



BEFORE THE OHIO BOARD OF NURSING

IN THE MATTER OF:

CASE # 11-004356

**OHIO AMERICAN HEALTH CARE, INC.
PRACTICAL NURSING PROGRAM**

ADJUDICATION ORDER

This matter came for consideration before the Ohio Board of Nursing (hereinafter "Board") on July 27, 2012. At such time the Board verified that it reviewed the following materials prior to consideration of this matter:

Hearing Transcript; State's Exhibits; Respondent's Exhibits; Hearing Examiner's Report and Recommendation; Objections to Report and Recommendation; Respondent's Board Address; and State's Board Address.

Ronda Shamansky was the Hearing Examiner designated in this matter pursuant to Section 119.09, Ohio Revised Code (ORC). *A true copy of the Report and Recommendation of Ronda Shamansky is attached hereto and incorporated herein.*

On this date, the Board accepted all of the Findings of Fact, Conclusions of Law and the Recommendation in the Hearing Examiner's Report and Recommendation and ORDERED that the conditional approval status of the **OHIO AMERICAN HEALTH CARE, INC. PRACTICAL NURSING PROGRAM (PROGRAM)** is hereby permanently withdrawn and full approval status is hereby permanently denied, effective July 27, 2012.

This Order is based on the totality of evidence presented in this matter. However, the following deficiencies are among those found to be most compelling to the Board in issuing this Order:

- 1) The Program failed to implement an orientation process for new faculty (Findings of Fact #2) (see also Report and Recommendation (R & R), Pages 5-6);
- 2) The Program failed to implement established student policies as written in critical areas including student admission (Findings of Fact #3), student progression (Findings of Fact #4), and student tuition and fees (Findings of Fact #5). Most significant to public safety, the Program progressed students from one course to the next without students' having completed the requirements of an earlier course (R & R, Page 9), or progressed students

without them having completed the clinical hours required for the earlier course (R & R, Pages 9-13);

- 3) The Program did not implement its curriculum as written by representing that clinical hours would be provided in critical areas, when in fact, either the Program utterly failed to provide students clinical hours, in fundamental areas of practice including Medical/Surgical Nursing I and IV Therapy (Findings of Fact #6, #14), provided less hours than the curriculum represented, and/or provided clinical experience *after* the classroom portion of the course had been completed, rather than concurrently as required by law (Findings of Fact #6; R & R, Pages 15-22). Similarly, the Program failed to provide its students clinical and laboratory experiences that met course objectives or provided the students an opportunity to practice skills learned in the theory portion of the course (Findings of Fact #13), and failed to evaluate whether students were successfully able to perform clinical skills (Findings of Fact #16);
- 4) The Program utilized individuals who did not meet the minimum requirements to teach nursing courses (Findings of Fact #11) or serve in an administrative capacity (Findings of Fact #10 and 11).

The critical deficiencies of this Program, including but not limited to those referenced above, permeated all aspects of the Program. The Program has shown disregard for the quality of education it provided to its students and ultimately, to consumers of healthcare who expect that licensed practical nurses in Ohio will be educated according to the standards established by the State.

This ORDER shall become effective immediately and is hereby entered upon the Journal of the Board for the 27th day of July, 2012.

TIME AND METHOD TO PERFECT AN APPEAL

Any party desiring to appeal shall file a Notice of Appeal with the Ohio Board of Nursing, 17 S. High St., Ste 400, Columbus OH 43215-7410, setting forth the order appealed from and the grounds of the party's appeal. A copy of such Notice of Appeal shall also be filed by the appellant with the Franklin County Court of Common Pleas, Columbus, Ohio. Such notices of appeal shall be filed within fifteen (15) days after the mailing of the notice of the Ohio Board of Nursing's Order as provided in Section 119.12 of the Ohio Revised Code.

CERTIFICATION

The State of Ohio
County of Franklin

I, the undersigned Betsy J. Houchen, Executive Director for the Ohio Board of Nursing, hereby certify that the foregoing is a true and exact reproduction of the original Order of the Ohio Board of Nursing entered on its journal, on the 27th day of July, 2012.



Betsy J. Houchen, R.N., M.S., J.D.
Executive Director

July 27, 2012
Date

(SEAL)

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Adjudication Order, concerning **OHIO AMERICAN HEALTHCARE, INC. PRACTICAL NURSING PROGRAM (PROGRAM)** was sent via certified mail; return receipt requested, this 30th day of July, 2012 to the following:

Ohio American Health Care, Inc. Practical Nursing Program
Attn: Jean Mathews Mitchell, Program Administrator
2323 Lake Club Drive
Columbus, Ohio 43232

Ronald Noga, Esq.
1010 Old Henderson Road, Suite 1
Columbus, Ohio 43220

I also certify that a copy of the same was sent via regular U.S. mail this 30th day of July, 2012 to Lamont Pugh, SAC, Sanctions & Exclusions, Department of Health and Human Services, Office of Inspector General, Office of Investigations, PO Box 81020, Chicago IL 60601-81020.



Betsy J. Houchen, R.N., M.S., J.D.
Executive Director

hrf

cc: Henry G. Appel, Assistant Attorney General

Certified Mail Receipt No. 7012 1010 0002 4225 3729
Attorney Certified Mail Receipt No. 7012 1010 0002 4225 3736

OHIO BOARD OF NURSING
17 South High Street, Suite 400
Columbus, Ohio 43215-7410

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In the Matter of
Ohio American Health Care, Inc.

Ronda Shamansky
Hearing Examiner

Practical Nurse Program

Case No. 11-004356

June 25, 2012
Report and Recommendation

Appearances: For the Ohio Board of Nursing: Mike DeWine, OHIO ATTORNEY GENERAL, and Henry Appel and Charissa Payer, Senior Assistant Attorneys General, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3400. Telephone: (614) 466-8600; Fax: (866) 441-4738

For the Respondent-Licensee: Ronald B. Noga, ATTORNEY AT LAW, 1010 Old Henderson Road, Suite 1, Columbus, Ohio 43220. Telephone: (614) 326-1954; Fax: (614) 447-1673

Hearing Date: May 29-30, 2012.

SUMMARY OF THE EVIDENCE

All exhibits, even if not specifically mentioned, were reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

Background

1. Ohio American Health Care, Inc. [OAHC] is a privately-owned school in Columbus, Ohio with two programs leading to licensure as a nurse in Ohio: a practical nurse [PN] program, and an "LPN to RN" program that provides additional training to practical nurses, so that they can become registered nurses [RNs]. This hearing concerned only the "PN program," as the "LPN to RN" program had already been discussed during an earlier hearing. However, some of the testimony about the program's ownership and administration heard during the RN hearing also applied to the PN hearing, since both programs have always had the same ownership and the same program administrator. Therefore, the transcripts from the LPN to RN program hearing were admitted by stipulation as Joint Exs.. (Joint Exs. [Joint Exs.] 1-5)

2. Students attend OAHC's PN program for about ten months and pay tuition and fees totaling about \$14,000. The students at OAHC are not eligible for federal financial aid, and instead pay the cost of the program privately, in monthly payments. A student who successfully completes the practical nursing program must then take the practical nursing NCLEX, the national licensing examination for nurses, in order to become licensed as a practical nurse in Ohio. (State's Exhibit [St. Ex.] 41)
3. OAHC has had seven different Program Administrators since it began admitting students in May 2010. In the 13 months preceding the hearing, it had six different Program Administrators. The school's first Program Administrator, Rosanna Bumgardner, Ph.D., was hired as a consultant in 2009, and became the Program Administrator when the school opened in May 2010. She remained in that position for nearly one year until she was terminated on March 28, 2011. Julia Wilson took over as the acting Program Administrator from March 28, 2011 until a day or two later, when it was discovered that she had no teaching experience, and so she did not meet the requirements to serve in that role. Nonetheless, she served as the "de facto" Program Administrator until May 9, 2011, when Diane Shiffer was hired for that position. Ms. Shiffer stayed only nine days, and left on May 18, 2011. Denise Ferrell was hired at the end of May 2011. Ms. Ferrell stayed with the school for only a few weeks, and then Julia Wilson once again acted as the de facto Program Administrator until July 2011. On July 5, 2011, Susan Thomas was hired as the Program Administrator. She stayed in that position for about five weeks, until August 12, 2011. In September 2011, Erin Stout was hired to be the Program Administrator. Ms. Stout remained the Program Administrator until about April 2, 2012, when she resigned suddenly without notice, and Jean Mathews Mitchell was named the Program Administrator. (Joint Ex. 1 at 32, 85, 233-234, 273-274, Joint Ex. 2 at 468-473, Joint Ex. 4 at 935, 1057)

History of the PN Program

4. The Ohio Revised Code [R.C.] grants broad authority to the Ohio Board of Nursing [Board] to license and regulate nurse education programs in this State. R.C. 4723.06(A)(4) requires the Board to establish minimum standards for nursing education programs. Subsections (A)(5), (6) and (7) authorize the Board to survey, inspect, and grant approval to those programs that meet certain criteria. There are three different types of approval that the Board may grant to nursing education programs. Under R.C. 4723.06(A)(5), the Board may grant "full approval" to a program that meets the standards established by the Rules of Ohio Administrative Code [OAC] Chapter 4723-5. Under R.C. 4723.06(A)(6), the Board may grant "conditional approval" to a new program or a program that is being reestablished after ceasing to operate, if the program meets the minimum standards in the Rules. Under R.C. 4723.06(A)(7), the Board may place a program that has ceased to meet and maintain the minimum standards set out in the Rules on "provisional approval" for a period of time specified by the Board. At the end of the time period specified,

the Board is required to reconsider whether the program meets the minimum standards provided by the laws and rules. If it does, the Board will grant full approval of the program. If it does not, the Board may withdraw its approval of the program.

5. In October 2009, OAHC filed a proposal for approval of a new nursing education program with the Board¹. The school submitted a very detailed plan for how it proposed to conduct its program. That proposal appears at State's Exhibit 7. It documented the curriculum that the school proposed to follow, as well as various policies related to the qualifications it would require of its instructors, the way it proposed to keep records, and the policies that would be in place for students, such as student progression policies. It also provided a copy of its organizational structure, showing that the Program Director or Director of Nursing² [DON] would oversee all aspects of the nursing program, and would report to the president of the corporation. The DON or "Program Director" is called a "Program Administrator" in OAC Chapter 4723-5, and those terms were used interchangeably by OAHC. The proposal included copies of the student and faculty handbooks that the school proposed to use, and was signed by Dr. Yemi Oladimeji, the President and CEO of the organization. He indicated that Rosanna Bumgardner, R.N., Ed.D., M.S.N., MED, was appointed to be the Director of Nursing or Program Administrator. (St. Ex. 7)
6. The Board issued conditional approval of the program in January 2010, and the program admitted its first cohort of students on May 17, 2010. The program referred to each group of students who started at the same time as a "cohort," and so they were referred to as the "first cohort," "second cohort," etc. (Joint Ex. 1 at 56-57)

**March 22, 2011, June 22, 2011, September 8, 2011, and October 12, 2011
Survey Visits**

7. On March 22, 2011, the Board conducted an unannounced Survey Visit to OAHC, as it is authorized to do under OAC Chapter 4723-5. Theda "Jody" Hostetler is an education regulatory surveyor for the Board, and she conducted the review of the Practical Nursing program. Ms. Hostetler is a registered nurse with a baccalaureate degree in nursing and a master's degree in education. She has been a faculty member in a nursing program, and she has served as a program administrator of a nursing education program. (Transcript [Tr.] at 198-200)
8. Ms. Hostetler testified that she conducted another survey of OAHC's PN program two months later, on June 22, 2011, but the June survey was announced in advance. During those two survey visits, Ms. Hostetler found evidence that the program was

¹ OAHC's proposal was originally filed on October 13, 2009, and was resubmitted on November 13, 2009.

² The testimony at the hearing demonstrated that the term "Director of Nursing" was used interchangeably with the term "Program Administrator" at OAHC. (Tr. at 52-53)

- not in compliance with OAC Chapter 4723-5, the chapter that sets for the rules for pre-license nurse education programs. She detailed her findings in a Survey Visit Report, addressed to the Program Administrator at that time, Susan Thomas, and dated August 9, 2011. The report described the violations that Ms. Hostetler found during the two survey visits. OAH submitted a response to the Survey Visit Report in the form of a letter from Julia Wilson, the lead clinical faculty and acting Program Administrator at that time. The response was dated August 23, 2011. (St. Exs. 12, 13, Tr. at 200-202)
9. Jody Hostetler conducted another unannounced Survey Visit of the PN program on September 8, 2011, and found discrepancies in the tuition and fee amounts when comparing OAH's proposal for a practical nursing program with the enrollment agreements that students signed. Ms. Hostetler detailed those discrepancies in a Survey Visit Report dated October 3, 2011, and addressed it to Erin Stout, the Program Administrator at that time. (St. Ex. 14) Ms. Stout responded to the allegations in the Survey Visit Report, through a letter dated October 24, 2011, which attached enrollment agreements showing total tuition of \$12,720 for the PN program. (St. Ex. 15)
 10. The Board reviewed the Survey Visit reports as well as OAH's responses to the report, and voted to issue a Notice of Opportunity for Hearing on November 18, 2011, [November 2011 Notice or "First Notice,"] charging the program with numerous violations of the rules governing nurse education programs. (St. Ex. 1a) Because some of the alleged violations cited deficiencies in carrying out its policies related to student progression and student records, the Notice included a confidential student key, identifying the particular students referred to in the Notice as "Student 1," "Student 2," etc. The Student key has been admitted as a sealed exhibit, and is not part of the public review copy of the record in this case. (St. Ex. 1b) On December 15, 2011, OAH requested a hearing on the Notice, through a letter from attorney Elizabeth Collis. (St. Ex. 3a)
 11. Jody Hostetler had conducted an additional Survey Visit of the PN program on October 12, 2011. This Survey Visit was unannounced. Ms. Hostetler once again observed what she believed were violations of OAC Chapter 4723-5. She documented her findings in a Survey Visit Report dated November 29, 2011, and addressed it to Erin Stout, who was the school's Program Administrator at that time. (St. Ex. 16) OAH sent a written response through a hand-delivered letter from Erin Stout dated December 20, 2011. (St. Ex. 17) The Board considered the Survey Visit Reports as well as the school's responses, and issued a second Notice of Opportunity for Hearing on January 20, 2012. (January 2012 Notice or "Second Notice") It outlined the alleged violations found in the October 12, 2011 Survey Visit. OAH requested a hearing on the Second Notice on January 30, 2012. (St. Ex. 3b)
 12. The hearing on each Notice was initially scheduled but continued upon the Board's own motion, pursuant to R.C. 119.09. (St. Ex. 4a, 4b, 4c) Through its former counsel, Elizabeth Collis, OAH moved for the consolidation of both Notices into a single

hearing, and that motion was granted. The hearing was ultimately scheduled by agreement of the parties to begin on May 29, 2012. (St. Ex. 5)

13. The hearing was held on May 29 and 30, 2012. At the hearing, both the Board and OAHC presented witness testimony and documentary evidence concerning the charges in the two Notices. Each had the opportunity to cross-examine the other's witnesses. Because some of the same students were referred to by different student numbers in the two different Notices, a single student key was formulated, showing how each student was designated in each Notice. (St. Ex. 6) That key, or "master key" as it was called during the hearing, was admitted under seal.
14. Throughout the issuance of the two Notices and the hearing process, OAHC has continued to admit new PN students, with the most recent cohort of students beginning their program on May 14, 2012, just before the hearing began. (Tr. at 23-24)

Program Deficiencies Cited by November 18, 2011 Notice (First Notice):

15. The Board's November 2011 Notice cited the following alleged deficiencies in OAHC's PN program:

a. Failure to Implement an Orientation Process for New Faculty

16. OAC Rule 4723-5-09(B) requires, in pertinent part, as follows:

The Program Administrator shall have the authority, accountability, and responsibility for all aspects of the program including but not limited to:

* * *

(4) Implementing an orientation process for new faculty.

