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12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 **Phoenix Division**

15 **National University of Health Sciences,**) Case No.: _____
16)

17 Plaintiff,)

18 v.)

19)
20 **The Council on Chiropractic Education, Inc.,)**

21)
22 Defendant.)
23 _____)

24 Plaintiff, National University of Health Sciences (“NUHS”), by counsel, alleges
25 the following factual allegations against Defendant The Council on Chiropractic
26 Education, Inc. (“CCE”):
27
28

INTRODUCTION

1
2 1. NUHS, a university that offers a Doctor of Chiropractic Degree program
3 (“DCP”) with campuses in Lombard, Illinois and Pinellas Park, Florida, seeks judicial
4 review of the arbitrary and capricious decision of its programmatic accrediting agency,
5 CCE, to place NUHS on Probation effective May 21, 2018, in violation of NUHS’s
6 common law due process rights and in violation of CCE standards. By affirming the
7 Council’s decision, CCE’s Appeals Panel (1) failed to follow its own standards because it
8 (a) considered evidence and information not reviewed by the Council prior to its decision
9 in order to reach its decision and (b) considered evidence and information not presented
10 in the appeal in order to reach its decision; (2) substantially disregarded CCE Standards
11 and the U.S. Code by affirming the Council’s contradictory decision to reaffirm
12 accreditation at the same time as placing NUHS on probation; (3) made an arbitrary and
13 unreasonable decision by not addressing NUHS’s appeal grounds that the Council denied
14 NUHS due process pursuant to the requirements of 34 C.F.R. § 602.25 by failing to
15 provide written notice of noncompliance and sufficient opportunity for NUHS to respond
16 to the noticed noncompliance before CCE placed NUHS on Probation; and (4) made an
17 arbitrary and unreasonable decision by not addressing NUHS’ appeal grounds that the
18 Council denied NUHS due process by implementing an unfair procedure that included an
19 arbitrary and capricious, discriminatory, and unreliable compliance determination in its
20 determination to issue a sanction of Probation.

21 2. As a result of CCE’s wrongful imposition of the sanction of Probation,
22 NUHS will lose current and prospective students, other DCPs accredited by CCE will
23 immediately attempt to poach NUHS’s current and prospective students, other DCPs
24 accredited by CCE will immediately attempt to poach NUHS’s faculty, the value of
25 NUHS’ Doctor of Chiropractic degrees will be adversely impacted, NUHS’s reputation
26 will be adversely effected by suggesting to third parties that NUHS provides a poor
27 education even though CCE reaffirmed accreditation and licensure success rates are high,
28 and NUHS’s enrollment will decrease such that the NUHS resources will be limited to

1 continue to implement the improvements that CCE recognized and encouraged NUHS to
2 pursue.

3 **PARTIES**

4 3. NUHS is a not-for-profit corporation organized under the laws of the State
5 of Illinois with its principal place of business located at 200 E. Roosevelt Road,
6 Lombard, Illinois 60148. NUHS's DCP has been accredited by CCE since 1971 and by
7 CCE's predecessor since 1966.

8 4. CCE is a not-for-profit corporation organized under the laws of the State of
9 Arizona with its principal place of business located at 8049 N. 85th Way, Scottsdale,
10 Arizona 85258. CCE is a national accrediting agency recognized by the Secretary of the
11 U.S. Department of Education ("Secretary") pursuant to 20 U.S.C. § 1099b.

12 **JURISDICTION AND VENUE**

13 5. This Court has subject matter jurisdiction over this action under 28 U.S.C.
14 § 1331 because this action arises under the laws of the United States, including 20 U.S.C.
15 § 1099b(f) and federal common law, which provides for exclusive federal jurisdiction for
16 disputes with accrediting agencies recognized by the Secretary.

17 6. This Court has personal jurisdiction over CCE as a not-for-profit
18 corporation organized under the laws of the State of Arizona, with its principal place of
19 business in Scottsdale, Arizona.

20 7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because
21 the causes of action arise from CCE's Council and CCE's Appeal Panel decisions and
22 CCE's Policies require that suits be filed in this Court.

23 **FACTS**

24 8. NUHS offers a Doctor of Chiropractic Degree program, which educates and
25 trains students in evidence based medicine to provide whole health healing to patients.
26 Chiropractic physicians specialize in natural, non-invasive health care and are trained to
27 use a full range of medical diagnostic tools and a wide array of effective treatment
28 options in patient care.

1 9. NUHS’s DCP has been accredited by a Secretary-recognized accrediting
2 agency since 1966.

3 10. CCE accredits only 15 DCPs in the United States. Accreditation by a
4 Secretary-recognized accrediting agency allows DCPs to participate in the U.S.
5 Department of Education’s (the “Department”) Title IV programs, which include federal
6 student loans and grants. Loss of accreditation means that DCP students are ineligible to
7 receive student aid funds under Title IV programs. The vast majority of DCP students
8 funds their education entirely with Title IV program funds and would not be able to
9 enroll in a DCP without access to Title IV program funds. Therefore a DCP’s loss of
10 accreditation or threatened loss of accreditation, e.g., Probation, is a death blow to a DCP.

11 11. NUHS’s DCP is the only DCP accredited by CCE that requires its
12 matriculating students to have earned a baccalaureate degree prior to admission.

13 *CCE’s Statutory and Common Law Due Process Requirements as a*
14 *Secretary-Recognized Accrediting Agency*

15 12. The requirements for an accrediting agency to obtain and maintain
16 recognition by the Secretary of the U.S. Department of Education are set forth in 20
17 U.S.C. § 1099b and 34 C.F.R. Part 602.

18 13. In order to be recognized by the Secretary, an accrediting agency must
19 demonstrate that it “consistently applies and enforces standards that respect the stated
20 mission of the institution of higher education...and that ensure that the courses or
21 programs of instruction, training, or study offered by the institution of higher
22 education...are of sufficient quality to achieve, **for the duration of the accreditation**
23 **period**, the stated objective for which the courses or the programs are offered.” 20
24 U.S.C. § 1099b(a)(4)(A) (emphasis added).

25 14. An accrediting agency demonstrates consistency in decision-making when
26 it:

- 27 (a) Has written specification of the requirements for
28 accreditation and preaccreditation that include clear standards

1 for an institution or program to be accredited;

2 (b) Has effective controls against inconsistent application of
3 the agency's standards;

4 (c) Bases decisions regarding accreditation and
5 preaccreditation on the agency's published standards;

6 (d) Has a reasonable basis for determining that the
7 information the agency relies on for making accrediting
8 decisions is accurate; and

9 (e) Provides the institution or program with a detailed written
10 report that clearly identifies any deficiencies in the
11 institution's or program's compliance with the agency's
12 standards.

13 34 C.F.R. § 602.18.

14 15. An accrediting agency must "demonstrate that it has standards for
15 accreditation...that are sufficiently rigorous to ensure that the agency is a reliable
16 authority regarding the quality of the education or training provided by the institutions or
17 programs it accredits." 34 C.F.R. § 602.16(a).

18 16. An accrediting agency demonstrates these standards at minimum when its
19 standards

20 effectively address the quality of the institution or program in
21 the following areas:

22 (i) Success with respect to student achievement in
23 relation to the institution's mission, which may include
24 different standards for different institutions or
25 programs, as established by the institution, including,
26 as appropriate, **consideration of State licensing**
27 **examinations**, course completion, and job placement
28 rates.

1 34 C.F.R. § 602.16(a)(1)(i) (emphasis added).

2 17. Accreditation “standards set must be reasonable, applied with an even hand,
3 and not in conflict with the public policy of the jurisdiction.” *Marjorie Webster Jr. Coll.,*
4 *Inc. v. Middle States Ass’n of Colls. & Secondary Schs., Inc.*, 432 F.2d 650, 655 (D.C.
5 Cir. 1970).

