



BEFORE THE OHIO BOARD OF NURSING

IN THE MATTER OF:

CASE # 11-002803

**OHIO AMERICAN HEALTH CARE, INC.
REGISTERED 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. REGISTERED NURSING PROGRAM (PROGRAM)** is hereby permanently withdrawn and full approval status is hereby permanently denied, effective July 27, 2012.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 was provided multiple opportunities to correct the problems identified in its program and did not do so. In response to complaints from students, former employees, and clinical agencies, the Board conducted an initial unannounced survey visit in March 2011 (Report and Recommendation (R & R), Page 3), followed by announced survey visit in May 2011, a visit in September 2011 and October 2011. The Board provided the Program survey visit reports detailing the identified problems and three (3) separate Notices of Opportunity for Hearing related to unresolved problems. Despite this, as of the time of the third Notice, the Program was still not in compliance with one of the most fundamental rules concerning the curriculum for a registered nursing program, i.e, the

Program was not providing appropriate clinical and/or lab experiences for its students (Findings of Fact #16 and #14). In fact, some students received no clinical experience at all in any course, some received no laboratory experience in Medical/Surgical (Findings of Fact #14), and with respect to the third cohort, no students were evaluated with respect to whether they could successfully perform clinical skills (Findings of Fact #16);

- 2) The Program failed to implement established student policies as written in critical areas including student admission, student progression, and student tuition, fees and/or refunds (Findings of Fact #3, #10, #13). 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 (Findings of Fact #3, #4, #13), and even issued certificates of program completion for students without evidence that the students completed the necessary lab and clinical hours or final examination for the course (Findings of Fact #13);
- 3) The Program did not implement its curriculum plan as written (Findings of Fact #4) and/or provide clinical experience, including supervision of clinical experience and evaluation of clinical experience, in critical practice areas (Findings of Fact #7, #14, #16);
- 4) The Program utilized individuals who did not meet the minimum requirements to teach nursing courses (Findings of Fact #12) or serve in an administrative capacity (Findings of Fact #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 registered 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. REGISTERED 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. Registered 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 3521
Attorney Certified Mail Receipt No. 7012 1010 0002 4225 2159

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

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BOARD OF NURSING
OHIO

In the Matter of
Ohio American Health Care, Inc.

Ronda Shamansky
Hearing Examiner

Registered Nurse Program

Case No. 11-002803

June 13, 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: April 30 and May 1-4, 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 licensed practical nurse [LPN] 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 "LPN to RN" program, or simply the "RN program," as it was called during the hearing. Students attend the program for about ten months and pay tuition and fees totaling \$16,500. The students at OAHC are not eligible for federal financial aid, and instead pay the cost of the program privately, in monthly payments. Students who successfully complete the diploma program must then take the NCLEX, the national licensing examination for nurses, in order to become

licensed as a registered nurse in Ohio. (State's Exhibit [St. Ex.] 48, Transcript [Tr.] at 620-621)

2. 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. (Tr. at 32, 85, 233-234, 273-274, 468-473, 935, 1057, St. Ex. 49 at 2)

History of the RN Program

3. 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.

4. In October 2009, OAHC filed an application 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 plan appears at State's Exhibit 8. 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 grading policies. It also provided a copy of its organizational structure, showing that the Program Director or Director of Nursing [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. (St.Ex. 8)
5. 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. (Tr. at 56-57, 286)

March 22, 2011 and May 25, 2011 Survey Visits

6. On March 22, 2011, the Board conducted an unannounced Survey Visit to OAHC, as it is authorized to do under OAC Chapter 4723-5. Cathy Learn, an education regulatory surveyor for the Board, has been a registered nurse since 1983 and has taught nursing as a faculty member of a nursing school. In addition to her experience as a nursing instructor, she served as the Program Administrator for a nursing program at the Mid-East Ohio Career and Technical Center in Zanesville, Ohio for 20 years. Ms. Learn testified that, at the time she conducted the Survey Visit in March 2011, the Board had received complaints from students, former employees, and clinical agencies against OAHC. (Tr. at 682, 685-686, 895-899)
7. Ms. Learn testified that she conducted another survey a couple months later, on May 25, 2011, but that the May survey was announced in advance. During these two survey visits, Ms. Learn found evidence that the program was 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, Denise Ferrell, and dated June 15, 2011. She testified that she hand-delivered that document to the school. The report described the violations that Ms. Learn observed during the two survey visits. (St. Ex. 15, Tr. at 685-686)

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

8. OAHC submitted a written response to the Survey Visit report, signed by Julia Wilson on behalf of the school. The response was dated June 28, 2011. (St. Ex. 16)
9. The Board reviewed the Survey Visit report as well as OAHC's response to the report, and voted to issue a Notice of Opportunity for Hearing on July 28, 2011, [July 2011 Notice or "First Notice,"] charging the program with numerous violations of the rules governing nurse education programs. (St. Ex. 1) 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. 1a) On August 12, 2011, OAHC requested a hearing on the Notice, through a letter from attorney Elizabeth Collis. (St. Ex. 4a)
10. Cathy Learn visited the school again on September 8, 2011 to conduct another Survey Visit. During that visit, she discovered discrepancies in the amounts listed for tuition and fees in the proposal submitted to the Board, when compared against the amount actually charged to students, as documented by enrollment contracts. She wrote her findings in the Survey Visit Report dated October 3, 2011. (St. Ex. 45) A confidential student key was included with the report, identifying by name the 58 students who were referred to in the report as Student #1 through Student #58 (St. Ex. 46) OAHC submitted a written response to the Survey Visit Report, with a cover letter from its counsel at that time, Elizabeth Collis. The response was dated October 18, 2011, and it attached documents related to the findings. (St. Ex. 47)
11. The Board reviewed the Survey Visit Report, as well as the response submitted by OAHC, and issued a second Notice of Opportunity for Hearing on November 18, 2011. [November 2011 Notice or "Second Notice"] OAHC once again requested a hearing on the allegations in the Notice, through a filing on December 7, 2011. (St. Ex. 4b)
12. Cathy Learn conducted another Survey Visit on October 12, 2011. This Survey Visit was unannounced. While conducting the Survey Visit, Cathy Learn once again observed what she believed were violations of OAC Chapter 4723-5. She documented her findings in a Survey Visit Report dated December 1, 2011, and sent it to Erin Stout, who was the school's Program Administrator at that time. (St. Ex. 49) OAHC sent a written response through a letter from Erin Stout dated December 20, 2011. (St. Ex. 51) The Board considered the Survey Visit Report as well as the school's response, and issued a third Notice of Opportunity for Hearing on January 20, 2012. (January 2012 Notice or "Third Notice") It outlined the alleged violations found in the October 12, 2011 Survey Visit. OAHC requested a hearing on the Third Notice on January 30, 2012. (St. Ex. 4a)

13. The hearing on each Notice was initially scheduled but continued upon the Board's own motion, pursuant to R.C. 119.09. (St. Ex. 5a, 5b, 5c) It was then scheduled by agreement of the parties to begin on January 10, 2012. OAHC's former counsel requested a continuance, and the motion was granted. OAHC also requested the consolidation of the first two Notices, and that motion was also granted. By agreement of the parties, the hearing was rescheduled to begin on February 22, 2012. After the third Notice was issued, OAHC again requested a continuance as well as the consolidation of the third Notice into a single hearing with the other two Notices. Both of OAHC's motions were granted, and by agreement of the parties, the hearing was rescheduled for April 30 through May 4, 2012. (St. Ex. 6) Several weeks before the hearing was scheduled to begin, OAHC moved for a continuance on the grounds that it had retained different counsel and that its Program Administrator had resigned suddenly. The motion was denied on the grounds that two continuances had already been granted, that the case involved serious allegations that had been pending for a considerable time, and that the program had continued to enroll new students during that pendency of the action.
14. The hearing was held on April 30, May 1, 2, 3, and 4, 2012. . At the hearing, both the Board and OAHC presented witness testimony and documentary evidence concerning the charges in the three 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 three different Notices, a single student key was formulated, showing how each student was designated in each Notice. (St. Ex. 7) That key, or "master key" as it was called during the hearing, was admitted under seal.
15. Throughout the issuance of the three Notices and the hearing process, OAHC has continued to admit new students, with the most recent cohort of students scheduled to begin their program on May 15, 2012, about two weeks after the hearing was scheduled to conclude. (Tr. at 1220)

Program Deficiencies Cited by July 29, 2011 Notice (First Notice):

16. The Board's July 2011 Notice cited the following alleged deficiencies in OAHC's RN program:
 - a. **Failure to Implement an Orientation Process for New Faculty**
17. 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.

* * *

18. 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. (St. Ex. 8 at 20) 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 are to fulfill, including an understanding of the relevant laws and rules of the Board of Nursing. (St. Ex. 8 at 22) OAHC also included this policy in its proposed Employee Manual that it submitted with its proposal for the program. (St. Ex. 8 at 249-250)
19. When Cathy Learn conducted the March 22, 2011 Survey Visit, the files of six faculty members were provided for her to review: Julia Wilson, Cynthia Davis-Zimmer, Zahra Mouzenpour, Dennis Koroma, Denise Ferrell, and Yasamine Harden. She found that none of the six files contained documentation that those faculty members had received an orientation. Ms. Learn included this information in her Survey Visit Report. Her report also states that she asked the Program Administrator, Rosanna Bumgardner, for those materials, and that Dr. Bumgardner told her she would have to look to see if she could find something. The following day, Dr. Bumgardner sent a single signed but undated orientation checklist for Julia Wilson, the Lead Faculty member. No documentation at all was provided for the five other faculty members. Ms. Learn emphasized that it was the Program Administrator’s responsibility to make sure that faculty orientations were done. (St. Ex. 15 at 2-3, Tr. at 688-694, 967-970)
20. At the hearing, several witnesses testified that they received no orientation when they began working as faculty members. Julia Wilson, the sole faculty member for whom a checklist was provided, testified that her position at OAHC was her first experience teaching in a classroom, yet she received no orientation. “[M]y orientation was, ‘Here, take this book and go teach.’ That was it.” (Tr. at 579, 468)
21. Cynthia Davis-Zimmer testified that she knew nothing about orientation. “[Y]ou’re asking me if I know anything about a faculty orientation. No, I don’t know anything about that. I was never oriented.” She said that, to her knowledge, her co-workers who started during that time were not oriented either. (Tr. at 163-164)
22. Susan Walker Thomas, who was the Program Administrator from July 5, 2011 until August 12, 2011, testified that when she got the Survey Visit report, she looked for documentation of a faculty orientation. “I reviewed each faculty file and I did not find any documentation of an orientation process.” On cross-examination, she acknowledged that she did not pursue faculty orientations because she was still being oriented herself. However, she explained that faculty orientation is important because the instructors need to understand how students are admitted, how they

progress from one class to the next, what lab and clinical hours are required, and how to document those experiences, especially in a program that goes by clock hours. (Tr. at 40, 110-111)

23. When OAHC responded to this allegation in its letter dated June 28, 2011, it admitted that there was no orientation process being followed:

Dr. Bumgardner did not have an orientation process in effect for the program. Faculty had never received adequate orientation to their positions. Therefore, effective March 29, 2011, an orientation policy has been originated and is in place for all current and newly-hired faculty.

(St. Ex. 16 at 1)

b. Failure to implement established student policies as written

(i) Student admission policies

24. OAC Rule 4723-5-12(A)(1) requires a program to establish and implement written policies for student admission. Cathy Learn testified that the Board gives programs autonomy to create their own policies, but they are expected to implement those policies as they are written. 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, and documentation of malpractice insurance. (St. Ex. 8 at 35-36, Tr. at 693-696, 893)
25. OAHC's draft school catalog also stated that students would be required to show they met those prerequisites. (St. Ex. 9 at 5) In addition, the Student Handbook in effect for 2010-2011 restated those policies. (St. Ex. 10 at 17)
26. Cathy Learn testified that she reviewed student files when she conducted her Survey Visits, but found that several student files did not contain evidence that they met those criteria for admission to the program. Student #1 had no evidence of a passing grade on the pre-entrance exam, and no evidence of CPR certification. Student #2's file did not have evidence of malpractice insurance. Student #3 had no evidence of CPR certification and no documentation of malpractice insurance. Ms. Learn documented those findings in her Survey Visit Report. (Tr. at 694-695, St. Ex. 15 at 4)
27. 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 said that Office Manager Chandra Smith would go through the files and prepare a list of what was missing from student files; then Dr.

Bumgardner would ask the students to get the information that was needed. At first, it worked, but later, she found that she was unable to enforce the policy:

It got to the point where that was another situation where I either wanted the student dismissed or dismissed for a few days until they did get that or whatever, or tell them that they could not go into a clinical facility without the necessary stuff on file, and I took that to Yemi² and Yemi said, "No. Absolutely, you can't do that because they will discontinue paying their monthly fee and you can't do that." He said, "You have to let them go."

(Tr. at 317-318)

Later in her testimony, Dr. Bumgardner clarified that she meant that Dr. Yemi told her she had to "let them go" to their clinicals – not "let them go" as in dismissing the students who did not have the correct documentation in their files. (Tr. at 454)

28. Susan Walker Thomas, the Program Administrator from July 5 to August 12, 2011, testified that she believed all of the allegations in the July 2011 Notice were accurate. She said that when she received the Notice, she reviewed student files to check for those items that should have been in the files and found no student files that had their graded admissions exam in it. She stated that Michelle Emmers, the receptionist, would fax the entrance exams to Dr. Yemi, who would grade the tests and call back to say what the student's score was. Ms. Thomas said that she made a list of which students did not have verification of immunizations or CPR training, and notified them that they could not go to clinicals until they had the required documents in their files. She said that most of them complied within a few days. On cross-examination, Ms. Thomas said that she tried to correct deficiencies, but in the five weeks she served as the Program Administrator, she was not able to do so. (Tr. at 39-42, 45, 94-95)
29. Julia Wilson, who served as an interim Program Administrator during times when a new person had not yet been appointed to that position, admitted that she investigated whether those items were actually missing from the students' files. She agreed that they were, in fact, missing verifications that were supposed to be in the files. (Tr. at 485)
30. In its written response to the Survey Visit Report written by Julia Wilson, OAHC acknowledged the existence of these deficiencies:

² Dr. Bumgardner 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." (Tr. at 275-277)

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 as well as location of the test scores.

(St. Ex. 16 at 1-2)

(ii) Student progression policies

31. 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 it had the following policy for student progression:

A final grade of 85% in each course and satisfactory externship or clinical performance (where applicable) is required. Failure to pass either theory or clinical constitutes a failure in the course and necessitates repetition of both components of the course. A student must successfully complete each course prior to advancing to the next level course.

(St. Ex. 8 at 41)

The draft Student Handbook was consistent with the policy in the proposal, requiring a grade of 85% to pass each course. (St. Ex. 9 at 14) However, in a progress report submitted to the Board on June 23, 2010 by Program Administrator Rosanna Bumgardner, the school reported that it had lowered its minimum passing score from 85% to 75%. It explained that it did so because the majority of other nursing programs require only a 75% passing score. (St. Ex. 22 at 3)

32. Student handbooks were not changed to reflect this change and inform students of it. In Cathy Learn's Survey Visit Report, she wrote that despite the change from 85% to 75%, the 2011-2012 Student Handbook that was in effect at the time of the May 2011 Survey Visit still identified the minimum passing score as 85%. (St. Ex. 15 at 5) OAHC responded to this allegation in its written response to the Survey Visit Report, admitting that the policies had not been consistent:

The current administration was totally unaware of any changes that Dr. Bumgartner submitted to the board changing the grading criteria for the program from 85% to 75%. Since becoming aware of the board's approval of these changes, we have implemented this new grading criteria effective immediately. The entire faculty and student body have been made aware of these changes. Changes have been noted in the student handbook and all syllabi.

(St. Ex. 16 at 2)

33. Rosanna Bumgardner testified that it was simply an oversight that the change was not made in the student handbook. She asserted that the required pass rate was 75% when the first students started class, and that the students knew the required score was 75%. She maintained that it simply did not get changed in the printed materials, and she agreed that it was her responsibility to make sure those materials had been changed. (Tr. at 421-423)
34. Dr. Yemi Oladimeji, or "Dr. Yemi," as he was called by most witnesses, the school's owner, testified that he believed this allegation in the Notice was true. He explained that Rosanna Bumgardner did not tell the school that she had informed the Board of Nursing that the new passing score would be 75%, and so it remained in the school's documents as "85%." (Tr. at 155)

(iii) Requirements for completion of each course not consistently implemented

35. OAC 4723-5-12(A)(4)(b) requires a program to establish and implement written policies for the satisfactory completion of each course. The January 2011 Notice alleged several ways in which students were progressed from one part of the program to the next, in a way that was inconsistent with the program's policies as they were written. First, it alleged that the initial cohort of students who entered the program on May 17, 2010 were still in RN002 at the time of the March 2011 Survey Visit, and had not started the coursework for RN003 or RN004, each of which was a ten-week course. The Notice claims that the program implemented an unplanned "break" in the curriculum for those students, so that another group of students could "catch up" with them, and as a result, the first students were not able to complete their program on time.
36. Cathy Learn testified that she was informed of the "break" by Rosanna Bumgardner and by students that she talked to during the Survey Visit. Dr. Bumgardner testified at the hearing about the reasons for the unscheduled break for 17 students in the first cohort:

[W]e were to the point where we had enough that Yemi wanted to start a second group, but he didn't feel that financially he could pay the number of faculty that he needed to teach two separate cohorts. So the decision was made for us to put the first – not group, okay, the first cohort, to put the first cohort on a summer vacation and bring the second cohort in and have them start and then we would blend the two together when the first – when the second cohort had caught up with where the first cohort was.

(Tr. at 330)

Dr. Bumgardner said that although Yemi made that decision, she agreed with it because staffing was insufficient at the time. "He didn't want to start the second cohort because he knew that he would have to hire additional faculty and it would be additional expense." (Tr. at 330-331)

37. Dr. Bumgardner documented this in a progress report submitted to the Board on December 16, 2010:

Due to the fact that our first RN class had only 6 students, it was financially impossible to start the second group of 11 students, which were scheduled to start on August 23, 2010 without additional financial loss incurred by hiring additional instructors and needing additional space. * * * The financial issues were discussed with the students and they were given several options, one of which was to take a 2 month summer break while the new class of 11 students started the curriculum which the original 6 had completed. * * * On October 25, 2010 the original 6 students and the second group of 11 were merged together as one group. They will continue through the programs as one group with an expected date of completion on June 3, 2010.

(St. Ex. 44 at 4)

38. Ms. Learn included this inconsistency in her Survey Visit Report. (St. Ex. 15 at 6) She noted that, despite their lack of progression, the students told her that they still planned to graduate on June 3, 2011, the original completion date stated in the proposal for the first cohort's completion. In the program's written response to the Survey Visit Report, OAHC did not respond to this allegation. (St. Ex. 16)
39. On cross-examination, Ms. Learn testified that the unplanned "break" set the first cohort of students back in being able to complete their programs as scheduled:

[T]hey should have been much further along at that period of time, all of them. Even though there had been a break, they still were not where they should be. In fact, a new cohort of students had started, RN-2's, in November and they were just three weeks behind students that had been either in the program since May of 2010 or October of 2010.

(Tr. at 944)

While she agreed that the break, in and of itself, was not a violation, she maintained that students were not able to complete the program as it was written and graduate on schedule:

[T]he first few students in cohort 1 completed their first RN001 courses, sat out the summer, waited while another small group of what would become RN-1's took that first 11 weeks, then they all combined back together again and would all have completed 11 weeks of their program. In October, then, they would move on into their RN002 courses, and by March they should have been farther along because it was my understanding they would graduate June the 3rd. So they should have nearly completed, but they had not progressed appropriately because they still hadn't had computer courses and other things that should have been done previously.