* * *

17. When OAHC submitted its proposal for a nursing program to the Board, its literature stated that the Program Administrator would be responsible for faculty orientation. The proposal stated that each employee would receive a "thorough orientation to the company and its policies and procedures," and it outlined the policies that would be covered during the faculty orientation. One of the items on that outline stated that there would be a "written checklist or other instrument" used during the orientation to assure that faculty had been introduced fully to the expectations they were to fulfill, including an understanding of the relevant laws and rules of the Board of Nursing. (St. Ex. 7 at 23)
18. When Jody Hostetler conducted the March 22, 2011 Survey Visit, she found that the files of faculty members Charlotte Caudill, Victoria McCormick, and Khadie Thomas

did not contain documentation showing that they had an orientation. When she returned for the Survey Visit on June 22, 2011, she found an additional faculty file, for Elizabeth Doyle, that also did not contain documentation of an orientation process. Ms. Hostetler included this information in her Survey Visit Report dated August 9, 2011. (St. Ex. 12 at 2-3, Tr. at 202)

19. In OAHC's August 23, 2011 response to the Survey Visit Report, it admitted, "Dr. Bumgardner did not have an orientation process in effect for the program. Faculty had never received adequate orientation to their positions." The letter stated that as of March 29, 2011, an orientation policy had been in place for all current and newly-hired faculty, and that each employee has a checklist in his or her file to document the orientation. It noted that Elizabeth Doyle was a clinical instructor at the Southern Ohio Medical Center, and did her orientation at that facility. (St. Ex. 13 at 1-2)
20. At the RN hearing held several weeks before this hearing, several witnesses testified that they received no orientation when they began working as faculty members. Julia Wilson and Cynthia Davis-Zimmer had testified that they received no orientation other than being handed a book and being told to go teach the class. At this hearing for the PN program, former Program Administrator Rosanna Bumgardner testified that there was no difference in the orientation for faculty members for the RN program and the PN program. (Joint Ex.1 at 163-164, Joint Ex. 2 at 468, 579; Tr. at 129)
21. Judy Leitenberger, who worked at OAHC in the PN program since January 2011, testified, "I received a clinical orientation as far as what clinical work that needed to be done as far as paperwork. But once I was turned over to actually teach full time to the med/surg LPNs, I did not. I was just handed the book by Dr. Koroma and said, here, go teach this." (Tr. at 54)

b. Failure to implement established student policies as written

(i) Student admission policies

22. OAC Rule 4723-5-12(A)(1) requires a program to establish and implement written policies for student admission. In OAHC's proposal, it represented that it had a policy that required students to meet certain qualifications and prerequisites for admission to the program. Among numerous other things, students were required to have a passing grade on the school's entrance exam, CPR certification, documentation of current immunizations, a criminal background check, and documentation of malpractice insurance. The student handbooks also had the same policy for student admission requirements. (St. Ex. 7 at 51-54, St. Ex. 19 at 5-7, St. Ex. 20 at 16-17, Tr. at 203-208)
23. At the March 22, 2012 Survey Visit, Program Administrator Rosanna Bumgardner provided a list of 51 students in the program. The files of nine students were chosen

at random and reviewed to determine if those students' files had evidence of meeting the admissions requirements. Ms. Hostetler found that the student files were missing some of the required documentation. Three students had no documentation of any immunizations or physical exams. Five students did not have CPR certification. Three students had not had a criminal background check. Those students were admitted to the program and allowed to remain in the program without that documentation. Moreover, by the time of the June 22, 2011 Survey Visit that Ms. Hostetler conducted, she found that the program had admitted four additional students whose files did not contain the necessary documentation of meeting the admissions requirements. (St. Ex. 12 at 4-6, Tr. at 205-210)

24. In its written response to the Survey Visit Report written by Julia Wilson, OAHC acknowledged the existence of these deficiencies:

After the termination of Dr. Bumgardner, a prompt audit of all student records was done and it was discovered that many of the current students did not have complete records for their admission to the program despite the amount of time they had spent in the school. Going forward, all admission records will be complete with all requirements prior to entering the program. Deficiencies were found in student admission files including absence of CPR verification, pre-entrance examination and malpractice insurance verification. Measures are being taken immediately to complete the current files by requesting the information from the students. Additionally, we are in the process of writing an admission policy and forming an admission committee. This committee will review all student files to determine qualifications for entering the program. The admissions committee will ensure that all records are received.

(St. Ex. 13 at 2)

25. Rosanna Bumgardner, the Program Administrator from the start of the program until March 28, 2011, testified about her efforts to make sure that student files had the information required. She acknowledged that the proposal submitted to the Board, as well as the program's student handbooks, set out an admissions policy requiring numerous prerequisites for admission, including a health history and physical exam, immunizations, CPR certification, criminal background check, and malpractice insurance. However, Dr. Bumgardner said that when Ms. Hostetler came to the school to conduct the Survey Visit, she was not able to find the missing documentation from those files, even when given additional time. "And I knew at the time, and I shared that with them, that there were missing pieces to some student files." (Tr. at 130-134, St. Ex. 7 at 51-54, St. Ex. 19 at 6-7, St. Ex. 20 at 16-17)
26. Dr. Bumgardner testified that she tried to enforce the admissions policies by keeping students out of school until their files were completed, but the school's owner, Yemi Oladimeji, would not permit her to do that:

Q: When you were the program administrator, to the best of your knowledge was the student ever held back because there was missing information in the file?

A: No.

Q: And why was that?

A: Because what I tried to do with the missing pieces then was to go to Yemi³ with that bit of information, explain to him that what I intended to do was have the student sit out for a number of days, I think I recall saying three days, give them three days to get the material turned in, and he would not allow that.

Q: When you say "Yemi," just to go back and make sure we're clear, that would be the owner of Ohio American Healthcare, Dr. Yemi?

A: Yes.

Q: What was Dr. Yemi's – was Dr. Yemi in agreement with you about keeping the students out for three days?

A: Not at all.

Q: Why not? If you know.

A: Because it was – it stopped payment to the school. It would stop payment. They – during the time that they were sitting out then they wouldn't have to be paying their tuition. And he was afraid that he would lose them in the course of having them sit out.

Q: And if a student was lost in the course of sitting out, what kind of impact would it have, if you know, financially on the school?

A: I don't recall exactly how much they were paying, like if they had a weekly payment. But it was most of them were paying \$700 a month.

(Tr. at 134-135)

27. On cross-examination, Dr. Bumgardner admitted that ultimately, it was her responsibility as the administrator to make sure the students had those documents in their files. However, she explained that her "leverage" was to make the students sit out a few days, and Dr. Yemi would not allow that. (Tr. at 165-167)

³ At the previous hearing concerning OAHHC's RN program Rosanna Bumgardner had testified that she refused to call Yemi Oladimeji, "Dr. Yemi," because she stated, "He tries to promote himself as a physician and he is not." She explained that he is not licensed as a physician in the United States, and she believes that the medical school he claims to have attended is a "bogus school" or "diploma mill." (Joint Ex.2 at 275-277) At the hearing on the PN program, Yemi Oladimeji acknowledged that he is not licensed as a physician in any state. (Tr. at 446-447)

(ii) Student progression policies

28. OAC 4723-5-12(A)(4) requires a program to establish and implement written policies for student progression. In the proposal that OAHC submitted to the Board of Nursing to begin its program, the school represented that its policy required a student to successfully complete each course prior to advancing to the next level course. (St. Ex. 7 at 57) In addition, Rule 5-13(F)(8)(d) requires the program to provide clinical and laboratory experiences concurrently with the related theory instruction.
29. Jody Hostetler testified that she reviewed 15 student files during her Survey Visit, and found that students sometimes progressed from one course to the next without completing some of the requirements of the earlier courses. She explained that this was not only a violation of Chapter 4723-5, but that it resulted in an inadequate curriculum for the students because the students were not learning the coursework they needed to proceed on to the next course. She explained why she believed this was important, "So they can meet all the competencies before they are completed and can move on to the next course and bridge all that information over. And apply it in their theory and their lab and their clinical courses for the next course." (Tr. at 213)
30. Ms. Hostetler included this information in her Survey Visit Report, citing several different ways in which the program failed to adhere to its progression policy. The first cohort of students progressed from the second to the third trimester of the program without completing the clinical components of the second trimester. Students took PN008, "Maternal and Child Health Nursing," and PN009, "Pediatric Nursing, but did not engage in clinical experiences until after the theory portion of those courses was taught. Students completed Maternal and Child Health Nursing and Pediatric Nursing on February 14, 2011 but did not begin their clinical experiences for those courses until June 13, 2011. In addition, students progressed to PN011 Medical Surgical Nursing I and IV Therapy on February 14, 2011 even though they had not completed the required clinical experiences for three courses: PN007, "Gerontology," PN008, "Maternal and Child Health Nursing," and PN009, "Pediatric Nursing." Also, students had not been provided the 72 hours of clinical experiences in PN011, "Medical Surgical Nursing I and IV Therapy," that OAHC's proposal stated would be taught – they had no clinical training. Nonetheless, they progressed to PN012, "Medical Surgical Nursing II," and as of June 13, 2011, were engaging in more advanced clinical experiences for that course. (Tr. at 211-216, St. Ex. 12 at 6-7)
31. OAHC responded to these allegations in its written response to the Survey Visit Report, dated August 23, 2011. On behalf of OAHC, Julia Wilson provided the following explanation:

The progression of the LPN 1 cohort from a clinical course without having met the required clinical hours was an error during Dr. Bumgardner's administration. As soon as the deficiency was realized with the new administration, we secured a clinical site and promptly sent the students to the clinical that they were deficient. Effective in the new administration, the students will not be progressed to new classes without the clinical component.

(St. Ex. 13 at 2, See also, Tr. at 186-187)

32. At the hearing, several former employees of the program explained why this occurred. Judy Leitenberger, the instructor for the Medical Surgical I class, testified that she was given the syllabus for this course that appears at State's Exhibit 29. It lists zero clinical hours, and Ms. Leitenberger agreed that the syllabus was not consistent with OAH's proposal, which said there would be 72 clinical hours for that course. She testified that Dr. Bumgardner told her the course did not have any clinical hours, and she did not question that. "I developed an IV therapy course, and if you're told by your director of nursing that you don't have any clinical hours, then they don't have any clinical hours. It was only until the Board came in and presented a whole different - a whole different, whatever this is, syllabus." (Tr. at 70) It was not until the Board's Survey Visit that Ms. Leitenberger learned the proposal required 72 clinical hours to be provided for students in that course. She said that by that time, she was already teaching Medical Surgical Nursing II to those students, and she did not attempt to make up the missed clinical hours from the Medical Surgical I course. She added that to her knowledge, no other instructor had taken the students to make up those hours either. (Tr. at 68-72, 96-97, 102, St. Ex. 28)
33. Ms. Leitenberger testified that she took the first cohort of students for maternal and child health clinicals to the Southern Ohio Medical Center on two Saturdays in September after the theory portion of those classes had been completed. That counted as 16 hours of clinicals, but the syllabus for the course showed that 40 clinical hours were supposed to be provided. Ms. Leitenberger agreed that the 40 hours stated on the syllabus were not provided for the clinical portion of this class, but she stated that she did not have great concern about it because generally, LPNs do not work in obstetrics. Ms. Leitenberger said that she believed former Program Administrator Erin Stout had submitted the decreased hours to the Board as a change in the program, but she did not understand until recently that such changes would apply only to cohorts who had not yet taken the class, and not to those who had already completed it. (St. Ex. 33, Tr. at 56-61, 67-68)
34. Ms. Leitenberger also took the first cohort to the Southern Ohio Medical Center for their pediatric clinicals. She stated that Susan Thomas was the Program Administrator then, and Ms. Thomas told her that the students needed to get the 40 hours of clinicals that were required for that course. She identified Respondent's Exhibit F as the clinical evaluation sheets she signed on August 9, 2011 for the

students' pediatric clinical experiences at the Southern Ohio Medical Center. Ms. Leitenberger said that although Elizabeth Doyle was the clinical instructor for some of those experiences, she evaluated them as "satisfactory" because Ms. Doyle had told her that the students completed the required experiences. (Tr. at 56-58, 62-64)

35. Former Program Administrator Rosanna Bumgardner testified that even though the proposal said there would be 72 hours of clinicals in the Maternal and Child Health Nursing course and the syllabus for the course said there would be 40 clinical hours, the students got no clinical experiences at all for that course while she was there. Those experiences were not provided until after the theory portion of those classes ended. Likewise, she testified that there were no clinical hours provided in the pediatric course, despite the representation in the proposal that 72 hours would be provided. She explained that there were no clinical sites to send them to. She added that she did not believe she had submitted anything to the Board to change the clinical hours required for those two classes. (Tr. at 148-151, St. Ex. 7 at 189, 195, St. Exs. 33, 34)
36. Dr. Bumgardner testified that during the time she was at OAHC for roughly the first year of the program's operation, there were no clinicals for obstetrics or pediatrics. "[D]uring the time that I was there when they had that class, they did not have any clinicals because we didn't have clinicals set up. They weren't available." (Tr. at 138-139) Dr. Bumgardner said that although she made "numerous, numerous phone calls," to at least 30 to 50 potential clinical sites all over the state, she had not found any clinical sites. She explained that it was hard to find sites because OAHC was not an established program, and it was not approved by the National League of Nursing [NLN.] On cross-examination, Dr. Bumgardner said that when OAHC got its initial approval to begin its program, it had Coshocton Memorial Hospital as a clinical site. However, when the time came for students to go there for clinicals, the hospital advised her that it was downsizing and would not be able to take students for clinical experiences. (Tr. at 160-163)
37. Dr. Bumgardner stated that she was unable to find any other acute care setting, adding that there are many other schools looking for clinical sites for their students. Dr. Bumgardner said that Dr. Yemi wanted her to call doctors' offices to ask if students could be sent there, but he specified that the physician would have to supervise the students because he was not willing to pay an OAHC instructor to go with the students. Dr. Bumgardner testified that she told Dr. Yemi she could not do that because the rules require an instructor who is a nurse to be with the students at their clinicals. In any event, she said that there were not enough faculty members to be able to send an instructor, even if she had found a physician willing to let students come to his or her office. (Tr. at 138-145, 161-162)
38. Dr. Bumgardner testified that Dr. Yemi determined that the students would progress from the second trimester to the third trimester of their program, even though they had not completed clinical experiences for the second trimester.

Q: Whose decision was it to allow a cohort to progress from one level to another without having the clinical [and] didactic taught together?

A: It was Yemi's.

(Tr. at 139)

39. Dr. Bumgardner expressed her belief that this disadvantaged the students. "[T]he whole rationale behind it is for them to have the ability to then apply what they've learned in the classroom to the clinical setting. Or to the lab." Despite the fact that the clinical experiences had not been provided at the same time as the theory or "didactic" instruction, Dr. Bumgardner stated that Dr. Yemi decided that the students would progress to the next level. "The ultimate decision came from Yemi to have them advance." (Tr. at 139-141)
40. Julia Wilson, the Lead Clinical Instructor, also testified that while she was acting in the role of the interim Program Administrator, students progressed from the PN-2 to the PN-3 courses without completing theory and clinical work at the same time. She said that when she took over as the Program Administrator, she quickly realized that clinical experiences were not being provided at the same time as the didactic instruction. The reason was that although they were being taught pediatrics and maternal and child health nursing, there were no clinical sites for those courses. Ms. Wilson said that she was successful in finding a clinical site quickly, the Southern Ohio Medical Center in Portsmouth, Ohio. Ms. Wilson said that since the syllabus for the classes said that 40 hours of clinical instruction would be provided, she sent them for 40 clinical hours. She was unable to explain the discrepancy between the syllabus, which required 40 hours and the proposal, which stated that 72 clinical hours would be provided for those courses. (Tr. at 172-174, 192, St. Ex. 7 at 189, St. Exs. 33, 34.)
41. Ms. Wilson explained that she tried to fit the clinical experiences in quickly for the students who had missed them, explaining that the didactic and clinical portions were supposed to be taught together, but the didactic portions had already ended. "They had had no clinical [for maternal and child nursing] prior to me starting so I found this and they were the first class to attend because it seemed they needed it the worst because they had the didactics the longest ago. So I sent them right away." Ms. Wilson clarified that the students were sent to clinicals for the Maternal and Child Health Nursing class and the Pediatric Nursing class at the same time. One group would attend from 7:00 a.m. to 3:00 p.m., and the other would attend from 3:00 p.m. until 11:00 p.m., and then they would rotate to have the other experience. (Tr. at 177-178, 187-188)
42. Ms. Wilson also testified about the number of clinical hours that students had for the Gerontology class. Although OAHc's proposal stated there would be 112 clinical hours, the syllabus for that course said there would be 104 clinical hours, and Ms. Wilson could not explain the discrepancy. She said that no one had told her there

had been any change to the curriculum, and she went by what was stated on the course syllabus, which she found in the program's computer. She said that to the best of her knowledge, nothing had been sent to the Board of Nursing to notify it of a change in the curriculum. On cross-examination, Ms. Wilson rejected the suggestion that she had simply been asked by the Board's investigators to tell them everything she did not like about the school, when she wrote her statement at State's Exhibit 39. "At the time I was doing my level best to save the school. I wouldn't write down anything I didn't like." (Tr. at 182-186, 193, St. Ex. 7 at 178, St. Ex. 32, 39)

43. Charlotte Caudill, the instructor of the Gerontology course in January and February 2011, testified by telephone at the hearing. Ms. Caudill said that she was familiar with the discrepancy between the 112 clinical hours stated in the proposal and the 104 hours stated in the course syllabus. (Tr. at 375-376) Ms. Caudill testified about why the clinical hours were decreased from what the proposal stated:

Q: Can you explain why there was a discrepancy between the syllabus and the number of hours in the proposal?

A: I can. Because in December after Christmas break they were to begin their clinical sites. However, the clinical sites were not established because there was difficulty finding them and getting contracts for the clinical sites. So Dr. Bumgardner said it would be one to two weeks longer before we could get in clinical sites.

(Tr. at 379)

Because OAHC did not get clinical sites on time, Ms. Caudill testified that the students she supervised got fewer than the 40 clinical hours stated in the Gerontology course syllabus. (Tr. at 378-379)

44. Ms. Caudill was also a clinical instructor for the Maternal and Child Health Nursing course and the Pediatric Nursing class. She said that while she was teaching those classes, there were no clinical hours for either class because the school had no clinical sites available. By the time she left the program in March 2011, no clinical experiences had been provided for those courses. (Tr. at 380-383)

(iii) The Program did not implement its policies for student tuition and fees consistently.