6 18. In order to obtain and maintain recognition by the Secretary, an accrediting
7 agency must

8 establish and apply review procedures throughout the
9 accrediting process, including evaluation and withdrawal
10 proceedings, which comply with due process procedures that
11 provide –

12 (A) for adequate written specification of -

13 (i) requirements, including clear standards for an
14 institution of higher education or program to be
15 accredited; and

16 (ii) identified deficiencies at the institution or program
17 examined;

18 (B) for sufficient opportunity for a written response, by an
19 institution or program, regarding any deficiencies identified
20 by the agency or association to be considered by the agency
21 or association –

22 (i) within a timeframe determined by the agency or
23 association; and

24 (ii) prior to final action in the evaluation and
25 withdrawal proceedings

26 (C) upon the written request of an institution or program, for
27 an opportunity for the institution or program to appeal any
28 adverse action under this section, including denial,

1 withdrawal, suspension, or termination of accreditation, taken
2 against the institution or program, prior to such action
3 becoming final at a hearing before an appeals panel...

4 20 U.S.C. § 1099b(a)(6)(A)-(C).

5 19. “The agency must demonstrate that the procedures it uses throughout the
6 accreditation process satisfy due process.” 34 C.F.R. § 602.25. An agency demonstrates
7 that it has met the requirements of due process when it:

8 (a) Provides adequate written specification of its
9 requirements, including clear standards, for an institution or
10 program to be accredited or preaccredited.

11 (b) Uses procedures that afford an institution or program a
12 reasonable period of time to comply with the agency’s
13 requests for information and documents.

14 (c) Provides written specification of any deficiencies
15 identified at the institution or program examined.

16 (d) Provides sufficient opportunity for a written response by
17 an institution or program regarding any deficiencies identified
18 by the agency, to be considered by the agency within a
19 timeframe determined by the agency, and before any adverse
20 action is taken.

21 (e) Notifies the institution or program in writing of any
22 adverse accrediting action or an action to place the institution
23 or program on probation or show cause. The notice describes
24 the basis for the action.

25 (f) Provides an opportunity, upon written request of an
26 institution or program, for the institution or program to appeal
27 any adverse action prior to the action becoming final.

28 34 C.F.R. § 602.25(a)-(f).

1 20. There is a “common law duty on the part of ‘quasi-public’ private
2 professional organizations or accreditation associations to employ fair procedures when
3 making decisions affecting their members.” *McKeesport Hosp. v. Accreditation Council*
4 *for Graduate Med. Educ.*, 24 F.3d 519, 534-35 (3d Cir. 1994); *see also Prof’l Massage*
5 *Training Ctr. v. Accreditation Alliance of Career Sch. & Colls.*, 781 F.3d 161, 169 (4th
6 Cir. 2015); *Thomas M. Cooley Law Sch. v. Am. Bar Ass’n*, 459 F.3d 705, 711-12 (6th Cir.
7 2006); *Med. Inst. of Minn. v. Nat’l Ass’n of Trade & Technical Schs.*, 817 F.2d 1310,
8 1314 (8th Cir. 1987); *Marjorie Webster Jr. Coll.*, 432 F.2d at 655-58.

9 21. The common law duty to “play it straight” is in part due to the effect of
10 accreditation on student access to federal funding and the steep cost denial or withdrawal
11 of accreditation has on both the institution and its current and past students. *See Prof’l*
12 *Massage*, 781 F.3d at 170.

13 ***CCE’s Relevant Standards, Policies, and Procedures***

14 22. CCE’s Bylaws grant authority to the Council “for all matters pertaining to
15 the accreditation status of programs.”

16 23. CCE Standards state, “CCE accreditation is granted to DCPs deemed by the
17 Council to comply with the eligibility requirements and requirements for accreditation.”

18 24. CCE Standards further state, “Any DCP seeking to achieve or maintain
19 CCE accredited status must apply for such status, and provide evidence that the DCP
20 meets the eligibility requirements and complies with the requirements for accreditation.”

21 25. CCE requires DCPs to correct any “incorrect, misleading or
22 misrepresentation of public statements about its...success of graduates.” It requires
23 DCPs to “disclose information honestly and completely” and not to omit relevant
24 information or distort information.

25 26. CCE requires DCPs to “disclose up-to-date results of student performance
26 on national board examinations and completion rates on the program website.” The
27 purpose of Policy 56 is to inform the public of the extent to which DCPs prepare
28 graduates for licensure to practice as a chiropractor.

1 27. DCPs are required to “post annually the overall weighted average of the
2 four (4) most recent years’ NBCE Parts I, II, III, and IV Exam success rates. The DCP’s
3 [sic] may use the Canadian Chiropractic Examining Board (CCEB) Part C exam data in
4 lieu of NBCE Part IV data.” For each of the 4 most recent years, the DCP must post:

- 5 1. The total unduplicated number of graduates of the
6 program who **attempted any or all** parts (Parts I, II, III
7 and IV*) of the NBCE exams within six (6) months post-
8 graduation;
- 9 2. The total unduplicated number of graduates of the
10 program who successfully passed all parts (Parts I, II, III
11 and IV*) of the NBCE exams within six (6) months post-
12 graduation; and
- 13 3. The percentage of these graduates who successfully
14 **passed all** parts (Parts I, II, III and IV*) of the NBCE
15 exams within six (6) months post-graduation.

16 * or CCEB Part C data in lieu of NBCE IV data

17 “The overall weighted average of the four (4) most recent years’ NBCE Parts I, II, III,
18 and IV* Exam success rates must not be less than 80%.”

19 28. As part of the reaffirmation of accreditation process, the Council appoints a
20 site team to review the institution’s self-study, conduct a site team visit, issue a draft
21 report to the DCP to correct factual errors, and issue a final report.

22 29. If the final report identifies areas of concern, the DCP must submit to CCE
23 a written response to the areas of concern identified in the final report.

24 30. CCE Standards state, “This process is designed to ensure that, in the best
25 judgment of a group of qualified professionals, the DCP complies with the requirements
26 for eligibility and accreditation and that the DCP is fulfilling its mission and goals. An
27 enduring purpose of CCE accreditation is to encourage ongoing improvement.”

28

1 31. CCE’s Accreditation Manual states, “A comprehensive site visit is a full
2 review of a program applying for initial accreditation or reaffirmation of accredited
3 status...[during which t]he team verifies and validates the information presented in the
4 self-study document. The team report identifies the program’s strengths and any
5 concerns regarding compliance with the CCE *Standards*.” Site team members are
6 required to abide by all relevant CCE policies.

7 32. CCE’s Accreditation Manual states, “Team members are required to
8 identify concerns and the Council will determine the nature, degree, and disposition of
9 these concerns. As Council representatives, team members must be clear with program
10 personnel so that the site team does not prescribe specific actions...The [Site Team]
11 report describes any concerns and recommends a plan and potential for overcoming such
12 challenges...The site team does not stipulate whether or not the program is meeting the
13 requirements of the *Standards* as this is the prerogative of the Council.”

14 33. CCE’s Site Team Manual states, “The site visit team report *must not*: ...3)
15 Indicate compliance or non-compliance with the requirements for accreditation of the
16 CCE *Standards*. 4) Contain any team judgments about, [sic] possible Council actions.”

17 34. CCE’s Site Team Manual states, “A *recommendation must* accompany
18 every *concern* identified in the report. *Although a team must never state in its report that*
19 *a program is not in compliance*, a concern does identify potential non-compliance
20 issues.”

21 35. CCE’s Accreditation Manual states, “Upon receipt of the final report, the
22 program must submit a formal written response to the content, if the report contains any
23 *concerns*.”

24 36. According to CCE Standards, following the site team visit and report to
25 CCE, the Council holds a status review meeting “to provide an opportunity for the
26 Council to meet with DCP representatives to discuss the findings of the site team in
27 accordance with CCE policies and procedures.”
28

1 37. Following the status review meeting, the Council reviews all information
2 “consistent with CCE policies and procedures, to determine whether the program
3 complies with the CCE *Standards*.”