(Tr. at 945)

40. In responding to later questions, Ms. Learn pointed out that OAHC's own proposal stated that a student was required to complete the program in no more than 1.5 times the total program length. Since this was supposed to be a 10-month program, then, students were required to complete their programs in no more than 15 months. Because of the unplanned break, some of the students were still in the program by the following October when Ms. Learn conducted a later Survey Visit, and had been in the program for more than 15 months. (St. Ex. 8 at 44, Tr. at 993-994)
41. Another allegation in the July 2011 Notice was that students progressed from RN001 to RN002 without completing the computer content of RN001 and without performing the required 72 hours of lab skills.
42. Dr. Bumgartner was the Program Administrator from the time OAHC was getting approval in late 2009 until she was terminated on March 28, 2011. She referred to the components of the RN001 class, titled, "Nursing Sciences, Technology, and Math," as set out in OAHC's proposal. That document indicates that a Computer Operations course is taught in RN001. (St. Ex. 8, p. 56) Likewise, the syllabus and course descriptions for RN001 indicated that that course included 66 hours of computer classes (St. Ex. 8 at 73) Dr. Bumgardner also referred to the 72 hours of laboratory instruction that students were supposed to get in RN001. She said that the students did get some lab hours in the Math for Nurses course, but added that "the bulk of them [the lab hours], as I recall, would have been with the computer class." She conceded that the first cohort of students was allowed to progress to RN002 without completing the computer class. (Tr. at 333-336, 338, St. Ex. 8 at 73-75)
43. Dr. Bumgardner said that the computer class was supposed to have been taught in RN001, but it was moved to RN002 because the school did not have enough computers to accommodate the class. When the school did get additional computers, they were not what Dr. Bumgardner expected:

*** They were old. They were basically antiques. And they had a little silver label on each one of them that said "State Department of Health." "Ohio Department of Health" is actually I think what it said on it.

Q: And so these were government surplus computers?

A: Obviously, yes.

Q: Did the computers themselves have any appearance that would make you think they were old?

A: Rather than the white or the buff color they had turned gold. Some weren't. Some didn't. We tried to piece some of them together but they still were not – they weren't – they were antiquated, basically. So even with that type of a computer you really couldn't teach the computer class. So it was never taught. He did, then, after that, buy a few, maybe three at the most, probably four laptops and made those available.

(Tr. at 331-332)

Dr. Bumgardner added that although the 3 or 4 laptops were new, there were about 85 students attending the school by that time. She confirmed that from May 17, 2010 when the first cohort began taking classes until her termination almost one year later on March 28, 2011, the computer course still had not been taught. (Tr. at 331-333)

44. Dr. Bumgardner was directed to the progress report that she submitted on behalf of OAHC on June 23, 2010, explaining that the computer class had been moved to RN002. It provided the following explanation:

Computers were not available for all students at the beginning of the term, which were needed in order to teach the computer class. This problem was resolved by teaching the nutrition and the LPN to RN transitions class in the first term and moving the computer class to the second term. We now have a sufficient number of computers in the school.

(St. Ex. 22 at 2)

45. In her testimony at the hearing, Dr. Bumgardner admitted that the computers she was referring to when she represented, "We now have a sufficient number," were not really adequate to teach that class:

Q: Do you believe that, looking back, that you did have a sufficient number of computers in the school?

A: That was around the same time that we did get that delivery of a large number, like I said, I don't remember how many, of the ones that came from the Ohio Department of Health and at that point in time

they were computers sitting there. I am not real computer literate so as far as knowing what you were able to do with them, I didn't know. So they were just computers sitting there but they really weren't able to, they didn't have the capability of teaching the class the way it was supposed to be taught because, like I said, some of them didn't even work.

* * *

Q: Were they sophisticated enough to teach Microsoft Excel or Microsoft Word?

A: No.

(Tr. at 337-338)

46. Susan Thomas, the program administrator from July 5 to August 12, 2011, also testified that students progressed from RN001 to RN002 without taking the computer class. She stated that there were some computers at the school, but only about 6 or 8, and since the first cohort alone had 16 students, the equipment was not sufficient unless the students were taught in small groups. She stated that by the time she was terminated in August 2011, the first cohort of students had never taken the computer course. (Tr. at 51-52)
47. Julia Wilson, the "de facto" Program Administrator after Susan Thomas left but before Erin Stout was appointed, testified that she tried to correct this deficiency through a "self-study course," which included a brief overview by an instructor. Students had to complete the rest of the project on their own and turn it in within a month or so later. There was no requirement that they complete any lab hours in the computer lab. Although Ms. Wilson agreed that the computers were old and "not very good," she said that they did have MicroSoft Word and Microsoft Office capability. (Tr. at 496-498)
48. Chandra Smith, who started in August 2010 as a receptionist and was promoted to office manager in April 2011, testified that she could see the computer lab from her office space, and that no computer class was ever held. She acknowledged, however, that she did not know about the possibility of a self-study course. (Tr. at 614-615, 619)
49. Dr. Bumgardner wrote a memo to Cathy Learn at the time of the March 22, 2011 Survey Visit, documenting some of her responses to Ms. Learn's concerns during that visit. It included an explanation that the reason the RN students in Cohort 1 progressed more slowly than anticipated is that some classes still needed to be taught during the second term of the program. Those classes were listed as Pharmacology, Medical-Surgical Nursing [Med-Surg], LPN to RN Transition 2, Psychology, and Computers. (St. Ex. 18 at 1)
50. Cathy Learn acknowledged in her cross-examination that this program made some changes in its progress reports, and she admitted that a program may make

reasonable changes to its curriculum. She clarified that those changes would apply only to later groups of students. For example, she stated that when the program changed its required number of computer hours, that change would apply to later cohorts, and that she would still expect to see the first cohort have the number of computer hours stated in the proposal. Ms. Learn added that changes that OAHC made in its progress reports came well after the program was granted conditional approval to begin its program. (Tr. at 906-912)

c. Failure to implement curriculum plan as written, and consistently with course syllabi

51. OAC Rule 4723-5-13 requires a program's curriculum objectives or outcomes, course objectives or outcomes, teaching strategies, and evaluation methods to be "implemented as written." A program writes its own curriculum, and then it must provide instruction that adheres to the curriculum that it wrote. The July 2011 Notice cited five alleged violations of this rule.

(i) Progression from RN001 to RN002 without completing computer course

52. As previously described in the allegation that the program did not adhere to its student progression policies, the computer course was moved from RN001 to RN002 because the school did not have sufficient computer resources to teach that course during the first term. However, students nonetheless progressed to RN002. In addition to being a violation of the school's student progression policies, the Notice also cited the Program with a failure to implement its curriculum as written in its proposal and as described in course syllabi when it failed to include this course in the RN001 class.

(ii) Inconsistent statements of theory and laboratory hours required in RN002

53. At the hearing, Cathy Learn testified that when she conducted her Survey Visits, she found that the hours allocated to classes on the course syllabi did not agree with the hours stated in the program's proposal that it submitted to the Board. In OAHC's proposal, it stated that 180 lecture or theory hours would be provided. (St. Ex. 8 at 73) Ms. Learn explained that she added together the theory hours from the course syllabi that the program was using, and arrived at only 144 hours of theory or lecture. (St. Ex. 21) The theory hours shown on the course syllabi were allocated as follows:

Math Review
Microbiology

30 theory hours
18 theory hours

Human Anatomy & Physiology	60 theory hours
Chemistry	30 theory hours
RN001:Nursing Sciences, Technology & Math, Computer Unit	6 theory hours

	Total: 144 theory hours

Ms. Learn stated that the Board never got notification that the number of theory hours was being reduced from 180 to 144. And, since the computer class was not taught, as witnesses testified, subtracting the 6 theory hours for that class would reduce the total theory hours taught to only 138. (Tr. at 715-719)

54. Ms. Learn included this information in her Survey Visit Report, dated June 15, 2011. (St. Ex. 15 at 8) OAHC responded to these allegations in its written response to the Survey Visit Report, dated June 28, 2011, and admitted the discrepancy:

After the termination of Dr. Bumgardner, it was discovered that the curriculum was not executed as originally written. A complete revision of teaching order has been completed and students are now following the correct curriculum format as reported to the board. The computer unit course in question has been corrected to ensure completion in RN001 prior to moving to RN002.

(St. Ex. 16 at 2)

55. At the hearing, Julia Wilson acknowledged that the allegations contained in this part of the July 2011 Notice were accurate. (Tr. at 500)

(iii) Inconsistencies between syllabi statements and hours actually taught.

56. Cathy Learn testified that she created a table comparing the number of hours identified in the school's proposal, adjusted by any changes stated in progress reports, with the number of hours of instruction stated in course syllabi. (St. Ex. 15 at 10, St. Ex. 44 at 3) OAHC's proposal stated that RN002 would include 180 lecture hours, 72 skills lab hours, and 96 clinical hours, for a total of 348 hours. (St. Ex. 8 at 78) However, the course syllabi for RN002 provided that a total of 318 hours would be taught, allocated as follows: 200 theory hours, 30 hours in the skills laboratory, and 88 clinical hours. (St. Ex. 21, Tr. at 715-718)
57. Ms. Learn said that she never saw evidence that any skills lab hours at all were provided to students. She testified that when she asked for lab evaluations at the Survey Visit in May 2011, Julia Wilson gave her the blank evaluation that appears at State's Exhibit 23, and there were never any completed checklists provided for any students. She explained that the checklists should have been completed by an instructor who witnessed the student performing those skills, but she was never provided a single checklist that even had a student's name on it. She testified that

she spoke with various faculty members about whether labs had been provided, and none of them knew of any. (Tr. at 719-723)

58. Susan Walker-Thomas, the Program Administrator from July to August 2011, agreed that there was no documentation that any lab experiences were provided for students in the RN-2 class. She described the school's skills lab as "low tech" with 3 or 4 beds with medical "manikins"³ in them. She explained that the manikins were only suitable for listening to heart rates, taking blood pressures, and listening to breath sounds. Instructor Cynthia Davis-Zimmer testified that the skills lab did not have equipment that should have been in place to practice skills such as those involved in IV therapy. She added that she went in once to look for supplies for a med-surg class, stating, "I couldn't even find the appropriate equipment to put an entire skills lab together for sterile dressing changes with a sterile basin." She concluded that there were no labs at all provided for her students in the medical-surgical course because there was not enough equipment. Ms. Davis-Zimmer concluded that these are basic skills, and she believed the students were not getting the education they needed to be nurses, as a result. Former Program Administrator Susan Thomas added that she tried to order IV fluids, but she was not able to order empty bags, and without a pharmacy license, she could not get any IV fluid bags. By the time she left, to her knowledge, there had been no IV supplies ordered. (Tr. at 53-55, 98, 170-172, 175)
59. Julia Wilson, who served as an interim Program Administrator at various times, testified that she did not believe the first cohort of students in the RN002 class had any lab hours. She referred to the program's proposal, which showed that they were supposed to have 72 lab hours, but she stated that, to her knowledge, the students never made up those missing hours. "I was teaching that class until I took over as the de facto director and I did not know that they needed skills lab so I did not take them to the skills lab. It was not told to me the right way." Ms. Wilson prepared the school's response to the Survey Visit Report, acknowledging those deficiencies. (St. Ex. 8 at 73, St. Ex. 26, Tr. at 502-505, 575)
60. In the written response to the Survey Visit Report that Ms. Wilson prepared, OAHC addressed the allegation that hours were inconsistent in its written response to the Survey Visit Report. It acknowledged the inconsistencies, and explained that they were the result of "the current administration not being made aware of the changes submitted by Dr. Bumgardner previously to the Board of Nursing." It stated that since the current administration was made aware of those changes, the program had implemented the program as approved by the Board. (St. Ex. 16 at 2)
61. At the hearing, Julia Wilson testified that she found the lab inadequate for the skills that the students needed to learn. She said that even though she had requested IV

³ A "manikin" is a term of art used by medical supply companies to describe a mannequin that can be used by students to practice medical procedures. (Tr. at 1232)

supplies several times, the lab still did not have what she needed to teach her students:

We had, when I left, we had one Foley catheter for all the students to try to use. We had to reuse it. We didn't have an adequate manikin arm for the IV therapy. We didn't have adequate IV supplies. I think we had one or two angiocaths and students had to reuse the same one. We did not have enough IV fluids for them to practice puncturing a bag and going through. We had three beds with manikins but the manikins were exactly that, just a manikin, they didn't have any depth, anything that we could do to them other than just turn them in bed maybe or, you know, learn to bathe them, the basics. We didn't have a simulator or anything like that.

(Tr. at 506-507)

62. On cross-examination, Ms. Wilson was challenged about whether there were any requirements in the rules for what equipment the lab had to have. She was pressed about whether there was an actual rule violation, or whether the school was being accused of not having "the most high-tech, absolute best operation that money can buy." She replied that it was "not a direct violation," but she queried, "shouldn't we be teaching the students on the things that they're going to see rather than the old things? Things that are current in hospitals." Ms. Wilson described the beds in the lab as "the old kind of beds that crank at the bottom," and said she had not seen those in a hospital in quite a while. (Tr. at 563-564)

63. Board surveyor Cathy Learn testified that she also found the lab inadequate:

During my visits in the laboratory, I had to clean a space in order to be able to lay my own rule booklet and my satchel down. It was not clean. It was unkempt. There was three or four, I did not count them, but at least three, maybe four very old styled beds with some disarticulated manikins, sheets on the beds that were stained with holes in them, and there was a small amount of what appeared to me to be used equipment such as dressings, et cetera, in some cupboards that were toward the back of the room because I did not look in the cupboard. I did not see anything that would be advancing a student to become an RN such as being able to teach them about blood and blood products as far as IV's. I did not see any IV simulator arms to teach them even basic IV skills, and I would have a concern if they did not, in fact, even do any lab skills or very few that the student would then go to a facility and without adequate practice and practice on the patient.

(Tr. at 727-728)

(iv) Failure to provide clinical experience in RN002 to complete medical/surgical nursing.

64. OAHC's 2010-2011 Student Handbook stated that "clinical facilities for clinical experiences include acute and long-term care agencies; ambulatory care settings, local hospitals and clinics, physicians' offices, and other health care providers approved by the State Board of Nursing." The program's proposal said that the Medical Surgical Nursing class would include 96 hours of clinical experience. (St. Ex. 8 at 81) Cathy Learn testified that the proposal's description of skills taught in that class included things such as Intraoperative Nursing Management that could be taught only in an acute care setting. Likewise, the syllabus for the Medical Surgical course includes content related to preoperative, interoperative, and postoperative care, and emergency nursing. (St. Ex. 28 at 78-81) However, in this case, OAHC students were getting their clinical experiences for the med/surg class at Westminster Thurber and Altercare. (Tr. at 728-732)
65. Ms. Learn testified that Westminster Thurber and Altercare are long-term care facilities, and although they do have rehabilitation units, students would not get experience with patients who are acutely ill, because those patients would be transferred to a hospital. She added that students could not have experience working with blood transfusions, for example, because that would be done only in a hospital. (Tr. at 732)
66. Ms. Learn included a discussion of this problem in her Survey Visit Report. She related that Dr. Bumgardner had told her the students attended those facilities for a total of 80 clinical hours, and that they 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. (St. Ex. 15 at 11-12, Tr. at 733-734)
67. Cynthia Davis-Zimmer, the instructor of the med-surg class from January 2011 until the end of March 2011, said that her students had not gone to any clinicals at all. "My particular group had not attended any clinical site. I taught them for over six weeks and I had them Monday through Friday, I had them every day of the week." (Tr. at 59-60, 175-181)
68. At the hearing, former Program Administrator Susan Walker Thomas conceded that the med-surg class was supposed to have 96 hours of clinical experiences, according to the program's proposal. However, she testified that in the five weeks that she was there, there were no clinicals in an acute care setting. She explained that the only clinical experiences she knew of were in nursing homes or extended care facilities, and that by the time she was terminated in August 2011, the students in the first cohort had had no acute care clinical training. (Tr. at 56-60)

69. OAHC responded to these allegations in its written response to the Survey Visit Report dated June 28, 2011, asserting that it was working to secure other sites:

The unfortunate loss of Westminster Thurber as a much needed clinical site was a direct result of Dr. Bumgardner's poor administration. The current leadership is diligently working to secure additional clinical facilities. Since March 29, 2011, we have added three new facilities including a hospital located in Southern Ohio for Obstetrics and Pediatrics. We are securing additional units in our current sites to accommodate Acute Care and Psychiatric/Mental Health experience.

(St. Ex. 16 at 3)

At the hearing, Julia Wilson, who wrote that response, testified that OAHC had an acute care site for pediatrics and obstetrics at that time, but not for any other classes. Cathy Learn likewise testified that in her review of affiliation agreements, she found only one acute care facility, and it was used for obstetrics and pediatrics. She clarified that OAHC has never identified a facility that provided an acute care experience for students in the Medical Surgical nursing class. (Tr. at 731, 509)

70. Julia Wilson testified that OAHC had just lost Westminster as a clinical site when she began her tenure, and she added, "It was my understanding that we had no other sites." She reiterated that on cross-examination, when she was asked what other clinical experiences the students were getting in the med-surg class besides Westminster Thurber, replying, "None that I know of." She said that she worked hard to find another site, estimating that she called 50-100 facilities. However, she was not able to get another clinical site. (Tr. at 508, 520-521)
71. Ms. Wilson testified that she later found out that they could use Altercare as a clinical site, and she described it as a good site for geriatrics. Ms. Wilson said that while she was acting as the Program Administrator, there was no acute care site for the medical surgical nursing course. She said she believed this was a problem because certain skills critical to medical surgical nursing do not occur in long-term care facilities:

I think in order to get adequate training on medical/surgical you need to be on a medical/surgical unit where you can put in IV's and see the acute care that happens. Nursing homes were great for long-term care, but I think the acute setting is much better for educating nurses.

(Tr. at 509)

Ms. Wilson gave examples of things done on a daily basis in an acute care setting that are not typically done in a nursing home. They included procedures such as putting in Foley catheters, inserting and removing IV's, assisting with blood

transfusions, changing dressings that involve tubes and drains, and maintaining central lines and PICC lines. (Tr. at 510)

(v) Failure to provide Psychology Theory course content in RN002

72. The proposal that OAHC submitted to the Board of Nursing included a syllabus for RN002 that included 42 hours of principles of psychology. (St. Ex. 8 at 80-81) Cathy Learn testified that she did not believe she ever saw grades or an actual syllabus for the psychology class. OAHC's first Program Administrator, Rosanna Bumgardner testified that students in RN002 did not actually have the psychology course in the time that she was there from May 2010 until March 2011. (Tr. at 368, 737-738)
73. Susan Walker Thomas, the Program Administrator from July 5, 2011 until August 12, 2011, also testified that no psychology theory class was actually taught as part of the RN002 class. (Tr. at 60-61) Julia Wilson, who served as the "de facto Program Administrator" after March 29, 2011 when Dr. Bumgardner left, also testified that the psychology theory class took the form of the class watching the movie, "A Beautiful Mind." After the movie, students were required to write a paper. (Tr. at 512-513)
74. Cathy Learn testified that watching the movie does not meet the requirements for the psychology theory course because it did not follow the program's proposal and its syllabus. (Tr. at 737)

(d) Failure to implement a systematic plan of evaluation

75. 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.
76. Cathy Learn identified the part of OAHC's proposal that described how they would carry out the systematic plan of evaluation. (St. Ex. 8 at 93-95) However, she testified that at the time of her Survey Visits on March 22 and May 25, 2011, there was no systematic plan of evaluation in existence. She included this finding in her

Survey Visit Report. (St. Ex. 15 at 13-14) OAHHC responded to this allegation in its written response to the Survey Visit Report, explaining that it was in the process of implementing a systematic plan of review, and that it anticipated the plan would be complete by the end of July. (St. Ex. 16 at 3) Ms. Learn stated that she never saw a revised plan anytime thereafter when she visited this program. (Tr. at 740-742)

77. 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. (Tr. at 372-373) 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." (Tr. at 442)
78. 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.

(Tr. at 514-515)

79. Ms. Wilson testified that she wrote the school's response to the Survey Visit Report, which said that OAHHC hoped to have the plan completed by the end of July. However, she said that did not occur. (Tr. at 516) On cross-examination, she

explained that the systematic plan of evaluation is not just a document, but a process:

Q: Well, the SPE is a piece of paper, though, isn't it? I mean, it's a piece of paper showing what people are doing to evaluate the plan.

A: It's my understanding that it's actually a process you have to go through. You have to do meetings and you have to do all kinds of things to lead up to the SPE, you have to do many components of it rather than just sitting down and typing something out and handing it in and calling it an SPE.