45. OAC Rule 4723-5-12(A)(6) requires in pertinent part as follows:

(A) The administrator of the program and the faculty shall establish and implement written policies for the following:

(6) Payment of fees, expenses, and refunds associated with the

program;

46. In Ohio American Health Care's original proposal, the school represented that it would charge students in the PN program the following tuition and fees:

5. Student fees, expenses and refunds;

Practical Nursing Tuition/Fee Payment Schedule

	Fee/Supplies	Tuition
On Application	\$50	
On Registration	\$75	\$250
Prior to class (Lab Fee)	\$95	
First day of class, 1st trimester		\$3,224
During Trimester (books)	\$134	
Uniform costs - Prior to clinical (last course of trimester)	\$200	
First day of class, 2nd trimester		\$3,223
During Trimester (books)	\$133	
Health and CPR	\$150	
First day of class, 3rd trimester		\$3,223
During Trimester (books)	\$133	
Prior to comprehensive exam NCLEX-PN Exam Fee	\$288	
	<u>\$1,258</u>	<u>\$9,920</u>
Total Tuition and Fees		<u>\$11,178</u>

All tuition and fees are payable in advance. Fees must be paid prior to the service or supplies being required.

(St. Ex. 7 at 60)

47. The school's draft Student Handbook contained the same schedule of tuition and fees, totaling \$11,178. (St. Ex. 19 at 18) However the Student Handbook for the 2010-2011 school year had a different schedule, showing the total tuition as \$12,500, and explaining various applicable fees, which totaled \$2,070:

PROGRAMS	APPLICATION & TESTING FEE	TUITION DOWN PAYMENT	TOTAL TUITION
DAY	\$ 125.00	\$ 1, 200.00	\$ 12,500.00
EVENING	\$ 125.00	\$ 1, 200.00	\$ 12,500.00
WEEKEND	\$125.00	\$ 1, 200.00	\$ 12,500.00

Tuition and fees are set at time of enrolment and will not be increased during the class cycle.

Tuition and fees will be due and payable as follows:

The following fees are applicable: Application Fee \$50; Pre-entrance Examination Fee \$75; Laboratory Fee \$95; First term Books \$300; Clinical Outfitting \$200; Second term Books \$250; Health and CPR \$150; Third term books \$250; Fourth term Books \$100; NCLEX-PN Review Course \$600. Tuition under this agreement will be honored but fees, books, or supplies are subject to change in cost based on possible price increases from third parties.

(St. Ex. 20 at 54)

Under this schedule including the fees included in the fine print, the total charged for fees and tuition was \$14,570 – over \$3,000 more than the amount represented in the program’s proposal to the Board of Nursing. Ms. Hostetler identified State’s Exhibit 21 as the Student Handbook for the 2011-2012 school year, and although it states, “Please review Tuition/Fee Schedules in the Program Information section for each program offered,” Ms. Hostetler said that the handbook did not have any such schedule for the PN program. (St. Ex. 21 at 34, Tr. at 216-222)

48. Jody Hostetler testified that when she reviewed the school’s handbooks and student enrollment agreements at the June 22, 2011 Survey Visit, she found a lack of consistency in the amounts stated for fees and tuition. She identified State’s Exhibit 41 as the Student Enrollment agreements that she found when she conducted the Survey Visit. The student whose contract appears at page 133 paid fees and tuition totaling \$13,616, on a contract entered into on June 21, 2011. The student whose contract appears at p. 51 paid fees and tuition totaling \$14,570. That contract was entered into on March 2, 2011. (St. Ex. 41 at 51, 133, Tr. at 221-224)

49. Ms. Hostetler included the inconsistent tuition and fees as a violation in her Survey Visit Report. (St. Ex. 12 at 8-9, Tr. at 216-217) When OAHC submitted its written response to this allegation, it acknowledged the inconsistencies:

The current administration, including Dr. Yemi Oladimeji, was unaware of differing fee structures between students. This has immediately been remedied for a consistent fee schedule. We have also secured a CPA on our staff to oversee all of the financial operations of the school and review all paperwork for consistency.

(St. Ex. 13 at 2)

c. Failure to implement curriculum as written

50. OAC Rule 4723-5-14 is titled, “Curriculum for a practical nursing program,” and contains requirements for a school’s curriculum, including a requirement that the curriculum be implemented as it is written.

(i) No clinical hours were provided for Medical/Surgical Nursing I and IV Therapy

51. On the proposal that OAHC submitted to obtain approval for its practical nursing program, it represented that the Medical/Surgical Nursing I and IV Therapy course would have a total of 180 hours, broken down as follows: 60 lecture hours, 48 skills lab hours, and 72 clinical hours. (St. Ex. 7 at 216) Jody Hostetler testified that when she conducted the Survey Visit at OAHC, she was given a syllabus for that same

course that showed a total of only 108 hours, with a different allocation of those hours. That syllabus showed that the course would include 100 theory hours, 8 hours of IV skills in the lab, and 0 (zero) clinical hours. (St. Ex. 29)

52. Ms. Hostetler included this finding as a violation in her Survey Visit Report. (St. Ex. 12 at 9-11) When OAHC provided its written response to this allegation, it did not dispute the allegation, but it referred to changes to the curriculum made by its first Program Administrator, Rosanna Bumgartner:

The inconsistent information provided during the May 25, 2011 Board of Nursing visit resulted from the current administration not being made aware of the changes submitted by Dr. Bumgardner previously to the Board of Nursing. Now that the current administration is aware of the changes submitted to the Board, we have implemented the curriculum parameters that were approved by the Board of Nursing.

(St. Ex. 13 at 3)

53. At the hearing, Judy Leitenberger, the instructor for the Medical Surgical I class, testified that she used the syllabus for this course that appears at State's Exhibit 29. She agreed that the syllabus, which listed zero clinical hours, was not consistent with OAHC's proposal, which said there would be 72 clinical hours for that course. Ms. Leitenberger said that Dr. Bumgardner had told her the course did not have any clinical hours, and she did not question that. She did not know that the proposal required 72 clinical hours to be taught, until the Board of Nursing conducted the Survey Visit. By that time, however, Ms. Leitenberger was already teaching Medical Surgical Nursing II to those students, and she did not attempt to make up the missed clinical hours from the Medical Surgical I course. She added that to her knowledge, no other instructor had taken the students to make up any clinical hours from Med/Surg I either. She wrote a statement that she provided to the Board's representatives at the Survey Visit, verifying that students had no clinical experiences in Med/Surg I. It appears at State's Exhibit 28. (Tr. at 68-74, 96-97, 100-102, St. Exs. 28, 29)
54. Former Program Administrator Rosanna Bumgardner testified at the hearing that clinical experiences are essential for a course like Medical/Surgical Nursing I. "[I]t's one thing to learn it from a book and it's another thing to actually go in and do the procedure on a patient." Dr. Bumgardner stated that she did not tell Judy Leitenberger that the course had no clinical hours, and she did not know why the syllabus indicated "0 clinical hours." She reiterated that there was no clinical site available for Medical/Surgical Nursing I. On cross-examination, she disagreed with the suggestion that students were not adversely affected by the discrepancy between the clinical hours stated in the proposal and the 0 clinical hours listed on the syllabus. "If the students didn't get the clinicals or the lab, then yes, they were detrimentally affected." (Tr. at 145-146, 152-153, 157-159, 160-163, St. Ex. 29)

55. While Instructor Judy Leitenberger testified that she did conduct the 8 hours of lab skills for the Medical/Surgical I class, she acknowledged that when she started that course, there was no manikin⁴ arm or hand on which the students could practice starting an IV and seeing a “blood return.” She asked for a manikin with various features such as a PICC line, central port, and implanted port, but she was told those were too expensive. By the end of the class, she did have a hand and an arm on which students could practice. She had 23 students, and each student got to practice 3 or 4 times on the IV arm. Ms. Leitenberger stated that she believed this was sufficient. She testified that, to her knowledge, only one student from the first cohort had ever had the opportunity to practice starting an IV in a clinical setting, and that was during the obstetrics experience at the Southern Ohio Medical Center, which took place after the Maternal and Child Health Nursing theory course ended. (Tr. at 73-79)
56. Ms. Leitenberger said that when she first started teaching the Med/Surg course, there were manikins, but not the kind that could be used to teach skills like IV therapy. “[I]t has to be a special equipment to – in order to stick an IV into a manikin. They have to be pliable for the angiocath, et cetera, et cetera. So they had no manikins available for IV therapy at the time that I was there.” (Tr. at 100-101) By the end of the course, an IV hand arrived that did have a blood supply, so she was able to show the starting and advancing of an IV. Before it arrived, she had been trying to show IV therapy on an intradermal arm, which was inadequate because it had no veins and did not show blood return. (Tr. at 118-121) Ms. Leitenberger said that she had to order equipment for the lab and it took a long time for it to come in. And, she explained that she did not always get the equipment that she wanted:

Q: Did you get push back from anyone when you tried to order IV supplies?

A: Not to my knowledge. I mean, they didn’t – what I wanted to order I didn’t get.

Q: Who would change the order?

A: I believe that was Dr. Yemi. He didn’t want to spend on the more expensive. At least that’s what I was told by Dr. Bumgardner and Julia Wilson.

(Tr. at 122-123)

57. Rosanna Bumgardner testified that she believed the lab was not sufficient for students to get 8 the hours of lab work that the course required, “because of the equipment that we didn’t have.” She explained that the lab had plenty of tape, but very few needles and very few angiocaths, as well as a shortage of alcohol swabs that are used to clean the skin before starting an IV. Dr. Bumgardner said that there was only one IV therapy arm, and that for a class of 23 students, she would want to

⁴ “Manikin” is a term of art used by medical equipment supply companies to indicate a mannequin that can be used to practice a variety of medical procedures. (Tr. at 524-525)

have four or five such arms for the students to get plenty of practice. She added that this is something that a student improves with repetition, and she believed that four attempts at starting an IV would not be a sufficient amount of practice for a nursing student. She added that starting an IV is a skill that LPNs are regularly required to do in their practice. (Tr. at 146-147, 152-153)

58. Dr. Bumgardner was also cross-examined about why she did not resort to a nursing home for the clinical hours for Medical/Surgical Nursing I:

Q: In other words, you were not going to have clinicals for med/surg 1 unless you could get them at an acute care hospital.

A: Right. They should be an acute care hospital for med/surg. And I tried desperately to find those clinicals. I made numerous calls every week to try to find those clinicals.

Q: And you would not have been satisfied to have them at a nursing facility or something like that.

A: A nursing home does not suffice for acute care for med/surg. It's not the same. Would be okay for gerontology. But it's not the same.

(Tr. at 163)

(ii) Gerontology class syllabus planned only 104 clinical hours, and not the 112 hours represented in the proposal.

59. On the proposal that OAHC submitted to the Board of Nursing for approval of its practical nursing program, it represented that it would provide a Gerontology class that would include 112 clinical hours. However, the syllabus for this class that Board representative Jody Hostetler found when she conducted the Survey Visit showed that only 104 hours of clinicals were scheduled. (St. Ex. 7 at 178, St. Ex. 32)
60. Charlotte Caudill, the instructor of the Gerontology course in January and February 2011, testified by telephone at the hearing. Ms. Caudill said that she was familiar with the discrepancy between the 112 clinical hours stated in the proposal and the 104 hours stated in the course syllabus. (Tr. at 375-376) She testified about why the clinical hours were decreased from what the proposal stated:

Q: Can you explain why there was a discrepancy between the syllabus and the number of hours in the proposal?

A: I can. Because in December after Christmas break they were to begin their clinical sites. However, the clinical sites were not established because there was difficulty finding them and getting contracts for the clinical sites. So Dr. Bumgardner said it would be one to two weeks longer before we could get in clinical sites.

(Tr. at 379)

Because OAHC did not get clinical sites on time, Ms. Caudill testified that the students she supervised got fewer than the 40 clinical hours stated in the Gerontology course syllabus. She stated that she signed some of the clinical evaluations for this experience, and those evaluations show a lesser number of hours than what the proposal planned. (Tr. at 378-379, St. Ex. 30)

61. Julia Wilson, who acted as an interim Program Administrator, also testified about the number of clinical hours that students had for the Gerontology class. Although OAHC's proposal stated there would be 112 clinical hours, the syllabus for that course said there would be 104 clinical hours, and Ms. Wilson could not explain the discrepancy. She said that no one had told her there had been any change to the curriculum, and she went by what was stated on the course syllabus, which she found in the program's computer. She said that to the best of her knowledge, nothing had been sent to the Board of Nursing to notify it of a change in the curriculum. (Tr. at 182-186, St. Ex. 7 at 178, St. Ex. 32)

(iii) Gerontology class actually received only 96 hours of clinical instruction at Westminster Thurber, because the facility discontinued its contract with OAHC.

62. The clinical evaluations at State's Exhibit 30 are from the Gerontology students' experiences at Westminster-Thurber. Jody Hostetler testified that although the evaluations indicate that 10 weeks of clinical experiences were planned, the documents are completed for only about 5 ½ weeks. (Tr. at 234-236) At the previous hearing on OAHC's RN program, there was testimony about why clinical experiences at that site were terminated before the end of the contract.
63. At the earlier RN hearing, Board Surveyor Cathy Learn related that Dr. Bumgardner had told her the students did not go to clinicals at Westminster Thurber after February 10, 2011. She further related that Dr. Bumgardner explained to her that she was unable to locate an acute care facility that could provide clinical experiences for the students to complete the objectives of the Medical Surgical course. (Joint Ex. 3, at 733-734)
64. Also at the earlier RN program hearing, Rosanna Bumgardner had testified about the reasons that students could no longer attend Westminster-Thurber after February 10, 2011. She stated that while she was the Program Administrator, she received a call from Judy Bender, the clinical coordinator at Westminster Thurber. She related the details of Ms. Bender's explanation of the problem with Yasamine Harden's supervision of the clinical students at that facility:

[S]he said that basically Yasamine had, who was the clinical instructor, had been going to a, it's like a living room area at the end of that rehab unit and it's set up like a library on one side and a living room on the other with a TV, and she had been going down there apparently every day, and I don't know why they didn't make me

aware of it sooner, but she had been laying on that couch taking a nap, according to what Judy said, and would actually take her blanket and curl up there and left the students out on the unit unsupervised.

But I found out later that she had indicated that one specific student, and it was every day when they were there, that same student would act as the charge nurse and she told them that anything that they needed, to go to this particular student and she would help them with whatever it was they needed help with.

(Joint Ex. 2 at 378-379)

Dr. Bumgardner said that on the following Monday, she terminated Yasamine Harden. She said that by the time she left on March 28, 2011, the students were not able to complete all of the clinical experiences that were required. (Joint Ex. 2 at 379, 383)

(iv) Although the syllabus for the Maternal Child Health Nursing course said that 40 clinical hours would be provided, no clinical hours were provided because OAHC had no clinical site.

65. Former Program Administrator Rosanna Bumgardner testified that even though the proposal said there would be 72 hours of clinicals in the Maternal and Child Health Nursing course and the syllabus for the course said there would be 40 clinical hours, the students got no clinical experiences at all for that course while she was there. She explained that this was because there were no clinical sites to send them to. She added that she did not believe she had submitted anything to the Board to change the clinical hours required for those that class. (Tr. at 148-151, St. Ex. 7 at 189, 195, St. Ex. 33)
66. Julia Wilson, who acted as an interim Program Administrator, testified that she realized this deficiency when she took over as the administrator, and she quickly found a site at the Southern Ohio Medical Center where she could send the students to make up the missed clinicals. However, since their theory course had finished some time ago, the students did not have their clinical experiences at the same time as the theory portion of the course. (Tr. at 173-177)
67. Judy Leitenberger testified that she took students to the obstetrics clinicals for the Maternal and Child Health Nursing class. She said that she did not teach the didactic part of that course because she was not even hired until January 7, 2011, and the didactic or theory portion of the course took place in 2010. (Tr. at 94, 113-114)
68. Jody Hostetler included this as a violation in her Survey Visit Report. (St. Ex. 12 at 11-12) When OAHC submitted its written response to the Survey Visit Report, it conceded that the first cohort had not been provided with the appropriate clinical experiences in this class:

LPN cohort 1 was denied clinical experience in Pediatrics and Maternity to coincide with the didactic portion of PN008. This was an error by Dr. Bumgardner. The current administration quickly secured a clinical site and the students have now completed their Pediatric and Maternity clinical.

(St. Ex. 13 at 3)

(v) Although the syllabus for the Pediatric Nursing course said that 40 clinical hours would be provided, no clinical hours were provided during that class because OAHC had no clinical site.

69. The proposal that OAHC submitted to the Board for approval of its practical nursing program represented that the Pediatric Nursing course would include 72 clinical hours. (St. Ex. 7 at 195) The syllabus for PN009, Pediatric Nursing for the class from December 22, 2010 through January 27, 2011, showed that 40 hours of clinical experiences would be provided for students. (St. Ex. 34) Witnesses at the hearing testified that in reality, no clinical experiences at all were provided to students while they were taking the Pediatric Nursing course.
70. Charlotte Caudill, the instructor for the Pediatric Nursing course, testified that when she was teaching that course, there was no clinical experience provided with the theory portion of the class because there were no clinical sites available. (Tr. at 383)
71. Rosanna Bumgardner, the Program Administrator for the first year of OAHC's operation, testified that while she was there from May 2010 until March 28, 2011, there were no clinical sites for pediatrics, despite the fact that she had made many calls to facilities all over the state, trying to find a site. She admitted that during her tenure, they did not have any clinicals for the Pediatric Nursing class because there were no clinical sites available. Furthermore, Dr. Bumgardner testified that she did not believe she had submitted anything to the Board of Nursing to change the number of clinical hours that were to be provided for that class. (Tr. at 138-142, 150-151)
72. Jody Hostetler agreed that no changes to the clinical hours for this course or others had been made by Dr. Bumgardner. She identified State's Exhibit 10 as a progress report submitted by Dr. Bumgardner dated June 23, 2010. It did not indicate that the clinical hours for the Pediatric Nursing class, nor for Gerontology, Medical/Surgical Nursing I, or the Maternal and Child Health courses were being changed. (Tr. at 229-231, St. Ex. 10)
73. Julia Wilson testified that when she began acting as the interim Program Administrator, she realized that the students had had no clinical experience in Pediatric Nursing, so she quickly tried to find a site for them to make up those hours.