4 38. After review, the Council issues a “written decision regarding accreditation
5 status.”

6 39. According to CCE Standards, imposing a Warning or Probation is a
7 noncompliance action resulting from the Council’s determination “that a DCP/Institution
8 is not in compliance with CCE Accreditation Standards, including eligibility and
9 accreditation requirements, and policies and related procedures.”

10 40. According to CCE Standards,

11 The intent of issuing a Warning is to alert the DCP/Institution
12 of the requirement to address specific Council concerns
13 regarding its accreditation. The Council may decide to issue
14 a Warning if the Council concludes that a DCP/Institution:

- 15 1. Is in noncompliance with the accreditation standards or
16 policies and the Council determines that the
17 deficiency(ies) do not compromise the overall program
18 integrity and can be corrected by the DCP/Institution
19 within the permissible timeframe; or
20 2. Has failed to comply and/or provide requested
21 information.

22 41. On the other hand,

23 Probation is an action reflecting the conclusion of the Council
24 that a program is in significant noncompliance with
25 accreditation standards or policy requirements. Such a
26 determination may be based on the Council’s conclusion that:

- 27 1. The noncompliance compromises program integrity; for
28 example, the number of areas of noncompliance,

1 institutional finances, or other circumstances cause
2 reasonable doubt on whether compliance can be achieved
3 in the permissible timeframe; or

4 2. The noncompliance reflects recurrent noncompliance with
5 one or more particular standard(s) and/or policy(ies); or

6 3. The noncompliance reflects an area for which notice to the
7 public is required in order to serve the best interests of
8 students and prospective students.

9 42. According to CCE Policy 8, “Doctor of Chiropractic Degree Programs,
10 Residency Programs or institutions hereafter referred to as Programs, have the right to
11 appeal an adverse accrediting decision of the CCE Council,” which includes “Public
12 Sanctions (Probation, Show Cause Order).”

13 43. DCPs “may appeal the Council’s adverse action on grounds that such
14 decision is arbitrary, capricious, or otherwise in substantial disregard of the CCE
15 Standards and/or procedures of the Council, or that the decision is not supported by
16 substantial evidence in the record upon which Council took action.”

17 44. “A list of all materials that comprise the complete record shall be identified
18 and made available to the Program.”

19 45. “With the exception of new information pertaining to failure to meet a
20 standard related to finances, information to an appeals hearing will consist of the
21 evidence presented to the Council prior to the adverse action. Information not reviewed
22 by the Council prior to the Council decision cannot be considered by the Appeals Panel.”

23 46. “The panel members shall decide on the issues presented in the appeal.”

24 47. “If the Appeals Panel affirms the action of the Council, the decision of the
25 Council becomes final and effective on the date of the Appeals Panel decision and is not
26 subject to further appeal.”

27
28

1 ***CCE Council's Arbitrary and Capricious Decision and Denial of NUHS' Due Process***

2 48. On February 26, 2016, CCE sent a letter to NUHS informing it that the
3 Council would begin the process for reaffirmation of accreditation upon receipt of
4 NUHS's written confirmation of its intent to pursue reaffirmation of accreditation with
5 CCE in accordance with CCE Accreditation Standards. CCE's letter informed NUHS
6 that its Self Study Report would be due by May 1, 2017, the Comprehensive Site Visit to
7 each of NUHS's two campuses would take place in the Fall of 2017, and that the
8 Council's Status Review Meeting with NUHS representatives would be held in January
9 2018.

10 49. In response to CCE's February 26, 2016 letter, NUHS sent a letter to CCE
11 on March 3, 2016 giving written confirmation of NUHS's intent to pursue reaffirmation
12 of accreditation with CCE.

13 50. NUHS's Lombard campus is located in Illinois, thus most of its graduates
14 seek Illinois licensure.

15 51. Prior to July 1, 2016, successfully passing the NBCE exam for purposes of
16 Illinois licensure meant attempting and passing only Parts I, II, and III of the NBCE
17 exam. Prior to July 1, 2016, licensure of a chiropractic physician under the Illinois
18 Medical Practice Act of 1987 (as amended) required only Parts I, II, and III of the NBCE
19 exam. Effective July 1, 2016, the Illinois Medical Practice Act of 1987 (as amended)
20 added Part IV of the NBCE exam to the examination requirement for licensure. *See* 68
21 Ill. Admin. Code § 1285.60(b)(1).

22 52. Similarly, DCP graduates who seek Canadian licensure do not take Part IV
23 of the NBCE exam. Instead, in order to obtain Canadian licensure, candidates are
24 required to take Part C of the Canadian Chiropractic Examining Board exam. In its July
25 2017 CCE Manual of Policies, CCE added a modification to Policy 56 that permitted
26 DCPs to substitute "Canadian Chiropractic Examining Board (CCEB) Part C data in lieu
27 of NBCE IV data." CCE made no similar modification to its public disclosure
28 requirements for Illinois NBCE exam takers.

1 53. On May 1, 2017, NUHS submitted its Self Study Report to CCE.

2 54. In its Self Study Report, NUHS pointed out that its graduates who seek
3 Illinois licensure are not required to and do not take Part IV of the NBCE exam. NUHS
4 proposed reporting data compliant with the purpose of Policy 56, success rates on NBCE
5 exams, that would be accurate based on what Illinois considered success on the NBCE
6 exam for purposes of licensure (i.e., Parts I, II, and III).

7 55. CCE's Site Team visited NUHS's Lombard, Illinois campus from
8 September 25-28, 2017. The Site Team visited NUHS's Pinellas Park, Florida campus
9 from October 10-12, 2017. The Site Team used as references the January 2013 version
10 of the CCE Accreditation Standards, Principles, Processes & Requirements for
11 Accreditation, the 2017 version of the CCE Manual of Policies, the 2016 version of the
12 Accreditation Manual, and the 2016 Academy of Site Team Visitors Manual.

13 56. As part of its review, the Site Team reviewed NUHS's records for NBCE
14 exam success rates on all four Parts of the exam for the years 2013 through 2016.

15 57. On November 8, 2017, CCE transmitted to NUHS the Final Site Team
16 Report. Therein, the Site Team identified certain areas of *concern*. The Site Team did
17 not identify any areas of noncompliance. Pursuant to CCE's Site Team Manual and
18 Accreditation Manual, the Site Team does not have authority to indicate or make
19 determinations of noncompliance as only the Council has that authority.

20 58. The Final Site Team Report indicated an area of concern that NUHS did
21 not meet CCE's 80% threshold for NBCE performance because it calculated NUHS
22 graduates who sought Illinois licensure, and therefore did not take Part IV of the NBCE
23 exam, as failing Part IV.

24 59. On December 6, 2017, NUHS transmitted to CCE its Response to Final Site
25 Team Report, in which NUHS responded to the Site Team's areas of concern identified
26 in the Final Site Team Report. Because the Site Team did not identify any
27 noncompliance, as the Site Team lacked authority to make such determinations, NUHS's
28 December 6, 2017 response did not respond to any written notice of noncompliance.

1 60. In its response to the Final Site Team Report, NUHS again pointed out the
2 misleading nature of the data Policy 56 requires NUHS to report. NUHS pointed out
3 that, “[r]eview of the university’s historical performance of Part IV performance (below)
4 shows a Part IV passing rate of 87% of those students who took the exam since 2013.”

5 61. NUHS also attached to its Response its public disclosures (a) explaining to
6 the public what constituted “success” on the NBCE exam for Illinois (Parts I, II, and III),
7 (b) providing data in the format required by CCE Policy 56, and (c) providing NUHS’s
8 actual success rates in light of those who did not take Part IV due to Illinois’ licensing
9 requirements and those who did take Part IV due to other states’ licensing requirements.

