.

12. California Code of Regulations, title 16, section 940, states:

- a) The minimum equipment for a school of cosmetology shall be as follows:
  - (1) Electrical equipment for giving instruction in skin care and electrical facials.  
NOTE: Equipment shall not be used to stimulate so as to contract, or for the purpose of contracting, the muscles of the body or face.
  - (2) Mannequins, with full head of hair: 10
  - (3) Time clocks or time scanner: 1
  - (4) Shampoo bowls: 5
  - (5) Dryers : 6
  - (6) Facial chairs or facial couches: 2
  - (7) Manicure stations: 6
  - (8) Thermal hair straighteners
    - (A) Non-electric comb: 3
    - (B) Stove (for non-electric combs): 1
    - (C) Electric curling iron: 1
    - (D) Non-electric curling iron (at least two sizes): 3
    - (E) Stove (for non-electric curling irons): 1
  - (9) Hairstyling or barber chairs: 15

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13. California Code of Regulations, title 16, section 961, states:

(a) An approved school shall provide a printed or electronic copy of the following to each student within the first week of instruction:

- (1) At least one textbook in the course of instruction that the student is enrolled in (e.g. cosmetology, barbering, electrology, esthetics, manicuring).
- (2) A current version of the California Barbering and Cosmetology Act (Chapter 10 of Division 3 of the California Business and Professions Code, commencing with section 7301);
- (3) A current copy of the Barbering and Cosmetology Regulations (Title 16, Division 9 of the California Code of Regulations, commencing with section 904);
- (4) A current version of any licensing examination translation guide prepared by the licensing exam vendor to assist exam candidates in the language in which the student intends to take the examination, if the student intends to take the examination in one of the non-English languages offered by the board.

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1 **COST RECOVERY**

2 14. Section 7403, subdivision (f), of the Code provides, in pertinent part, that, in any case  
3 in which the administrative law judge recommends that the board discipline a license, the  
4 administrative law judge may, upon presentation of suitable proof, order the licensee to pay the  
5 board the reasonable costs of the investigation and prosecution. For purposes of this section,  
6 costs include charges by the board for investigating the case and charges incurred by the office of  
7 the Attorney General.

8 **BACKGROUND**

9 15. On or about December 14, 2021, the Board notified all schools by email that a new  
10 1000-hour course must be approved by both the BPPE and the Board.

11 16. On or about December 22, 2021, Respondent applied for approval of a 1000-hour  
12 course.

13 17. On or about December 27, 2021, the Board sent an email to Respondent that the  
14 curriculum was not provided with their application. Respondent’s application for a 1000-hour  
15 class was never approved.

16 18. On or about January 12, 2022, the Board notified all schools by email that the schools  
17 must have approval from both the BPPE and the Board to enroll students.

18 19. A representative of the Board attempted to inspect Milpitas Massage College and  
19 found it to be closed, locked and empty on or about the following dates and times:

- 20 a. April 13, 2022 at 10:00 AM;
- 21 b. April 18, 2022 at 1:30 PM;
- 22 c. May 10, 2022 at 9:50 AM and;
- 23 d. May 12, 2022 and 10:00 AM.

24 On these dates the “open” sign was not lit. The representative called the phone number on the  
25 window on each date and no one answered.

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**AUGUST 23, 2022 - SITE INSPECTION**

20. On or about August 23, 2022, representatives of the Board and of the Bureau for Private Postsecondary Education (Bureau) inspected Milpitas Massage College. The Board representatives observed the following:

a. Upon seeing the Board representatives, Respondent walked into a room and closed the door. Her colleague then told Board representatives that Respondent was not present. Finally, the representatives were able to talk with Respondent.

b. Only 1,500 of the approximate 3,000 square feet of the College location is dedicated to working, practice and classroom areas. Other parts appeared to be used as residential space, and two of Respondent's California Driver's Licenses have the College address on them.