(Tr. at 565)

80. Cathy Learn testified that when she went back to the school for a Survey Visit the following May, there was still no Systematic Plan of Evaluation. She was asked to clarify if she *ever* saw such a Plan, and she added, "At no time that I was ever at the program." (Tr. at 740-742)
81. Susan Walker Thomas, the Program Administrator from July 5 to August 12, 2011, corroborated the testimony that there was no systematic plan of evaluation in existence. She said that when she was hired, Dr. Yemi asked her to write one, but she had "too many other pressing things to deal with." Also, she explained that such a plan required faculty input and student participation, and a good assessment of the school. This still had not been done by the time she left the program in August 2011. On cross-examination, Ms. Thomas admitted that she taught one class as an adjunct instructor at another nursing school for six hours per week, but she maintained that while she did hold the other job, she worked about 70 hours a week at OAHC. (Tr. at 62-63, 99-100)

(e) Failure to provide students with a syllabus for each course

82. 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;

83. Cathy Learn testified that when she conducted her Survey Visit in March 2011, Rosanna Bumgardner told her that no students had received syllabi for the RN-2 class. (Tr. at 744) She included this in her Survey Visit Report, and the school responded to that allegation in its written response to the report, dated June 28, 2011:

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. 16 at 3)(See also, Survey Visit Report findings, St. Ex. 15 at 15)

84. Cynthia Davis-Zimmer, the instructor of the med-surg course from January through March 2011, testified that students did not receive a syllabus for her class. She explained that Rosanna Bumgardner told her not to give them one, because the syllabus was under revision. On cross-examination, she was asked if she gave students *anything* in place of a syllabus. She responded, "From week to week they were emailed the PowerPoints with the reading assignment, with the reading chapters," adding that she was the one who sent this. For her part, Rosanna Bumgardner testified that Dr. Yemi restricted the use of the school's printer because of the expense of toner and paper. She queried, "[H]ow do you give them a syllabus if you can't use a printer?" (Tr. at 178-179, 196, 201-202, 377)
85. Julia Wilson, who acted as the de facto Program Administrator at times when the school did not have one, also testified that students were not being given syllabi for their classes. She explained that she understood they were not getting the syllabi because "there were none." When she learned that the students were not getting them, she went through the computer and found syllabi like the one that appears at State's Exhibit 28. (Tr. at 517-518)

(f) Failure to provide 10 weeks of clinical experience with appropriate supervision.

86. 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.

87. Cathy Learn testified that when she conducted her Survey Visit, she requested schedules and student evaluations to show that students had completed their clinical experiences. Rosanna Bumgardner supplied her with the evaluations that appear at State's Exhibits 31 through 39, as well as two lists showing which students did their clinicals at Westminster Thurber, and which ones did their clinicals at Altercare. (St. Ex. 30) The evaluations for the students who went to Westminster Thurber were signed by Yasamine Hardin on February 8, 2011, but were not signed by the students. As shown by the scan below, the evaluations seem to indicate that 10 weeks of clinicals at that facility were scheduled, but students were evaluated through only the middle of the sixth week:

Name	OAHC	Clinical Site <i>Westminster Thurber</i>									
Professional Performance		Week 1 1/17-1/20/11	Week 2 1/21-1/24/11	Week 3 1/25-1/28/11	Week 4 1/29-2/1/11	Week 5 2/2-2/5/11	Week 6 2/6-2/10/11	Week 7	Week 8	Week 9	Week 10
Appearance: Correct uniform, shoes and socks, badge, stethoscope, etc.	S	S	S	S	S	S	S				
Attendance: Perfect attendance & punctuality for all clinical days.	S	S	S	S	S	S	S				
Dependability: Team player; completing assignments on time; (i.e., documentation & med passing)	NA	S	S	S	S	S	S				
Ethics: Treating patients of all race, creed, gender, age, etc. without bias.	NA	S	S	S	S	S	S				
Professional Growth: Able to complete an accurate assessment and pass meds stating their action, use for this patient, dose, route, side effects, and nursing implications; able to intervene when an abnormal assessment is found including labs, within the scope of practice.	NA	S	S	S	S	S	S				
Attitude: Positive and professional; speaks to and about the instructor, staff, and physicians as a professional; refrains from gossiping & complaining about tasks assigned; speaks positively about the school, its employees, curriculum and clinical sites, etc. consistently.	NA	S	S	S	S	S	S				
Interaction with patients and families: Speaks competently and at a level the patient can understand consistently	NA	S	S	S	S	S	S				
Interaction with staff: Positive and professional -- see above "attitude"	NA	S	S	S	S	S	S				
Interaction with peers: Assists peers in completing tasks; speaks to and about peers professionally consistently	NA	S	S	S	S	S	S				
Interaction with Instructors: See above "attitude"	NA	S	S	S	S	S	S				

EXHIBIT 31

88. Ms. Learn said that she knew OAHC had an affiliation agreement for clinical experiences to be conducted at Westminster Thurber, and upon investigation, she found that Westminster Thurber had notified the program that it could no longer accommodate its students as of March 16, 2011. (St. Ex. 29 at 6) In response to Ms. Learn's request for information from that facility, the Board received a letter from the facility's Director of Nursing and letters from two staff members, describing problems with the supervision of the OAHC students. The letters state that the students were to be under the supervision of their instructor, Yasamine, but that Yasamine was not adequately supervising her students. Instead, she was observed to be sitting on a sofa at the end of the hall, and was not present while students were giving care to patients there. (Tr. at 744-748)

89. At the hearing, Rosanna Bumgardner testified 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.

(Tr. at 378-379)

The following Monday, Ms. Bumgardner 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. (Tr. at 379, 383)

90. Cathy Learn testified that she never received any additional documentation to show that these students had completed their clinical training in medical/surgical nursing. (Tr. at 749-751) She included this as a reported violation in her Survey Visit report. (St. Ex. 15 at 15-16)
91. OAHC responded to this allegation in its written response to Cathy Learn's report. It stated, "The unfortunate loss of Westminster Thurber as a much needed clinical site was a direct result of Dr. Bumgardner's poor administration," and explained that it was diligently working to secure additional clinical sites. It stated that since March 29, 2011, the program had added three new clinical facilities including a hospital in Southern Ohio for obstetrics and pediatrics⁴. In addition, the letter stated that all faculty had been advised that inappropriate supervision of students would result in immediate termination. (St. Ex. 16 at 3-4, Tr. at 751-752)
92. Cathy Learn testified that when Rosanna Bumgardner was terminated as the Program Administrator on March 28, 2011, Dr. Yemi hand-delivered the transcripts of Julia Wilson to the Board and requested that she be named the new Program

⁴ OAHC had a contract with the Southern Ohio Medical Center for clinical experiences in pediatrics and obstetrics, but the contract expired in April 2012 and was not renewed.

Administrator. Ms. Learn said that she reviewed the information and found that Julia Wilson was not qualified to be a Program Administrator because she did not have two years of teaching experience at any level. The very next day, Dr. Yemi proposed to name Yasamine Harden as the Program Administrator, despite the fact that she was the instructor who had recently been terminated for failing to supervise students at Westminster Thurber. Ms. Learn conveyed to him that Ms. Harden was qualified to be the LPN Program Administrator because she did have two years of teaching experience in a practical nursing program, but she was not qualified either to be the Program Administrator of the RN program. Dr. Yemi informed her that he wanted to name someone who could be the administrator of both the LPN and the RN programs, and so Ms. Harden was no longer considered. (Tr. at 747-749)

93. From July 5 to August 12, 2011, Susan Walker Thomas served as the Program Administrator, and she began looking at the issue of whether to sign certificates of completion for any students in the first cohort, who were supposed to finish in August. She said that when she looked through the files, she found that they did not have the appropriate number of clinical hours in the gerontology class, since they were missing four weeks of their clinical experience. She said that although the students told her they had completed all ten weeks of their clinicals, she felt that she could not take their word for it because there was no documentation of it. She found there was no way to verify that students had actually completed the hours, so she determined that they would have to repeat them. However, by the time she left, they had not done that. (Tr. at 63-64, 69-70, 97)
94. At the hearing, Ms. Thomas flipped through the clinical evaluations marked as State's Exhibits 32 through 39, identifying various problems with each. Some had no student's name on them. Some have no signature of the instructor. Some show a different number of weeks completed. (Tr. at 71-72, St. Exs. 31-39)
95. Ms. Thomas testified that she told Dr. Yemi she could not sign the students' certificates of completion. "I could not sign the certificate of completion until everything, all the clinical hours and all of the courses that they were supposed to have done were complete." (Tr. at 70, 74-75) Although she acknowledged that Dr. Yemi never told her she had to sign them, she was terminated within a week of her refusal to sign the certificates:

Q: * * * You previously testified that you would not have any - that you said you would not sign any certificates of completion.

A: Right.

Q: How long after that were you let go?

A: Oh, I don't know. Within a week. I was going to quit that day, but, yes, I -- I had to quit because I could not sign those certificates of completion. And then I was dismissed the same day I was going to quit, so...

(Tr. at 82)

96. Ms. Thomas said that she has concerns whether the two students whose certificates of completion were signed by her successor, Erin Stout, had learned the necessary skills in their programs at OAHC:

Q: Do you have concerns about whether the students that were in the program at the time you were Program Administrator are going to be competent nurses once they graduate or once they graduated?

A: I would say overall I was concerned.

Q: Why?

A: Because I felt like they just were not – their clinicals were inadequate, okay. I think their instruction was inadequate. They were supposed to have masters-prepared instructors and they did not. * * * So they got around the requirement that the instructors be masters prepared by calling Julie the clinical lead instructor, or lead clinical instructor, or some title such as that. And in actuality the instructors just took the book in the room and taught. And Julie made up the tests and she was master's prepared, but I just felt like they deserved to have a masters instructor in the classroom and in clinical and in every area because that is what the Board requires is that RN students have masters-prepared instruction.

(Tr. at 87-88)

97. With respect to the two students who were certified as having completed the program by Erin Stout, Julia Wilson testified that she helped Susan Thomas research whether those students had met all of the requirements for completion. Ms. Wilson testified, "I did not see any completed student files." She said that the clinical hours that were missing from the med/surg class were never made up. Since Ms. Wilson remained at the school after Susan Thomas's departure as Program Administrator, Ms. Wilson was able to testify that students did no make-up work of their med-surg clinicals after Ms. Thomas left. (Tr. at 523-531)
98. On cross-examination, Ms. Wilson explained why the clinical experience is an essential complement to the in-class theory or "didactic" instruction:

[T]here's the didactic and then there's the clinical, and I believe that you need to be good clinical nurses as well as smart nurses. So there's the didactic that makes you smart nurses and there's the clinical that makes you clinically sound.

(Tr. at 561)

99. Ms. Wilson said that when she was acting as the Program Administrator, Dr. Yemi sometimes told her to change a student's grade to make that student pass a test or a class, and she admitted that she altered documents in order to comply with those instructions:

Q: And you said that when you were the de facto Program Administrator Dr. Yemi sometimes instructed you to change grades. What exactly did he tell you to do?

A: Make them pass.

Q: An individual course?

A: Uh-huh. Or a test or whatever they needed to pass the class.

Q: And so if the instructor had given them a failing score, you were instructed to alter the -

A: Yes.

Q: --document?

A: Yes.

Q: And you did that.

A: Yes.

(Tr. at 579-580)

100. As a result, Ms. Wilson said that even though she had seen this cohort through to the comprehensive final, she had concerns about the students' skills:

[T]he process that they had to go through to get through the school where we would just pass them through without technically passing a class was such that I thought it compromised the academic integrity of the school and what these students would come out knowing how to do, and I was very concerned.

(Tr. at 553)

(g) Failure to maintain faculty records as required by Rule 4723-5-21

101. 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.

102. OAHC said in its proposal that the school would maintain “staff files including information relating to qualification, resumes, and employment contracts.” (St. Ex. 8 at 185-186) Cathy Learn testified that when she went to the school for the March 2011 Survey Visit, Rosanna Bumgardner gave her six faculty files to review. Ms. Learn found that three of those files did not have complete documentation. The files for faculty members Cynthia Davis-Zimmer, Julia Wilson and Denise Ferrell did not contain their academic transcripts. When Ms. Learn requested those transcripts from Dr. Bumgardner, she stated that she did not have transcripts for those faculty members. She added that when she returned two months later on May 25, 2011, there was still a faculty member, Christine Roseberry, whose file did not contain her curriculum vitae and her official academic transcript. Ms. Learn included this as a rule violation in her Survey Visit Report dated June 15, 2011. (St. Ex. 15 at 16, Tr. at 753-759)
103. The program responded to this allegation in its written response dated June 28, 2011, indicating that all faculty files had been reviewed for completeness including official educational transcripts. The letter stated that several faculty members whose files were incomplete on the May 2011 Survey Visit were no longer employed by Ohio American Healthcare, and therefore, it was not possible to complete their records. (St. Ex. 16 at 4)
104. Julia Wilson, the de facto Program Administrator who wrote that response, testified at the hearing that the faculty files of Cynthia Davis-Zimmer and Denise Ferrell, as well as her own file, were missing academic transcripts. (Tr. at 530-532)
105. When Susan Walker Thomas took over as Program Administrator on July 5, 2011, she found that faculty files still did not have the things they should have had. She testified that she made a list of what should be in each person’s file, and that this was “on her list of things to do.” (Tr. at 72-73)

(h) Submission of false, misleading, or deceptive information to the Board

106. OAC Rule 4723-5-25 prohibits a program from submitting false, misleading, or deceptive information or documentation to the Board. It further provides that “Violation of this requirement shall be considered a failure to meet the requirements of this chapter in considering approval status.”
107. When Ohio American Health Care submitted its Conditional Approval Progress Report to the Board on December 16, 2010, Program Administrator Rosanna Bumgardner verified that the program was in compliance with numerous aspects of Chapter 4723-5. She did this by checking “yes” to various questions asking about the school’s administration, curriculum plan, systematic plan of evaluation, and

program records, attesting that the school was in compliance with the rules cited. She then signed her name as the Program Administrator, and dated the document December 13, 2010. (St. Ex. 44 at 4) At the hearing, Dr. Bumgardner bluntly admitted that she supplied false, misleading, or deceptive information to the Board, stating, "I did." She explained that she believed she would have time to get things in order after she sent the report. (Tr. at 443)

108. About three months later, Cathy Learn visited the school to conduct the March 2011 Survey Visit and found violations of some of the same rules that Dr. Bumgardner had recently verified as having been met. Ms. Learn included these findings in her Survey Visit Report, which notes that despite Dr. Bumgardner's attestation that all rule requirements were met, there still was no orientation for faculty and no systematic plan of evaluation, and the records retention plan and curriculum plan were not being implemented as the school had represented. (St. Ex. 15 at 16-17)
109. In its written response to the Survey Visit report, OAHC responded to the allegation that Dr. Bumgardner had submitted false, misleading, or deceptive information or documents:

Please accept the humble apologies of the Current Administration on behalf of Ohio American Healthcare Inc. for the false documents submitted by Dr. Bumgardner. As delineated in this report, these items have now been corrected. Going forward with a new administration, there will not be any reoccurrences of these misrepresentations ever reported to the Board again.

(St. Ex. 16 at 4)

110. In her cross-examination, Cathy Learn was asked if it was reasonable to attribute many of the deficiencies found in the first Survey Visit to Rosanna Bumgardner, as the Program Administrator. Ms. Learn admitted, "I would say she was a contributing factor to it." She emphasized, however, that Dr. Bumgardner could be held responsible only through the March Survey Visit, since she was terminated on March 28, 2011. She commented that many of the problems found at the March Survey Visit were still present at the May Survey Visit, after Dr. Bumgardner was no longer in that position. (Tr. at 918-923)

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

111. On September 8, 2011, the Board conducted an unannounced Survey Visit and found an additional violation of Chapter 4723-5. The Board's investigator documented her findings in a Survey Visit Report dated October 3, 2011. OAHC submitted a response to the Survey Visit Report in its letter dated October 25, 2011. The Board met on November 17-18, 2011 and considered both the Survey Visit Report and the

program's response to that report. It voted to issue a second Notice of Opportunity for Hearing, which was issued on November 18, 2011.

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

a. Failure to Implement Written Policies for Student Fees, Expenses and Refunds

113. 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;

114. In Ohio American Health Care's original proposal, the school represented that it would charge students tuition and fees as follows:

5. Student fees, expenses and refunds;

Nursing Transition LPN to RN Tuition/Fee Payment Schedule

(Payment schedule dates will be provided on enrollment approx 10 weeks apart)

	Fee/Supplies	Tuition
On Application	\$50	
On Registration	\$75	\$250
Prior to class (Lab Fee)	\$95	
First day of class		\$4,030
During 2 nd Course (books)	\$400	
Uniform costs - Prior to clinical (2 nd Course)	\$200	
During 2 nd Course		\$4,030
During 3 rd Course (books)	\$400	
During 3 rd Course		\$4,030
During 4 th Course (books)	\$200	
Prior to comprehensive exam NCLEX-RN		
Exam Fee	\$288	
	\$1,708	\$12,340
Total Tuition and Fees		\$14,048

(St. Ex. 8 at 44)

Likewise, the draft copy of the 2009-2010 School Catalog listed tuition as \$12,340 and fees as \$1,708, for a total of \$14,048. (St. Ex. 9 at 13)

115. Cathy Learn testified that every program on conditional approval has to submit a Pre-Survey Visit report to the Board, before the surveyors arrive to conduct the Survey Visit. Since the May 2011 Survey Visit was an announced visit, Dr. Yemi had provided that documentation to the Board on or about May 3, 2011, signing his

name on the transmittal letter, and the other documents accompanying it. Ms. Learn said that in several places in that documentation, the tuition and fees were represented to be the same as those set out in the proposal and in the draft school catalog. (Tr. at 760-771, St. Ex. 12 at 18, 20, 33)

116. When she went to the school to conduct the Survey Visit, Ms. Learn looked at student enrollment agreements on file, and found that students had been charged a different amount than what was listed in the documents that the program submitted to the Board. State's Exhibit 48 contains the enrollment agreements of 58 students in the first, second, and third cohorts. The agreements break down the charges to students as follows:

ENROLLMENT INFORMATION
Proof of valid Practical Nurse license is required. All admission requirements must be met prior to starting class.

Program/Course	Clock Hrs	Start Date	End Date	Tuition	*Fees	Total
Registered Nurse	1206	12/08/2010		\$16,500	\$2020	\$18,520

APPLICANT SCHEDULE				
Hours Per Week	Days of Attendance	Times	Grad Date	Number of Weeks to complete
30	190	8:30am-2:30pm		38

***FEES**
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 \$200; Fourth term Books \$100; NCLEX-RN Review Course \$600. The total fees - \$2,020. 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. 48 at 88)

117. These documents showed that the amount charged for tuition alone was almost \$2500 more than the school had represented to the Board that it would be charging. Fees were also higher than the amount the program informed the Board that it would charge and that it represented in its student handbook (the only handbook that existed at that time) that it would charge. (Tr. at 760-773)
118. Ms. Learn noted that some students, such as the student whose enrollment agreement appears at the first page of State's Exhibit 48, signed their contracts just days before the school provided its Pre-Survey Visit report to the Board. This particular student started her program on April 18, 2011. Her contract was signed that day by the student, and by Julia Wilson on behalf of the school. Some of the contracts were signed by Dr. Yemi himself, on behalf of the school. Yet when Dr. Yemi submitted the Pre-Survey Visit Report to the Board on or about May 3, 2011, those materials represented that students were being charged only \$14,048 for total tuition and fees, when actually, they had each paid \$18,520 – a difference of about \$4,500. (Tr. at 765-767, St. Ex. 48)
119. Ms. Learn testified that she made a chart to show tuition and fees paid by each student whose contracts she reviewed, and included that chart in the Survey Visit Report, dated October 3, 2011. Her chart shows that all of the students were

charged \$16,500 for their tuition, but there was some variation in the amount of fees charged. Most students paid \$2,020 for their fees, but some paid \$1420 and one student paid no fees. Therefore, their totals ranged from \$17,920 to \$18,520. Each student nonetheless paid about \$4500 more than that \$14, 048 that the program represented that it would charge. (St. Ex. 45, Tr. at 763-765)

120. In addition to the fact that students were charged more than the handbook and documents on file with the Board said they would be charged, the discrepancy in those numbers demonstrates an inaccuracy in the financial documents that the school submitted as part of its Pre-Survey Visit Report. The Income Statements included in that report are based on a tuition figure shown as \$12,340. If each one of 58 students paid at least \$4,000 more, the figures shown on those statements are incorrect, and the school actually collected several hundred thousand dollars more than the amount shown on its financial statements. (St. Ex. 12 at 18-20, Tr. at 769-770)
121. On cross-examination, Cathy Learn conceded that the program was not cited for having "excessive tuition," and that all of the students were charged the same amount. She said that the problem was that there was a difference between the amount stated in the proposal and the Pre-Survey Visit Report, compared with what students were charged in their enrollment contracts. "The school could have established their own tuition and fees, but once they establish their policy, then that policy is what should be implemented and followed." Likewise, Chandra Smith, who served as the program's office manager and processed student payments, testified that she believed students understood that their tuition was \$16,500. She added that the reason for the change in fees was that the first students paid for their books as "fees." However, later it was discovered that it was less expensive for students to buy their own books, and so the cost of books was no longer included in the fee figure. (Tr. at 665, 671-672, 957)
122. OAHc responded to this allegation in its written response to the Survey Visit Report, a letter from its counsel at that time, Elizabeth Collis, dated October 18, 2011. The letter provided an updated enrollment agreement form showing revised amounts, as well as an updated fee schedule. It included an explanation that students were advised of the changes to the tuition and fee amounts:

Please be advised that 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. Based on the volume of the documents involved and the short notice provided by the Board to respond to this request, the Board will be provided with the updated Enrollment Agreements shortly.