10 62. The actual success rates of NUHS graduates for 2013 was 90%, for 2014
11 was 94%, and for 2015 was 79%. As identified in the Final Site Team Report, the
12 percentage of NUHS graduates passing all parts of the NBCE in 2016 was 87%.
13 Therefore, the accurate success rate as a weighted average of 2013-2016 is 87.5%, not
14 76% as set forth in the Final Site Team Report.

15 63. CCE’s requirement that Illinois NBCE exam takers who did not take Part
16 IV be reported as failing even though they were not required to take Part IV to obtain
17 Illinois licensure, requires NUHS to make “incorrect, misleading or misrepresentation of
18 public statements about its...success of graduates,” to omit relevant information (that
19 Illinois does not require and therefore Illinois licensure seekers do not take Part IV of the
20 NBCE exam), and report distorted information (falsely low success rates because Illinois
21 does not require and therefore Illinois licensure seekers do not take Part IV of the NBCE
22 exam).

23 64. On January 13, 2018, the Council held its NUHS Status Review Meeting.
24 Representatives from NUHS attended. During the Status Review Meeting, the Council
25 and NUHS representatives discussed the areas of concern that the Site Team had
26 identified in its Final Site Team Report.

27 65. At no time during the Status Review Meeting did the Council provide
28 written notice to NUHS that the Council had determined that NUHS was out of

1 compliance with CCE's accreditation requirements. Similarly, at no time during or after
2 the Status Review Meeting did the Council provide NUHS sufficient opportunity to
3 respond to the Council's noncompliance findings because the Council had not yet
4 informed NUHS that it was out of compliance with any accreditation requirements.

5 66. On February 2, 2018, CCE emailed all of the DCPs it accredits to inform
6 them that it reaffirmed the accreditation of NUHS. CCE published the same notice on its
7 website.

8 67. Subsequently, NUHS received a letter from CCE dated February 2, 2018,
9 informing it that "the Council conducted deliberations and reached a consensus decision
10 to *reaffirm the accreditation* of the NUHS doctor of chiropractic degree program.
11 Reaffirmation marks the beginning of the next eight (8) year accreditation cycle for
12 NUHS."

13 68. According to CCE Standards § 1(I), "CCE accreditation is granted to DCPs
14 deemed by the Council to comply with the eligibility requirements and requirements for
15 accreditation."

16 69. Similarly, under 20 U.S.C. § 1099b(a)(4)(A), an accrediting agency's
17 accreditation of a program, "ensure[s] that the courses or programs of instruction,
18 training, or study offered by the institution of higher education...are of sufficient quality
19 to achieve, for the duration of the accreditation period, the stated objective for which the
20 courses or the programs are offered."

21 70. On February 2, 2018, in the same letter to NUHS as its reaffirmation of
22 accreditation, CCE informed NUHS that the Council had imposed a sanction of Probation
23 because it concluded that NUHS was in significant noncompliance with two CCE
24 Standards and CCE Policy 56. The Council therefore based its imposition of the sanction
25 of Probation in part on the Council's conclusion that NUHS was not in compliance with
26 Policy 56.

27 71. Contrary to the determination of accreditation, CCE's determination of
28 probation, according to CCE Standards § 1(V)(B), "is an action reflecting the conclusion

1 of the Council that a program is in significant noncompliance with accreditation
2 standards or policy requirements.”

3 *CCE Appeals Panel’s Arbitrary and Capricious Decision*

4 72. On February 23, 2018, NUHS timely noticed its appeal of the Council’s
5 sanction of Probation to CCE.

6 73. On April 30, 2018, NUHS timely served its written grounds for appeal,
7 identifying the following bases for its appeal:

8 a. The Council’s action to place NUHS on Probation subsequent to
9 reaffirming NUHS’s accredited status fails to comply with CCE Standards and is
10 arbitrary and capricious.

11 b. The Council’s action to place NUHS on Probation violates NUHS’s
12 due process rights as set forth in 34 C.F.R. § 602.25.

13 c. The Council’s decision that NUHS is out of compliance with CCE
14 Policy 56 is arbitrary and capricious because Policy 56 violates 34 C.F.R. §
15 602.16(a)(1)(i) and conflicts with Illinois public policy, is unreasonable for requiring
16 NUHS to report misleading NBCE exam success rates, and is discriminatory.

17 d. The Council’s action to place NUHS on Probation violates NUHS’s
18 due process rights because the decision arises from the Council’s arbitrary and capricious
19 decision that NUHS is out of compliance with CCE Policy 56.

20 e. The Council’s action to place NUHS on Probation should be
21 reversed because the sanction has the effect of substantially and materially hindering
22 NUHS’s ability to correct the areas of concern within the permissible timeframes set
23 forth in Standards § 1(V).

24 74. On May 11, 2018, the Appeals Panel heard oral presentations from NUHS
25 and the Council.

26 75. On May 21, 2018, CCE transmitted to NUHS the Appeals Panel’s Report,
27 which affirmed the decision of the Council.

28

1 76. The Appeals Panel’s Report stated that prior to the May 11, 2018 hearing,
2 members of the Panel reviewed the documents identified in Appendix 1 of the Report.

3 77. The Appeals Panel’s Report stated that the grounds for NUHS’s appeal
4 “centered around five arguments,” which is summarized as:

5 A. The Council’s action to place NUHS on probation
6 subsequent to reaffirming NUHS’s accredited status
7 fails to comply with CCE standards and is arbitrary
8 and capricious.

9 B. The Council’s action to place NUHS on probation
10 violates NUHS’s due process rights as set forth in 34
11 C.F.R. 602.25.

12 C. The Council’s decision that NUHS is out of
13 compliance with CCE Policy 56 is arbitrary and
14 capricious because Policy 56 violates 34 C.F.R.
15 602.16(a)(1)(i) and conflicts with Illinois Public
16 Policy, is unreasonable for requiring NUHS to report
17 misleading NBCE success rates, and is discriminatory.

18 D. The Council’s action to place NUHS on probation
19 violates NUHS’s due process rights because the
20 decision arises from the Council’s arbitrary and
21 capricious decision that NUHS is out of compliance
22 with CCE Policy 56.

23 E. The Council’s Action to place NUHS on probation
24 should be reversed because the sanction has the effect
25 of substantially and materially hindering NUHS’s
26 ability to correct the areas of concern within the
27 permissible timeframe set forth in Standards 1(V).
28

1 78. The Appeals Panel Report identified the following observations,
2 purportedly in response to NUHS's grounds for appeal.

3 a. "The CCE is recognized by the Department of Education (DOE) and
4 as such is in compliance with regulations required for recognition."

5 b. "The CCE followed its policy and provided NUHS written
6 notification of noncompliance in the Final Site Team Report and provided an opportunity
7 for response in the Response to the Final Report and also at the CCE Status Review
8 Meeting. Institutions are obligated to understand terminology used in the accreditation
9 process such as concern and recommendations following a concern."

10 c. "NUHS states that they believe that Policy 56 is biased against them
11 and that the appeal panel should recommend the policy be changed. Review of NUHS
12 for reaffirmation of accreditation is based on current accreditation standards and policies
13 and review of standards and policies is outside the scope of the appeal panel action."

14 79. The Appeals Panel's Report makes the conclusory statement, "It is
15 important to note that this policy [56] is applied equally to all accredited DCPs." The
16 Report provides no basis for the statement.

17 80. The Appeals Panel's Report confirms that the Council's imposition of
18 Probation and the Panel's affirmation of that decision incorporates a conclusion of
19 noncompliance regarding Policy 56. The Report states, "the combination of the three
20 areas of noncompliance present evidence for the determination that the program is in
21 significant noncompliance with accreditation standards or policy requirements and that
22 this level of noncompliance compromises program integrity."