She ultimately found the Southern Ohio Medical Center and was able to send students there, but it was well after the time that the theory portion of the Pediatric Nursing course had ended. (Tr. at 173-178)

(vi) Clinical experiences for PN008, Maternal and Child Health Nursing, and PN009, Pediatric Nursing, were not provided concurrently with the theory portion of those classes.

74. OAC Rule 4723-5-14(E)(12)(d) requires a program to provide clinical and laboratory experiences concurrently with the related theory instruction. However, as indicated by the discussion of the testimony of Rosanna Bumgardner, Julia Wilson, and Judy Leitenberger, that did not occur. Instead, no clinical hours at all were provided during the theory portion of the Pediatric Nursing and Maternal and Child Health Nursing courses. It was only after the classes concluded, when Julia Wilson was able to find a site in the Southern Ohio Medical Center, that students were able to attend clinicals for those two classes at that hospital. (Tr. at 173-178)
75. Jody Hostetler's report indicated that although the first cohort had completed the theory and laboratory portion of those classes as of February 14, 2011, they did not even begin their clinical experiences at the Southern Ohio Medical Center until June 13, 2011 – four months after the theory class had ended. (St. Ex. 12 at 11-12) When OAHC provided its written response dated August 23, 2011, it acknowledged, "LPN cohort 1 was denied clinical experience in Pediatrics and Maternity to coincide with their didactic portion of PN008." The program explained that this was due to an error by Dr. Bumgardner, and represented that the students had, as of that date, completed their Pediatric and Maternity clinicals. (St. Ex. 13 at 3)

(vii) The course titled "PN004, Practical Nursing Fundamentals" offered in 2010 did not include the 42 hours of laboratory experiences that OAHC's proposal represented would be included.

76. Jody Hostetler's Survey Visit Report states that at the visit on March 22, 2011, she requested documentation that the students who took PN004, "Practical Nursing Fundamentals," engaged in the 42 hours of lab work that the program's proposal indicated would be completed. However, Rosanna Bumgardner was unable to produce that documentation. The only documentation provided were blank skills checklists with a copyright dated 2011, and therefore, those could not have been the checklists used for a class that was taught beginning in June 2010. (St. Ex. 12 at 12)
77. At the hearing, former Program Administrator Rosanna Bumgardner testified that the blank skills checklists that she gave to Jody Hostetler were blank "because they had not done any lab." When pressed whether students could have done lab work that was not documented, Dr. Bumgardner responded, "It's possible that they had some labs but very little because, like I said before, we didn't have lab equipment and supplies." She was asked how the school got its initial approval, if it had no lab equipment. Dr. Bumgardner replied that she was present when the surveyors came

for the initial visit, and she believes that while the surveyors saw that a lab existed, they did not check for any specific equipment. (Tr. at 167-170)

78. Charlotte Caudill was the instructor for the Practical Nursing Fundamentals class, and also taught the lab portion of it. She stated that she instructed students to print off their own lab evaluation forms and bring them to her, so that she could check off skills that they were able to complete. She said that when she completed a checklist, she gave the checklist to the student so the student could then take it to his or her clinical site, to show that they had passed a particular skill in the lab. Ms. Caudill said that she did not keep a copy of any evaluations that she completed, and she had not been told that she should do that. (Tr. at 384-385)
79. Ms. Caudill agreed that while she tried to teach lab skills to her students, the lab at OAHC was not adequate for teaching skills such as sterile dressing changes or straight catheterization. Packages for the supplies had either been opened many times or did not exist, so she could not demonstrate proper sterile technique. "So I would say this is the correct method in performing this even though we don't have this." (Tr. at 385-386) Ms. Caudill said that although she had asked Rosanna Bumgardner to order supplies, Dr. Bumgardner always told her that Dr. Yemi said they would be coming, but he did not know when.
80. Ms. Caudill said that some of the skills on the lab checkoffs could not be done because the school did not have the correct supplies for those skills to be taught. For example, she could not teach tracheostomy skills because the lab at OAHC had only outdated metal tracheostomies, and not the new plastic variety that is for single-use only. "[T]he equipment that I had was actually one from many, many years ago, which was a metal tracheostomy that really isn't even used now." She added that the metal tracheostomy equipment has not been used since the 1970's, to her knowledge. She later explained that the older metal tracheostomy had to be sterilized in an auto-clave, whereas that is not done with the current plastic ones, since they are not re-used. She said that this caused her students confusion, "Because I was constantly saying, 'pretend it's like this' when it really wasn't like that." (Tr. at 388, 396-398)

(viii) OAHC did not document students' completion of laboratory experiences prior to April 2011.

81. Jody Hostetler testified that when she conducted the Survey Visit on June 22, 2011, she asked Julia Wilson, the acting Program Administrator, for documentation of the students' lab experiences to show what skills they had learned. Ms. Hostetler related that Julia Wilson was unable to find any such documentation. (Tr. at 237-239)
82. Ms. Hostetler testified that, although at one point during the March Survey Visit she was provided with a 419-page procedure checklist, titled, "Principles-Based Checklist to Use with All Procedures," this could not have been the checklist that

was used for classes taught in 2010 because it has a copyright statement at the bottom of each page, indicating a 2011 copyright. (St. Ex. 38, Tr. at 237-238)

83. Referring to the checklists that appear at Respondent's Exhibit G, Ms. Hostetler said that she was not provided with any checklists that look like those, when she was conducting the Survey Visit. (Tr. at 239-240)
84. OAHC presented Respondent's Exhibit G, which the current Program Administrator, Jean Mitchell, identified as lab checkoffs for one student in various courses, including some for Fundamentals of Nursing. She stated that the lab checkoffs for Fundamentals of Nursing were signed off on by Charlotte Caudill on November 9, 2010. She added that if the student did not get checked off on a skill in this lab experience, the student might nonetheless have learned that skill in a later course. (Resp. Ex. G, Tr. at 481-484)
85. There was some testimony at the hearing that Charlotte Caudill was lax about turning in her documentation. Julia Wilson, the acting Program Administrator at the time of the June 2011 Survey Visit, testified that she had a problem getting Ms. Caudill to turn in grades for her students for the Nursing Fundamentals course, and she was not able to get any evaluations from her for lab experiences:

When I took over there were no grades documented anywhere, so I had to try to pull everything together and figure out what the students had done and how they had passed through and the classes they had taken and the grades they had received. And then one of them was taught by Charlotte and I did not have grades, so we had to get in touch with her to get those grades that she had I don't know where. She said a storage locker somewhere. And Dr. Yemi drove down to get them from her.

Q: Did Dr. Yemi go by himself?

A: No; Harold John went with him.

Q: Where does Charlotte Caudill live, or did she live at that time?

A: I thought it was Athens.

Q: Did you have any specific paperwork in terms of the lab evaluations from the classes that Charlotte Caudill taught?

A: No. All I had was grades.

Q: Do you know whether those lab evaluations were done and never submitted or do you know if they weren't done?

A: I have no idea.

(Tr. at 188-189)

86. Charlotte Caudill testified that she recalled the time that Dr. Yemi and Harold John came to Athens to pick up documentation from the classes that she had taught, and

she said that was in approximately May 2011. She stated that she recalled providing them with the grades for students in several classes, including the Nursing Fundamentals course. She further explained that after every course, she used to take the students' grades to Mr. Bumgardner, Rosanna Bumgardner's husband, who was acting as an office manager. However, after he was in a motor vehicle accident, he was not at the school very often and so she just kept the grades. She stated that when she finally turned grades over to Dr. Yemi, she believed they were complete. She added that when she was completing lab evaluations, if she felt the lab equipment was inadequate or she did not have something that she needed to instruct the student in that skill, she would write, "N/A." "[T]hat meant either I did not have the equipment or the student did not have that check-off to go to a clinical site." (Tr. at 393-396)

d. Failure to implement a Systematic Plan of Evaluation

87. OAC Rule 4723-5-15 requires a program administrator to establish a written systematic plan of evaluation, which includes data collected from sources such as faculty, instructional personnel, nursing students, preceptors, and employers of graduates. Subsections (B) and (C) of that Rule require that information to be summarized, and used for purposes of improving the program:
- (B) The results of the evaluation of each aspect of the program as set forth in paragraph (A) of this rule shall be summarized and documented; and
 - (C) Documentation shall demonstrate that the results of the evaluation of each aspect of the program as set forth in paragraph (A) of this Rule have been used to plan and implement changes in the program.
88. In OAHc's original proposal to the Board of Nursing, it described in great detail how it would implement a systematic plan of evaluation. (St. Ex. 7 at 264-304) However, Jody Hostetler testified that when she conducted the Survey Visit in March 2011, the faculty members she spoke with had no knowledge of a systematic plan of evaluation. She said that she saw no meeting minutes, or documents where students had evaluated their classes, their instructors, or their clinical sites. When Ms. Hostetler visited the program again for a subsequent Survey Visit in June 2011, she still saw no evidence that a systematic plan of evaluation was being used. For these reasons, she believed that the program had not carried out the systematic plan of evaluation that it represented it would implement. (Tr. at 240-241)
89. Ms. Hostetler included this as a violation in her Survey Visit Report. (St. Ex. 12 at 13-14) OAHc provided the following explanation in its written response to the Survey Visit report:

Our Interim Program Administrator is in the process of revising the Systematic Plan for Evaluation and forming the appropriate committees including but not limited to specialties in education, administration, and curriculum. This will be supported by faculty, instructional personnel and nursing students to show the plan and implementation of changes in the Program. We are promptly beginning the search for members of the Advisory Board. The lack of such systems is another obvious egregious error on the part of Dr. Bumgardner. Due to this action combined with her poor execution of the school, she was promptly terminated.

(St. Ex. 13 at 3)

90. At the RN hearing several weeks prior to this hearing, several former program administrators testified that there was no systematic plan of evaluation in existence. Rosanna Bumgardner testified that there was no systematic plan of evaluation in existence at the time she was the Program Administrator. "There was not one completed at the time of my dismissal, and there was not one completed at the time of the survey visit in March." She added that no advisory committees ever met during her tenure to take up the matter of the Systematic Plan of Evaluation. On cross-examination, Dr. Bumgardner admitted that implementing a systematic plan of evaluation was her responsibility, but she added, "When you wore as many hats as I had including housekeeper, there wasn't a lot that you did get done." (Joint Ex.2 at 372-373, 442) At the hearing for the PN program, Dr. Bumgardner testified that the status of the systematic plan of evaluation was the same for the RN program and the PN program while she was at OAH. (Tr. at 129-130)
91. Also at the previous hearing on the RN program, Julia Wilson testified that when she took over as the *de facto* Program Administrator, she was unable to put a plan together in time for the Board's Survey Visit:

[B]ecause I don't have any teaching experience or educating experience, I didn't even know what an SPE, or systematic plan of evaluation, was, so I had to try to figure that out. And she sent me – the person that wrote the curriculum sent me a list of things that I needed to get together for the Board to prepare, the documents they needed to prepare, and that was one of them so I had to try to figure out what it was. So I did my best to figure it out and try to start implementing it but, unbeknownst to me, that's not something you can just write in a day. It's something that is a process. So I just, I did my best to come up with the meeting minutes they needed but it certainly was probably not adequate.

Q: By the time you left in September of 2011, what – well, had you completed a systematic program evaluation?

A: No. That was always one of those things that the director was supposed to work on. When we got a new director, she's doing to do this, the new director's going to do this. Well, they wouldn't stay long enough to get it done. * * * I had all I could take care of just trying to keep the school running between times that I didn't - I did not have time to work on the SPE.

(Joint Ex.2 at 514-515)

92. Ms. Wilson testified that she wrote the school's response to the RN program's Survey Visit Report, which said that OAHC hoped to have the plan completed by the end of July. However, she said that did not occur. (Joint Ex. 2 at 516)
93. At the hearing on the PN program, Instructor Judy Leitenberger testified that to her knowledge, no systematic plan of evaluation had ever really been started:

Q: * * * While you were - during the time that you've been employed at Ohio American Health, are you familiar with Ohio American Health having a systematic plan of evaluation for the LPN program?

A: When Dr. Bumgardner left, Julia was looking - I don't know what the - that was part of the thing - program that we needed to - and we didn't know what it was, so to my knowledge that one has not ever really been started.

Q: Have there ever been committees that you've been aware of for the - to do a systematic plan of evaluation for the PN program?

A: There was supposed to be an evaluation program or committee, but I don't believe that they ever met.

(Tr. at 81-82)

(e) The program failed to provide a syllabus or outline of each course to students.

94. OAC Rule 4723-5-19(A) requires that faculty members provide students with a syllabus containing certain minimal information:

4723-5-19 Responsibilities of faculty teaching a nursing course

Faculty teaching a nursing course shall:

(A) Provide a syllabus or outline to each nursing student that includes at least:

- (1) The title of the course;
- (2) The number of theory hours, if applicable;

- (3) The number of laboratory hours, if applicable;
 - (4) The number of clinical hours, if applicable;
 - (5) The course description;
 - (6) The course objectives or outcome;
 - (7) The teaching strategies;
 - (8) The methods of evaluation; and
 - (9) The required textbooks and other bibliography of learning resources;
95. Jody Hostetler testified that when she conducted her Survey Visit in March 2011, she asked the Program Administrator, Rosanna Bumgardner, for all syllabi for all courses in the PN program. Dr. Bumgardner said that she was unable to access those because of a problem with her computer. The next day, however, Dr. Bumgardner produced the syllabi, and Cathy Learn, the other Board surveyor who was there to review the RN program, went to pick them up. The syllabi for Medical/Surgical Nursing I, Gerontology, Maternal and Child Health Nursing, Pediatric Nursing, and Practical Nursing Fundamentals were all provided the day after the Survey Visit. Ms. Hostetler said that when she met with students of the program, they said they had never been given syllabi for their courses. (Tr. at 242-244, St. Exs. 29, 32, 33, 34, 35)
96. At the hearing, OAHC Instructor Judy Leitenberger testified that she did not have course syllabi for the classes she taught until Dr. Bumgardner started working on them just before the Board's visit. She was confident that she did not have the syllabus for the Medical/Surgical Nursing I course at the time the class started. "[W]e heard that the State Board was coming. So whenever she worked over that weekend, she then handed out the syllabus later." Ms. Leitenberger estimated that she got the syllabus in March, and when she was shown the syllabus for that course with her handwritten notes, she agreed that her notes indicated that the class began on February 22, 2011, but the syllabus was first received on March 21, 2011. (St. Ex. 29, Tr. at 82-84)
97. Rosanna Bumgardner also testified at the PN hearing. She stated that the syllabi were those from the program's original proposal, but that OAHC was in the process of having them "re-typed." (Tr. at 158) Former instructor Charlotte Caudill, who worked with the program from July 2010 until March 2011, also testified that she did not give syllabi to students. She said that she asked the program administrator for a syllabus for the Gerontology course, but there was not one in existence at the time of the class in early 2011. (Tr. at 377) Ms. Caudill added that she was not able to give students syllabi for several other courses:

Q: For gerontology, maternity, and pediatric nurses, did the student get syllabi?

A: No. No, there were no syllabi given.

(Tr. at 389-390)

On cross-examination, Ms. Caudill said that she could also not remember giving the students anything in place of syllabi. (Tr. at 390-391)

98. The failure to provide course syllabi was included as a violation of the administrative rules in Jody Hostetler's Survey Visit Report. (St. Ex. 12 at 14) When OAHC submitted its written response to the Survey Visit Report, it provided the following explanation:

Since the termination of Dr. Bumgardner, we have created new and amended the old syllabi. Effective March 29, 2011, all students are now being given a course syllabus or outline including all pertinent information to the course.

(St. Ex. 13 at 3)

99. At the previous hearing on OAHC's RN program, Rosanna Bumgardner responded to the suggestion that she was at fault for the failure to provide students with a syllabus for each course. She testified that the school's owner, Yemi Oladimeji, restricted the use of the school's printer and copier because of the expense of toner and paper. She asked, "[H]ow do you give them a syllabus if you can't use a printer?" (Joint Ex. 2 at 377)

OAHC still had not implemented its own tuition and fee policies at the September 8, 2011 Survey Visit.