(St. Ex. 47 at 1)

123. The updated enrollment agreement and fee schedule that was provided indicates that it became effective on October 13, 2011, almost two weeks after the Survey Visit Report was issued, even though the program had been charging students significantly higher fees since well before that date. (St. Ex. 47 at 2)

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

124. On October 12, 2011, the Board of Nursing conducted an additional unannounced Survey Visit to Ohio American Health Care. Cathy Learn testified that she conducted that visit, and that she once again found numerous violations of the laws and rules governing pre-license nurse education programs. She documented her findings in a Survey Visit Report dated December 1, 2011. (St. Ex. 49) It was sent to the attention of Erin Stout, who was the Program Administrator at that time, and it included a Student Key, identifying 26 students referred to by number in her report. (St. Ex. 50)
125. Ohio American Health Care provided a response, through a letter from Erin Stout dated December 20, 2011. (St. Ex. 51) The Ohio Board of Nursing considered Cathy Learn's Survey Visit Report as well as the response from Erin Stout, and voted to issue a third Notice of Opportunity on January 20, 2012. (St. Ex. 3a) The Notice alleged the following deficiencies in OAHC's program:

(a) 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.

126. 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 goes on to enumerate 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 Notice charges that during the Board's Survey Visit in October 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. 3a at 2)

127. Cathy Learn testified that when she conducted the Board's Survey Visit, Harold John or "Reverend John" as he was known, seemed to be deeply involved in the day-to-day operations of the program. When she first arrived, Program Administrator Erin Stout was not there. Another staff person, Jessica Jacklin, was present and offered to assist with the Survey Visit. Ms. Jacklin provided an organizational chart to show lines of communication and authority in the program. (St. Ex. 52) She told Cathy Learn that Erin Stout was on her way to the school. (Tr. at 775) While Ms. Learn waited for Erin Stout to arrive, Reverend John's involvement in the program became more apparent to her:

During the time frame Reverend John, as he introduced himself and calls himself, continued to ask questions, continued to provide information, wanted us to look at his policy that he was writing about different aspects of the program and to make comments about it, so it became very obvious that Reverend John was deeply involved in student records, faculty files.

Any questions that I had of Jessica or of Erin, he would immediately interject into the conversation and make comments that no, no, or yes, yes, or you need to do this or that, and then he would take them aside, tell them what to do and then come back and he might make the comment or they might make the comment.

(Tr. at 775-776)

128. Because Reverend John was not a nurse, Ms. Learn found this inappropriate, and included it as a violation in her December 1, 2011 Survey Visit Report. (St. Ex. 49 at 3-4) In the program's written response to the Survey Visit Report, Erin Stout confirmed that Harold John is not a nurse, but an accountant. She wrote that he "helps us with our books and some of the paperwork." Her letter referred to a corrected organizational chart showing a board of directors, of which Harold John is one, above Dr. Yemi, the owner of the school. Ms. Stout's letter attached an affidavit from Harold John, denying the allegations in the Survey Visit Report. Among Reverend John's statements in the affidavit are the following:

1- I did not ask the Board staff members to review and approve the program's written policy. This is a fabrication. Board staffs were on premises to survey our school program. I am part of management of Ohio American Health Care, Inc. I know better than to ask a Board staff to review and approve the program's written policy. Again, I am stating that this statement is false.

2- I must be familiar with our school's program. I am a Board member who is specialized in Management Audit. I have to make sure that the

program is operating correctly. I am not an instructor. I am not an educator. I am a business and administrative personnel. I am upper management.

3- The Nursing Program is a sub-division of the corporation. I must see that all division of the Ohio American Health Care, Inc. are operating according to guidelines and procedures set by monitoring agencies.

(St. Ex. 51 at 122)(Reprinted as in original)

129. Ms. Learn testified that with its response to the Survey Visit Report, OAHC sent documents, many of which show that Reverend John regularly acted as the program's official representative in daily operations. The school provided the enrollment contracts of 57 students. On all except one of the contracts, Reverend John signed in the place designated for the "school official signature." (St. Ex. 51a at 5-118) His signature appears on Independent Contracting Agreements for the hiring of two adjunct professors, Karen Tedder and Patricia Bennett, in September 2011. (St. Exs. 54, 55) He signed as the "employer" on Employee Confidentiality Agreements that the school entered into with Michelle Martens and Karen Tedder. (St. Exs. 56, 59) And, he signed faculty orientation checklists, verifying that faculty members B. Patel and Michelle Martens had completed their orientations. (St. Exs. 57, 58, Tr. at 778-780)
130. The revised organizational chart that OAHC submitted with its written response to the Survey Visit Report shows Reverend John as the "Interim Strategic & Financial Officer," below the governing board of directors and across from Dr. Yemi, and it notes that Reverend John was uncompensated for his work.⁵ (St. Ex. 51a at 139)
131. At the hearing, the Assistant Attorney General 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. (St. Ex. 60) 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. (St. Ex. 61) 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

⁵ Although Reverend John was properly served with a subpoena on April 11, 2012, compelling his attendance at the hearing, he failed to appear, and there was no explanation provided for his absence. (St. Ex. 86)

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. (St. Exs. 60, 61, 62, Tr. at 781-784)

132. At the hearing, Dr. Yemi, the owner of OAHC, testified that he was not aware that Reverend John had been convicted of a felony until a probation officer arrived at OAHC, about a week before the hearing took place. Concerning Reverend John's conviction, Dr. Yemi submits, "He was not actually the person that do it, but according to the judge, they said it's contributory charge against him for issuing the document to do the paycheck." Dr. Yemi said that he confronted Reverend John about his failure to disclose his conviction when he was appointed to the Board, and Reverend John then resigned. Dr. Yemi maintained, "I swear to God I don't know about it." However, former office manager Chandra Smith testified that she told Dr. Yemi in February 2012 that she had heard Reverend John had a criminal conviction. (Tr. at 128-130, 604-606)
133. On cross-examination, Cathy Learn agreed 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. (Tr. at 961-966) 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:

I was asking for documentation related to law and rule as far as anything, student files, et cetera, and he was the one that was responding very often to my questions. In technical senses he discussed the lack of the transcripts, that he was verifying that students did complete everything, he knew that they completed all of the requirements.

When I would be talking with Jessica Jacklin or Erin Stout, he would immediately intercede into the conversation and give the answers and tell them no, no, or yes, yes, and it was very difficult to tell who the program administrator was based upon it was him that was giving much of the information.

* * *

Q: Isn't it true that the problem was that not what Reverend John was doing so much but the fact that he seemed to be taking things over, is that what your concern was?

A: That he would not allow the program administrator and the assistant program administrator to answer questions without his presence was a bit of a concern, or that he interrupted them and he made comments that he brought policies in and said he was going to change them and implement them and make corrections to the student handbook; I think those were the concerns we had.

(Tr. at 962-964)

She added that she did not know Reverend John was a governing board member until after the Survey Visit, since he had introduced himself as a counselor for the students. (Tr. at 965-966)

134. Several former employees also testified about Reverend John's involvement in the program. Tracie Manning is a registered nurse with a bachelor's degree. She was hired as a teaching assistant in May 2011. Ms. Manning said that within a week after Julia Wilson left, Reverend John told her to teach classes without supervision:

Q: Was there anybody nominally the lead instructor, other than you?

A: That taught the class? No, I always taught the class. But as far as coordinating the class, Julie did help me initially, she was the person that I could go to and she would help me along.

Q: Okay.

A: But once she left, I didn't have any direction.

Q: Now, when did Julie leave OAHC?

A: I think it was around September of 2011.

Q: Now, you don't have a master's degree -

A: No.

Q: -- in nursing. Are you, to your knowledge, are you allowed to teach an RN class unsupervised?

A: Now I know no, I'm not supposed to.

Q: Now, when Julie left, did you receive any instruction from anyone on what to do?

A: When Julie left, I was instructed by Reverend John that I needed to make the test and I also needed to grade the students' assignments on my own.

Q: Now, did he - so, in fact, did you grade tests on your own and enter grades?

A: Yes.

(Tr. at 217-218)

135. Ms. Manning elaborated that in the last couple of months that she was there, Reverend John's involvement increased. He arrived before anyone else in the morning, he would call mandatory staff meetings, and "it seemed as if he was almost running everything." She related that Reverend John told the staff that Dr. Yemi wanted them to report to him, even though Erin Stout was the Program Administrator by that time. And, she said that even after Ms. Stout began working fulltime at OAHC, Reverend John's involvement did not decrease. "It still seemed as if he was running everything all the way up until the day I left." (Tr. at 220-222, 248) She was asked why it seemed that way:

A: I don't really know how to explain it. Like he was overbearing, kind of intimidating to me. I didn't like it.

Q: First of all, was he even there?

A: All the time.

Q: How often was he there?

A: Oh, he was always there.

Q: Like a couple hours a day?

A: Oh, no, no, no, no, 10 to 15 hours a day that man was in there. * * *
Like I said, he acted as though he was like the director of the facility.

(Tr. at 222-223)

136. On cross-examination, Ms. Manning was asked why she did not seek supervision or guidance from Erin Stout or Jessica Jacklin, who both had master's degrees:

Q: So [Reverend John] told you to do that and then you didn't check with Erin or anything about whether that was going to be right or wrong?

A: At that time I really didn't know what to do. I felt, like I said, I felt, I don't want to say, "threatened," but I felt like, you know, he was intimidating to me and I didn't want to lose my job. So I kind of just shut up and stayed there until I could find another job.

(Tr. at 235)

Later on cross-examination, she said that she felt like she had to do what Reverend John told her to do:

I went ahead and taught the class because I felt like my boss, Reverend John, told me to do it. That's what I felt like. I felt like he was my boss. That is what I want you to understand, he was like the person that ran the company.

(Tr. at 237)

137. Julia Wilson, the de facto Program Administrator during several periods of time, testified that she knew Reverend John as a friend of Dr. Yemi's from New York. Referring to the organizational chart, she said that he 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." (Tr. at 538-541, 549, St. Ex. 51a)

138. Chandra Smith also testified about her experience with Reverend John at OAH. Ms. Smith was hired as a receptionist on August 2, 2010, but was promoted to office manager in April 2011 after Rosanna Bumgardner left. When she was asked who Reverend John is, she laughed and quipped, "I'd like to know who Reverend John is too." She stated that he was the husband of one of the students at OAH, and that he was initially brought into the school in June or July 2011 to teach her how to use the Quickbooks program. However, his role increased over time. She stated that Dr. Yemi gave Reverend John control, and that even Program Administrator Erin Stout answered to Reverend John. (Tr. at 596-560)
139. Ms. Smith said that Reverend John's role did not decrease after Erin Stout was hired as the Program Administrator. She related that "Erin wanted to do things right," but that every time Erin Stout made a change, "Reverend John would throw a tizzy fit and it would go back to his way." (Tr. at 601-602)

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

140. 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:

When I wanted to go on a - conduct kind of a visit of where the classrooms were, she went with me as I requested and she showed me a couple of classrooms. And I asked her to go see the other classrooms across from kind of the public bathrooms, ladies room, and she said, "There are no other classrooms."

And I had to show her where her other program classrooms was, and when she saw them, she said, "Oh, I didn't even know we used this part of the building," something to that effect. And she didn't seem to recognize the faculty that were in the classrooms. And I introduced her to her own faculty.

(Tr. at 787)

141. Ms. Learn added that Erin Stout had been named Program Director in early September 2011, and it was October 12, 2011 when she was there conducting the Survey Visit, four or five weeks after she had supposedly been in that role. 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. (Tr. at 787-788)
142. Cathy Learn included these details in her Survey Visit Report findings that the Program Administrator did not have accountability for all aspects of the program.

(St. Ex. 49 at 3, Tr. at 788-789) When OAHC responded in writing to these allegations, Erin Stout provided the following explanation:

[The Survey Visit Report] 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 them 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. 51 at 2)

143. In OAHC’s written response, Erin Stout also responded to the charges that she was unfamiliar with the facilities and with faculty members. She explained that the two classrooms that she was unfamiliar with were being used for the very first time on the morning of the Survey Visit. In addition, she responded to the allegation that she did not recognize instructor Katherine Penty, writing, “What really happened is that I didn’t SEE Kathy Penty in the classroom, NOT that I didn’t recognize her once I saw her!” (St. Ex. 51 at 2, Emphasis in original.)
144. At the hearing, Cathy Learn explained why she did not believe Ms. Stout’s response was truthful:

*** I introduced her to Kathy Penty. I said, “Well, this is one of your faculty,” and they shook hands in the hallway in front of me, so I didn’t believe her response to be accurate or honest.

(Tr. at 973)

145. On cross-examination, Ms. Learn admitted that nothing in the Rules requires a Program Administrator to be present at the school every day, and in fact, there are provisions in the Rules for when a Program Administrator vacates the position. The school has a period of time in which to appoint a new Program Administrator when that occurs. She also acknowledged that it is not a violation if a school does not have a Program Administrator at any point in time. She admitted that Erin Stout told her at the October Survey Visit that she was new to the school, and she was familiar with the school’s staff problems and high turnover, adding that Dr. Yemi had notified her every few weeks that he was changing Program Administrators. However, Ms. Learn insisted that even though Erin Stout was only working part-time in October 2011, she was nonetheless the one who was held responsible for all aspects of the program, since she had been named the Program Administrator in the preceding August or September. (Tr. at 916-917, 937-938, 974, 992)

(iii) The Program Administrator did not ensure that faculty received orientation.

146. 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. Cathy Learn testified that when she reviewed faculty files during the October 2011 Survey Visit, she found that the file of one instructor, Alicia Hill, was missing an orientation checklist. The file of another instructor, Bijal Patel, had a checklist, signed by Reverend Harold John on behalf of the administration, but certain items were not checked off, suggesting that she had not completed those parts of her orientation. That checklist shows that Ms. Patel was not checked off on "introduction to all staff members," nor to "orientation to curriculum and expectations from instructors as well as students." (St. Ex. 58) Finally, Ms. Learn testified that when she asked instructor Katherine Penty if she had had an orientation, the instructor told her, in the presence of Erin Stout, that she had not; that she had just been given a book and told to go teach the class. (Tr. at 789-791)

147. The Program Administrator's failure to implement a faculty orientation process was cited as a violation in the Survey Visit Report. (St. Ex. 49 at 5-6) When OAH provided its written response to the allegations in the Survey Visit Report, it addressed the orientation charges as they related to Bijal Patel, Katherine Penty, and Alicia Hill. With respect to Instructor Bijal Patel, the school explained as follows:

When Bijal Patel was oriented, there wasn't a Program Administrator. The Lead Faculty, Julia Wilson, did the orientation. Ms. Wilson did not sign the document and is no longer employed at OAH. Reverend John signed meaning that due to the location of his office, he heard Ms. Patel being oriented by Ms. Wilson. If you deem it necessary, we can get an affidavit from Ms. Patel saying that she was oriented by Ms. Wilson.

(St. Ex. 51 at 2)

With respect to Instructor Alicia Hill, the school provided the following explanation:

Orientation checklist for Alicia Hill was not present in her file.
Explanation: She was hired by the previous administration on June 22, 2011. When I started as Program Administrator on September 13, 2011, Ms. Hill was no longer employed by OAH. I had other things that required my attention and didn't see a good reason to follow up on this.

(St. Ex. 51 at 2)

With respect to Instructor Katherine Penty, the school explained as follows:

The December 1, 2011 SVR alleges that “although she had signed the checklist, she had not received an orientation to her position.” This has since been rectified.

(St. Ex. 51 at 2)

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

148. 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 at the time of the Survey Visit showed her as the “ADON [Assistant Director of Nursing], Program Manager,” as well as the Lead Faculty. (St. Ex. 52) Testimony at the hearing demonstrated that this school used the term “Director of Nursing” [DON] interchangeably with the term, “Program Administrator.” 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.
149. Cathy Learn testified that during the Survey Visit, it was clear to her that Jessica Jacklin was serving as the Associate Program Administrator:

Q: And what makes you think that she was the associate administrator?

A: She said she was. She had it on an organizational chart. She had a paper on her office door that stated she was the associate administrator. She discussed – when we asked Erin about the budget, she told us to talk to Jessica. Jessica told me that she was putting together the budget to put in a new laboratory * * * She was the one that provided the clinical paper that said where the students were. She was the one that retrieved all of the documents for me when I would request anything, and frequently Erin would tell us that she didn’t know, “You need to talk to Jessica about that.”

(Tr. at 796)

150. The problem with Ms. Jacklin’s serving as the Associate Program Administrator was that she did not meet the requirements of OAC 4723-5-10(A)(2) to be in that position, because she did not have two years of experience as a faculty member in a registered nursing program. Ms. 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. Ms. Learn identified Jessica Jacklin's resume at State's Exhibit 64. She explained that Ms. Jacklin had been an instructor at Hondros for a very short time on the date of the Survey Visit. Although she 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, Tr. at 794-796)

151. Cathy Learn testified that she included this information in her Survey Visit Report. (St. Ex. 49 at 7-8) In the program's written response to the Survey Visit Report, 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. However, Ms. Stout said that while awaiting clarification from the Board, Ms. Jacklin's title had been changed to "lead faculty."
152. Cathy Learn 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 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. (Tr. at 798-799)

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

153. In addition to the allegation that Jessica Jacklin did not meet the requirements set forth in OAC 4723-5-10 to be an Associate Program Administrator, the Board's January 2012 Notice alleged that three other faculty members did not meet the requirements to hold the positions in which they served: Karen Tedder, Tracie Manning, and Dennis Koroma.

Karen Tedder

154. At the hearing, Cathy Learn identified Karen Tedder's resume, which shows that she graduated from Chamberlain College of Nursing in 2010. (St. Ex. 68) Ms. Learn further identified Board of Nursing records showing that Ms. Tedder was first licensed as a registered nurse on March 24, 2010. (St. Ex. 67) 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 4723-5-10 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. Ms. Learn included this as a violation in her Survey Visit Report. (St. Ex. 49 at 8-9) 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 position to a lab assistant. She only worked here for a week or two, and is no longer employed at OAHc.

(St. Ex. 51 at 3)

Tracie Manning

155. Cathy Learn testified that she saw Tracie Manning at the Survey Visit, and she remembered seeing her on an earlier visit. Ms. Manning asked to speak with Cathy Learn, and she proceeded to tell her that she was teaching RN 003: Nursing Through the Lifespan: Maternity and Newborns. Ms. Learn asked her for the syllabus for the course, and she produced one that had no instructor's name listed on it. Ms. Manning told Cathy Learn that she was the instructor of the course, and wrote her name on the top of the syllabus. Ms. Learn asked her if she had gotten her master's degree, and Ms. Manning replied that she had only a bachelor's degree. When she asked her who was in charge of the course, Ms. Manning told her, "I am." (St. Ex. 69, Tr. at 803-806)
156. Ms. Learn explained that although Tracie Manning could have served as a teaching assistant, a lab assistant, or even a clinical instructor, but not as a faculty member teaching a course. Since OAC 4723-5-10(A)(3)(c) requires that a faculty member teaching a course must have a master's degree, Ms. Learn included this as a violation in her Survey Visit Report. (St. Ex. 49 at 8, Tr. at 802-806) In the program's written response to the Survey Visit Report, Erin Stout conceded that Ms. Manning had only a bachelor's of science in nursing [BSN] and that she was hired in September 2011. She wrote that Ms. Manning was no longer employed by OAHc at that time. (St. Ex. 49 at 3)
157. Cathy Learn also related that Tracie Manning reported to her that she was working under the direction of Reverend John:

[S]he went on to say that she had not had direction, that Reverend John was telling her what to do, and there had been a period of time when there was no one there. Susan Thomas had left and Erin Stout – there was a period of time between them coming and then Erin had not been there but maybe a few hours occasionally.