23 81. The Appeals Panel's Report section that purportedly addresses "Whether
24 the procedures used to reach the adverse action were contrary to established CCE
25 procedures, policies or practices and whether the procedural error prejudiced the
26 Council's consideration" considered information and evidence not reviewed by the
27 Council prior to its decision and failed to address the grounds of NUHS's appeal. The
28 Report stated:

1 The appeal panel found no evidence that the procedures,
2 policies, or practices followed during the reaffirmation process
3 were contrary to established CCE procedures, policies, or
4 practices. Information presented during the appeal hearing
5 demonstrated that the procedures, policies, or practices were
6 followed and an example of a similar circumstance was
7 provided by CCE that reaffirmation of accreditation with a
8 sanction of probation has been applied to an institution
9 previously and in recognition by the Department of Education.
10 In addition, review of CCE by the Department of Education in
11 2013 and 2016 demonstrates that CCE is in compliance with
12 the requirements for recognition by the DOE.

13 82. The Appeals Panel's Report concluded without any analysis of the
14 provisions of the Standards, Policies, and practices NUHS raised in its Grounds for
15 Appeal, that "[t]he evidence demonstrates that CCE followed its policies and
16 procedures."

17 83. The Appeals Panel decided "to Affirm the decision of The Council on
18 Chiropractic Education as stated in the February 2, 2018 Council letter to NUHS."

19 ***Irreparable Harm to NUHS***

20 84. Because CCE only accredits 15 DCPs in the United States, there is strong
21 competition between the DCPs to recruit, enroll, and graduate committed students and
22 recruit, hire, and retain good faculty.

23 85. As a result of CCE's wrongful imposition of Probation and soon to be
24 published Public Disclosure Notice of the same, NUHS will suffer immediate,
25 substantial, and irreparable harm and prejudice.

26 86. First, public disclosure and enforcement of the sanction of Probation will
27 cause NUHS to lose current and prospective students because they may believe that
28 NUHS will soon be losing its accreditation and therefore access to Title IV program

1 funds. Students rely on Title IV program funds to pay for their education. A DCP's
2 access to Title IV funds, by virtue of accreditation by a Secretary-recognized accrediting
3 agency, is instrumental to recruiting and retaining students for the duration of the
4 student's studies. Despite NUHS's pursuit of its legal rights in this Court and assertions
5 that it will maintain its accreditation, current and prospective students may misinterpret
6 the sanction of Probation as an imminent loss of accreditation and therefore transfer from
7 or decline to enroll in NUHS's DCP.

8 87. Second, public disclosure and enforcement of the sanction of Probation will
9 cause NUHS to lose current students because they may encounter more difficulty in
10 obtaining employment. Probation will create a false impression among the public that
11 NUHS does not provide a quality education or prepare DCP graduates for licensure and
12 practice. Individual graduates will therefore be placed at a disadvantage to obtain
13 employment as a chiropractor. Current students will therefore decide that the financial
14 hardship of transferring to another DCP may be worth the risk of having a more difficult
15 time entering the practice of chiropractic medicine.

16 88. Third, public disclosure and enforcement of the sanction of Probation will
17 cause NUHS to lose prospective students because they will receive a distorted message
18 that NUHS is not in compliance with Policy 56 regarding NBCE exam passage rates.
19 Fewer prospective students will seek information or enrollment in NUHS because the
20 distorted data CCE requires NUHS to report will lead the prospective student to believe
21 that NUHS does not adequately prepare its graduates to obtain licensure because its
22 weighted NBCE exam passage rates are below 80%. The public would have to wade
23 through numerous court documents and exhibits to learn the truth: NUHS graduates have
24 an 87% board passage rate and 87.5% of NUHS takers of Part IV pass Part IV. Palmer
25 College of Chiropractic is one of NUHS's main competitors. Palmer College's
26 recruitment efforts and marketing to the public are focused on NBCE exam passage rates
27 and it will use CCE's public disclosure and enforcement of the sanction of Probation as a
28 means to recruit both NUHS's current students as well as prospective students.

1 89. Fourth, public disclosure and enforcement of the sanction of Probation will
2 cause NUHS to lose prospective students because, rather than attracting students,
3 NUHS's rigorous admission standards will deter enrollment when juxtaposed with the
4 distorted NBCE exam passage rates and the sanction of Probation.

5 90. Fifth, public disclosure and enforcement of the sanction of Probation will
6 cause NUHS to lose significant amounts of revenue and, therefore, be less likely to
7 continue to develop and utilize the academic and programmatic improvements CCE
8 recognized as a positive. NUHS must reasonably expect to lose millions of dollars in
9 tuition revenue as a result of CCE's wrongful probation tarnishing NUHS's standing and
10 reputation and incentivizing students to attend other DCPs. My administration calculates
11 that for each group of five prospective or current students who choose not to attend
12 NUHS, the University will lose approximately \$500,000 in revenue. NUHS reasonably
13 forecasts—in order to manage budgets—that the losses will be much larger than
14 \$500,000. While the losses of revenue as a result of current and prospective students'
15 decisions not to enroll or to transfer to another DCP are not yet realized, NUHS knows
16 and forecasts that they will be sizable and larger than that figure.

17 91. Sixth, public disclosure and enforcement of the sanction of Probation will
18 cause NUHS to lose current faculty because CCE's Probation determination will convey
19 to the public that NUHS is not a quality DCP. Faculty will not want to continue teaching
20 at a school with a negative reputation and will therefore look for opportunities at other
21 DCPs or be the target of other DCPs' faculty recruiting efforts.

22 92. Seventh, public disclosure and enforcement of the sanction of Probation
23 will cause NUHS's insurance premiums to increase and reduce its insurability.

24 **COUNT I: DENIAL OF COMMON LAW DUE PROCESS –**

25 **APPEAL PANEL DECISION**

26 93. NUHS incorporates by reference all preceding paragraphs of this
27 Complaint as set forth fully hereinafter.

28

1 94. CCE, as a Secretary-recognized accrediting agency, must “demonstrate the
2 procedures it uses throughout the accrediting process satisfy due process.” 34 C.F.R. §
3 602.25; *accord.* 20 U.S.C. § 1099b(a)(6).

4 95. An accrediting agency’s internal rules must provide a fair and impartial
5 procedure and an accrediting agency must follow its rules in reaching its decision.

6 96. CCE’s Appeals Panel’s May 21, 2018 decision to reaffirm the Council’s
7 February 2, 2018 decision imposing Probation denied NUHS its common law due
8 process rights when it:

- 9 a. Considered information and evidence not reviewed by the Council
10 prior to the Council’s decision in order to reach the Panel’s decision;
11 b. Substantially disregarded CCE’s standards and policies and the U.S.
12 Code in deciding that the Council had not made a contradictory
13 decision to affirm accreditation while at the same time placing
14 NUHS on probation;
15 c. Failed to decide each of NUHS’s grounds for appeal in its decision
16 and support such decision with analysis.

17 ***Appeals Panel Considered Information Not Reviewed by the Council***

18 97. CCE Policy 8 states, “With the exception of new information pertaining to
19 failure to meet a standard related to finances, information to an appeals hearing will
20 consist of that evidence presented to the Council prior to the adverse action. Information
21 not reviewed by the Council prior to the Council decision cannot be considered by the
22 Appeals Panel.”

23 98. The Appeals Panel Report itemizes the entirety of the Record of
24 Accreditation Proceedings in Appendix 1.

25 99. During the Appeals Panel hearing, the Council asserted in its verbal
26 response to NUHS’s first ground of appeal that the Council’s decision to reaffirm and
27 place on probation simultaneously was not contradictory based on CCE’s Standards
28 because the Council had done the same thing with another school in 2016 at a Council

1 accreditation meeting that was attended by a staff member of the Department of
2 Education. The Council asserted that the Department's recognition of CCE in 2016
3 constituted an endorsement by the Department of CCE's reaffirming accreditation at the
4 same time as it placed the school on probation.

5 100. The Council provided no evidence at the Appeals Panel hearing to support
6 its statement that its prior example of reaffirming the accreditation of an institution while
7 simultaneously sanctioning it with probation was "recognized by the Department of
8 Education."