100. OAC Rule 4723-5-12(A), cited earlier in this Report and Recommendation, requires a program to establish and implement written policies regarding student tuition and fees. As described earlier in this report, the program was not in compliance with its own policies for tuition and fees at the time of the June 2011 Survey Visit because although the proposal and the student handbooks indicated that students would pay a total of \$11,178 in tuition and fees, there was a lack of consistency, and some students were actually being charged \$14,570. Ms. Hostetler testified that when she returned to the school on September 8, 2011 to conduct an unannounced Survey Visit, she once again found inconsistencies, despite the program's earlier assurance that it had retained a CPA to make sure such inconsistencies were not repeated. (Tr. at 245-250)
101. Ms. Hostetler stated that OAHC's proposal listed the tuition for the PN program as \$9,920, and fees as \$1,258, for a total of \$11,178. (St. Ex. 7 at 60) In the Pre-Survey Visit Report that OAHC provided on May 3, 2011, it indicated the same figures for tuition and fees. (St. Ex. 9 at 30) However, when Ms. Hostetler reviewed student enrollment contracts, she found that Student #1 paid \$12,500 in tuition and \$1,470 in fees, for a total of \$13,970. Ms. Hostetler determined that the tuition and fee policy stated in the proposal and the student handbook was applicable to 25 out of the 61 students in the PN program, based on when they began their programs. She

found that of those 25 students, all 25 of them were charged \$12,500 for tuition, and not \$9,920 as stated in the proposal and handbook – about \$2500 more for tuition alone. There were also discrepancies in the amount of fees paid by students. Although the proposal and handbook said that fees would be \$1,258, 23 of the students were charged \$1,470 for fees, and two students paid no fees at all. Ms. Hostetler included this as a violation in her Survey Visit Report. (St. Ex. 9, St. Ex. 14, St. Ex. 41 at 2, 6, 41; Tr. at 246-250)

102. In OAHC's response to Ms. Hostetler's Survey Visit Report, Program Administrator Erin Stout enclosed revised enrollment agreements, and a letter with the following explanation:

All students were provided with notification of the change to their tuition from the amounts that were published in the student handbook. In addition, each student has been provided an updated Enrollment agreement outlining the revised fees.

(St. Ex. 15 at 1)

Program Deficiencies Cited by January 20, 2012 Notice (Second Notice):

103. The Board's January 2012 Notice cited the following alleged deficiencies in OAHC's PN program:

a. Failure to Provide Information Requested by the Board

104. OAC 4723-5-05 (B) and (C) provide that the Board may request certain information from a program, and the program must comply with that request:

(B) When requested by the board, the administrator of the program shall submit progress reports or periodic supplemental reports, completed questionnaires and surveys, and other documents that shall include the information requested by the board. The administrator of the program shall complete all surveys or questionnaires requested by the board to verify compliance with this chapter.

(C) Failure to submit a report as required by the board may result in a change of the program's approval status in accordance with rule 4723-5-04 of the Administrative Code.

105. Ms. Hostetler testified that she wrote a letter to Erin Stout, OAHC's Program Administrator on September 19, 2011. It was in response to a letter from Julia Wilson, the previous interim Program Administrator, advising the Board that the

completion date for the first cohort of students was changed from September 7, 2011 to November 12, 2011. (St. Ex. 42, Tr. at 263-264)

106. Ms. Hostetler requested that OAHC provide the following information by September 26, 2011, one week from the date of the request:

1. The reason(s) for changing the completion date for the Program's first student cohort completion;
2. A list of all students by name who were admitted to the Program as the Program's first cohort at the time of the Program's implementation;
3. A list of all students by name who are in the first cohort as of the date of this letter; and
4. A list of all students by name who are currently enrolled in the Program with associated date of Program completion for each enrolled student.

(St. Ex. 42)

107. Ms. Hostetler testified that Erin Stout provided a response, but not within the time requested by the Board. In addition, the response did not include all of the requested information. On October 6, 2011, Ms. Stout provided a one-page letter with a list of all students in the first cohort. She did not respond to the third or fourth items requested by the letter and did not provide an explanation for why that information was not presented. Her letter also provided no explanation for why the program completion date was changed for the first cohort of students. (St. Ex. 44, Tr. at 264-266)

108. Ms. Hostetler included this failure to provide information as a violation in her Survey Visit Report dated November 29, 2011. (St. Ex. 16 at 2) OAHC provided a written response to the Survey Visit Report through a letter dated December 20, 2011, and included attachments to the letter. (St. Exs. 17, 18) In the program's response, Ms. Stout acknowledged that she had not provided all of the information that the Board requested, and that it was not provided within the time requested:

I received a letter from the Board on September 19, 2011. The Board requested the submission of additional information to be provided in writing to the Board on or before September 26, 2011. I did not get my response to the Board until October 6, 2011. I apologize for the lateness. It was my first week of work at OAHC and since I was part-time at that point, I only had a day or so until it was due. The letter from the Board and the need for replying by a certain date was

pushed to the back of my mind by all the new information that one receives when one starts a new job.

I also did not include the list of all students, by name, that were currently enrolled in the Program with associated date of Program completion for each enrolled student. I thought our secretary was going to do that. I have included it with this letter. I apologize for not submitting the response on the date requested by the Board and for failing to include the list of student names.

(St. Ex. 17 at 1-2)

b. The Program Administrator did not have authority for all aspects of the Program.

(i) The Program Administrator allowed Harold John, a non-nurse, to be involved in numerous operations of the program.

109. OAC Rule 4723-5-09(B) provides as follows:

(B) The program shall be administered by a registered nurse administrator who meets the qualifications set forth in rule 4723-5-10 of the Administrative Code for a registered nursing education program, or rule 4723-5-11 of the Administrative Code for a practical nursing education program. **The program administrator shall have the authority, accountability, and responsibility for all aspects of the program * * ***

(Emphasis added)

The rule then enumerates various aspects of the program that the Program Administrator must be responsible for in a program's operation. Included within that list are maintaining communication with faculty and students, hiring faculty, and implementing an orientation process for those faculty members. The January 20, 2012 Notice charges that during the Board's Survey Visit on October 12, 2011, a member of OAHC's governing board who is not a nurse, Harold John, appeared to be responsible for many aspects of the program's operation. (St. Ex. 2a at 2-3)

110. Ms. Hostetler testified that when she visited the school to conduct the October 2011 Survey Visit, she observed that Harold John, who is not licensed as a nurse, was performing various official functions for the school. She referred to OAHC's organizational chart at State's Exhibit 45, which she said was provided to her by Jessica Jacklin, who was acting as the Associate Program Administrator during the Survey Visit. That chart does not indicate any direct report between the Board of Governors (of which Harold John was one) and the Program's employees, other than Yemi Oladimeji. It shows no involvement by the Board of Governors in the

program's operations. However, Ms. Hostetler testified about the ways in which Reverend John appeared to be directly involved in the daily operation of the practical nursing program. (Tr. at 271-275, St. Ex. 17 at 3)

111. Ms. Hostetler identified numerous contracts and documents that Harold John or "Reverend John" as he was known, signed in an official capacity for the school. He signed as the "Authorized Officer" of the contracting party in an Independent Contracting Agreement with instructor Patricia Bennett. (St. Ex. 46) He signed as the "Employer" in an Employee Confidentiality Agreement with Jessica Jacklin on September 26, 2011. (St. Ex. 47) He signed again as the "Employer" in an Employee Confidentiality Agreement with Michelle Martens on September 19, 2011. (St. Ex. 48) Reverend John signed for the "Administration" on faculty orientation checklists for Michelle Martens and B. Patel on September 19, and September 27, 2011, respectively. (St. Exs. 49, 50) He signed as the "Authorized Officer" of the contracting party in an Independent Contracting Agreement on September 29, 2011 with Karen Tedder, and he signed as the "Employer" in the Employee Confidentiality Agreement with Ms. Tedder on the same date. In October 2011, he was the only OAHC representative to sign as the "school official" on a student's enrollment agreement. (St. Exs. 57, 58, St. Ex. 41 at 150, Tr. at 272-276)
112. At the RN hearing prior to this hearing, numerous employees of OAHC testified that Reverend John seemed to have more control over the program than the Program Administrator, who at that time was Erin Stout. At the earlier hearing, Board surveyor Cathy Learn, who accompanied Jody Hostetler on the Survey Visit, testified that Reverend John responded to their questions and requests for documents during the Survey. She agreed on cross-examination that it wasn't a violation for Reverend John to re-organize student files, since that could be done by a secretary. She also agreed that he did not have to be a nurse in order to assist in getting materials for the Survey Visit, or to sign an enrollment agreement or a confidentiality agreement. She explained that it was the totality of his involvement in the program that caused her to believe he was acting in the capacity of a Program Administrator. Ms. Learn explained that he would not allow the Program Administrator and Associate Program Administrator to answer questions outside of his presence, and he discussed policies that he was in the process of changing. (Joint Ex. 3 at 775-776, Joint Ex. 4 at 962-964.)
113. Also in the previous hearing, interim Program Administrator Julia Wilson testified that Reverend John was responsible for making sure student files were complete and handling financial matters. "[A]nything financial, Reverend John was responsible for." She added that Dr. Yemi always ran everything by Reverend John, and that during her tenure, Reverend John instructed her how to do her everyday things like grading and testing as well as discipline issues. "He didn't specifically have a say in the grades, but he would have a say in whether somebody could pass or not and then I had to make it work that they could." Office Manager Chandra Smith likewise testified that Dr. Yemi gave Reverend John control, and that even

Program Administrator Erin Stout answered to Reverend John. (Joint Ex.2 at 538-541, 549, Joint Ex. 3 at 596-600)

114. At this hearing on the PN program, Instructor Judy Leitenberger described Reverend John as “Dr. Yemi’s eyes and ears for the school.” She testified that he was supposed to handle files and make sure they were up to date, but that he also handled the finance, took in checks and did the school’s payroll. She said that although she did not have a great deal of interaction with Reverend John because of the fact that she was an instructor at clinical sites, she observed that he attended staff meetings. (Tr. at 85-86)
115. At the hearing, the State introduced a certified copy of an indictment of Harold John, also known as “Reverend John,” on four counts of Conspiracy to Commit Wire Fraud and Bank Fraud, in Case No. 1:09 Cr. 00978-004, United States District Court for the Southern District of New York, in October 2008. On or about July 27, 2010, Reverend John entered a guilty plea to Count One of the Indictment, and the other counts against him were dismissed on the motion of the United States Attorney. Count One of the indictment, to which Reverend John pled guilty, stated that Reverend John and his co-defendants had “created and utilized fake documents and made false statements to lenders in order to obtain home mortgage loans for buyers through fraud.” It stated that Reverend John, for his part, had created false documents, including fraudulent W-2’s, pay stubs, and other documents for homebuyers, for a fee, knowing that those documents would be submitted to lenders in support of mortgage applications, as part of a scheme to defraud lending institutions. After his guilty plea, Reverend John was sentenced to three years of probation, with six months of home confinement. He and his four co-defendants were ordered to pay restitution of \$4,952,831.73, with joint and several liability. (St. Exs. 51-54)

(ii) The Program Administrator worked part-time and was not familiar with the operations of the school.

116. At the previous hearing for the RN program, Board Surveyor Cathy Learn testified that at the time of the October Survey Visit, Program Director Erin Stout stated that she worked “only a few hours a week.” Ms. Learn found that she was not familiar with the school’s facilities and instructors, and testified that she introduced Ms. Stout to Katherine Penty, one of the school’s instructors. Erin Stout’s unfamiliarity with the facilities and staff prompted Ms. Learn to ask her how often she was at the school. Ms. Stout told her that she was working a few hours a week until November, because she was working at another job at Ohio State University Hospitals. (Joint Ex. 3 at 787-788)
117. At this hearing on the PN program, there was no dispute that when Erin Stout was first appointed to be the Program Administrator, she worked part-time while finishing her job at the Ohio State University Medical Center. Judy Leitenberger testified that when Erin Stout was hired to be the Program Administrator, she was

still teaching "Epic," a computerized charting system, to staff at the Ohio State University Medical Center. She was nonetheless the Program Administrator, even though she worked only part-time there. Ms. Leitenberger said that Ms. Stout was in a transition program during that time. "She would work a few hours at the school and then and then she had to go to Ohio State to teach their Epic program." She said on cross-examination that she understood that Jessica Jacklin was helping Ms. Stout, and that Ms. Stout was supervising her. (Tr. at 86-87, 103-104)

118. Ms. Hostetler included this information in her Survey Visit Report dated November 29, 2011. (St. Ex. 16 at 7) When OAHC responded in writing to these allegations, Erin Stout provided the following explanation:

On page 7, of the November 29, 2011 SVR, [Survey Visit Report] it refers to me working "a few hours a week". That was a temporary situation. I told the two Board surveyors that on October 12, 2011. I also told the surveyors that on November 18, 2011, I would be retiring from Ohio State University Medical Center after 30 years of employment. The following Monday, November 20, 2011, I would be starting full time at OAHC.

(St. Ex. 17 at 3)

(iii) The Program Administrator did not ensure that the orientation policy was implemented for every new faculty member.

119. One of the items listed in OAC Rule 4723-5-09(B) as aspects of the program that the Program Administrator must have responsibility for is in subsection (4): implementing an orientation process for new faculty. Jody Hostetler's Survey Visit Report indicates that at the Survey Visit on October 12, 2011, she reviewed faculty files for the "Orientation checklist" that OAHC's policy stated would be in each faculty member's file. She found no documentation of an orientation in the file of faculty member Alicia Hill, who was hired on June 22, 2011. When she reviewed the file of Bijal Patel, Ms. Hostetler found an orientation checklist signed by Ms. Patel and Reverend Harold John, but the checklist left blank some of the elements of that orientation. The file of faculty member Katherine Penty, hired on August 15, 2011, had an orientation checklist, but when the Board surveyors asked Ms. Penty if she had received an orientation, she stated that she had signed the checklist but had not actually received an orientation. Instead, she was given a book and a syllabus for the mental health class, and shown the location of the classroom. (St. Ex. 16 at 6-7)
120. In OAHC's written response to the Survey Visit Report, it provided explanations for the absence of this documentation. With respect to Alicia Hill, Program Administrator Erin Stout wrote that this instructor had been hired before she came to OAHC and was no longer employed there when she became the Program Administrator on September 13, 2011. With respect to the allegation that Katherine Penty had not received an orientation, the program responded, "This has since been

rectified.” With respect to Bijal Patel’s orientation, the program responded that the orientation had been conducted by Lead Faculty member, Julia Wilson, but that Reverend John had heard her being oriented by Ms. Wilson due to the location of his office; he therefore signed the document indicating that he knew she had been oriented to her position. (St Ex. 17 at 1-2)

(iv) The Program Administrator allowed an unqualified associate administrator to assume administrative responsibilities, including preparing the program’s budget.

121. Another one of the items listed in OAC Rule 4723-5-09(B) as aspects of the program that the Program Administrator must have responsibility for is in subsection (1): providing input into the budget process. The organizational chart that Jessica Jacklin provided to Cathy Learn and Jody Hostetler at the time of the Survey Visit showed Ms. Jacklin as the “Lead Faculty” supervising all full- and part-time instructors. (St. Ex. 18 at 83) On the organizational chart, all nursing faculty and teaching assistants reported directly to Ms. Jacklin, who in turn, reported to the Program Administrator. Therefore, it appeared that Jessica Jacklin was acting as an Associate Program Administrator.
122. Instructor Judy Leitenberger agreed that Jessica Jacklin served in that role. “[S]he was the person, while Erin wasn’t there, to make the decisions of the program.” Ms. Leitenberger testified that Jessica Jacklin made decisions such as the number of clinical hours that were needed and who would teach various courses. She agreed that Ms. Jacklin was “instructing the instructors on when and what they were to teach.” (Tr. at 87-88)
123. The problem with Ms. Jacklin’s serving as the Associate Program Administrator was that she did not meet the requirements of OAC 4723-5-11(A)(2) to be in that position, because she did not have two years of experience as a faculty member in a registered nursing or a practical nursing program. In the previous hearing on the RN program, Cathy Learn testified that she had previously seen Jessica Jacklin’s resume, because after Susan Thomas’s term as Program Administrator ended, Dr. Yemi presented Ms. Jacklin’s resume to be evaluated to determine if she could serve as the Program Administrator. Jessica Jacklin’s resume was introduced as State’s Exhibit 64 in the previous hearing. Cathy Learn explained that Ms. Jacklin had been an instructor at Hondros for a very short time on the date of the Survey Visit. Although the resume represented that Ms. Jacklin had been at Central Ohio Technical College since 2010, she served only as an adjunct clinical instructor, and not as a faculty member. Likewise, at Chamberlain College of Nursing, Ms. Jacklin was a laboratory assistant and clinical instructor, but not a faculty member. (St. Ex. 64, Joint Ex. 3 at 794-796)
124. This was included in Jody Hostetler’s Survey Visit Report dated November 29, 2011. (St. Ex. 16 at 7-8) When OAHC provided its written response to the Survey Visit Report, it disputed the Board’s interpretation of OAC 4723-5-11. On behalf of OAHC,

Erin Stout wrote that she could not find anything in the rules that distinguished between “faculty” and “clinical faculty.” Therefore, she asserted that Ms. Jacklin had the required two years of experience as a faculty member, by virtue of serving as a clinical instructor at Central Ohio Technical College. However, Ms. Stout said that while awaiting clarification from the Board, Ms. Jacklin’s title had been changed to “lead faculty.” (St. Ex. 17 at 3)

125. At the previous hearing, Cathy Learn had testified that the distinction between clinical faculty and teaching faculty became a moot point when she found out that Jessica Jacklin had not actually worked as a clinical instructor at Central Ohio Technical College. Ms. Learn explained that she had recently done a Survey Visit at Central Ohio Technical College, and still had that program’s documents in her possession. She checked to see if Jessica Jacklin was listed as one of the program’s clinical instructors, and found that she was not. To verify this, she called the Program Administrator at Central Ohio Technical College and was told that Ms. Jacklin had never been employed there. (Joint Ex. 3 at 798-799)

(c) The Program had faculty who did not meet the qualifications for their positions.

126. In addition to the allegation that Jessica Jacklin did not meet the requirements set forth in OAC 4723-5-11 to be an Associate Program Administrator, the Board’s January 2012 Notice alleged that two other faculty members, Karen Tedder and Dennis Koroma, did not meet the requirements to hold the positions in which they served.