(Tr. at 804-805)

158. On cross-examination, Ms. Learn was asked if it would still be a violation for Tracie Manning to teach the course if Erin Stout had been supervising her. She agreed that Tracie Manning could teach portions of the course under the supervision of Erin Stout, but she emphasized that that would be acceptable only if Erin Stout were the instructor of the course. And, on redirect examination, she stated Erin Stout never claimed to be the actual instructor of that course. She added that it would have been very difficult for Ms. Stout to provide that kind of supervision, because at that time she was at the school only two to three hours per day, a couple times a week, while she finished out her job at the Ohio State University Medical Center. Ms. Learn agreed that if the various individuals who served as the Program Administrator had the credentials for that position, then those individuals would have been able to provide some supervision. However, she maintained that that was acceptable “only if they were the faculty in charge of teaching that course.” (Tr. at 975, 935-936, 989-991)
159. Tracie Manning appeared at the hearing and corroborated Cathy Learn’s testimony that she was teaching as a faculty member, and that she had no “lead instructor.” Ms. Manning testified that although she does not have a master’s degree, she was teaching “pretty much everything” in RN002, including med-surg, gerontology, mental health, and a course called Nursing Through the Lifespan: Maternity and Newborn. Ms. Manning testified that Reverend John directed her to teach the course, make up exams, and grade the students’ work. She clarified later in her testimony that neither Jessica Jacklin nor Erin Stout was serving as her lead instructor. (Tr. at 224-230, 244-250)
160. Although Ms. Manning agreed on cross-examination that Reverend John was not telling her how to teach the course, on redirect examination, she said that *no one* with a master’s degree ever told her how to teach her course. (Tr. at 236, 241)

Dennis Koroma

161. Cathy Learn testified that when she conducted the Survey Visit, the grade lists for the students’ Pharmacology class identified Dennis Koroma, M.D. as the instructor of the course. (St. Exs. 66, 66a) Ms. Learn said that 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. Learn said that she received no documentation during or after the Survey Visit identifying anyone other than Dr. Koroma as the instructor of that course. She included this as a violation in

her Survey Visit Report, which alleged that Dr. Koroma does not hold a current, valid license to practice any health care profession in the State of Ohio.⁶ (St. Ex. 49 at 9)

162. OAHC responded to this allegation in its written response to the Survey Visit Report, prepared by Erin Stout:

Dennis Koroma, M.D. The December 1, 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. 51 at 3-4)

Although the document stated that "a nurse" taught part of the course relating to nursing principles and that his or her name should have appeared on the documentation, that person was not named. Ms. Learn testified that at no time during or after her investigation did the school inform the Board of who the nurse instructor was. (Tr. at 806-809) In addition, she testified that although the school identified him as a medical doctor, Dr. Koroma is not licensed as a physician in Ohio. (Tr. at 1012-1013)

163. Julia Wilson, the de facto Program Administrator at times when there was no official administrator, testified that when she got the Survey Visit Report and learned that Dr. Koroma was not supposed to be teaching the nursing part of the pharmacology course, she assigned an instructor who was a nurse to teach the first half of that course; Dr. Koroma then taught the second half of the course. (Tr. at 546-547)

(c) The Program did not implement its student progression policies and policies for fees and refunds as written.

164. OAC 4723-5-12(A) requires that a program establish and maintain written policies for numerous policies related to its students and the operation of its academic program. Among the written policies that a program must have and apply are the following:

(1) Student admission;

(4) Student progression, which shall include the following:

⁶ 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.

- (a) The level of achievement a student must maintain in order to remain in the program or to progress from one level to another; and
- (b) The requirements for satisfactory completion of each course required in the nursing curriculum;

(5) Requirements for completion of the program;

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

(i) Student files did not have documentation of admission prerequisites.

165. OAHC's Student Handbook listed certain prerequisites that a prospective student to the nursing program would have to meet. These remained consistent from the draft 2009-2010 Catalog, to those for the years 2010-2011 and 2011-2012. (St. Exs. 9 at 5, 10 at 8-9, 11 at 5) They included the following:

PREREQUISITES FOR ADMISSION

- High School Diploma and official High School Transcripts or General Equivalency Diploma (GED) with passing scores. (Foreign high school diplomas must be equated to United States educational system.) Students who have completed a college degree may have this requirement waived. Students with certification as a Geriatric Nursing Assistant (GNA)/Certified Nursing Assistant (CNA) may have this requirement waived.
- Minimum age of 17 years, students under 18 years old, must have parental/guardian permission.
- A passing grade on the pre-entrance exam (see "Entrance Exam")
- Three references from people who have known the student for a minimum of one year who can attest to the student's character, work experience and/or community services. The people providing these references should not be related to the student by blood or marriage.
- Personal Interview
- Health History and Physical Exam. Each student is required to provide a health history and physical examination (performed within the past year). Immunization status must document either positive testing for or a history of having had the following diseases: rubeola (measles), rubella (German measles), mumps, varicella (chickenpox). A current negative chest x-ray or negative tuberculin test is required. It is recommended that students receive the Hepatitis B vaccination or a waiver declining the vaccine. These items are required by the first day of classes.
- Clear Criminal Background Check
- CPR Certification is required before starting class.
- All nursing students must have malpractice insurance.

NURSING TRANSITION FROM LPN TO RN PREREQUISITE

In addition to the above entrance requirements, students in the Nursing Transition from LPN to LPN to RN program must have graduated from an approved LPN program and have a valid and current LPN license.

(St. Ex. 11 at 5)

166. Cathy Learn testified that when she reviewed student files during the Survey Visit, 15 of the files did not have evidence that the student had met all of those prerequisites. Her chart on page 11 of the Survey Visit Report shows what was missing from the files of those students. Ms. Learn testified that she took this data from a more detailed chart she made to show exactly what was missing; for

example, if a student did not have proof of all of his or her immunizations, she documented on the more detailed chart which ones were missing. (St. Ex. 49 at 11, St. Ex. 70) Generally, each student had *some* of the required documentation, but not all of it; however, the missing information was often something that was critical for nursing students who would be working with patients in their clinicals. Seven students did not have documentation of immunizations and/or a TB test. Three students did not have evidence of malpractice liability insurance. Two students had no evidence of a criminal background check. (St. Ex. 70, Tr. at 809-812)

167. One of the other requirements was that a student have a passing grade on the pre-entrance exam. Office manager Chandra Smith testified that she administered the admissions test to students and then faxed it to Dr. Yemi, who would later call with the student's score. She stated that in her experience at the school from August 2010 until very recently, only one person had ever failed the test. (Tr. at 609) In her answers to later questions, she chuckled as she explained that the person who failed was someone that Dr. Yemi and Reverend John believed had been sent by the Board as a test:

A: They thought that she was – they thought that she was sent in by you – Cathy [Learn] – to spy on the program so they failed her.

Q: How do you know this? Who told you this?

A: Reverend John was thinking she was in here because he thought that you guys had sent her because that was the time when you guys made the surprise visit and, remember you knocked on the – I answered the door and I was like, okay. So he thought that you guys sent her to – Reverend John thought that you sent her to spy so he told Dr. Yemi, and so when he told Dr. Yemi, when her test came back, she failed. And then she paid again and came back and took the test and passed.

Q: Did Reverend John tell you he thought this?

A: Yes.

(Tr. at 669-670)

168. Ms. Smith testified that she was in charge of making sure the students had what they needed in their student files. If a file was missing something, such as CPR certification or malpractice insurance, the student was given some additional time to get that documentation. However, she said that the administration was very lax about it. "But for the most part if they didn't have it in a certain amount of time, there really was no – no repercussions behind it." (Tr. at 612-614)
169. In OAHC's response to the Survey Visit Report, it acknowledged that admission prerequisite documentation was missing from the files of 15 students and asserted, "This has been rectified." (St. Ex. 51 at 4) However, Cathy Learn testified that the school never produced the missing documentation to show that it had been obtained. (Tr. at 812)

(ii) Student progression policies were not followed as students progressed from one course to the next.

170. In OAHC's 2011-2012 Student Handbook, the school's policy states, "A student must successfully complete each course prior to advancing to the next level course." Subsequent parts of that policy elaborate that a student must pass both the theory and clinical component of each course with a grade of at least 75%. (St. Ex. 11 at 26)
171. Cathy Learn testified that when she asked to see the grades for the first cohort of students, the school provided the lists of grades at State's Exhibit 71. She explained that the second page of the document shows that the column for grades in Pharmacology was left blank – no grades at all were shown. She included this as a violation in her Survey Visit Report. The Report stated that despite the school's policy that a student must successfully complete each course before advancing to the next one, students #16-31 in the first cohort progressed from RN002 to the classes in RN003 and then to a class in RN004 without having successfully completed the Pharmacology course that was required in RN002. (St. Ex. 49 at 12, Tr. at 812-813)
172. OAHC provided the following explanation in its written response to the Survey Visit Report:

No recorded grades for a Pharmacology course. Explanation: the Pharmacology instructor stated verbally that they had all passed, so they were progressed. He neglected to put the grades in the computer, though. This has been rectified.

(St. Ex. 51 at 4)

Ms. Learn stated that OAHC had never provided documentation of those grades to the Board, to show that those students successfully completed that course before moving on to the later courses in their programs. (Tr. at 814)

(iii) Two students who were issued certificates of completion of the program were found to have insufficient documentation that they completed three classes.

173. This allegation concerns two students identified as Student #26 and Student #28 in the January 2012 Notice. Since those students were referred to by different student numbers in other allegations in the two other Notices, the State presented a "Master Key" with newly-assigned numbers, so that each student involved in any of the Notices has only one "Student number." (St. Ex. 7) In the Master Key, Student #26 is now Student #57. Student #28 is now Student #47.

174. On October 5, 2010, Program Administrator Erin Stout signed a Certificate of Registered Nurse Program Completion form for Students # 57 and 47, verifying that each of those students had completed "all curriculum and all other requirements for a Diploma of Registered Nursing" as of September 19, 2011. (St. Exs. 73, 74)
175. Cathy Learn testified that there was inadequate documentation to show that these students had actually completed all the requirements of the program because when she conducted the Survey Visit, she asked to see the transcripts of those students. She reported that Erin Stout and Reverend John had told her there were no transcripts. She said she then asked if there were any grades anywhere for these students. She was provided with the list of grades at State's Exhibit 71, with its missing grades for Pharmacology. Ms. Learn said that in addition to the missing Pharmacology grade, the third page of that document shows no grades listed for the "Comprehensive" final, although she said she could not tell if that was a final course or a final exam. She admitted on cross-examination that she had not gone back to the school after her visit to ask them to provide the missing grades, but she added that she had already asked Erin Stout for them at the time of the Survey Visit. (Tr. at 815-818, 980-982)
176. Also on cross-examination, it was suggested to Ms. Learn that the Certificates of Completion for those two students could be deemed to be "transcripts." Ms. Learn rejected that suggestion, stating that a certificate of completion is not a transcript. She explained that a transcript typically contains a list of the courses a student took, the date the student completed the program, and what degree was earned. (Tr. at 978-979) She added that Erin Stout seemed puzzled by what she was asking for, when she requested the transcripts:

A: She didn't seem to understand what a transcript was or she was not understanding when I asked her, "Could you provide me the transcripts for the students that have completed the program," because it's what I'm basically looking for in students that have completed, and she said there were completers.

I went through a process of explaining what a transcript was to her and even identified it as something she would have for herself. Then she said, "Oh, no, we don't have those." But Reverend John interceded and said, "Oh, yes. Yes, we do." And I said, "Well, if you have them, can I see one?" And he said, "Oh, it will take me a while" And I asked where they were and he said, "I'll find them for you." And three hours later I asked for it again and they then decided they didn't have any.

Q: Okay. Have you ever encountered another nursing school where they were unable to provide you with any transcripts?

A: No. Not for a graduate of their program. Sometimes I would view them on line, most often, then they would print one off for me.

(Tr. at 988-989)

177. Ms. Learn testified that there was also inadequate documentation to show that those two students had completed the laboratory and clinical requirements of the program. State's Exhibit 75 is the final Lab and Clinical Skills evaluation from the Gerontology class for Student #47. It shows no lab grades at all – the column for lab grades is left blank. And, for the clinical grades, which were to be designated either "pass" or "fail," some of the skills are marked, "N/A," suggesting that this student had no training in those areas. The areas marked "N/A" included skills such as tube feeding, catheterization, and work with sterile dressings, as shown below:

and Clinical Skills Evaluation		Gerontology	
Student Name: _____			
Instructor: <i>Kim Stampex</i>			
VERIFICATION DATA MUST APPEAR IN EITHER LAB OR CLINICAL COLUMN.			
	LAB	CLINICAL	
	Pass/Fail	Pass/Fail	
61	Ear		PASS
62	Throat		PASS
63	Tube feeding		N/A
64	Specimen collection		PASS
65	Foley		PASS
66	Urine		PASS
67	Stool		PASS
68	Measure and record intake and output		PASS
69	Catheterization		N/A
70	External catheter care		PASS
71	Bladder irrigation and instillation		N/A
72	Specimens from closed systems		PASS
73	Enema administration		N/A
74	Colostomy irrigations		PASS
75	Wound care		PASS
76	Sterile dressing		N/A
77	Wet to damp dressing		PASS
78	Care of patient		PASS
79	Respiratory care		PASS

(St. Ex. 75 at 3)

For brevity, only part of the document is reproduced above as an example and, of course, the student's name has been redacted. Ms. Learn testified that other important areas including IV medications, tracheostomy care and cast care were also marked, "N/A." She commented that these are necessary skills. "I would think that most of the items that are marked 'N/A' should have been either done in a lab or done in a clinical or both." (Tr. at 821)

178. For that same student's Clinical experience in this course, done at Westminster Thurber, pages 5 through 8 of State's Exhibit 75 show that clinicals were scheduled to be held for 10 weeks at that facility. However, the clinical check-off sheets show that only 5 or 5 1/2 weeks of that experience were completed. These evaluations show a mid-term grade, signed off on by Yasmine Harden on February 8, 2011, but no final grade. In her testimony, Rosanna Bumgardner related that Westminster Thurber ended its clinical affiliation with the program after Ms. Harden was found

to be taking frequent naps when she was required to be supervising students. (St. Ex. 75 at 5-8, Tr. at 821-822, 378-379)

179. The other student, Student #57, had similar documentation for the Lab and Clinical Skills final evaluation. No grades at all are shown for lab work, and that column was left completely blank. And, skills including catheterization, sterile dressings, cast care, and tracheostomy care were marked "N/A" rather than "pass" or "fail." (St. Ex. 76 at 1-4) This student also completed only 5 or 5 ½ weeks of the clinical experience at Westminster Thurber, as shown by the check-off sheets later in those documents. And, that student also received a mid-term grade signed off on by Yasmine Harden on February 8, 2011, but no final grade for that experience. (St. Ex. 76 at 5-8)
180. Cathy Learn said she never got documentation from the school to show that these two students got all of the training they were supposed to get before they completed the program. She emphasized that some of the skills which these graduates do not appear to have been taught are critical ones for RN's to be able to perform:

Q: Are these matters nurses should be expected to do when they're RNs and they graduate?

A: These are basic registered nursing skills that I would expect a registered nurse that may be supervising other nurses to have some awareness of and at least be competent in.

Q: Wait. Supervising other nurses. This person would have just graduated. Why would a new graduate ever supervise any other nurse?

A: Well, she would – just by having a registered nurse licensure, if she was hired by a nursing home, she certainly would be eligible to supervise the nurse aids and the LPNSs beneath her.

(Tr. at 824)

181. She added that students who graduate from a diploma program such as this one may be more likely to end up working in nursing homes or in home health care, rather than magnet-status hospitals where there would be a higher level of supervision. She expressed concern that Student #57, who was deemed to have completed the program, had no documentation to show that she was taught how to do sterile dressings in a lab or a clinical course. And, although she acknowledged on cross-examination that these students were already LPN's who should have had some experience with sterile dressings, she explained on redirect that there are some advanced types of sterile dressing procedures that one would perform as an RN, but not as an LPN. As an example, she suggested that a different type of dressing might be used on a patient in an Intensive Care Unit or a patient with a catheter. (Tr. at 826, 931, 1003)
182. Ms. Learn testified that she included these allegations as violations when she wrote her Survey Visit Report, citing the graduation policy in all three editions of the

Student Handbook, which required the student to “complete the entire program as prescribed by the School/institution.” (St. Ex. 49 at 12) At the hearing, she also pointed out OAHC’s representation in its proposal submitted to the Board of Nursing that in order to graduate, a student would be required to complete the entire program as prescribed by the school and meet all curriculum requirements as defined and established by the school. (St. Ex. 8 at 43)

183. OAHC responded to those allegations in its written response, prepared by Erin Stout, the Program Administrator at that time:

The staff at OAHC told me that two students had completed the program. I knew that they had passed the exit test. I signed letters of completion. Explanation: I am used to a more organized program. If the faculty/staff say that the program was complete, it didn’t occur to me to make sure that all the grades had been recorded. I wasn’t aware that it was the Director of Nursing’s responsibility to go back and check the validity of every grade.

(St. Ex. 51 at 4)

Ms. Stout added, “On a happy note, one of those two students has already taken the NCLEX and passed at 75 questions.” (St. Ex. 51 at 4)

(iv) The program failed to issue a refund in compliance with its policies to a student who withdrew from the program.

184. The 2009-2010 draft edition of the Student Handbook, as well as the handbooks for the years 2010-2011 and 2011-2012 all included a policy for a tuition refund if a student withdraws or is terminated from the program. That policy stated, “Refunds shall be made within thirty days after the school has determined that a student has withdrawn.” (St. Ex. 11 at 35)
185. Cathy Learn identified documents showing that Student #32 had decided to withdraw from the program after she had made her downpayment, but before she began her program. In a handwritten letter to OAHC dated August 8, 2011, the student explained:

I was planning to attend the RN program in September this year but due to financial difficulty I have to drop out and regret to ask for my down payment back. Hopefully the school will have financial aid one day and I’ll be able to attend.

(St. Ex. 78)

A date stamp on the letter shows that OAHC received it on August 10, 2011, just two days after the student mailed it. This student’s admission checklist showed that the

amount of that student's downpayment was \$1,450. (St. Ex. 79) The student included her bank statement showing that the check was cashed by OAHC on June 15, 2011. (St. Ex. 80)

186. Ms. Learn testified that the student had called the Board several times about this issue before the Survey Visit, and that she inquired about it when she visited the school on October 12, 2011 -- about two months after the student had requested a refund. Ms. Learn's Survey Report documented that Erin Stout told her she had no information about this and referred her to Jessica Jacklin. Jessica Jacklin referred her to Office Manager Chandra Smith, who presented a copy of the student's letter, showing that it was, in fact, received on August 10, 2011. Chandra Smith told her that she was aware of the 30-day refund policy, but the student had not been issued her refund because Yemi Oladimeji had not authorized it. (Tr. at 830-833, St. Ex. 49 at 14)
187. Ms. Learn testified that after the Survey Visit, she provided Student #32 with a "Nursing Education Dissatisfaction Form," which the student then filed with the Board of Nursing. (St. Ex. 77) Along with her complaint, the student included documents showing her payment and her request for the refund. (St. Ex. 80) Her complaint states, in pertinent part, as follows:

I sent a letter to the school in Aug which the school recived on Aug 11th to get my refund back that was for the down payment \$1,450.00 to hold a spot. I called end of Aug and the receptionist told me "We recived your request but we have one month from now to pay back the down payment. So I waited until middle of September and started to call again and every time there was other excuses like I need an approval from the owner to write the check to pay any one and we have three more people to pay that withdrew also." Or the receptionist will put me on hold until I sit then hang up because she never came back on the phone. So I have not recived the refund back and it is 2 and a ½ months from now going on 3 months since I requested my refund. And I'm afraid the school will not pay if I did not talk to the Board of Nursing. I hope to get this money back. I really need it now. Please help me. Thank you.

(St. Ex. 77 at 1-2)(Reprinted as in original)

188. In its written response to the Survey Visit Report, OAHC conceded that it had not followed its refund policy with respect to Student #32:

"Despite the Program's published thirty (30) day refund policy the Program had not refunded student 32's fees as of the October, 2011 survey visit." This was an oversight and has been rectified. The student has her refund.

(St. Ex. 51 at 4)

OAHC included a copy of the refund check dated October 25, 2011, for the refund to this student of \$1,450. (St. Ex. 51a at 1) It also included the following explanation with the check:

Tuition refund due student [name redacted] was made and mailed to student on October 25, 2011. There is no more amount due student. Attached, please find a copy of check sent to student.