9 101. NUHS asserted that that information was not evidence and was not in the
10 record on appeal.

11 102. A review of the Record of Accreditation Proceedings confirms that there
12 was no evidence submitted to the Council regarding other accreditation actions that
13 would displace CCE's written standards and policies.

14 103. In determining that CCE followed its procedures, policies, and practices,
15 the Appeals Panel specifically cited as the basis for its decision the example CCE
16 provided during the hearing.

17 104. The Appeals Panel therefore impermissibly and in violation of CCE's
18 Policy 8 considered information not reviewed by the Council.

19 ***Appeals Panel Substantially Disregarded CCE's Standards and Policies Regarding***
20 ***Reaffirmation and Probation***

21 105. The U.S. Code states that an accrediting agency's action to accredit a
22 program "ensure[s] that the courses or programs of instruction, training, or study offered
23 by the institution of higher education...are of sufficient quality to achieve, for the
24 duration of the accreditation period, the stated objective for which the courses or the
25 programs are offered." 20 U.S.C. § 1099b(a)(4)(A).

26 106. CCE Standards states that "CCE accreditation is granted to DCPs deemed
27 by the Council to comply with the eligibility requirements and requirements for
28 accreditation."

1 107. On the other hand, pursuant to CCE Standards, “Probation is an action
2 reflecting the conclusion of the Council that a program is in significant noncompliance
3 with accreditation standards or policy requirements.”

4 108. Reaffirmation of accreditation and probation require that the Council reach
5 contradictory conclusions about the compliance of a DCP.

6 109. The Appeals Panel ignored the express language of CCE’s Standards and
7 the U.S. Code and instead based its decision that the Council followed CCE’s procedures,
8 policies, and practices on a single example where the Council made the same decision.
9 Rather than an example of CCE following its standards, the example is an admission by
10 the Council that it does not follow its written standards. CCE’s failure to provide
11 adequate written specifications of its requirements is a violation of its due process
12 requirements under 34 C.F.R. § 602.25(a).

13 ***Appeals Panel Failed to Decide Each of NUHS’s Grounds for Appeal***

14 110. 34 C.F.R. § 602.25(f)(iii) require that the appeals panel must not serve only
15 an advisory or procedural role, but rather, that the appeals panel must make a decision to
16 affirm, amend, or reverse the accrediting agency’s decision-making body.

17 111. CCE Policy 8 states: “The panel members shall decide on the issues
18 presented in the appeal.”

19 112. The Appeals Panel Report identified NUHS’s five grounds of appeal.

20 113. Section “C” of the Appeals Panel Report identified “Panel Review and
21 Findings.”

22 114. Instead of analyzing and deciding any of the five grounds of appeal NUHS
23 raised, the Appeals Panel Report analyzed two issues that were not before it on appeal:
24 (a) “Whether each concern or area of non-compliance was supported by substantial
25 evidence. Substantial evidence is such relevant evidence which might reasonably be
26 accepted as supporting the concern or area of non-compliance cited.” (b) Whether the
27 concern or area of non-compliance that are supported by substantial evidence are
28 sufficient to support the adverse action of the Council.”

1 115. The Appeals Panel Report failed to address or analyze NUHS’s specific
2 grounds for appeal in reaching its conclusion that it “found no evidence that the
3 procedures, policies, or practices followed during the reaffirmation process were contrary
4 to established CCE procedures, policies, or practices.”

5 116. The Appeals Panel stated as its basis for its conclusory statement that
6 “review of CCE by the Department of Education in 2013 and 2016 demonstrates that
7 CCE is in compliance with the requirements for recognition by the DOE.”

8 117. The fact that the Department re-recognized CCE as an accrediting agency
9 means that the CCE was in compliance at the time of the re-recognition. Re-recognition
10 does not establish that CCE’s accreditation decisions subsequent to the Department’s re-
11 recognition constitute compliance with Department requirements or common law due
12 process requirements.

13 118. Similar to CCE’s authority to reaffirm accreditation of a program and, after
14 complying with due process requirements, sanction or withdraw accreditation, so too
15 does the Department have authority to determine that an accrediting agency is no longer
16 in compliance with the Secretary’s criteria. *See* 29 U.S.C. § 1099b(1).

17 119. The Appeals Panel failed to decide NUHS’s second ground of appeal:
18 whether the Council’s action to place NUHS on probation violates NUHS’s due process
19 rights as set forth in 34 C.F.R. § 602.25.

20 120. The Appeals Panel did not decide whether the Council complied with the
21 requirements of 34 C.F.R. § 602.25(c) and (d).

22 121. In the “Background Information” section of the Appeals Panel Report, the
23 panel stated, “The CCE followed its policy and provided NUHS written notification of
24 noncompliance in the Final Site Team Report and provided an opportunity for response
25 in the Response to the Final Report and also at the CCE Status Review Meeting.
26 Institutions are obligated to understand terminology used in the accreditation process
27 such as concern and recommendations following a concern.”

28

1 122. The Appeals Panel, like the Council, conflate two terms that are
2 specifically differentiated in CCE’s Standards and policies – “concern” and
3 “noncompliance.”

4 123. 34 C.F.R. § 602.25(c) requires that CCE provide written specification of
5 any deficiencies.

6 124. 34 C.F.R. § 602.25(d) requires that CCE provide sufficient opportunity for
7 a written response to the deficiencies identified in Section 602.25(c) before any adverse
8 action is taken.

9 125. CCE’s February 2, 2018 letter identifies the deficiencies in NUHS’s
10 program as noncompliance. However, CCE never provided written specification of
11 NUHS’s noncompliance prior to February 2, 2018.

12 126. CCE’s Site Team Manual and Accreditation Manual specifically
13 differentiate the terms “concern” and “noncompliance,” stating that the site visit team
14 must not indicate compliance as it is solely in the authority of the Council to make
15 determinations of non-compliance.

16 127. Because the Site Team does not have the authority to determine non-
17 compliance, its Final Site Team Report cannot be written notice to NUHS of the
18 deficiency of noncompliance to satisfy the due process requirements of 34 C.F.R.
19 602.25(c). Indeed the term “noncompliance” does not appear in the Final Site Team
20 Report.

21 128. Because the Final Site Team Report does not constitute written notice of
22 the deficiency of noncompliance for purposes of 34 C.F.R. 602.25(c), NUHS’s Response
23 to Final Site Team Report cannot constitute written response to the deficiency of
24 noncompliance to satisfy CCE’s due process requirements set forth in 34 C.F.R. §
25 602.25(d).

26 129. NUHS’s written grounds of appeal does not satisfy 34 C.F.R. § 602.25(d)
27 because CCE is required pursuant to 34 C.F.R. § 602.25(f) to provide the opportunity for
28 appeal after CCE notifies the program in writing that it is being placed on probation.

1 130. The Appeals Panel failed to decide NUHS's third ground of appeal:
2 whether the Council's decision that NUHS is out of compliance with CCE Policy 56 is
3 arbitrary and capricious because Policy 56 violates 34 C.F.R. § 602.16(a)(1)(i) and
4 conflicts with Illinois Public Policy, is unreasonable for requiring NUHS to report
5 misleading NBCE success rates, and is discriminatory.

6 131. In the "Background Information" section of the Appeals Panel Report, the
7 panel stated, "NUHS states that they believe that Policy 56 is biased against them and
8 that the appeal panel should recommend the policy be changed. Review of NUHS for
9 reaffirmation of accreditation is based on current accreditation standards and policies and
10 review of standards and policies is outside the scope of the appeal panel action."

11 132. NUHS did not ask the Appeals Panel to change Policy 56. NUHS asked
12 the Appeals Panel to reverse the decision that NUHS was not in compliance with Policy
13 56 because the Council's application of Policy 56 to NUHS violated 34 C.F.R. §
14 602.16(a)(1)(i), causes NUHS to be in violation of Policy 22, and is not applied evenly.