Karen Tedder

127. At the hearing, Jody Hostetler identified Karen Tedder’s resume, which shows that she graduated from Chamberlain College of Nursing in 2010. (St. Ex. 55) She further identified Board of Nursing records showing that Ms. Tedder was first licensed as a registered nurse on March 24, 2010. (St. Ex. 56) Therefore, at the time of the Survey Visit in 2011, Ms. Tedder did not have two years of experience as a licensed nurse. Since OAC Rule 4723-5-11 requires at least two years of experience for a nurse to serve as a faculty member, preceptor, or even a teaching assistant, Ms. Tedder did not have the requisite experience. Nonetheless, on September 29, 2011, she had signed an Independent Contracting Agreement to be an Adjunct Professor for OAHC. (St. Ex. 57) Ms. Hostetler included this as a violation in her Survey Visit Report. (St. Ex. 16 at 8-9, Tr. at 277-280) The program responded to this allegation in its written response to the Survey Visit Report, and did not dispute that Ms. Tedder was unqualified:

[Karen Tedder] was employed here, briefly. She was originally hired as an adjunct professor. After we realized that she didn’t have an RN

license long enough, we changed her to a lab assistant. She only worked here for a week or two, and is no longer employed at OAHC.

(St. Ex. 17 at 4)

Dennis Koroma

128. Jody Hostetler testified that she included in her Survey Visit Report an allegation that Dennis Koroma, a faculty member who is not a nurse, was teaching the Pharmacology course to practical nursing students. Ms. Hostetler identified State's Exhibit 59 as the list of Pharmacology grades that she was given by Jessica Jacklin, the acting Associate Program Administrator. A heading at the top of the page identifies only one person as the instructor of that course: "Instructor: Dennis Koroma, M.D."⁵ Ms. Hostetler testified that no other person was listed as an instructor, even for the parts of the course that involved aspects of nursing. Referring to the 29-page syllabus that appeared in OAHC's for the Pharmacology course, she testified that some of the performance objectives involve nursing techniques that must be taught by someone who is a nurse. Specifically, she identified objectives such as "Review the effective use of the nursing process in medication therapy," and "Discuss the nurse's responsibilities in the event of a drug interaction or adverse effect." (St. Ex. 16 at 9, St. Ex. 7 at 144-172, Tr. at 281-284)
129. Because Dennis Koroma is not licensed as a nurse, he cannot serve as the faculty assigned to teach that course, under OAC 4723-5-10. Subsection (A)(6)(a) of that Rule does permit a nurse *or other health care professional* to provide instruction, but if the instructor is not a nurse, he or she must hold a current, valid license or certificate to practice his or her "other healthcare profession" issued by the state of Ohio. Ms. Hostetler's report stated that Dr. Koroma is not licensed to practice any healthcare profession in the State of Ohio. (St. Ex. 16 at 9)
130. OAHC responded to this allegation in its written response to the Survey Visit Report, prepared by Erin Stout:

Dennis Koroma, M.D. The November 29, 2011 SVR states, "Dennis Koroma was the only faculty or instructor name included on the course grade document." That is true, but it is an error. Dr. Koroma has a Masters in Pharmacology and was teaching part of the course, but there is a nurse teaching the nursing administration/teaching part, and that person's name should have been on the course grade document also. This has been rectified.

(St. Ex. 17 at 4)

⁵ Although Dennis Koroma is identified as a medical doctor, there has been no showing that he is licensed as a physician in any state. The Ohio E-license Center indicates no records of his being licensed as a physician in Ohio.

131. Ms. Hostetler testified that although OAHC claimed in its response that it had a nurse teaching the nursing elements of the course, the program never identified that nurse instructor. (Tr. at 282) Throughout the hearing process, no person in that role was ever identified by name, even though this was one of the formal charges against the school.

(d) The Program did not establish and implement written policies for payment of student fees and expenses.

132. As cited earlier in this Report and Recommendation, OAC Rule 4723-5-12(A)(6) requires the program administrator and the faculty to establish and implement written policies for the payment of fees, expenses and refunds associated with the program.
133. Ms. Hostetler identified State's Exhibit 21 as the Student Handbook for the 2011-2012 school year, and although it has a statement, "Please review Tuition/Fee Schedules in the Program Information section for each program offered," Ms. Hostetler said that the handbook did not have any such schedule for the PN program. (St. Ex. 21 at 34, Tr. at 285-286)
134. Ms. Hostetler included the absence of these policies in the Student Handbook as a violation of the administrative rules in her Survey Visit Report dated November 29, 2011. The report indicates that the surveyors were provided with the 2011-2012 handbook, which was reportedly distributed to students and was the handbook in effect at the time of Erin Stout's appointment as Program Administrator on September 7, 2011. (St. Ex. 16 at 9)
135. When OAHC submitted its written response to the Survey Visit Report, it did not deny that the policy had been left out of the Student Handbook:

The November 29, 2011 SVR states the "2011-2012 School Catalog/Student Handbook did not contain the Program's policy regarding tuition and fees." This is correct. It was inadvertently left out in the last printing of the handbook. It has been rectified.

(St. Ex. 17 at 4)

(e) The program did not implement the curriculum outlined in its 2011-2012 School Catalog/Student Handbook and its proposal submitted to the Board.

136. OAC Rule 4723-5-14, titled, "Curriculum for a Practical Nursing Program," sets forth many detailed requirements for what content must be taught in a practical nursing

program. It also requires that a school implement its curriculum as it is written, i.e., it must teach what it said it would teach.

137. Subsection (E)(12) of OAC 4723-5-14 mandates that a practical nursing program provide clinical and laboratory experiences that meet course objectives and give the student an opportunity to practice skills learned in the theory portion of a class:

(E) The curriculum shall consist of content that spans a minimum length of thirty weeks of full-time study, including examination time, and shall include but not be limited to the following areas of study that may be integrated, combined, or presented as separate courses:

* * *

(12) Clinical and laboratory experiences that:

(a) Meet the established course objectives and outcomes;

(b) Provide a nursing student with the opportunity to practice cognitive, psychomotor, and affective skills in the performance of a variety of basic nursing functions with individuals or groups across the life span;

(c) Provide a nursing student with the opportunity to practice technical skills;

(d) Are provided concurrently with the related theory instruction;

138. In OAHC's proposal submitted to the Board of Nursing when it sought approval of its practical nursing program, it represented that 8 of the 11 practical nursing classes would include required hours of instruction in the skills laboratory and/or in a clinical setting. The proposal included various checklists and evaluation forms that it represented would be used to ensure student competency in those areas of practice. (St. Ex. 7) Likewise, the program's 2011-2012 School Catalog/Student Handbook showed that skills lab and clinical hours would be required for 8 of the practical nursing courses: PN004: "Practical Nursing Fundamentals;" PN005: "Medication Administration/Pharmacology;" PN007: "Gerontology;" PN008: "Maternal and Childhealth Nursing;" PN009: "Pediatric Nursing;" PN019: "Mental Health and Mental Illness;" PN011: "Medical/Surgical Nursing I and IV Therapy;" and PN012: "Medical/Surgical Nursing II." (St. Ex. 21)
139. Jody Hostetler testified that when she conducted the Survey Visit, she requested performance evaluations for the laboratory and clinical portions of all of the practical nursing students' classes. She was not provided with any evaluations at all. Ms. Hostetler's Survey Visit Report states that there were 57 students whose evaluations she was requesting, but the Program Administrator was not able to

produce any documentation at all that those students had completed any clinical or laboratory instruction in any of their classes. At the hearing, Ms. Hostetler testified that she requested this information from Erin Stout and Jessica Jacklin at the Survey Visit. Although they produced some student evaluations, none of those evaluations were for the 57 practical nursing students listed on the program's student roster. Ms. Hostetler said that OAHC was not able to produce any documentation of clinical or laboratory instruction to its practical nursing students during the Survey Visit or at any time after it. (St. Ex. 16 at 11, Tr. at 288-292)

140. When OAHC provided its written response to the Survey Visit Report, it addressed the missing evaluations:

Missing clinical and lab evaluations for 57 students. Explanation: I spoke to the various clinical faculty and many of them had piles of clinical evaluations that they didn't know where to file. We are in the process of obtaining as many of these past evaluations as possible and filing them. These were from before my tenure as Program Administrator. We are in the process of making sure that the faculty members know that they need to do clinical and lab evaluations, sign and date them, and file them.

(St. Ex. 17 at 4)

141. Instructor Judy Leitenberger testified that she did lab checkoffs for IV therapy, and those should have been placed in students' files. However, she admitted being "kind of lax in filing them in the student files." She acknowledged that sometimes when students did complete an experience, it did not get documented into individual student files, which weren't kept until Julia Wilson's tenure as the Program Administrator. "We did not get the folders, the notebooks, until Julia Wilson – until she heard that the Board wanted separate personal files and what they went through in the curriculum, a separation." She added that it is an ongoing process, and that even today, there are papers that still have not been filed in the student's individual files. (Tr. at 88-90, 93)
142. The Notice also alleges that during the Survey Visit, a faculty member for the Medical/Surgical Nursing I and IV Therapy course told the surveyors that the students had no opportunity to practice technical skills related to IV therapy in a clinical setting. At the hearing, Jody Hostetler testified the faculty member referred to in the Notice was Judy Leitenberger, the instructor of Medical/Surgical Nursing I and IV Therapy. Ms. Hostetler said that she included this as a violation when she prepared her Survey Visit Report dated November 29, 2011. (St. Ex. 16 at 10-11, Tr. at 287-288)
143. Ms. Hostetler's Survey Visit Report referred to subsection (F) of OAC 4723-5-14, which provides as follows:

(F) In addition to the content set forth in paragraph (E) of this rule, all practical nursing education programs shall include a course or content in intravenous therapy. **A course or content in intravenous therapy to be included in a practical nursing education program shall have, at a minimum, didactic, laboratory, and supervised clinical practice that covers the following:**

(1) The law and rules related to the role, accountability, and responsibility of the licensed practical nurse in intravenous therapy;

(2) Policies and procedures related to intravenous therapy and affiliating clinical agencies;

(3) Sciences related to intravenous therapy, including, but not limited to anatomy, physiology, microbiology and standard precautions, principles of physics, pharmacology, and pharmacology mathematics;

(4) Nursing care of individuals receiving intravenous therapy, including but not limited to, procedures for:

(a) Venipuncture;

(b) Adding intravenous solutions to existing infusions;

(c) Additive administration and intravenous line maintenance in accordance with section 4723.17 of the Revised Code;

(d) Hanging and regulating the flow of intravenous solutions;

(e) Changing intravenous tubing;

(f) Performing intravenous dressing changes;

(g) Flushing and converting peripheral intermittent infusion devices and heplocks;

(h) Guidelines for preventing, identifying, and managing complications;

(i) Related psychosocial preparation and care;

(5) Documentation related to intravenous care;

(6) Any other training or instruction the board considers appropriate;

(7) A testing component through which a student is able to demonstrate competency related to intravenous therapy;

(8) A means to verify that a student has successfully completed the

course in intravenous therapy as set forth in this rule.

(Emphasis added)

144. Therefore, despite this Rule requiring supervised clinical experiences in IV therapy, Ms. Hostetler reported that the instructor of the course told her there was no opportunity for a student to practice working with IV's in a clinical setting. (Tr. at 287-288)
145. At the hearing, Instructor Judy Leitenberger confirmed that the Medical/Surgical Nursing I and IV Therapy course she taught did not include any clinical hours. Likewise, the syllabus for that course showed that "0" clinical hours would be taught in the course. (Tr. at 68-71, St. Ex. 29) Ms. Leitenberger testified that she did not know that any clinical hours were required for the Med/Surg I and IV Therapy course until the Board conducted its Survey Visit. By that time, she was already teaching Medical/Surgical Nursing II, and she did not try to "make up" any clinical hours from Med/Surg I that the students missed:

Q: Are the number of clinical hours consistent with the number of clinical hours taught in the course?

A: In med/surg I? They did not get any clinical hours in med/surg I.

Q: When did it become to your attention that there was a problem that there were no clinical hours given for med/surg I?

A: Whenever the State Board came in and told me differently of a different – they showed me a different syllabus they had.

Q: Was there a document shown to you that indicated there had to be 72 hours of clinical instruction?

A: Yes.

Q: What class were you teaching when you found out that there was a problem in the medical/surgical I class?

A: I believe med/surg II.

Q: And did you attempt to make up the hours from med/surg I?

A: No.

(Tr. at 71-72)

The "different syllabus" which showed 72 hours was very likely the syllabus presented by the program's original proposal to the Board of Nursing, in which it represented that it planned to offer 72 hours of clinical experience in the Medical/Surgical Nursing I and IV Therapy course. (St. Ex. 7 at 216)

146. When OAH submitted its written response to the Survey Visit Report, it provided the following explanation:

Absence of IV related clinical experiences. Explanation: Ms. Leitenberger can only speak from her clinical experience. When I spoke with other clinical instructors and students, they said there had been some clinical experience with IV's. The November 29, 2011 SVR quotes me as saying about IV experience, "That is another thing we need to work on." Clinical experience in hospitals is hard to obtain. That is where most of the IVs are. In long term care facilities, there aren't as many IVs and when the patient has an IV, it is most likely a PICC line. I repeat, we do need to work on getting more IV experience for our students in the clinical setting. It is not an easy thing to obtain.

(St. Ex. 17 at 4)

147. Although OAHC's response claimed that other instructors and students said they *did* have some clinical experience with IV's during those classes, there was no instructor or student who testified at the hearing that he or she had had such experience or had supervised such experience. Likewise, Jody Hostetler testified that the program never referred her to a different instructor that would be able to provide the information she needed. She said that, to her knowledge, Judy Leitenberger was the only Medical/Surgical Nursing and IV therapy instructor who was teaching that course at this time. (Tr. at 292-294)
148. At the hearing, the school's owner, Yemi Oladimeji, testified that he recalled having paid an independent company to come in and provide an IV therapy course for the Medical/Surgical I students, but he stated on cross-examination that he had not brought a copy of that check to the hearing as an exhibit. Although this was not previously mentioned in the school's official response to the Survey Visit Report, Dr. Yemi was provided the opportunity to supplement the record after the hearing with evidence of that course, such as a contract or a check that he wrote to the company. No such evidence was provided, and no instructor or student involved in such a course ever testified. (Tr. at 433, 441, 445, 448-451)

(f) Failure to implement a systematic plan of evaluation

149. OAC Rule 4723-5-15 requires a program administrator to establish a written systematic plan of evaluation, which includes data collected from sources such as faculty, instructional personnel, nursing students, preceptors, and employers of graduates. Subsections (B) and (C) of that Rule require that information to be summarized, and used for purposes of improving the program:

(B) The results of the evaluation of each aspect of the program as set forth in paragraph (A) of this rule shall be summarized and documented; and

(C) Documentation shall demonstrate that the results of the evaluation of each aspect of the program as set forth in paragraph

(A) of this Rule have been used to plan and implement changes in the program.

150. Jody Hostetler testified that the failure to implement a systematic plan of evaluation was one of the charges in the first Notice that the Board issued against OAHC's practical nursing program. It was included in the second Notice, as well, because OAHC had previously replied in August 2011 that its interim administrator was in the process of revising the plan and forming the appropriate committees. (St. Ex. 13 at 3) However, Ms. Hostetler said that at the time of the October 12, 2011 Survey Visit, she still did not see any evidence that it was being implemented and used to evaluate and improve the program. She explained that she was looking for a written plan that had progressed from the inception of the program until that Survey Visit, but she saw no documentation that OAHC was carrying out a systematic plan of evaluation. While Ms. Hostetler said that there were minutes from a few committee meetings, those minutes did not address the requirements of the administrative rules for what should be addressed in such a plan. (Tr. at 295-296) She described only a "skeleton" of a plan:

Nothing was addressed. Rule 9, Rule 11, Rule 14, Rule 15, those are all - every rule that is supposed to be addressed in the systematic plan of evaluation, every aspect of the program, none of that was done. There was just a skeleton of a systematic plan of evaluation that was submitted in the proposal. There was no progression of any work, any documentation, any discussions, any information in the systematic plan of evaluation.

(Tr. at 296)

151. Julia Wilson, who served as the interim program administrator in mid-2011 after the departure of various program administrators, testified that the school hoped to have the systematic plan of evaluation completed by the end of July 2011, but that did not occur. She explained in the previous hearing on the RN that she did not realize that a systematic plan of evaluation was "not something you can just write in a day. It's something that is a process." Ms. Wilson added, "I did my best to come up with the meeting minutes they needed but it certainly was probably not adequate." She said that by the time she left OAHC in September 2011, there still was no systematic plan of evaluation.

That was always one of those things that the director was supposed to work on. When we got a new director, she's doing to do this, the new director's going to do this. Well, they wouldn't stay long enough to get it done. * * * I had all I could take care of just trying to keep the school running between times that I didn't - I did not have time to work on the SPE.

(Joint Ex. 2 at 514-515)

152. When Erin Stout prepared the program's written response to the Survey Visit Report in her letter dated December 20, 2011, she addressed the allegation that it had not implemented a systematic plan of evaluation:

When I started working at OAHC, they were working on developing a systematic plan of evaluation. One did not exist. It has since been finished and is being used to evaluate the program. It is a new process for OAHC and is rather complex. We want to do it right and have input from faculty and students. To do it properly, though, it takes time. We don't want to use it as a "quick fix" just to satisfy the Board. We want it to be implemented as it was meant to be implemented, as a living, breathing document.