Our interim Financial Officer (Reverend John) processed request for refund within two-weeks when the Request for Refund was submitted to him.

(St. Ex. 51a at 2)

189. Despite the fact that the program claimed to have processed the request for the refund within two weeks of the student's request, the check was not issued until about two months after OAHC received the student's letter, and about two weeks after the Board's Survey Visit.
190. Chandra Smith, the office manager during that time period, testified that she was familiar with this student, identified as Student #32 on the Third Notice, but as #77 on the Master Key, because that student had called her several times wanting her refund. Ms. Smith said that she was the payroll administrator and could check the balances of the school's accounts. She explained the reason that this student did not get her refund within 30 days: "[T]he funds weren't there is what it boiled down to." (Tr. at 640-646)

(v) The program failed to establish a written policy for the payment of fees and expenses associated with the program, as required by OAC 4723-5-12(A).

191. OAC Rule 4723-5-12(A)(6) requires a program to have written policies for the payment of fees and expenses associated with the program. At the hearing, Cathy Learn testified that OAHC's 2011-2012 Student Handbook includes the following statement regarding its policies for student fees and expenses:

FINANCIAL INFORMATION

TUITION

Please review Tuition / Fee Schedules in the Program Information section for each program offered.

(St. Ex. 11 at 34)

Ms. Learn testified that the problem is that there is no such fee or tuition schedule in the handbook, so it referred to a section that simply was not there. (Tr. at 833-834) She included this as a violation in the Survey Visit Report, and OAHC admitted in its written response to the Survey Visit Report that it did not appear in the handbook, writing, "This is correct. It was inadvertently left out of the last printing. It has been rectified." (St. Ex. 51 at 4)

(d) The Program did not implement its curriculum as written.

192. OAC 4723-5-13, titled "Curriculum for a Registered Nursing Program," sets out the curriculum requirements for a program. Subsection (C)(3) requires the curriculum objectives or outcomes and the teaching strategies and evaluation methods to be implemented as written by the program.

(i) The program did not include the lab hours in RN002's Medical Surgical course that the syllabus for that course said would be provided.

193. The syllabus for the Medical Surgical Class in RN002 showed that the class would include 86 theory hours, 16 laboratory hours, and 88 clinical hours, for a total of 190 hours. (St. Ex. 28) Ms. Learn testified that OAHC's original proposal had included a lab evaluation checklist that the program represented it would be using to evaluate students in this class. (St. Ex. 8 at 82-83) When she conducted the Survey Visit, Ms. Learn was looking for documentation that the 16 lab hours had been completed. She stated that she asked Erin Stout for the evaluations to show the completion of that lab work, but Erin told her to go ask Jessica Jacklin. Ms. Jacklin provided only the course syllabus, but did not have any documentation, such as students' evaluations, that would show they completed their lab hours. Ms. Learn emphasized that she was not looking exclusively for the particular lab evaluation form that the proposal included. "I would have accepted if they had any type of checklist that indicated their labs were completed in med/surg. They could have redeveloped it. But they didn't have anything." (Tr. at 845-849)
194. Ms. Learn included this finding as a violation when she prepared her Survey Visit Report. (St. Ex. 49 at 15) OAHC addressed the allegation in its written response to the Survey Visit Report:

The SVR mentions two separate classes, Medical Surgical Course and Gerontology Course. It states that the course objectives weren't met related to lab and clinical evaluations that weren't present in the students' files. Many evaluations from the previous administration have been found and placed in the students' files. The procedure is to evaluate every clinical rotation as required and place in students' file.

(St. Ex. 51 at 5)(Reprinted as in original)

195. Despite the claim that the program had found many evaluations and placed them in the students' files, Cathy Learn testified that the school has never provided that documentation to the Board:

Q: And to this date have you received lab evaluations for the medical/surgical course as identified in the survey visit report?

A: No, I never did.

(Tr. at 848)

(ii) The program could not show that students completed laboratory and clinical hours that the syllabus for the Gerontology course said would be provided.

and

(iii) The Program failed to provide any clinical evaluations for six students in the Gerontology Course.

196. Cathy Learn testified that during the Survey Visit, she asked to see student lab and clinical evaluations for the Gerontology Class. She was given the evaluations from the students' clinical experiences at Westminster Thurber. This was the facility that cancelled its affiliation with OAH because it was not satisfied with the supervision provided by Yasmine Harden. Those evaluations include the clinical site check-off sheets for various students, showing whether the student received an "S," a "U," or an "NA" for each week of that experience. As discussed earlier in this Report and Recommendation, the forms show that ten weeks of clinical experience were planned, but only 5 or 5 ½ weeks were completed. The instructor gave students a mid-term grade, but did not assign a final grade to these students. In addition, there are forms titled, "Lab and Clinical Skills Evaluation" that show whether the student passed each aspect of the lab and clinical portions of the gerontology class. Although the form states, "VERIFICATION DATA MUST APPEAR IN EITHER LAB OR CLINICAL COLUMN," all of the objectives in the lab column were left blank, and numerous objectives in the clinical skills column were marked "N/A." (St. Ex. 85, Tr. at 851 -865)
197. Ms. Learn testified that she made a chart that she included in her Survey Visit Report; however, she explained that there were so many students who had not completed all the objectives that she chose a representative sampling. (Tr. at 858) Her chart showed that certain students in her sampling had not been shown as having successfully mastered the following objectives in the lab component of the gerontology course:

- Students #16, #17, #19, #23, #26, and #28-30 were not verified in the provision of post-operative care.
- Students #16, #17, #19, #23, #26, #28-30 were not verified in the provision of parenteral medication.
- Students #16, #23, #26, #28-30 were not verified in their application of sterile dressings.
- Students #16, #17, #19, #23, #26, #28-30 were not verified in the provision of tracheostomy care.
- Students #16, #17, #19, #23, #26, #28-30 were not verified in the administration of blood transfusions.

(St. Ex. 49 at 17)

198. Ms. Learn explained that skills such as post-operative care, parenteral medication, sterile dressing, tracheostomy care, and blood transfusions, are critical to an RN's practice. She said that post-operative care skills are crucial because that is a critical transitional time for a patient. Even if a minor procedure has been performed, the patient could hemorrhage, develop a blood clot, or go into cardiac arrest. This is especially true of a "compromised patient," such as an elderly person. "[T]hat would be something an RN really would have to be on top of in those critical hours after surgery when they were returned to the floor even post surgery up to probably 24 to 48 hours depending." (Tr. at 858-859)
199. She also described the importance of parenteral medication, or, as she generally termed it, "shots." She said that a nurse has to develop skill in administering intradermal, subcutaneous, intramuscular [IM], and "Z-tracking" injections. She stated that an RN must also be competent in tracheostomy care because that deals with the patient's ability to breathe. She explained that a tracheostomy involves an incision into the patient's trachea with a tube that has to be suctioned and kept clean because it goes directly into the patient's lungs. Ms. Learn testified that an RN must also be proficient in managing blood transfusions because that is a function that LPN's are not permitted to do. She said that the skill should be practiced in a lab because it involves the use of a larger cannula or needle, than is typically used. The nurse must also be watching the patient for any reaction to the procedure. Finally, she testified that a nurse must be able to change sterile dressings while maintaining the proper sterile procedures. (Tr. at 857-864)
200. In addition, Ms. Learn stated that no Gerontology clinical evaluations at all were provided for the following Students in the first cohort: Student #18, #20, #21, #22, #24, and #27. Those student numbers applied to the third Notice only. The same students were assigned different numbers on the Master Key at State's Exhibit 7, and are known on that document as Students # 55, 52, 45, 75, 53, and 76, respectively. (Tr. at 865-867, St. Ex. 8 at 17)
201. OAHc responded to these allegations in its written response to the Survey Visit Report, but provided no explanation why some of the skill objectives were not graded "pass" or "fail," but were instead marked "N/A.":

Missing clinical and lab evaluations for students. Explanation: I spoke to the various clinical faculty members 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.

* * *

The SVR mentions two separate classes, Medical Surgical Course and Gerontology Course. It states that the course objectives weren't met related to lab and clinical evaluations that weren't present in the students' files. Many evaluations from the previous administration have been found and placed in the students' files. The procedure is to evaluate every clinical rotation as required and place in students' file.

(St. Ex. 51 at 5)

202. On cross-examination, Cathy Learn agreed that "N/A" did not mean fail, but would mean either "Not applicable" or "Not available." She was asked if it was possible that some of those skills, such as sterile dressings, could have been covered in another course, but she maintained, "I don't have anything else to verify that they ever were." Despite the program's assurance that many documents from the "piles of clinical evaluations" that were located had been placed in students' files, Ms. Learn said that the program had provided no additional documentation to show that the clinical and lab portions of those classes had been completed. (Tr. at 865-866, 927-930)

(e) The program did not provide evidence that each aspect of its program was evaluated through a Systematic Plan of Evaluation.

203. As cited earlier in this Report and Recommendation, OAC Rule 4723-5-15 requires a school to evaluate its own program on an ongoing basis through a Systematic Plan of Evaluation. Cathy Learn testified that when she went to her first Survey Visits at this school in March 2011 and May 2011, there was no systematic plan of evaluation in existence. She cited this as a violation in her first Survey Visit Report, and the school responded, stating that it was in the process of implementing a Systematic Plan of Evaluation and that it expected it would be complete by the end of July. (St. Ex. 15 at 13-14, St. Ex. 16 at 3)
204. Ms. Learn testified that when she went back to the school on October 12, 2011, she asked Erin Stout about the school's progress on the systematic plan of evaluation. Erin Stout referred her to Jessica Jacklin, who told her that there had been a meeting about it, and they were planning to get to it. However, even by that time, there was no systematic plan of evaluation in existence. Ms. Jacklin did provide the minutes of a meeting held on October 4, 2011, attended by herself as well as Kim Stamper and Kathy Penty. (Tr. at 867-872) The minutes show three different committees as having met: the Evaluation Committee, the LPN to RN Transition Advisory

Committee, and the Faculty/Staff Committee. Those minutes are unusually sparse, and do not indicate the creation or discussion of a systematic plan of evaluation. Instead, the minutes provide identical information with respect to each committee's discussions. That information is what appears below, repeated over three separate pages:

Agenda topics

DISCUSSION	Discussion of committee and goals as well as meeting times and places	
CONCLUSIONS	We will discuss with the other members as to what day of the week, and time will work for all members to attend.	
ACTION ITEMS	PERSON RESPONSIBLE	DEADLINE
Jessica Jacklin RN MSN	Jessica Jacklin RN MSN	10/10/2011

(St. Ex. 65 at 1-3)

205. Cathy Learn referred to the plans for a systematic plan of review committee that the school included in its original proposal. It stated that the Director of Nursing [i.e., the Program Administrator] would form two committees to assist with properly administering the evaluation plan: a Nursing Transition LPN to RN Advisory Committee, and a Faculty Committee. It goes on to say that the LPN to RN Advisory Committee will include "at a minimum" a consumer, a health care administrator, an LPN who became an RN, a registered nurse, a nurse educator not associated with the program, a faculty member, a current student, a graduate, a representative of a clinical site, an employer, and other members of the community with insight to the local community and employers. (St. Ex. 8 at 93-94) However, only three faculty members attended the only meeting whose minutes were provided to the Board, and those discussions were reflected above in the minutes reprinted.
206. When Cathy Learn saw the minutes, it was evident to her that there still was no systematic plan of evaluation in existence. She testified that she asked Erin Stout and Jessica Jacklin why there was no plan of evaluation yet, and they responded, "They hadn't had time to do it. They were working on it." (Tr. at 872) She included this in her Survey Visit Report, and Erin Stout addressed this allegation in OAHC's written response to the Survey Visit Report:

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, 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. 51 at 5)

Ms. Learn testified that although OAHC attached numerous documents to its written response to the Survey Visit Report, it did not attach the plan of evaluation that it claimed it had just finished, nor any documents to show that the plan was being used to evaluate and improve the program. To date, Ms. Learn said that she has never been provided with a copy of OAHC's systematic plan of evaluation. (St. Ex. 51a, Tr. at 872-873)

(f) The program failed to provide and evaluate clinical experiences for students, as some students had no clinical evaluations in any course.

(i) Three students in the first cohort had no clinical evaluations in any course.

207. OAC Rule 4723-5-20 provides that faculty members are responsible for planning a student's clinical experience and evaluating the student's performance in that experience. The Rule sets out numerous requirements for clinical experiences during the program. One such requirement, at subsection (C)(6) is that the faculty member must evaluate the student's experience, achievement, and progress in relation to the clinical objectives or outcomes.
208. An earlier part of this Report and Recommendation addressed the allegation that six students had no documentation of any clinical experience in the Gerontology course. In addition, Ms. Learn testified that there were three students in the first cohort, Student 18, #20, and #24, who had no documentation that they completed clinical experiences for *any course*.⁷ She included this as a violation in her Survey Visit Report. (St. Ex. 49 at 19) In OAHC's written response to the Survey Visit Report, Program Administrator Erin Stout responded to the allegation of "missing clinical and lab evaluations for students" by referencing the program's response in an earlier portion of the letter, at part D. That section states that "many evaluations have been found and placed in the students' files. The procedure is to evaluate every clinical rotation as required and place in students' file." (St. Ex. 51 at 4-5)
209. Cathy Learn testified that although the school claimed to have found many of the missing documents and placed those in the student files, the program did not include those with its response to the Survey Visit Report. She said that, to date, she has never received any such documentation from the program. (Tr. at 875-878)

⁷ Students #18, #20, and #24 are referred to as Students #55, 52, and 53, respectively, on the Master Key introduced as State's Exhibit 7.

(ii) One student in the second cohort had no clinical evaluations in any course.

210. Cathy Learn testified that she found one student in the second cohort who had no documentation of any clinical experiences. This student was referred to as Student #35 in the January 2012 Notice, but was called Student #24 in the Master Key, introduced as State's Exhibit. Ms. Learn emphasized that she asked for "all of the evaluations they had" at the time she conducted the Survey Visit. When she examined the documents the school provided, she found that there were no clinical evaluations for this student in any course. (Tr. at 878-879)
211. Ms. Learn included this information in her Survey Visit Report, and OAHC responded to it once again by writing, "Many evaluations have been found and placed in the students' files. The procedure is to evaluate every clinical rotation as required and place in students' file." (St. Ex. 49 at 20-21, St. Ex. 51 at 4-5)

(iii) There were no clinical evaluations for any students in the third cohort.

212. Cathy Learn testified that when she examined all of the clinical evaluations that the program gave her, she found no evaluations at all for any students in the third cohort:

I asked for them. They said, "Here's the notebook. This is all we have." And none of those students had a clinical evaluation in that notebook and they didn't give me any reason for any - any reason why they didn't have them. Jessica and Erin just said, "This is it. This is all there is." Now, they scurried around looking for stuff during the entire survey visit but that's all they could find, and I asked them again before I left, "Do you have any other documents that we can copy? Anything? And they said "No."

(Tr. at 880)

213. Ms. Learn said that Reverend John assisted Jessica Jacklin and Erin Stout in trying to locate documents. He showed her the room where student files were kept, and he and Jessica Jacklin looked in those files. Ms. Learn told them that they could bring any of the relevant documents to her if they found them, but she stated that they never brought her any additional documents. (Tr. at 880-881)
214. This violation was included in Ms. Learn's Survey Visit Report, and OAHC responded to it by explaining that many evaluations had been found and placed in the students' files. However, even though the school attached many documents to its written response to the Survey Visit Report, no such evaluations were included. Ms. Learn testified that, to date, she has never been supplied with any clinical evaluations for any student in the third cohort. (Tr. at 880)

(iv) The evaluations for the first cohort's Gerontology class were incomplete.

215. This allegation has already been addressed earlier in this Report and Recommendation. It concerns the fact that although the clinical evaluation forms for the Gerontology class showed that 10 weeks of clinical experiences were scheduled, only 5 or 5 ½ weeks were completed. (See Third Notice: Section (d)(ii)) It is cited in this section, as well, because it presents a potential violation of this Rule as well as Rule 4723-5-13.

(v) Clinical evaluations did not consistently identify the location of the experience and the course to which they were connected.

216. Cathy Learn identified a collection of clinical evaluations that were given to her when she conducted the October 2011 Survey Visit at OAHC. Although these documents have a place for the name of the Clinical Site to be written, that information is left blank on the vast majority of the forms. There is also no indication on many of the forms as to what class this clinical experience was connected to. (St. Ex. 83 at 1-8, Tr. at 881-884)
217. In Erin Stout's written response to the Survey Visit report, she responded as follows:

When I began my tenure as Program Administrator, I found the clinical schedule to be very unorganized. We are in the process of making it a more seamless process. I would like the students/clinical faculty/ and site to know well in advance when and where clinical is. I would like the didactic and clinical faculty to communicate weekly to make the clinical experience an opportunity to practice cognitive, psychomotor, and effective skills that go along with the concepts that they are learning in class.

(St. Ex. 51 at 5)

218. On cross-examination, Cathy Learn explained that part of the problem with not having the clinical site identified on the evaluation form is that she could not know if the school had a legitimate contract for clinical experiences at that facility. She said that usually, there is a schedule that shows where students attended their clinicals, what dates they were there, who the clinical instructor was, and which theory course the clinical experience complemented. (Tr. at 932)

(vi) The program did not provide qualified faculty members to evaluate some students' clinical experiences.

219. OAC 4723-5-20(C)(6) requires a faculty member to evaluate the student's experience, achievement, and progress in relation to the clinical objectives or outcomes. And, since OAC 4723-5-10(A)(3)(c) requires a faculty member in an RN program to have a master's degree with a major in nursing, the clinical experience must therefore be evaluated by an instructor with a master's degree in nursing.
220. Cathy Learn testified that clinical faculty who direct students' experiences at the clinical site are sometimes only bachelor's-prepared nurses, but they must work under the supervision of the faculty member in charge of that course. And, there has to be some kind of communication back and forth between the master's level faculty member and the clinical instructor who has only a bachelor's degree. Ms. Learn added that the faculty member usually signs the clinical evaluation, in addition to the clinical instructor. (Tr. at 885-887)
221. Ms. Learn testified that the two instructors who signed the clinical evaluations at State's Exhibit 83 did not have master's degrees. One instructor, Tracie Manning, who signed many of the forms, testified at the hearing that she is an RN with only a bachelor's degree. (Tr. at 213) Cathy Learn testified that the other instructor, Z. Moazampour, also did not have a master's degree in nursing.⁸ There was no one with a master's degree in nursing who signed off on any of the evaluations at State's Exhibit 83. (Tr. at 885-887)

(vii) There was a lack of organization and no schedule to show where and when the students had their clinical experiences.

222. Cathy Learn testified that when she conducted the October 2011 Survey Visit, she asked Program Director Erin Stout for the schedules showing where and when students went to their clinical experiences. Erin Stout referred her to Chandra Smith. However, Chandra Smith said she did not know, and referred Ms. Learn to Jessica Jacklin. Ms. Learn testified that Jessica Jacklin gave her a document and said, "This is all the schedules I have." (Tr. at 887-888)
223. Ms. Learn said that she asked Jessica Jacklin how the students and faculty knew where they were supposed to go for their clinicals, or how the school would get in touch with a student if there was an emergency. She testified that Ms. Jacklin said that she would have no way of knowing how to reach them. (Tr. at 888)

⁸ At the hearing, Cathy Learn could not recall the name of the other instructor who signed clinical evaluations, except that she recalled it was a name that began with "Z." Her Survey Visit report indicates that "Z. Moazampour" was the other instructor. (Tr. at 886, St. Ex. 49 at 21)

(g) Failure to develop and implement a records retention plan for student records.

224. OAC 4723-5-21 requires the Program Administrator to maintain certain records for faculty and students. The first part of the rule deals with the records that must be kept for students:

The administrator of the program shall maintain including the following:

(A) Records for currently enrolled nursing students that include:

- (1) Admission or transfer records;
- (2) Transcripts; and
- (3) Clinical experience evaluation records;

(i) The files of 15 students did not have records to show that they met the program's requirements for admission to the program.