15 133. The Appeals Panel must determine whether the procedures used to reach
16 the adverse action were contrary to established CCE procedures. NUHS's third ground
17 of appeal was squarely within the Appeals Panel's scope of review.

18 134. The Appeals Panel failed to decide NUHS's fourth ground of appeal:
19 whether the Council's action to place NUHS on probation violates NUHS's due process
20 rights because the decision arises from the Council's arbitrary and capricious decision
21 that NUHS is out of compliance with CCE Policy 56.

22 135. The Appeals Panel failed to decide NUHS's fifth ground of appeal: whether
23 the Council's Action to place NUHS on probation should be reversed because the
24 sanction has the effect of substantially and materially hindering NUHS's ability to correct
25 the areas of concern within the permissible timeframe set forth in Standards 1(V).

26 136. The Appeals Panel's decision to affirm the Council's imposition of
27 Probation denied NUHS its common law due process rights.

28

1 137. Absent a Court injunction, CCE is required to make public disclosure of all
2 final adverse accreditation actions, including probation.

3 138. As a direct and proximate result of the Appeals Panel’s denial of NUHS’s
4 common law due process rights, and its imminent public disclosure of its final action to
5 place NUHS on Probation, NUHS will suffer irreparable harm as set forth in Paragraph
6 Nos. 84 through 92.

7 **COUNT II: DENIAL OF COMMON LAW DUE PROCESS –**

8 **COUNCIL DECISION**

9 139. NUHS incorporates by reference all preceding paragraphs of this
10 Complaint as set forth fully hereinafter.

11 ***Council Failed to Follow Its Standards in Reaching Contradictory Conclusions on***
12 ***Compliance with Accreditation Standards***

13 140. When an accrediting agency accredits a program, it makes the
14 determination that the program is “of sufficient quality to achieve, **for the duration of**
15 **the accreditation period**, the stated objective for which the courses or the programs are
16 offered.” 20 U.S.C. § 1099b(a)(4)(A) (emphasis added).

17 141. CCE grants initial accreditation or reaffirms accreditation status to “DCPs
18 deemed by the Council to comply with the eligibility requirements and requirements for
19 accreditation.” CCE’s Standards do not qualify the level of compliance. Instead, CCE’s
20 standards require the Council to determine complete compliance with CCE’s
21 requirements for accreditation.

22 142. On the other hand, a determination of probation, according to CCE
23 Standards § 1(V)(B), “is an action reflecting the conclusion of the Council that a program
24 is in significant noncompliance with accreditation standards or policy requirements.”

25 143. The Council determined that NUHS’s DCP “compl[ies] with the eligibility
26 requirements and requirements for accreditation.” On February 2, 2018, CCE sent
27 NUHS a letter informing it that “the Council conducted deliberations and reached a
28 consensus decision to ***reaffirm the accreditation*** of the NUHS doctor of chiropractic

1 degree program.” Additionally, CCE reaffirmed NUHS’s accreditation for the full 8-year
2 cycle. On the same date, CCE emailed notification to all the DCPs it accredits and
3 published a notice to the public on its website informing all that CCE had reaffirmed the
4 accreditation of NUHS’s doctor of chiropractic degree program.

5 144. In blatant contradiction to the Council’s reaffirmation of accredited status,
6 in the same February 2, 2018 letter notifying NUHS that its accreditation was reaffirmed
7 because it complied with CCE’s accreditation requirements, CCE informed NUHS that
8 the Council had imposed a sanction of Probation because it concluded that NUHS was in
9 significant noncompliance with CCE’s standards and policies.

10 145. At the Appeals Panel hearing, the Chair of the Panel indicated his
11 understanding, despite no evidence being part of the record before the Council or
12 provided to NUHS for its appeal, that CCE can reaffirm accreditation and determine that
13 a DCP is at the same time out of compliance with certain standards.

14 146. If the Council has in fact failed to follow its own standards and the
15 requirements for recognition by the Secretary under 20 U.S.C. § 1099b, the Council has
16 merely admitted to an ongoing violation of not only NUHS’s due process rights but other
17 DCP’s due process rights.

18 147. The Council’s failure to follow its own standards denied NUHS of its due
19 process rights and was arbitrary and capricious. The Council’s decision should have been
20 reversed by the Appeals Panel.

21 148. The Appeals Panel’s failure to follow CCE’s standards denied NUHS of its
22 due process rights and was arbitrary and capricious. Further, to the extent it based its
23 affirming the Council’s decision on other unrelated misapplications of CCE’s standards,
24 none of which were part of the record on appeal, such decision is arbitrary and capricious
25 and not based on substantial evidence.

26 ***Council’s Failure to Afford NUHS the Due Process Set Forth in 34 C.F.R. § 602.25***

27 149. NUHS incorporates by reference all preceding paragraphs of this
28 Complaint as set forth fully hereinafter.

1 150. CCE is required to afford NUHS due process by providing NUHS with
2 “written specifications of any deficiencies” and “sufficient opportunity for a written
3 response by an institution or program regarding any deficiencies identified by the
4 agency” before notifying NUHS “in writing of any adverse accrediting action or action to
5 place the institution or program on probation or show cause. The notice describes the
6 basis for the action.” 34 C.F.R. § 602.25(c)-(e); *accord.* 20 U.S.C. § 1099b(a)(6).

7 151. On February 2, 2018, CCE informed NUHS in writing for the first time that
8 the Council determined NUHS to be in significant noncompliance with CCE standards
9 and policies and, as a result, imposed a sanction of Probation.

10 152. According to CCE Standards,

11 Probation is an action reflecting the conclusion of the Council
12 that a program is in significant noncompliance with
13 accreditation standards or policy requirements. Such a
14 determination may be based on the Council’s conclusion that:

- 15 1. The noncompliance compromises program integrity; for
16 example, the number of areas of noncompliance,
17 institutional finances, or other circumstances cause
18 reasonable doubt on whether compliance can be achieved
19 in the permissible timeframe; or
- 20 2. The noncompliance reflects recurrent noncompliance with
21 one or more particular standard(s) and/or policy(ies); or
- 22 3. The noncompliance reflects an area for which notice to the
23 public is required in order to serve the best interests of
24 students and prospective students.

25 153. The Council’s imposition of a sanction of Probation establishes that the
26 deficiency the Council identified is noncompliance.

1 154. NUHS received no written notice of the deficiency of noncompliance prior
2 to CCE’s February 2, 2018 letter notifying NUHS that CCE was placing NUHS on
3 Probation.

4 155. On November 8, 2017, CCE transmitted the Final Site Team Report to
5 NUHS, which identified “Concerns with Recommendations” in reference to 2013 CCE
6 Accreditation Standards, § 2.A, 2013 CCE Accreditation Standards, § 2.H, and CCE
7 Policy 56: Student Performance Disclosure, Thresholds, and Outcomes.

8 156. Pursuant to CCE’s Accreditation Manual and Site Team Manual, the Site
9 Team does not have authority to and shall not make conclusions as to whether NUHS
10 was in compliance with CCE Standards or Policies.

11 157. If the Site Team were to state conclusions of noncompliance, the Site Team
12 would be acting in substantial disregard of the CCE Standards and/or procedures of the
13 Council as only the Council has authority to make noncompliance determinations.

14 158. Assuming that CCE complied with its requirement to follow its own
15 standards, policies, and procedures, the Site Team did not provide notice of NUHS of
16 noncompliance because the Site Team does not have the authority to make such
17 conclusions.

18 159. The CCE’s February 2, 2018 notifying NUHS for the first time of the
19 deficiency of noncompliance and simultaneously imposing Probation eliminated the
20 procedure and notice requirements of § 602.25 and stripped away any chance for NUHS
21 to be heard—or have access to substantive and procedural due process.