(St. Ex. 17 at 5)

153. At the hearing on the PN program, Instructor Judy Leitenberger, who was still employed on the date of the hearing, testified that to her knowledge, no systematic plan of evaluation had ever really been started:

Q: * While you were – during the time that you've been employed at Ohio American Health, are you familiar with Ohio American Health having a systematic plan of evaluation for the LPN program?**

A: When Dr. Bumgardner left, Julia was looking – I don't know what the – that was part of the thing – program that we needed to – and we didn't know what it was, so to my knowledge that one has not ever really been started.

Q: Have there ever been committees that you've been aware of for the – to do a systematic plan of evaluation for the PN program?

A: There was supposed to be an evaluation program or committee, but I don't believe that they ever met.

(Tr. at 81-82)

(g) The program failed to evaluate practical nursing students' clinical experiences.

154. OAC Rule 4723-5-20 sets out the responsibilities of faculty members when working in a clinical setting. It provides that a qualified faculty member is responsible for planning and evaluating the students' clinical experiences, and that the faculty member must supervise the students in a way that is appropriate to the clinical situation. Subsection (C)(6) requires the faculty to evaluate the students' clinical experiences:

(C) All experiences for a nursing student in a clinical setting involving the delivery of nursing care to an individual or group of individuals shall be performed under the direction of a faculty member who functions only as a faculty member during the nursing student's clinical experience. The faculty member providing direction shall:

* * *

(6) Evaluate the student's experience, achievement, and progress in relation to the clinical objectives or outcomes, with input from the teaching assistant or preceptor, if utilized.

155. As described earlier in this Report and Recommendation, the program was unable, at the time of the Board's Survey Visit or anytime thereafter, to produce any clinical evaluations at all for the 57 students who appeared on the student roster as having been part of the practical nursing program. Jody Hostetler testified that she asked Erin Stout and Jessica Jacklin for those evaluations, but they were not able to produce any. When OAHC submitted its written response to the Survey Visit Report, it did not deny the allegation that those evaluations were missing. Writing for the program, Erin Stout described "piles of clinical evaluations" that the program's instructors did not know where to file. She wrote that the program was in the process of obtaining past evaluations as quickly as possible and filing them. However, as Jody Hostetler testified, no such evaluations were produced at any time during the Survey Visit or thereafter. (Tr. at 288-292, St. Ex. 17 at 4)
156. At the hearing, current Program Administrator Jean Mathews Mitchell testified that Judy Leitenberger had at least two boxes and a drawer full of unfiled documents, and she added that other instructors are in a similar predicament with a backlog of unfiled documentation. However, when Ms. Mitchell was asked if the program had considered hiring a file clerk to assist with the task of sorting through those documents, Ms. Mitchell said that OAHC would prefer to hire someone with a BSN degree who could help with the filing as well as helping to teach some classes. She said that in the meantime, she has been working on getting the documents filed by herself. She denied seeing the urgency of this situation. "I know where the files are, I just, nothing's changed in the short time I've been there, so I'm not really seeing the rush today. It's in the works." (Tr. at 514-516)
157. Instructor Judy Leitenberger testified that she completed one set of clinical evaluations, but she stated that there were problems getting clinical evaluations filed in individual students' files. She said that she left her evaluations in her desk and then she believed someone else was to do the filing. Therefore, she could not say for sure whether her evaluations had ever been placed into students' files. Ms. Leitenberger acknowledged that she had found a lack of organization in the student files when she looked at some of them. "There are some people's forms are in the wrong person's chart, and many things are missing." Ms. Leitenberger said that she

made sure her students' grades got recorded, but she did not do the filing because she was a contract employee and did not have time to do the filing in the limited number of hours that her contract allowed. She added that the current Program Administrator, Jean Mitchell, had told her she could not be paid to do the filing, and that the files remain disorganized. In addition, she said that she did not have the keys to the room where those files were kept. Only the program administrators and "Reverend John" had those keys. (Tr. at 91-92, 104-112)

(h) The program did not implement a records retention plan for student and faculty records

158. OAC Rule 4723-5-21 requires the Program Administrator to maintain certain records for faculty and students. With respect to faculty members and teaching assistants, the Rule requires the following documentation to be maintained by the school:
- (1) Documentation of academic credentials, including copies of official academic transcripts;
 - (2) A record that includes the time periods, by month and year of employment in clinical practice, and in teaching, and the names and locations of all employers in the field of nursing and nursing education ; and
 - (3) Verification of current, valid licensure as a registered nurse in Ohio at the time of appointment, and at each licensure renewal.
159. Jody Hostetler testified that the lack of clinical evaluations for students was cited as a violation of Rule 4723-5-21 as well as the previously discussed rule requiring the program to provide clinical experiences and the rule requiring the program to evaluate those experiences. Because no clinical evaluations at all were supplied for any of the program's 57 practical nursing students, the Board cited OAHHC with a violation of Rule 4723-5-21, the rule requiring it to maintain student records, as well. (Tr. at 299-300)
160. In addition, Ms. Hostetler included in her Survey Visit Report a violation of the part of this Rule that concerns faculty records. Ms. Hostetler testified that when she reviewed faculty files at OAHHC, she found that two instructors' files did not contain their academic transcripts or verification of licensure as a nurse. She included this as a violation in her Survey Visit Report. It stated that Ms. Hostetler reviewed 11 faculty files and found that the files of Katherine Penty and Karen Tedder did not have the records required by the Rule. The file of Katherine Penty, who was employed at OAHHC as of August 15, 2011, did not contain her official academic transcripts. The file of Karen Tedder, who was employed on September 29, 2011 did not contain official academic transcripts, and was also lacking verification of her licensure as a nurse. (Tr. at 300-302, St. Ex. 16 at 14)

161. When OAHC submitted its written response to the Survey Visit Report, Program Administrator Erin Stout provided the following explanation of this allegation:

Karen Tedder was only employed for a week or two and is no longer employed by Ohio American Healthcare, Inc. Therefore, it is impossible to complete these records. Katherine Penty had her diploma in her records, but not her official transcript. This has since been rectified.

All faculty files have been reviewed for completeness including official educational transcripts. This requirement has been added to the orientation process to assure compliance.

(St. Ex. 17 at 5)

NCLEX Pass Rates

162. The NCLEX is the national examination that nurses in all states must pass before they are eligible for licensure as nurses. In Ohio, OAC Rule 4723-5-23, known as the "95% Rule," serves as a benchmark that an Ohio school's NCLEX pass rate should be at least 95% of the national average, i.e. a slightly lower figure than the national average. The 95% Rule requires the Board to review any program that does not meet that standard for three consecutive years, but the Rule applies only to programs that are on full approval, and not those on conditional approval, such as OAHC's program. The Board has not cited OAHC with a violation of the 95% rule in any of the three Notices. However, because a school's NCLEX pass rates serve as an indicator of whether students have been well-prepared by their nursing school program, there was testimony about OAHC's NCLEX pass rates for its practical nursing program. (Tr. at 302-303)
163. Jody Hostetler identified State's Exhibit 24 as a listing of NCLEX pass rates prepared by the National Council of State Boards of Nursing. It shows the NCLEX pass rates of every state, as well as a section showing the pass rates for various schools in Ohio. Ms. Hostetler testified that the document is updated every quarter, and that it shows pass rates for the calendar year from April 1, 2011 through March 31, 2012. Ms. Hostetler stated that the document shows the average national pass rate as 83.85%. Using the Ohio Board's 95% Rule, then, an Ohio school is expected to have a pass rate of at least 95% of that figure, or 79.65%. Ms. Hostetler drew attention to page 27 of that document, which shows that OAHC has had 4 students take the practical nursing NCLEX for the calendar year from April 1, 2011 to March 31, 2012. Only one student passed the test, resulting in a pass rate of 25%. (Tr. at 303-306, St. Ex. 24)
164. In the presentation of the Respondent's case, current Program Administrator testified that her school has not yet had a full year of NCLEX results, since it is still a

fairly new program. She did not dispute that the program has had 4 students take the NCLEX and that only one of them passed on the first attempt. However, she represented that all four of those students have now passed the test and are licensed as nurses. (Tr. at 491-492)

165. Ms. Mitchell referred to Respondent's Exhibit J, which shows the program's NCLEX pass rates, and also Respondent's Exhibit K, a document she prepared to show each student's or former student's NCLEX status. She testified that where a student's status is listed as "pending," that means the student has passed the school's exit exam and is eligible to take the NCLEX. However, while she acknowledged that 21 out of 23 students in the first cohort were listed as eligible to take the NCLEX, she had "no way of knowing" if they had taken it or not. She did testify that out of the 23 students in the first cohort, four of them have become licensed as practical nurses. For the second cohort of students, Ms. Mitchell said that she was not allowing them to sit for their exit exams yet because she has not yet been able to go through their files and verify that they completed all of their coursework. (Tr. at 24-27, 491-492, 492-493)
166. Ms. Mitchell compared OAHC's pass rates to those of Felbry College, citing statistics that for the first quarter of the year, 8 Felbry students took the NCLEX and none of them passed. She added that Felbry is a competing school with OAHC, as that school's owners, Dr. and Mrs. Tolani, are from Nigeria and are community leaders in Columbus. She believes that OAHC has been unfairly targeted by the Board. Ms. Mitchell referred to a newspaper article in the *Call and Post* about problems at Felbry College. Despite its problems, she said that that school was offered a Consent Agreement with the Board of Nursing and later it was offered an Addendum to the Consent Agreement, whereas Ohio American Healthcare has not been offered a Consent Agreement. On cross-examination, however, Ms. Mitchell acknowledged that Felbry's pass rate for the calendar year 2010 was 84%, and in the year that Felbry was offered an Addendum to its Consent Agreement, its pass rate was over 90%. (Tr. at 492-495, 516-520, Resp. Ex. J)

Mitigation Evidence

167. Jean Mathews Mitchell has been employed by Ohio American Health Care, Inc., since February 2012. In the previous hearing concerning the RN program, she testified that she did not even know the school existed prior to that time, but that she saw an ad for employment on Monster.com and applied for the job. She went for an interview, and Erin Stout hired her "on the spot" to be a classroom instructor. She began teaching there on February 6, 2012. Ms. Mitchell has been the Program Administrator for OAHC since April 2, 2012, when Erin Stout resigned without notice. She related that Ms. Stout sent her an email on a Sunday informing her of her resignation, and that she met with her for only an hour on the following Monday. That was the first time that Ms. Mitchell saw the Notices that the Board had issued

against the school. (Joint Ex.4 at 1047, 1053, 1057-1058, Joint Ex.5 at 1159; Tr. at 454-455)

168. Ms. Mitchell has had a heavy load to carry since she began her tenure as the Program Administrator for both the RN and the PN program at OAHC, which has also included teaching many of the courses to both RN and PN students. When she was called on cross-examination by the State, she admitted that the course syllabi presented as Respondent's Exhibit I indicate that she is the instructor for many of the courses. She commented that in some cases, she will be assisted by another instructor whose name is not listed on the syllabus for any given course, but she still agreed that she was fulfilling numerous functions at the school:

Q: So that would mean right now you're the lead instructor for all the RN courses.

A: I am. And I'm working day and night at that.

Q: So you're wearing a number of hats right now.

A: Many.

Q: You're the primary PN instructor on most classes.

A: Yes.

Q: You're the only instructor on the RN courses, right.

A: Yes. Well, yes.

Q: And you're the program administrator.

A: Yes.

(Tr. at 29-33)

She also acknowledged that one of her instructors, Judy Leitenberger, had given notice that her last day would be June 8, 2012, but she stated that she believes Ms. Leitenberger will stay on beyond that day. (Tr. at 33-34) Judy Leitenberger, however, testified that she intended to leave after June 8 because her last paycheck had bounced, and because she did not want to go through "a whole 'nother director of nursing and the challenges that that has." She commented that Jean Mitchell will be her 7th director of nursing, including one - Diane Shiffer - who she claims never actually "showed up" to take on that role. (Tr. at 52-53)

169. Jean Mitchell identified seven current faculty members who will be teaching in the practical nursing program: Judy Leitenberger, Lorain Studer, Marjorie Wright, Dr. Koroma, "Bijal," "Zhara," and herself. She noted that Lorain Studer has only an associate's degree in nursing, so she will teach only lab and clinicals, as well as nutrition if Ms. Mitchell is not available to teach it. She added that while Dr. Koroma is not a nurse and Marjorie Wright has only a BSN, she will be supervising them in their courses. "I teach with all of those instructors. And I prepare all of the coursework for them." (Tr. at 27-29) The school's owner, Dr. Yemi, agreed that while the school has a list of 7 faculty members currently, the only instructor with a master's degree is the Program Administrator, Jean Mathews Mitchell. (Tr. at 402-402)

170. Ms. Mitchell said that she has also been trying to correct the deficiencies alleged by the Board in the Notices issued against the program. She testified that she is making sure that faculty members have an orientation to their positions. Respondent's Exhibit A shows information from faculty files including orientation checklists. While none of those were signed by Ms. Mitchell, and one orientation checklist (for Karen Tedder) was not signed by a school official at all, Ms. Mitchell testified that these documents are included in the faculty files now. She added that when she orients a faculty member, she also has the new instructor sit in on one of her classes and she requires that they orient to their clinical facilities, as well. (Tr. at 460-463)
171. Ms. Mitchell testified that she has completed a review of student files to make sure that they have evidence of meeting the admission prerequisites, such as health physicals and immunizations. She identified Respondent's Exhibit B as a collection of documentation from the 57 current students' files. While she stated that she did not know why that information was not in their files at the time of the Survey Visits, she said that she now enforces a policy requiring it at the time of a student's admission. "I know now that the students have to have everything in their file before they can start school. And if they don't, they're sent home the first day of school." Ms. Mitchell added that she had had to send a few students home the first day because they did not have evidence of the requisite vaccinations, and those students will not be allowed to return until they can show that they have had them. (Tr. at 463-465)
172. Student fees are now consistent among students, as shown on the Enrollment Agreements at Respondent's Exhibit D. Ms. Mitchell testified that while tuition has always been consistent among students, the amount of fees charged depended on whether books were provided to the students or not. She explained that when it was discovered that students could buy their books at a better price on amazon.com, their fees decreased from \$1400 to \$220. She said that, to her knowledge, "There's never been a change in tuition that I can find anywhere." Ms. Mitchell maintained that students knew the amounts they were paying for tuition and fees when they signed their enrollment agreements, even though there were disparities in the amounts stated in the proposal and handbook, versus what the student was charged in the enrollment agreement. (Tr. at 470-471, 491, Resp. Ex. D)
173. Ms. Mitchell identified Respondent's Exhibit E as the current course syllabi for the program's classes. She said that these were in the school's computer, but she added, "some are - were in the computer as blank because we haven't taught those courses yet. Since I've been in there, in the office." Ms. Mitchell said that these syllabi are now being provided to students, and students have to sign a statement acknowledging receipt of them. (Tr. at 472-473, 476, Resp. Ex. E)
174. Ms. Mitchell identified Respondent's Exhibit F as documentation of the clinical hours done for the pediatrics course. Although the experience forms in Exhibit F are not dated, the forms were signed by Judy Leitenberger on August 9, 2011. Ms. Mitchell

conceded that these experiences at the Southern Ohio Medical Center took place after the pediatrics theory course ended. "They were done out of order. The students didn't progress as they were supposed to but they did get all their work, according to Judy, as well." She said that the exhibit contains only "samples" of the evaluations Judy Leitenberger signed, since she had not yet had time to go through that instructor's "drawers of clinical documentation." Ms. Mitchell added that she believes the first cohort repeated the pediatric nursing class, with the clinicals added. However, she did not provide any verification of that. She said that clinicals are now offered concurrently with the theory portion of the PN classes. (Tr. at 189, 195, 470, 479-480, Resp. Ex. F)

175. Ms. Mitchell said she believes that the students did complete all of their clinical hours in the pediatric and maternal courses, despite the allegation that they did not. She said she believes there was a change submitted to the Board of Nursing by Erin Stout to reduce the clinical hours from 72 to 16 in both courses. (Tr. at 34-35, 48-49) However, she stated that the document that made that change appeared to be missing:

Q: Do you have a piece of paper that shows that the number of hours were changed prior to the time these students took these classes?