225. Cathy Learn testified that when she reviewed student files as part of her Survey Visit, she found that some of the students' files were missing that documentation. She found that the files for Students #1 through #15 did not have documentation that they had met the program's admission requirements. Ms. Learn included this as a violation in her Survey Visit Report. (St. Ex. 49 at 22, Tr. at 889) OAHHC submitted its written response to the Survey Visit Report, but did not address this allegation. (St. Ex. 51)

(ii) The files of 4 students did not have clinical experience evaluations

226. As discussed earlier in sections (f)(i) and (f)(ii) of this Report and Recommendation, Cathy Learn found that three students in the first cohort, and one student in the second cohort had no clinical experience evaluations at all in their files. This was cited previously as a violation of the requirement that clinical experience be provided to students. It was cited again for the failure to maintain the student records required by OAC 4723-5-21. (Tr. at 889-890, St. Ex. 49 at 21-22) OAHHC did not respond to this allegation in its written response to the Survey Visit Report. (St. Ex. 51)

(iii) The files of 2 graduates of the program did not contain transcripts.

227. OAC 4723-5-21 also requires a program to maintain certain records for its graduates. Subsection (B) states that the Program Administrator must maintain records for all graduates that include complete transcripts indicating the credential granted and the date of completion of the program.
228. Cathy Learn testified that when she conducted the October 2011 Survey Visit, there were two students that the program deemed to have completed the course of study

at OAHC. Those students are identified as Student #26 and 28 in the January 2012 Notice, but are referred to as Student #57 and Student #47 on the Master Key admitted as State's Exhibit 7. Ms. Learn testified that she asked to see transcripts for those students, but Erin Stout and Reverend John told her there were no transcripts. (Tr. at 815-818)

229. Ms. Learn said that OAHC has never produced transcripts for those students. Although the school sent a written response to the Survey Visit Report, stating, "This has been rectified for both students and any students since that time," the transcripts were not included with the extensive documentation the program included with its response. (Tr. at 890-891, St. Ex. 51, 51a)

(iv) The files of two faculty members did not include the required documentation.

230. OAC 4723-5-21 requires the Program Administrator to keep records for all faculty members and teaching assistants that include at least the following:

- (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.

231. Cathy Learn testified that when she conducted the Survey Visit in October 2011, the file of faculty member Karen Tedder did not contain an academic transcript, nor documentation to show that the program had verified her current, valid licensure at the time she was hired. The file of faculty member Katherine Penty did not contain her academic transcript. Ms. Learn included these findings in her Survey Visit Report. (Tr. at 891-894, St. Ex. 49 at 23)
232. When Erin Stout submitted the program's written response to the Survey Visit Report, the program explained, "Karen Tedder was only employed for a week or two, and is currently no longer employed by [OAHC.] Therefore, it is impossible to complete these records." With respect to Katherine Penty, the program stated, "Katherine Penty had her diploma in her records but not the official transcript. This has since been rectified." (St. Ex. 51 at 6) Ms. Learn testified that with its written response, OAHC submitted Katherine Penty's official transcripts. The earliest date shown on those transcripts as the date they were issued from a registrar's office is October 31, 2011 – well after the date of the Survey Visit. (St. Ex. 51a at 140-144, Tr. at 891-892)

233. Cathy Learn was asked on cross-examination if the transcripts that appear as Respondent's Exhibit M were sufficient, being presented on the day of the hearing, but she maintained, "It should have been there on the day of the survey visit." (Tr. at 977)

NCLEX Pass Rates

234. 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 a 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.
235. Cathy Learn identified State's Exhibit 87 as the document showing the pass rates of all of the nursing programs in the State of Ohio. It also shows that the national pass rate was 91.23%. Therefore, since the Board requires a program to have its graduates pass at 95% of that figure, an 86.6% pass rate for each calendar year keeps an Ohio program from being reviewed by the Board. Looking at the figures on this document, Ms. Learn testified that OAHC has had 5 candidates take the NCLEX: two of them have passed, and three of them have failed. The document shows that this results in a 40% pass rate. (Tr. at 1025-1030, St. Exs. 87, 89)
236. Jean Mathews Mitchell, who has been OAHC's Program Administrator since April 2, 2012, pointed out several factors that should be taken into consideration when reviewing the pass rates on State's Exhibit 87. First, she emphasized that this document shows only those students who were first-time test takers, and so it would not show students who passed the NCLEX on later attempts. She also testified that some of the students in this program speak English as a second language, and therefore, it may be more difficult for them to pass the NCLEX on their first attempt than it would be for a native speaker of English. Ms. Mitchell also suggested that some of the program's students may have taken the test in states other than Ohio. (St. Ex. 87, Tr. at 1110-1118, 1121)
237. Ms. Mitchell identified Respondent's Exhibit M as a document she constructed to show the status of everyone who has ever been a student at OAHC, and whether or not each student has taken or is eligible to take the NCLEX. The "RN" column on the far right side of this chart shows the date that some of the students passed the NCLEX and became licensed nurses. It indicates that a total of six students have passed the test, although not necessarily on their first attempt. She submits that this brings the program's pass rate up to 50%. Although the document shows that 16

students from the first cohort and 19 students from the second cohort – a total of 35 students -- took their comprehensive exit exams in November or December 2011, only six students are shown to be licensed as RN's in the column showing their NCLEX status. Ms. Mitchell admitted on cross-examination that this exhibit does not show which students took the NCLEX and failed, explaining, "I don't have that information." She was also asked on cross-examination if the students whose NCLEX status is listed as "pending" were eligible to take the NCLEX, but she stated that she also did not have that information. (Resp. Ex. M, Tr. at 1110-1118, 1212-1214, 1219-1220)

238. Also on cross-examination, Ms. Mitchell was asked if she could identify any other nursing school on State's Exhibit 89 whose pass rates were in the range of 50%. She identified only ATS Institute of Technology, and she indicated that she knew the Board was attempting to close that program. Ms. Mitchell pointed out that Ashland University showed a pass rate of 42%; however, that rate was only for one quarter, and not over the course of a calendar year, the standard used by the 95% rule. Ms. Mitchell also asserted, however, that percentage pass rates can be deceptive when looking at small programs. As an example, she pointed out that while OAH's NCLEX pass rate from April 2011 to March 2012 was only 50%, during that period of time, only two people took the exam. (Tr. at 1200-1204)

Equal Protection

239. Since the beginning of this proceeding, OAH has argued that it has been denied equal protection under the law because the Board did not offer it the chance to enter into a Consent Agreement, through which it could have remediated the deficiencies found during the Survey Visits. Instead, the Board has sought to withdraw conditional approval from the program, which would result in the closure of the school and the current students having to complete their programs at a different school.
240. In its opening statement at the hearing, OAH's counsel claimed that the Board has prejudged this school because of a bias against its African owner and students (Tr. at 20) Counsel cited the following statistics in arguing that such a bias has been shown to exist:

The evidence will show that 98 percent of the students in this school are black. Ninety-eight percent of the students in this school are, in fact, of African origin and African nationality. The ownership is black and of African nationalities and origin.

The makeup of the school is so pronounced in its ownership and in student body racially and by national origin that it's inescapable to conclude that where the Board of Nursing has refused to deal with this school in any capacity other than through the disciplinary

process, that that kind of disparate treatment is a result of the racial and national origin makeup of this school.

(Tr. at 21-22)

Although the statements from OAHC's counsel and its Program Administrator referred to the students' nationality as "African," the only particular African *nation* that was mentioned was Dr. Yemi's home country of Nigeria. (Tr. at 1199)

241. Jean Mathews Mitchell, the current Program Administrator, was presented with documentation showing licensure and demographic information about the owners of the Felbry nursing school, with which she had compared to OAHC. That information shows that Felbry's owner, Dr. Olugbenga Felix Tolani, is licensed as a physician in Ohio, and that his birth country is Nigeria, the same country as Dr. Yemi's. And, although Ms. Mitchell had testified that Mrs. Tolani had no license of any kind, State's Exhibit 88a shows that Dr. Tolani's wife and the co-owner of the school, Feyisayo Tolani, has been licensed as a registered nurse since 2004. (Tr. at 1146-1147, 1197-1199, St. Exs. 88 and 88a)
242. Cathy Learn, the Board's surveyor who testified in this case about the allegations against OAHC's program, explained that her role is only to conduct the Survey Visit and write the Survey Visit Report. She does not make a recommendation to the Board as to whether a program should be offered a consent agreement. Ms. Learn stated that in her work as a surveyor, she had never seen a program that appeared to be more out of compliance than Ohio American Healthcare, Inc. When she was asked if it was a "close call," she quickly responded, "No." (Tr. at 983-985, 1025)
243. Aside from Dr. Yemi, all of the witnesses at the hearing appeared to be Caucasian, except Chandra Smith, the school's former office manager. Because the equal protection argument had been made at the outset of the hearing, she was asked whether she ever detected any racial bias or national origin bias on the part of the Board's surveyors:

Q: Did you ever perceive any bias or prejudice by the people from the Board against some of the people at this school because of their national origin or their race?

A: No, ma'am.

Q: Did you ever perceive any bias against yourself because you appear to be non-Caucasian? Did you ever have that sense?

A: I had a sense that because I wasn't African, from an African country, that I felt that he kind of treated me a little different.

Q: That who treated you differently?

A: Dr. Yemi.

Q: Okay.

A: He acted like I wasn't competent. He would give me a job to do and then he'd take it all from me and give it to Reverend John.

Q: And you appear to be non- and you are American born.

A: Yes, ma'am.

Q: You're not from an African country.

A: I'm multicultural.

Q: Okay. But my question was related to any bias that you might have sensed from people from the Board, the Board's investigators -

A: Oh, no.

Q: -- Board members.

A: No.

Q: That was what I wanted to follow up on.

A: No, ma'am. None at all.

(Tr. at 673-674)

Mitigation Evidence

244. Jean Mathews Mitchell has been with Ohio American Health Care, Inc., since February 2012. 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 emphasized that she has been with the program for only about one month, adding that since the hearing lasted one week, she had spent only about three weeks at the school. 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. (Tr. at 1047, 1053, 1057-1058, 1159)
245. In addition to being the Program Administrator for both the RN and the LPN program at OAHC, Ms. Mitchell has been teaching some classes, and supervising some instructors who have BSN degrees but not master's degrees. When she was hired as an instructor, she immediately became the lead instructor for Dr. Koroma's pharmacology class, teaching the nursing portions of that class. She is also the lead instructor for the med/surg course. (Tr. at 1053-1054, 1056-1057)
246. Ms. Mitchell has also been trying to correct the deficiencies alleged by the Board in the Notices issued against the program. She identified Respondent's Exhibit A as a chart she made to address each of the various violations alleged, as well as what has been done to correct them. (Resp. Ex. A, Tr. at 1060-1061)
247. Ms. Mitchell testified about her work to ensure that the program's policies are implemented correctly. The faculty handbook sets out a new faculty orientation policy, and Ms. Mitchell stated that she had pulled every faculty member's file to

make sure each instructor was marked as having completed an orientation. She added that when she began as an instructor, Erin Stout provided her with an orientation. (Tr. at 1063-1066, Resp. Ex. C-2)

248. Ms. Mitchell also testified about faculty policies that are now being implemented at the school. She said that there is a records retention plan in place for faculty, and that faculty must have all of their documentation in place before their first day of work. She stated that she is currently in the process of hiring additional faculty members. (Tr. at 1085, 1138-1145)
249. Ms. Mitchell testified that the program's student policies are now being implemented consistently. She said that she now has a checklist to make sure that student files contain all the required documentation, such as CPR certification and malpractice insurance coverage. However, she stated that she has not yet gone through each student file in order to check for completion. Ms. Mitchell said that student files are now kept in a locked room. She explained that in the past, the records were kept but not organized. "[T]hey're just everywhere." She believes the current records retention plan is adequate, and she said that she has had no interference with any aspect of that plan from Dr. Yemi. Ms. Mitchell has also coordinated student handbooks to make sure that all documents show that 75% is the minimum passing grade. She added that since she has been with the school, students have progressed through the program as they are supposed to. (Tr. at 1069, 1070-1071, 1107-1109)
250. Ms. Mitchell testified that students now receive syllabi for each course, along with a receipt for them to sign indicating that they have received each syllabus. She also reviewed the school's curriculum plan and its course syllabi to make the hours stated in each consistent with one another. She identified Respondent's Exhibit H-7 as the curriculum plan that she found in the master files on Erin Stout's computer, which has now become her computer. Enrollment agreements now show the correct tuition and fee figures, all of which have been signed by the students. Ms. Mitchell said that she pulled a sampling of enrollment contracts, which appears at Respondent's Exhibit J-9, and saw no discrepancies. She submits that this has been rectified. (Tr. at 1075-1076, 1082-1083, 1088-1089, 1102-1103, Resp. Ex. I-8)
251. Ms. Mitchell testified about her efforts to organize the various student evaluations that are required for the program. She stated that she believes the psychology course was, in fact, taught to RN students by instructor Katherine Penty, but that the papers have not yet been graded and put in the computer and in student files:

[T]here's still on my desk, actually, a pile, a good pile of at least a foot tall of past psychology courses that she had taught and papers that were, you know, maybe half graded and some Scantrons and the tests missing and all kinds of things she just left in a huge box that I am trying to figure out just what it is. But they're marked Psychology for the psychology course. It was taught to be RN's."

(Tr. at 1067-1068)

252. Regarding clinical experiences, Ms. Mitchell testified that she is now checking on the clinical instructors who supervise students' experiences at their clinical sites. She said that she gets a report every week from the instructor, and she believes they are meeting the requirements of the Board. Ms. Mitchell added that she is reviewing the clinical evaluation forms to make sure they are completed. She also makes sure that theory hours, lab hours, and clinical hours of a course are taught concurrently. Ms. Mitchell identified Respondent's Exhibit F-5 as the clinical skills checklist now in use. It includes the student's name, the facility where the experience took place, and the number of hours the student was there. She added that Erin Stout had started using this checklist before she began with OAHC, and that the current clinical instructor, Judy Leitenberger, has a "drawer full of clinical evaluations" from the med/surg course that Jean Mitchell taught. On cross-examination, she clarified that the evaluations in Exhibit F were all done in April 2012, and that this is the form she has used since she began her tenure with the program. (Tr. at 1072-1074, 1083-1085, 1205-1207)
253. Ms. Mitchell agreed that Julia Wilson was "a driving force" behind many of the changes that Erin Stout began to implement before she began working at OAHC. She testified that one of the things they began working on was the Systematic Plan of Evaluation [SPE], which she believes was initiated in April 2011. Ms. Mitchell identified Respondent's Exhibit G-6 as minutes of a faculty meeting held on April 25, 2011 by Julia Wilson, Judy Leitenberger, and Zahra Mozempour, to work on the Systematic Plan of Evaluation. While she described this as a "bare bones form" of an SPE, she asserted that these minutes pre-date the ones introduced by the Board from the October 11, 2011 meeting. She referred to a reference in the minutes that each cohort will elect a representative to relate information from the students to the faculty and administration, and she asserted that this is part of the Systematic Plan of Evaluation. (Resp. Ex. G-6, Tr. at 1077-1082, 1104-1105)
254. With respect to the allegations of an unqualified instructor teaching the pharmacology course, Ms. Mitchell said that she believes a nurse has been teaching the nursing portion of that course for quite some time. She said that when Erin Stout was the Program Administrator, Patricia Bennett taught it under her supervision. Ms. Mitchell taught the nursing portion of that course during the last term. She believes that the lead instructor's name simply did not get "carried over" to the syllabus. She stated that Dr. Koroma has a master's of science degree and is a medical doctor, but she agreed that he is not licensed as a physician in the United States. (Tr. at 1054, 1100-1102)
255. Concerning the submission of false information to the Board, Ms. Mitchell said that she does not believe Rosanna Bumgardner, the first Program Administrator, intended to make false representations to the Board. She testified that she believes Dr. Bumgardner thought the school was in compliance with the rules, when actually

it was not the case; however, she does not believe that was intentional. Ms. Mitchell stated that she has a good understanding of the Board's rules and will not sign anything documenting compliance if she does not believe the program is in compliance. "I would not falsify records in any way." (Tr. at 1086-1087)

256. Ms. Mitchell testified that she has not felt as though Dr. Yemi or Reverend John interfered in any way with her role as Program Administrator and she did not find Reverend John controlling, although she added that he had resigned in the week prior to the hearing. She said that while Reverend John had a few of the records on his computer, those are now being transferred to her computer so that she will have complete control over all records at the school. Ms. Mitchell said that Dr. Yemi calls periodically, maybe once a week, to see if she needs anything, but she has had no trouble working with him. (Tr. at 1085-1086, 1090-1091)
257. Ms. Mitchell provided examples of ways in which she has tried to improve the program. She said that she realized that previous program administrators did not make use of the remediation process offered by the HESI company, which administers exit exams in preparation for the NCLEX, and instead, students had to "remediate themselves." She added that the third cohort of students is now scheduled to take the exit exam. (Tr. at 1119, 1123, Resp. Ex. M)
258. Ms. Mitchell said that she also believes the school offers students sufficient clinical experiences now, but she acknowledged, "[W]e obviously need more." She explained that it is difficult to obtain clinical sites because the Columbus area is oversaturated with programs in need of clinical experiences. She stated that she checked with hospitals, but they generally take only RN students from schools that are fully approved, and they prefer students working towards BSN degrees. (Tr. at 1127)
259. Respondent's Exhibit L shows the program's current contracts with clinical sites. Included within that exhibit is a contract for an obstetrics experience at Birthright of Columbus. That contract provides, in paragraph J that "Instructors will be evaluating students on the IV therapy component of the program as part of the Medical Surgical Nursing I course." Ms. Mitchell testified that Birthright of Columbus does "prenatal counseling," but she acknowledged that the organization does not have doctors, nurses, or midwives on staff. She said that women come to that organization for counseling, and for baby products, formula, and prenatal vitamins. Ms. Mitchell added that she is also trying to get a contract with the Women's Clinic. She said that she would like to get a contract with a hospital site, but she has also talked with a few midwives who might consider taking students to see a live birth. She believes the clinical obstetrics experiences are now sufficient. (Tr. at 1124, 1133-1135, 1180-1181, 1233, Resp. Ex. L)

260. Ms. Mitchell identified Respondent's Exhibit Q as information about Discovery Learning Center, which will be the program's clinical site for pediatric experiences.⁹ Although that information identifies Discovery Learning Center as a childcare center, Ms. Mitchell maintained that it provides opportunities for nursing assessments. "[T]he students cover a wide range of skills for their assessments and looking at milestones and, you know, doing the different testing, observing their play, you know, things that fall under pediatrics." (Resp. Ex. L at 35-40, Tr. at 1128-1129)
261. Respondent's Exhibit O is information about Arbors East, with which OAHC has a contract for clinical experiences in medical/surgical nursing. The school also has contracts for clinical experiences with several other homecare agencies and nursing homes, including Altercare of Hilliard, the other site used for medical/surgical experiences. On cross-examination, Ms. Mitchell agreed that Altercare was not an acute care facility, but she added that it has a Select intensive care unit where students can get experiences. She admitted that Arbors East was also a nursing home, but she stated that it, too, has a rehab unit, and she commented that she prefers to call it a "rehab and nursing facility." (Resp. Ex. L at 42-47 and 65-70, Resp. Ex. O, Tr. at 1128-1129, 1169-1173, 1177)
262. OAHC also has a contract for clinical experiences at The Woods at Parkside, which Ms. Mitchell identified as an acute care facility. "I knew they were an acute care hospital, and I thought, well, at least if we could get a contract with them, that we would be covered as far as having an acute care hospital." She identified a copy of an internet printout describing that facility as an acute care hospital. She added that she tries to find clinical experiences wherever she can, relating that one of the clinical instructors has a husband who has a PICC line and gets total parenteral nutrition [TPN] every night. It coincides with the students' med/surg course, so the instructor is allowing the students to go to her home, 2 or 3 at a time, to administer medications through the PICC line and hang the patient's TPN. (Resp. Ex. S, Resp. Ex. L at 16-22, Tr. at 1131-1132)
263. On cross-examination, Ms. Mitchell was asked if the Woods at Parkside was a drug and alcohol rehabilitation center. She agreed that it is, but she maintained, "[T]hey have acutely ill patients come in there in detox." She added that, to her knowledge, students can perform hands-on care there. The State called a rebuttal witness, Marion Lewis, the Director of Nursing at the Woods at Parkside, who agreed that her facility is an acute care hospital, but clarified that the acute care is only of clients in withdrawal from alcohol and drugs. She agreed that the facility was not a "regular medical/surgical facility," adding that it doesn't do intravenous care, for example, and therefore she stated that it would not be appropriate for medical/surgical clinicals. However, she stated that her understanding of the contract with OAHC is

⁹ Although the information printed from the website at Respondent's Exhibit Q refers to "Discovery Learning Center," the school's contact at Ex. L states the name of that facility in more than one place as "Discovering Learning Center," and it is not entirely clear that they are one and the same.

that it is for mental health experiences for the students. Students will be observing and watching patient assessments, but they will not be performing hands-on patient care. Any preceptors will be from the school, and not from The Woods at Parkside. (Tr. at 1171-1172, 1186-1192)

264. The State also called Deanna DeLara, RN, the Director of Nursing at Altercare of Hilliard, in rebuttal of Ms. Mitchell's testimony. Ms. DeLara testified that Altercare of Hilliard does not provide acute care services:

We are not an acute-care facility. We don't do surgical. We don't do – we do things such as residents that are here for rehab from orthopedic surgeries or have cardiac issues. We do intravenous therapy; we do things like that. We don't do ventilators. we don't do anything really acute care. We're strictly a post-acute facility.