22 ***Council Failed to Apply Its Policies with an Even Hand and Failed to Provide a Fair***
23 ***Procedure***

24 160. NUHS incorporates by reference all preceding paragraphs of this
25 Complaint as set forth fully hereinafter.

26 161. CCE’s standards for accreditation should take into consideration State
27 licensing examinations in order to meet its requirement that it establish standards that
28

1 “ensure that the agency is a reliable authority regarding the quality of the education or
2 training provided by the [DCPs] it accredits.” 34 C.F.R. § 602.16(a).

3 162. CCE must apply its standards with an even hand. 20 U.S.C. § 1099b(a)(4);
4 34 C.F.R. § 602.18; *Marjorie Webster Jr. Coll.*, 432 F.2d at 655.

5 163. CCE requires DPCs to “post annually the overall weighted average of the
6 four (4) most recent years’ NBCE Parts I, II, III, and IV Exam success rates. The DCP’s
7 [sic] may use the Canadian Chiropractic Examining Board (CCEB) Part C exam data in
8 lieu of NBCE Part IV data.”

9 164. Prior to July 1, 2016, successfully passing the NBCE exam for purposes of
10 Illinois licensure meant attempting and passing only Parts I, II, and III of the NBCE
11 exam. *See* 68 Ill. Admin. Code § 1285.60(b)(1).

12 165. NUHS’s Lombard campus is located in Illinois, thus most of its graduates
13 seek Illinois licensure.

14 166. CCE’s application of Policy 56 to NUHS’s NBCE exam success rates pre-
15 July 1, 2016 does not meet the requirements of 34 C.F.R. § 602.16(a)(1)(i), unreasonably
16 requires reporting of irrelevant data, and conflicts with Illinois’ public policy as set forth
17 in 68 Ill. Admin. Code § 1285.60(b)(1).

18 167. CCE’s application of Policy 56 to NUHS’s NBCE exam success rates pre-
19 July 1, 2016 does not meet the requirements of 34 C.F.R. § 602.16(a)(1)(i), unreasonably
20 requires reporting of irrelevant data, and conflicts with Illinois’ public policy as set forth
21 in 68 Ill. Admin. Code § 1285.60(b)(1).

22 168. In its July 2017 CCE Manual of Policies, CCE added a modification to
23 Policy 56 that permitted DCPs to substitute “Canadian Chiropractic Examining Board
24 (CCEB) Part C data in lieu of NBCE IV data.”

25 169. Though CCE was aware that prior to July 1, 2016, Illinois did not require,
26 and therefore NUHS graduates seeking Illinois licensure did not take, Part IV of the
27 NBCE exam, CCE made no similar modification to its public disclosure requirements for
28 Illinois NBCE exam takers.

1 170. CCE allows DCPs with graduates seeking Canadian licensure to satisfy the
2 NBCE outcomes threshold with an exception, while unreasonably punishing NUHS and
3 reducing its outcomes because many of its graduates seek Illinois licensure.

4 171. CCE Policy 22 requires DCPs to correct any “incorrect, misleading or
5 misrepresentation of public statements about its...success of graduates.” It requires
6 DCPs to “disclose information honestly and completely” and not to omit relevant
7 information or distort information.

8 172. CCE’s application of Policy 56 to NUHS requires that NUHS report Illinois
9 NBCE exam takers who are not required to and therefore do not take Part IV but still
10 obtain Illinois licensure as failing NBCE exam Part IV.

11 173. CCE’s requirement that Illinois NBCE exam takers who did not take Part
12 IV be reported as failing even though they were not required to take Part IV to obtain
13 Illinois licensure, requires NUHS to make “incorrect, misleading or misrepresentation of
14 public statements about its...success of graduates,” to omit relevant information (that
15 Illinois does not require and therefore Illinois licensure seekers do not take Part IV of the
16 NBCE exam), and report distorted information (falsely low success rates because Illinois
17 does not require and therefore Illinois licensure seekers do not take Part IV of the NBCE
18 exam).

19 174. The Council’s decision to place NUHS on Probation denied NUHS its
20 common law due process rights.

21 175. Absent a Court injunction and declaratory judgment, if the Appeals Panel is
22 directed to remand to the Council, the Council is likely to make the same common law
23 due process violations.

24 176. As a direct and proximate result of the Council’s denial of NUHS’s
25 common law due process rights, NUHS will suffer irreparable harm as set forth in
26 Paragraph Nos. 84 through 92.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff National University of Health Sciences prays the Court

1 to enter judgment in its favor, providing relief as follows:

2 (A) Enter an ex parte temporary restraining order until a preliminary injunction
3 proceeding can be briefed and ruled upon, requiring CCE to stay its enforcement of
4 probation and enjoining CCE from making public disclosure of its imposition of
5 probation;

6 (B) Enter a preliminary injunction requiring CCE's Appeals Panel to rescind its
7 decision to affirm the Council's February 2, 2018 decision to place NUHS on probation,
8 requiring CCE's Appeals Panel to reverse the Council's February 2, 2018 decision to
9 place NUHS on probation, and enjoining CCE from making public disclosure of its
10 imposition of probation;

11 (C) Enter a permanent injunction requiring CCE to follow all procedures set
12 forth in CCE's Standards, Policies, Accreditation Manual, and Site Team Manual, and
13 those required by the U.S. Code, Code of Federal Regulations, and federal common law;

14 (D) Enter a declaratory judgment that CCE Standards, as currently written, do
15 not permit the Council to grant accreditation or reaffirmation of accredited status and, on
16 the same record, impose a sanction of probation;

17 (E) Enter a declaratory judgment that CCE Standards, as currently written, do
18 not authorize the Site Team to make conclusions of compliance or noncompliance and
19 Final Site Team Reports, therefore, do not constitute notice of the deficiency of
20 noncompliance to satisfy the due process requirements of 34 C.F.R. § 602.25(c) and (d)
21 when the adverse action is based on a conclusion of noncompliance;

22 (F) Enter a declaratory judgment that CCE Policy 56 as applied to NUHS fails
23 to comply with 20 U.S.C. § 1099b(a)(1)(i), is not applied with an even hand, and requires
24 NUHS to report misleading and inaccurate data and, therefore, cannot be the basis of a
25 decision to impose an adverse action; and

26 (G) Grant such other relief as the Court deems just and equitable.
27
28

VERIFICATION

I, Joseph Stiefel, declare as follows:

1. I am the President of National University of Health Sciences (“NUHS”), the Plaintiff in this action.
2. I am authorized to make this verification on behalf of Plaintiff NUHS.
3. I have read the entire foregoing Verified Complaint and know the contents thereof and that all allegations made therein with respect to Plaintiff NUHS are true and accurate to the best of my knowledge and belief, and if called on to testify, I would competently testify as to the matters stated herein.
4. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this Complaint concerning NUHS are true and correct.

Executed on May 23, 2018



Joseph Stiefel

1 Date: May 23, 2018

Respectfully submitted,

/s/ Brian R. Booker

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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

**Plaintiff National Univeristy of Health
(s): Sciences**

County of Residence: Outside the State of Arizona

County Where Claim For Relief Arose: Outside the State of Arizona

Plaintiff's Atty(s):

**Booker R. Brian , Attorney
Gordon Rees Scully Mansukhani LLP
111 West Monroe, Suite 1600
Phoenix, Arizona 85003
602-265-4716**

**Defendant The Council on Chiropractic
(s): Education, Inc.**

County of Residence: Maricopa

Defendant's Atty(s):

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:- **2 Citizen of Another State**
Defendant:- **1 Citizen of This State**

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **890 Other Statutory Actions**

VI.Cause of Action: **Common law 20 U.S.C. § 1099(b) 34 C.F.R. § 602**

VII. Requested in Complaint

Class Action: **No**

Dollar Demand: **Declaratory/Injunctory**

Jury Demand: **No**

VIII. This case is not related to another case.

Signature: **Brian R. Booker**

Date: **05/23/2018**

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014