21. On or about August 23, 2022, representatives of the Board observed the following in regards to the Board's equipment requirements:

- a. No non-electric combs;
- b. No non-electric curling irons; and
- c. No stove for non-electric curling irons.

An employee of Respondent told the Board representative that he did not know where these items were.

22. The representative did not see any textbooks. An employee of Respondent stated that textbooks are only online and the students do not have textbooks.

23. Respondent had the 2013 version of the Barbering and Cosmetology Act and the Rules and Regulations of the Board of Barbering and Cosmetology on site, but not the current 2022 version.

24. Respondent did not have the Board of Barbering and Cosmetology's Health and Safety Course Textbook, Student Exam Booklet, or the Instructor Guide.

25. Respondent stated that she does not take money from the students until they apply for the exam with the Board.

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**AUGUST 23, 2022 – INSPECTION OF STUDENT FILES ON-SITE**

26. Review of the student files on-site revealed the following:

- a. Student files for the current students did not contain the current week’s timecards.
- b. Students arrived and clocked in within the same six-minute window every morning for five months, before 10 AM, such as 9:53 AM to 9:59 AM.
- c. In all reviewed timecards, the students clocked out 6:30 PM to 6:35 PM on days that they attended 8 hours.
- d. Numerous student timecard records showed that they clocked in at school before 10 AM on days that the Board inspector visited the College and saw that it was closed. For example, student NL’s record showed that they attended school on all four days that the Board representative visited the school and found it to be closed.

27. Respondent stated that the school was open 10 AM to 6 PM on the date of the inspection. However, no students arrived on August 23, 2022, and Respondent could not explain why.

28. Respondent stated that most of the students are Vietnamese, and her advertisements are in Vietnamese. There is a different phone number in on a Vietnamese advertisement. Respondent stated it is her cell phone number. This is a different number than the number posted outside the workplace, which was called by the inspector.

29. Respondent has not received authorization to teach in Vietnamese.

30. TN is the person who signed the student attendance records. Respondent stated that TN works 2:30 PM to 6:30 PM.

31. Many students’ residential addresses were over 100 miles away from the College.

32. Four students are enrolled in a 1000-hour cosmetology course, and Respondent is not approved by the Board to provide this course.

33. Student records omitted key dates such as the date of enrollment agreements.

34. Students attended the school in unusual patterns and frequency that do not appear accurate.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 35. Respondent is subject to disciplinary action for unprofessional conduct under Code  
4 section 7362(b)(1), as described in paragraphs 20 to 34.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Repeated Failure to Comply with the Rules Adopted by the Board)**

7 36. Respondent is subject to disciplinary action under Code section 7362(b)(3) in that  
8 Respondent repeatedly failed to comply with the rules adopted by the Board for the regulation of  
9 Board-approved schools, as described in paragraphs 20 to 34.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Action or Conduct that would have Warranted the Denial of a School Approval)**

12 37. Respondent is subject to disciplinary action under Code section 7362(b)(8) in that  
13 Respondent's actions or conduct would have warranted the denial of a school approval, as  
14 described in paragraphs 20 to 34.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
17 and that following the hearing, the State Board of Barbering and Cosmetology issue a decision:

- 18 1. Revoking or suspending Cosmetologist License Number KK 304581, issued to Ninh  
19 Thi Nguyen (Respondent);
- 20 2. Revoking or suspending Electrologist License Number L 6183, issued to Respondent;
- 21 3. Revoking or suspending School Code Number SC 16002 issued to Respondent dba  
22 Milpitas Massage College;
- 23 4. Ordering Respondent to pay the State Board of Barbering and Cosmetology the  
24 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
25 Professions Code section 7403; and,

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

DATED: February 7, 2023

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CARRIE HARRIS  
Deputy Executive Officer  
State Board of Barbering and  
Cosmetology  
Department of Consumer Affairs  
State of California  
*Complainant*