

IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS  
CIVIL DIVISION

Ohio American Health Care, Inc. :  
Registered Nursing Program  
Practical Nursing Program  
  
Appellant, : Case No. 12-CVF-009722 and  
Consolidated Case No. 12-CVF-009723  
  
vs. :  
  
Ohio Board of Nursing : JUDGE SCHNEIDER  
  
Appellee. :

**DECISION AND ORDER**

Schneider, J.

Ohio American Health Care, Inc. (hereinafter referred to as Appellant) filed a Motion for Stay of the Ohio Board of Nursing (hereinafter referred to as Appellee) orders as to the Registered Nursing Program and Practical Nursing Program both issued July 27, 2012. The Court conducted a hearing on the motion on August 7 and 8, 2012.

On August 15, 2012, the Court issued a Decision and Order allowing both programs to continue to operate under the supervision of the Court. The Court appointed a Special Master to monitor the program and report to the Court. The Order prohibited Appellant from enrolling new students into either program without further Order of the Court. The Court agreed to review its decision no later than December 10, 2012.

Since the date of the hearing, the Court has received regular reports from the Special Master. The last report was filed on October 3, 2012, and updated on October 24, 2012. Included in the final report was a copy of an Affidavit of Lisa Emrich, MSN, RN; a response to the Affidavit; and the Survey Report of the Board of Nursing, dated October 15, 2012, from its site survey of October 1 and 2, 2012.

The Court must address two issues. The first issue is whether the two programs should be allowed to continue. The second issue is whether new students should be admitted. Appellant has submitted a written argument advocating both for the continua-

tion of both programs and for the admission of new students. Conversely, Appellee believes that both programs should be terminated forthwith and the Court's stay dissolved.

### **Continuation of the Program**

Over the objection of Appellee, the Court granted Appellant's motion for a stay allowing Appellant to operate both programs. Admittedly, much of the Court's decision was based on the impact on the current students if the stay was not granted. The students paid for (without scholarships and government funding) and attended a nursing school that was licensed by the State of Ohio. If the Court did not grant the stay, the credits they had earned would have been forfeited with no realistic redress for the money they had paid.

If the Court did not take action to allow the school to remain open, it would have been the students who would have paid the price when they were not at fault. The student should be able to rely on the State when it certifies a program; a fact that the Court believes remains lost on Appellee.

The Court was well aware of the risk it was taking. These students were going to become nurses. Others' health would be dependent on the care they may be providing.

However, the Court believed that between the Special Master and the new program administrator, who testified at the August hearing, these issues could be addressed. In addition, no student could be licensed as either an RN or PN without first passing the exit exam from the school and then the state exam.

With these safeguards in place, the Court felt the risks were addressed.

Given the pass rate of the exit exams as reported by the Special Master in her October 3 report and addendum dated October 24, the Court was not disappointed. While the program has some deficiencies as noted by both the Special Master and the Board's survey, great progress has been made.

There is no reason to believe that the remaining students will not enjoy the same success.

Based on the foregoing, so much of this Courts Order of August 15, 2012, allowing the school to remain operational shall remain in full force and effect until December 31, 2012, at which time the stay shall expire unless extended by further order of the Court. The authority of the Special Master shall also continue until December 31, 2012.

A final report shall be filed with the Court within fifteen (15) days after the stay expires. The Special Master shall continue to be compensated as provided for in the August 15, 2012 Order.

### **Admission of new students**

The admission of new students is an entirely different question. The Court needs to make sure that they are not allowed to enter a program where the risk of failure is unacceptable.

The program continues to have some significant operational deficiencies as pointed out both by the Appellee and the Special Master. In fact, the Special Master does not recommend the admission of new students.

In addition to the operational issue is the financial stability of the program. Appellant acknowledges that the program is facing serious financial issues. However, Appellant argues that this issue can be addressed if new students are admitted. Further, the problem will only get worse if it is not allowed to do so.

The Court is aware of the paradox; however, when a business opens, it must be sufficiently capitalized to deal with the possibility of not having enough customers. Without regard to the operational issues, which are significant, if the Court were to allow the admission of new students, there is no guarantee that a sufficient number would enroll to make these programs financially viable. If that were to happen, we would be right back where we are today; a problem the Court wants to avoid.

Based on both the operational and financial issues, the Court will not modify its initial Order to allow the admission of new students.

### **Conclusion**

Appellant may continue to operate both its RN and PN programs subject to the conditions of the Court Order dated August 15, 2012, until December 31, 2012. New students may not be admitted. In addition, the Program Administrator, with the assistance of the Special Master, shall contact the State of Ohio Career Board to assist students who do not complete the exit exam by December 31, 2012, to pursue other options.

IT IS SO ORDERED.

Copies to:

Ronald Noga, Esq.  
Counsel for Appellant

Henry Appel, Esq.  
Counsel for Appellee

Franklin County Court of Common Pleas

**Date:** 11-05-2012  
**Case Title:** OHIO AMERICAN HEALTH CARE INC -VS- OHIO STATE BOARD NURSING  
**Case Number:** 12CV009722  
**Type:** ORDER

It Is So Ordered.



/s/ Judge Charles A. Schneider