A: I'm not sure if I do or not. You know I have a lot of chaotic paperwork that was left to me. You know, I'm sorting through it as fast as I can. * * *

(Tr. at 522-523)

176. On rebuttal, Board Surveyor Jody Hostetler testified that Erin Stout submitted a letter dated September 20, 2011, stating that the program had decided to reduce the clinical hours in Maternal Child and Pediatrics. The letter explained that this was being done in order to permit students more time in their didactics, and due to the fact that LPNs do not generally work in those areas and therefore do not need so many hours. (St. Ex. 62) Jody Hostetler said that this change would not apply retroactively to the first cohort of students, who had already taken those classes. She presented another letter that Erin Stout gave her during the October 12, 2011 Survey Visit, which asked the Board to disregard the changes to another course, Anatomy and Physiology, because the curriculum change was not "taken through the proper channels according to 4723-5-16." Ms. Hostetler testified that Erin Stout told her at the Survey Visit to "disregard the curriculum changes" detailed in her earlier letter, which appears at State's Exhibit 62. (St. Exs. 62, 63, Tr. at 527-529)
177. Ms. Mitchell identified Respondent's Exhibit G as the checkoff for lab work done by one student in Fundamentals of Nursing, pharmacology, and Medical Surgical Nursing I. Ms. Mitchell said that this was signed by Charlotte Caudill on November 9, 2010. She stated that she had additional evaluations for some of the other students, as well. (Tr. at 481-484, Resp. Ex. G)

178. Ms. Mitchell identified Respondent's Exhibit H as the program's systematic plan of evaluation, in a combined form for the RN program and the LPN program. She testified, "[T]he plan has always been there, you know, it's just it had not been implemented properly." She said that the school had "stacks" of documents in which students had evaluated their instructors and their clinicals, for example. "I've looked at the stacks, and you know, they're just not filed." Ms. Mitchell said that former Program Administrator Erin Stout had told her that there were committees in existence since before she (Erin Stout) arrived. Ms. Mitchell added, "I would think that they could have had a meeting or two in that time." (Tr. at 486-488, Resp. Ex. H)
179. Ms. Mitchell identified Respondent's Exhibit I as a collection of syllabi she pulled from the office computer, to address the allegation that students were not being given syllabi for their courses. Some of these are the same documents contained in Respondent's Exhibit E. Ms. Mitchell said that she has given a lot of thought to the curriculum, lesson plans, and outlines for the courses in the program. (Tr. at 488-490, Resp. Ex. I)
180. At the time of the hearing, Ms. Mitchell had taken numerous pictures of the school's facilities, and particularly the laboratory. She introduced these as Respondent's Exhibit L. She identified the manikin hand and arm for IV practice, which to her knowledge had always been there. She said that they have male and female manikins, as well as an IV pump and fluids. The school also has oxygen and respiratory equipment, dressing change supplies, and wheelchairs. She stated that she believes it is common for nursing schools to re-fold and re-wrap dressing change supplies to pretend the dressing is sterile again, and that most schools do this instead of using new supplies for each practice attempt. She added that the instructors have been told to ask for whatever they need, and to her knowledge, no instructor has been refused anything since she has been the Program Administrator. On cross-examination, she acknowledged that the pictures in Respondent's Exhibit L show the state of the lab as of May 2012. (Tr. at 497-503, 506, Resp. Ex. L)
181. Ms. Mitchell explained her belief that OAHC's lab is currently adequate:
- I think that at times our lab has been portrayed as not having, you know, what the students need. But I think a lot of it is perception and what type of instructors you have whether they have the knowledge to really teach or not. So, and I'm not saying that they've always had that, but I'm saying what we have now I think is very good.
- (Tr. at 505)
182. Ms. Mitchell conceded that the program does not have a simulator lab, but she questioned whether that was necessary for this school:

[E]ven though we don't have a simulated lab, you know, we do have adequate equipment. And when one of the people that have applied for a position there that goes to Africa said that this lab is more than adequate as well for this type of student, for the students that we have that are here from Africa.

(Tr. at 499)

183. Ms. Mitchell was pressed on cross-examination, about whether the school was setting a lower standard based on the fact that most of the program's students are from African countries:

Q: You said that the equipment here is adequate for students from Africa.

A: Uh-huh.

Q: Do you believe that students that you're teaching don't need as good equipment as students who would be from America?

A: I'm not saying any equipment is better than the next equipment. I'm saying that they don't necessarily have to have simulator labs. They're not used to that. You know, for the – their education over in Africa has not – of the students that I've talked to, has not included simulator lab, anything with that.

(Tr. at 508)

Ms. Mitchell conceded that the students need no prior nursing experience to begin the LPN program at OAHC, but she added that many of them are certified as STNA's. (Tr. at 508-509)

184. On rebuttal, the State called Board surveyor Jody Hostetler, who testified that the lab did not look like the photos at Respondent's Exhibit L at the time she visited the school to conduct the survey. She explained that she did not see the IV hand or arm, the IV pump, the catheter kits, or IV supplies. She concluded that the lab had been improved since the time of her Survey Visit. However, on cross-examination, she admitted that some of those things could have been present at the time of the Survey Visit, but that she did not see them. (Tr. at 529-540)
185. The school's owner, Yemi Oladimeji, testified that he believes the witnesses who testified against the school are disgruntled employees, some of whom were recruited to testify by Rosanna Bumgardner to give her an advantage in her civil suit against him:

Because all my employees that left my company, they would become disgruntled. If one or the other people that are not disgruntled because I'm in the court with Rosanna Bumgardner on negligence of

duty, so Rosanna is recruiting some of my faculty to help her in the court. Because I'm in the court with her.

(Tr. at 409)

186. Dr. Yemi testified that he believes he hired "bad people" as employees in the past, but he believes that the current Program Administrator, Jean Mathews Mitchell, will be able to turn the school around:

I don't want to run a school where I see a nurse coming to me and I would be scared of the kind of product that I produced. My intention was to run a good school. But my problem was bad administrator. I've been hiring bad people to run the school. Until now that God give me Jean Mitchell Matthews who is well-grounded that get all around about the school. And she told me that if given the opportunity, she want to turn this school around. She already started in place.

(Tr. at 412-413)

FINDINGS OF FACT

1. During four different survey visits by the Ohio Board of Nursing to OAHC's practical nursing program, the program was found to be in violation of the requirements established in Chapter 4723, ORC, and Chapter 4723-5, OAC, for pre-licensure nursing education programs. After considering all of the evidence presented at the hearing, I find that the following violations have been proven:
2. At the time of the first Notice, OAHC was not in compliance with OAC 4723-5-09(B)(4) because it did not implement an orientation policy for faculty members. In the March 22, 2011 Survey Visit, there was no evidence of an orientation in three faculty files reviewed. By the time of the June 22, 2011 Survey Visit, there was no evidence of a faculty orientation in one additional faculty file. Several employees, including current instructor Judy Leitenberger testified that there was no orientation process in place, and the program admitted that Dr. Bumgardner had not implemented an orientation policy, in its response to the Survey Visit Report.
3. At the time of the first Notice, OAHC was not in compliance with OAC 4723-5-12(A)(1) because it failed to implement student admission policies as they were written in the school's proposal for its program. The student files reviewed at the Survey Visit in March 2011 lacked some of the necessary documentation showing that admitted students had had vaccinations and CPR certification, had malpractice insurance, and had passed a criminal background check. By the time of the June 2011 Survey Visit, it was discovered that additional students had been admitted to the program, and their files also did not contain the necessary documentation.

4. At the time of the first Notice, OAHC was not in compliance with OAC 4723-5-12(A)(4) because it failed to implement student progression policies as they were written in the school's proposal for its program. Students progressed from one course to the next without completing the requirements of the prior course. In several instances, students progressed to the next course without completing the clinical hours required in the earlier course. Those courses included Medical/Surgical Nursing I and IV Therapy, Gerontology, Maternal and Child Health Nursing, and Pediatric Nursing.
5. At the time of the first Notice, OAHC was not in compliance with OAC 4723-5-12(A)(6) because it failed to implement policies related to student tuition and fees as they were written in the school's proposal for its program. It was discovered at the March 2011 Survey Visit that students were charged inconsistent fee amounts, which often were substantially higher than the fee amounts represented in the program's original proposal to the Board of Nursing. And, when the Board conducted a later survey in September 2011, students were still being charged amounts for fees and tuition that were inconsistent with the figures stated in the program's proposal.
6. At the time of the first Notice, OAHC was not in compliance with OAC 4723-5-14 because it failed to implement its curriculum plan as it was written in the school's proposal. The program failed to provide any of the 72 clinical hours that it represented would be provided in Medical/Surgical Nursing I and IV Therapy. The Gerontology class syllabus stated that there would be only 104 clinical hours, and not the 112 hours stated in the program's proposal. And, in fact, only about 96 hours of clinical instruction were actually provided to the students in the Gerontology class. Practical Nursing Fundamentals did not include the 42 hours of laboratory experiences that the program's proposal represented would be offered, and there was no documentation of any lab experiences. None of the 40 clinical hours listed on the syllabus for Maternal and Child Health Nursing were provided because the program had no clinical site. Likewise, none of the 40 clinical hours listed on the syllabus for Pediatric Nursing were provided because the program had no clinical site. Although the clinical hours for Maternal and Child Health Nursing and Pediatric Nursing were eventually made up once a clinical site was obtained, the clinical experience was provided months after the theory portion of those classes ended.
7. At the time of the first Notice, OAHC was not in compliance with OAC 4723-5-15 because it had no Systematic Plan of Evaluation that it could use to evaluate and improve the program.
8. At the time of the first Notice, OAHC was not in compliance with OAC 4723-5-19(A) because students were not provided with a syllabus or outline for each course.

9. At the time of the second Notice, OAHC was not in compliance with OAC 4723-5-05 (B) and (C) because it had not provided documentation requested by the Board within the requested time period. The material was provided ten days late, and when it was provided, it was not complete and did not respond to some of the Board's requests.
10. At the time of the second Notice, OAHC was not in compliance with OAC 4723-5-09(B) because the Program Administrator did not have authority for all aspects of the practical nursing program. Harold John, who was not a nurse, was involved in numerous aspects of the program in place of the Program Administrator. The Program Administrator at that time, Erin Stout, was working only part-time at OAHC, while she also worked at the Ohio State University Medical Center. Ms. Stout was not exercising control over the faculty orientation process, and she allowed an unqualified person, Jessica Jacklin, to serve in the role of an Associate Program Administrator.
11. At the time of the second Notice, OAHC was not in compliance with OAC 4723-5-11 because it had several employees who did not meet the requirements in the rule for their positions. In addition to Jessica Jacklin's serving as the Associate Program Administrator, the program also had two faculty members, Karen Tedder and Dennis Koroma, who did not meet the qualifications to be faculty members.
12. At the time of the second Notice, OAHC was not in compliance with OAC 4723-5-12(A)(6) because it failed to implement policies related to student tuition and fees as they were written in the school's proposal for its program. Although the student handbook advised students to refer to the tuition and fee policy in the Program Information section for each program offered, the handbook did not contain any such policy.
13. At the time of the second Notice, OAHC was not in compliance with OAC 4723-5-14(E)(12) because it failed to provide clinical and laboratory experiences that met course objectives and gave the students an opportunity to practice skills learned in the theory portion of a class, concurrently with the theory portion. At the October 2011 Survey Visit, the Program Administrator was not able to produce any documentation at all that the program's 57 students had completed any clinical or laboratory instruction in any of their classes.
14. At the time of the second Notice, OAHC was not in compliance with OAC 4723-5-14(F) because the program did not provide a course or course content in intravenous therapy that included didactic, laboratory, and clinical experiences. The Medical/Surgical Nursing I and IV Therapy course provided no clinical hours to students.
15. At the time of the second Notice, OAHC was not in compliance with OAC 4723-5-15 because it had no Systematic Plan of Evaluation that it could use to evaluate and improve the program.

16. At the time of the second Notice, OAHC was not in compliance with OAC 4723-5-20(C)(6) because it failed to evaluate students' clinical experiences. The program was unable, at the time of the Board's October 2011 Survey Visit or anytime thereafter, to produce any clinical evaluations at all for the 57 students who appeared on the student roster as having been part of the practical nursing program.
17. At the time of the second Notice, OAHC was not in compliance with OAC 4723-5-21 because it had not implemented a records retention plan for student and faculty records. There were no clinical evaluation records maintained for any students. When faculty files were reviewed by the Board's surveyor, some of the files did not contain academic transcripts and verification of the instructor's licensure as a nurse.

CONCLUSIONS OF LAW

1. R.C. 4723.06(A)(6) provides for Board review of a program that is on conditional approval. It requires the Board to consider, at the first meeting of the Board after the program's first class has completed the program, whether to grant full approval. If it appears that the program has failed to meet and maintain standards established through its rules, the Board must hold an adjudication. Based on results of the adjudication, the board may continue or withdraw conditional approval, or grant full approval.
2. Pursuant to R.C. 4723.06(A)(6), the Board considered whether to grant full approval to OAHC after its first class of students completed the program. However, that consideration resulted in a finding that the program was not in compliance with the rules for such a program at OAC Chapter 4723-5, and the Board issued the first Notice of Opportunity for Hearing. Over the course of the following year, two additional Survey Visits were conducted, which resulted in an additional Notice of Opportunity for Hearing being issued on January 20, 2012. At the adjudication hearing on May 29 and 30, 2012, the State presented evidence concerning the charges in both Notices. Pursuant to R.C. 4723.06(A)(6), the Board may now decide whether to continue conditional approval, withdraw conditional approval or grant full approval to this program.
3. Pursuant to R.C. 4723.28(K), when the Board takes action against a license or certificate, it may specify that its action is permanent.
4. Because the hearing produced ample reliable and probative evidence that OAHC has failed to comply with many of the rules in Ohio Administrative Code Chapter 4723-5 over a significant period of time, it is appropriate for the Board to permanently withdraw its conditional approval of this program.

DISCUSSION

When the Board gave its conditional approval to OAHC to begin offering a new practical nursing program, it did so after finding that the school's proposal appeared to describe a high-quality program that would comply with the Board's rules and would prepare students to become skilled, competent nurses. However, the academic program that OAHC actually provided to its students was so unlike the program OAHC represented would be offered that I must conclude that the school failed to give students the program they paid for, and put the public at risk by graduating students who had not had the basic forms of clinical experience necessary to assure their competency as practicing nurses.

The evidence revealed numerous instances in which students progressed from one course to the next without having completed the requirements of the first course. Although students had not completed any clinical hours for the pediatrics and maternity courses, they progressed from the second to the third semester of their programs. The Program Administrator from that period testified that this was at the insistence of the school's owner, Yemi Oladimeji.

In the most troubling example, students completed "Medical/ Surgical Nursing I and IV Therapy" without completing *any* of the 72 clinical hours that the school represented to the Board of Nursing that it would provide. Judy Leitenberger, the instructor for that course, testified that the students were already taking Medical/Surgical Nursing II when she realized that clinical hours were even required for the earlier Medical/Surgical I course. The syllabus for Medical/ Surgical Nursing I and IV Therapy suggests that it is one of the core areas of study of a practicing nurse's education, including skills such as venipuncture, starting IVs, and flushing infusion devices and heplocks. Former Program Administrator Rosanna Bumgardner testified that it is one thing to learn this material in a book and another to actually perform those procedures on a patient. I found her testimony persuasive that students were adversely affected by not having the opportunity to learn those skills in a clinical setting under the supervision of an instructor.

Although the school's owner, Yemi Oladimeji, claimed to have paid an independent company to come to the school and provide an IV therapy course for the students, that testimony was not credible. No such course had ever been discussed in any of the written responses of the program prior to the hearing, no contract or cancelled check was ever presented to show the existence of such a course, and no testimony or documentation was presented to show that any student ever took such a course.

The lab experiences taught by the school were also insufficient because, as several former employees testified, the school's laboratory did not have adequate equipment and supplies. Although Judy Leitenberger, the instructor of the Medical/Surgical I course testified that she taught the students 8 hours of laboratory work in that course, she agreed that the school's lab was not sufficient because there was no manikin that would show blood return

when she began teaching the class. Likewise, Charlotte Caudill, the instructor of the Fundamentals of Nursing, testified that the lab had old equipment, such as metal tracheostomies that she said have not been used since the 1970's. The current Program Administrator, Jean Mathews Mitchell, testified that she believed the lab was sufficient because OAHC's students are from African countries and are not accustomed to simulator labs.

There are many other examples of ways in which this program did not live up to the requirements of the administrative rules and the representations it made to the Board of Nursing. The school hired faculty members who, in some cases, were not qualified for their positions. If it had complied with the rules requiring documentation of instructors' academic and professional credentials, it might have realized this prior to putting that person in his or her position. The school did not require its students to have documentation showing that they had been fully vaccinated, that they had completed CPR training, and that they had malpractice insurance -- requirements intended for the safety of patients with whom student nurses may come into contact during clinical experiences. There were also instances when decisions about academic curriculum or student progression -- decisions that should have been made by the Program Administrator -- were made by the school's owner, Yemi Oladimeji, or "Reverend John," neither of whom is a nurse. All of this evidence demonstrates that this was not just a program that failed to meet some of the technical requirements of the administrative rules; it was a grossly inadequate program that was not professionally conducted.

The explanations offered by the program for these inadequacies were either not credible or completely unacceptable. Dr. Yemi's assertion that all of his former employees were disgruntled and in some cases conspiring with the Board's surveyor in order to close his school was not at all credible. The program's repeated claims that critical documentation might exist in the "piles of paper" that it had waiting to be filed was unacceptable. And, the school's suggestion that it could simply change the number of clinical hours required in a course and apply that change retroactively to a class that had already taken the course is likewise, illogical and unacceptable.

In making a recommendation in a case involving a nursing school, one important consideration must always be the impact upon current students if the program ceases to operate. In this case, these students invested their money, their time, and their effort to engage in a course of study that they believed would teach them to be nurses. Because of the inadequacies in this program, OAHC did not give those students what it represented to the Board that it would give them. For this reason, I believe the students would be better served by transferring to other nursing schools to complete their nursing education, even though that would be inconvenient for many of them.

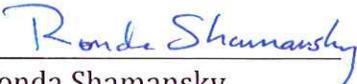
The State has presented ample reliable and probative evidence from credible witnesses that OAHC failed to comply with the representations in its proposal and with the requirements in the Ohio Administrative Code for the operation of a nursing education program. As a result, it provided its students with a substandard program that did not

sufficiently prepare them to take and pass the NCLEX, and did not prepare them to practice nursing with competence and clinical skill.

I recommend that the Board withdraw its conditional approval from this program, and, because the violations of OAC Chapter 4723-5 were of such an egregious and unprofessional nature, I recommend that the Board specify that its withdrawal of approval from this program is permanent.

RECOMMENDATION

For the reasons stated in this Report and Recommendation, I recommend that the Board permanently withdraw conditional approval from the practical nursing program at Ohio American Health Care, Inc.



Ronda Shamansky
Hearing Examiner