(Tr. at 1240-1241)

On cross-examination, Ms. DeLara admitted that Altercare offers services such as stroke care, surgical post-acute care, tracheostomy management, wound care management, amputation care, dysphasia management, diabetes management, IV therapy/TPN, pain management, ostomy and catheter care, parenteral nutrition, restorative nursing programs, hospice care and oxygen therapy. However, on redirect examination, she clarified that based on Medicare guidelines, patients are admitted to that facility no less than 3 days post-operatively. (Resp. Ex. P, Tr. at 1236-1244)

265. Also in rebuttal of Jean Mitchell's testimony, the State called Susan Wilson, RN, the regional director of the company that owns Arbors East. She also stated that her facility is a nursing home and not an acute care center. She agreed that students could not get the medical/surgical skills they need to be competent RNs at her facility:

[W]e don't take care of that level of skilled services in our building. There are things like, oh, like the emergency room that you would need -- that you learn and there's just techniques that you would learn in a hospital that we don't have the opportunity or provide in a skilled nursing home.

(Tr. at 1248-1248)

On cross-examination, Ms. Wilson agreed that the facility provided a range of services including post-operative care, respiratory services, infusion therapies, comprehensive wound care therapies, palliative care services, renal disease services, cancer recovery services, digestive disease support, respite care, and hospice care. However, on redirect examination, she stated that patients generally arrive at the facility three days post-operatively. (Tr. at 1250-1252)

266. Jean Mitchell was cross-examined at length about why students were allowed to progress or even graduate without documentation that they had completed all required classes and laboratory experiences. She admitted that she had not addressed, in Respondent's Exhibit A, why students progressed from RN001 to RN002 without taking the computer course. She stated that with respect to cohort 5, however, she knew those students had taken the computer course because she had seen the computers herself and knew that the course was done. There was no testimony showing that cohorts prior to Ms. Mitchell's arrival at OAHC had taken that course. (Tr. at 1150-1150)
267. Ms. Mitchell also did not offer an explanation as to why the students had no pharmacology grades, but were nonetheless allowed to progress. However, she insisted, "I don't know that they *didn't* have a pharmacology grade." She referred to State's Exhibit 71 in conceding, "[I]f this is what you were submitted, I could see how you would see that there were no pharmacology grades." Ms. Mitchell suggested that Dr. Koroma, the instructor of the course, was not very familiar with how to put grades into the computer. She acknowledged that she could not produce any pharmacology grades for that cohort, including the two students who received their certificates of completion. And, although she asserted that she did not have time to go through "the stacks of papers that Cathy walked out and left in a big pile," she was not affiliated with the program during any of the Survey Visits that Cathy Learn conducted. (Tr. at 1152-1160)
268. Ms. Mitchell also claimed on cross-examination that there were numerous piles of documents that might contain the documentation found to be missing by the Board's surveyors.

I do know that there is this huge box of papers including some psychology grades in that box that was taught by an MS - MA, whatever, Kathy Penty that taught that course. It's a matter of, you know, somebody having the time to go back and figure out what she did or what - but there is a list of grades there for at least one psychology course; I don't know which one.

(Tr. at 1152-1153)

269. Ms. Mitchell was pressed for information about the two students who received certificates of completion signed by Erin Stout, but she maintained that she had not seen a need to research whether documentation could be located for those two students:

Q: Do you have today any evidence that Students 47 or 57 completed the last four weeks of their med/surg clinicals?

A: Well, actually, you know, the completion letters were submitted to the Board. There must not have been a question; they let them take

the NCLEX test. They passed it very well. so what – you know, I would not have a reason to go back and look at that prior to today. If you want that, I can make that a priority and try to find those grades.”

(Tr. at 1166-1167)

270. Finally, she was cross-examined about why the school had not produced transcripts or a documentation of clinical experiences for the two students who received their certificates of completion. Even at the conclusion of a five-day hearing in which those were significant allegations against the program, Ms. Mitchell suggested that she did not realize that documentation was needed:

Q: Do you have transcripts for Students 47 or 57?

A: Not here today, but I’m sure they’re at school. You got letters of completion. I don’t know whether Erin submitted those to you or not. I would have to have time to look, but I’m sure they’re at school. If you request those, I mean, I would be glad to go back and see if I can, you know, bring those to you. But I think it would only be fair that I know what you want specifically when you’re asking about things that happened before I was there that I would have a chance to bring those to you.

(Tr. at 1166-1167)

271. When asked for her opinion of the school’s condition going forward, Ms. Mitchell concluded that the school currently meets the standards for a pre-license nursing program:

Q: What is your opinion of the condition of the school today going forward?

A: I think the condition is that it’s – it meets the standards. It meets the requirements of a nursing school. I think there’s a lot to be done. I think that, you know, we certainly don’t have a simulator lab, I have been trained on simulators as far as teaching with them, especially birthing simulators, you know, they’re great, if that’s what you feel that you need or can afford. Simulator labs are very, very costly and when you have students that are from other countries that are not used to even maybe some of the bathroom facilities to be, you know, very raw about it, I mean, you know, do they really need simulators, or, you know.

Q: So –

A: I think it’s adequate today.

272. She added that the school also fulfills a “cultural and ethnic need” for its students, further explaining as follows:

I think that the students are here for a specific reason and I think the school fulfills a specific need for those students. And I think that they should be afforded the opportunity to at least, you know, get the education that they're paying for and that they've come here for. I think it would be very traumatic for the students not to have that opportunity to complete.

(Tr. at 1147)

FINDINGS OF FACT

1. During three different survey visits by the Ohio Board of Nursing to its registered nursing program, OAHC 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 2011 Survey Visit, none of the six files reviewed had evidence that an orientation had been completed, and several employees of the school testified that there was no orientation.
3. At the time of the first Notice, OAHC was not in compliance with OAC 4723-5-12 because it failed to implement student policies as they were written in the school's proposal for its program. This included the policies for student admission, policies for student progression from one course to the next, and policies for the satisfactory completion of each course.
4. At the time of the first Notice, OAHC was not in compliance with OAC 4723-5-13 because it failed to implement its curriculum plan as it was written in the school's proposal. Students progressed from RN001 to RN002 without having the computer course that the proposal said would be required. Students did not have the 42-hour psychology course that was to have been taught; instead, they watched a movie. There were inconsistencies between the proposal and the school's syllabi concerning how many hours of theory, lab and clinical instruction would be provided for RN002. The program did not provide 96 hours of clinical experience in medical/surgical nursing, as the proposal said it would – one instructor testified that her medical/surgical class had no hours of clinical experience at all. And, while the proposal stated that a total of 348 hours of instruction would be provided to students in this program, the course syllabi show a total of only 318 hours.

5. 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.
6. 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 for each course.
7. At the time of the first Notice, OAHC was not in compliance with OAC 4723-5-20 because it failed to provide the ten weeks of clinical experience that students were supposed to have received at Westminster Thurber, with appropriate supervision. At least four weeks of that experience were ended early when the facility terminated the contract because of inadequate supervision, and there is no evidence that the remaining weeks were made up.
8. At the time of the first Notice, OAHC was not in compliance with OAC 4723-5-21 because it failed to maintain required faculty records including credentials and academic transcripts. Three of the six files reviewed did not include that information; one of those files was for an instructor who had no master's degree and therefore was not qualified to teach an RN program.
9. At the time of the first Notice, OAHC was not in compliance with OAC 4723-5-25 because it submitted false information to the Board. Former Program Administrator Rosanna Bumgardner admitted that she submitted progress reports in which she checked off various items verifying that the program was in compliance with rules concerning the program's administration, curriculum plan, Systematic Plan of Evaluation, and program records. In fact, the program was not in compliance with those rules.
10. At the time of the second Notice, OAHC was not in compliance with OAC 4723-5-12(A)(6) because it failed to implement its written policies for student fees, expenses, and refunds. Although the proposal submitted to the Board of Nursing represented that students would pay a total of \$14,048 for this course of study, their enrollment contracts show that each student actually paid a total of \$18,520.
11. At the time of the third Notice, OAHC was not in compliance with OAC 4723-5-09(B) because the Program Administrator did not have authority over all aspects of the program. Harold John, who is not a nurse and who has a criminal conviction for conspiracy to commit bank fraud and wire fraud, was allowed control over many facets of the program, while Program Administrator Erin Stout worked part-time and was not familiar with the operations of the school. By the time of the October Survey Visit, seven months after the first visit, the Program Administrator still had not implemented a faculty orientation program. And, the Program Administrator allowed Jessica Jacklin to serve as an Associate Program Administrator when she was not qualified for that position because she did not have two years of teaching experience.

12. At the time of the third Notice, OAHC was not in compliance with OAC 4723-5-10 because it had faculty members who were not qualified for their positions. Karen Tedder did not have two years of experience as an RN. Dennis Koroma was not licensed to practice nursing or any other health care profession. Tracie Manning, who testified that she taught “pretty much everything” in the RN002 curriculum, did not have a master’s degree in any discipline.
13. At the time of the third Notice, OAHC was not still in compliance with the requirements of OAC 4723-5-12(A) that it implement its policies for student admission, student progression, and for refunds and fees, as they were written in the program’s proposal. There was still inadequate documentation of student admission prerequisites. The program continued to allow students to progress from one course to the next without meeting all of the requirements of the first course, as evidenced by the lack of any pharmacology grades. And, most importantly, two students received certificates of completion without grades to show that they completed pharmacology and the comprehensive final, and without evidence that they completed the necessary lab and clinical experiences that were required. It further violated this rule by not following its policies for student tuition, fees, and refunds; instead, it charged students a significantly higher amount than its proposal stated it would, and when a student requested a refund after withdrawing from the program, it did not follow its policy of refunding her money within 30 days of her request.
14. At the time of the third Notice, OAHC was still not in compliance with OAC 4723-5-13 because it failed to implement its curriculum plan as it was written in the school’s proposal. Although a course syllabus said that 16 lab hours would be provided for the medical/surgical course, no hours were provided. There was also no documentation that students had completed the hours indicated on the syllabus for the gerontology course, and there were no clinical evaluations at all for six students.
15. At the time of the third Notice, OAHC was still not in compliance with OAC 4723-5-15 because it had no Systematic Plan of Evaluation that was being used to evaluate and improve the program.
16. At the time of the third Notice, OAHC was still not in compliance with OAC 4723-5-20 because it failed to provide appropriate clinical experiences for students. Three students in the first cohort had no clinical evaluations in any course. One student in the second cohort had no clinical evaluations in any course. No students in the third cohort had any evaluations in any course. The clinical evaluations that did exist did not consistently identify the site location and the course to which the clinical experience was connected. They did not document where and when the student had the clinical experiences. And, the experiences were conducted by two instructors who did not have master’s degrees and were not under supervision, and yet signed evaluations as the instructors.

17. At the time of the third Notice, OAHC was still not in compliance with OAC 4723-5-21 because it failed to develop and implement a records retention plan for student and faculty records. Seven months after the first Survey Visit, the same violations existed during the third Survey Visit. Fifteen student files had no documentation that students met admission requirements, including immunizations, malpractice insurance, and CPR certification. Four student files had no clinical experience evaluations. Two faculty files did not have academic transcripts – one was for an instructor who had no master’s degree. Two students had been certified as having completed the program, but their files did not include transcripts, and to date, no transcripts for those graduates have ever been produced.

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 two additional Notices of Opportunity for Hearing. At the adjudication hearing on April 30 through May 4, 2012, the State presented evidence concerning the charges in all three 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 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

The hearing on this case lasted five days and included voluminous documentary evidence. After giving very serious thought to the evidence presented, and after reviewing the documents carefully, I conclude that OAHC has so egregiously and continuously violated the provisions of Chapter 4723-5 that the only appropriate outcome is a permanent withdrawal of the program's conditional approval.

When OAHC submitted its proposal for a new nursing program in 2009, it made representations about how the program would be conducted and what the curriculum would include. The Board reviewed that proposal and determined that, based upon those representations, OAHC appeared to have a plan for a high quality program that would satisfy the requirements of the rules and would adequately prepare students to practice nursing safely and competently. The Board granted conditional approval, and the program began admitting students in May 2010.

Beginning with the first class of students, however, OAHC did not provide students with the program described in its proposal. Instead, it reduced the total hours of instruction, and in many cases reduced or even eliminated laboratory and clinical experiences that were to be provided for these students. In the case of the psychology course and the computer course, there was testimony that those entire courses were simply not taught to some students, while other students supposedly learned that content through a self-study course or through watching a movie.

Former Program Administrator Susan Walker Thomas testified that there was no documentation of any lab experiences for any students during the entire course of RN002. Julia Wilson, who also acted as a Program Administrator, testified that the lab was not adequate to teach a student about IV techniques or even sterile dressing changes. Unqualified instructors without master's degrees were hired. Tracie Manning testified that she had no master's degree and yet she taught "pretty much everything" in the RN002 course of study. Cynthia Davis-Zimmer also had no master's degree and taught the medical/surgical nursing course, one of the core nursing curriculum subjects. Ms. Davis-Zimmer testified that her students went to no clinical experiences at all during their medical/surgical course, despite the representation that clinical hours would be provided for OAHC students. In the case of the clinical experiences at Westminster Thurber, students received only five or six weeks of clinicals instead of the ten weeks that were promised, because the facility cancelled its affiliation with OAHC when the school's instructor was found to be inadequately supervising her students. Most notably, the program's track record for clinical experiences got worse over time, even after the Board continued issuing Notices against it. Although several students in the first and second cohorts had no documentation of any clinical experiences, no students in the third cohort had documentation of any clinical experiences at all.

Those departures from the representations in OAHC's proposal and from the requirements of the Administrative Code dramatically diminished the quality of the program that the school provided for its students. Several former instructors or former program administrators testified at that hearing that as a result of the reduced or missed hours of clinical or lab instruction, they had grave concerns about the students' ability to function as competent nurses. Yet, as hours of instruction were reduced or eliminated compared to what was represented in the proposal, students were charged over \$4,000 more for their program than the amount stated in the proposal.

Some of the violations may appear to be more technical in nature, such as the failure to have a faculty orientation, or the failure to have instructors' transcripts in their files. Yet those requirements appear in the rules to prevent more obvious substantive deficiencies. For example, if faculty members had received an orientation at this program, they may have been more aware of how to document student clinical experiences, or how to put a student's grades in the computer, or how to get evaluations into student files, rather than keeping them in the "piles of paper" that Ms. Mitchell referred to. Likewise, if the program had followed the requirement of getting faculty transcripts before an instructor began teaching, it might have discovered that some of its instructors were not qualified to for their positions and it would not have put them in the classroom.

The most disturbing evidence presented during the hearing was that which demonstrated blatant corruption and dishonesty, and it is on this basis that I believe a permanent withdrawal of approval is in order. Julia Wilson gave credible testimony that Dr. Yemi, the owner of the school, instructed her to change students' grades so that they would pass a test or a course. Susan Walker Thomas testified that she told Dr. Yemi she would not sign certificates of completion for two students because she could not find evidence that they completed all of the requirements of the program. Within a week of her refusal, she was fired. A new Program Administrator was appointed, who promptly signed the certificates of completion for those students. To this day, the program has not been able to document that those students completed all of the hours of coursework and clinical and lab experiences that were required of them, yet they were certified as having finished the program. Reverend John, who recently pled guilty to conspiracy to commit bank fraud and wire fraud, was the program's "Interim Strategic and Financial Officer," serving in an unpaid position. By numerous accounts from different witnesses, Reverend John took over many aspects of the Program Administrator's role. He directed Tracie Manning to teach the RN002 classes without supervision from a lead instructor. He instructed faculty members that they were to report to him, and even though Erin Stout was the Program Administrator during this time, various employees testified that in reality, Reverend John was in control of the program.

OAHC claims that former Program Administrator Rosanna Bumgardner is to blame for many of the violations in this program, and, with respect to those that occurred during her tenure, that may be true. After her departure in March 2011, however, the violations continued to occur and in fact, they became progressively more egregious. OAHC also claims that Dr. Bumgardner is biased against Dr. Yemi because the two are involved in a bitter civil lawsuit, and in her testimony, Dr. Bumgardner acknowledged the pendency of

the civil suit. In most cases, however, the testimony of Dr. Bumgardner was corroborated by consistent testimony from other witnesses. In some cases, it was corroborated by the program's admission in its written response to the Survey Visit reports that the deficiencies existed. While OAHc claims that the State's witnesses are merely disgruntled employees, as the trier of fact, I found them credible. I find it inconceivable that six witnesses: Rosanna Bumgardner, Julia Wilson, Susan Walker Thomas, Cynthia Davis-Zimmer, Tracie Manning, and Chandra Smith -- were all so disgruntled about their terminations or resignations that they would choose to fabricate testimony against the program. OAHc argues in its closing statement that "the only reliable and probative witness with firsthand knowledge of the status of the RN program at the school" is its current Program Administrator, Jean Mathews Mitchell. Yet, Ms. Mitchell began her tenure as the Program Administrator less than one month before the hearing began. She was not with the program when any of the Survey Visits were conducted.

While Ms. Mitchell testified that she has tried, in the short time she has been with the program, to correct deficiencies in the program and "right the ship," the deficiencies that have already occurred are so serious that many cannot be effectively corrected. The school still cannot produce transcripts for the two students it claims successfully completed its program. It cannot provide missed clinical experiences to the first and second cohorts of students, who have already finished their coursework. As a result of these inadequacies, the program has had very few students pass the NCLEX to be licensed as nurses. Although 38 students finished the program in 2011 - 16 in the first cohort and 19 in the second cohort -- the program's own documents show that only six of those students have become licensed nurses. And, the program's assertion in its closing argument that all of the six students who took the NCLEX have passed it is simply not correct, since the NCLEX result printouts admitted at the hearing show that at least three students have failed the exam. Ms. Mitchell admitted that the document she created to show that six students passed the exam did not show any information about students who failed it. Those students invested their time and a significant amount of money in this program, and they were not given what the program represented to the Board of Nursing that it would provide to them. And, Ms. Mitchell's suggestion that students from underdeveloped countries do not need sophisticated lab equipment is startlingly unacceptable.

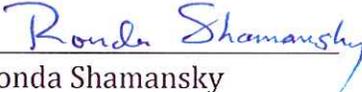
I failed to find merit in the program's argument that it has been denied equal protection of the law because the Board of Nursing did not offer a Consent Agreement and chose instead to seek the withdrawal of conditional approval. I saw no evidence of any animus based on a bias against the race or national origin of the school's owner or its students. I believe, instead, that the Board chose to seek withdrawal of the program's approval because the allegations against the program, especially those involving fraud and corruption, are so serious as to warrant the withdrawal of its approval. Cathy Learn testified that in all of the Survey Visits she has conducted, she had never seen a program that appeared to be so far out of compliance as this program. Chandra Smith, the only non-Caucasian witness aside from Dr. Yemi, testified that she never sensed any racial or national origin bias by anyone affiliated with the Board, when those individuals were at the school conducting the Survey Visits. While a hearing examiner cannot rule on constitutional questions such as the equal protection argument, I found no factual evidence supporting such a claim. If any entity has

treated these students in a discriminatory way based on their national origin or ethnic background, the testimony of Jean Mitchell, that these students do not even know how to use modern bathroom fixtures and therefore do not need modern lab equipment, suggests that it is the school itself. By failing to provide the high-quality program that OAHC represented would be provided to its students, the program has defrauded those students and put the public in danger of inadequate care from poorly-trained nurses.

I find that the State has presented ample reliable and probative evidence from credible witnesses that this program failed to comply with the representations in its proposal and with the requirements in the Ohio Administrative Code. As a result, it provided its students with an inadequate 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. Particularly in light of the elements of corruption that existed within this program, the most appropriate action this Board can take to protect the public is a permanent withdrawal of OAHC's conditional approval.

RECOMMENDATION

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


Ronda Shamansky
Hearing Examiner