

**ARIZONA STATE BOARD OF NURSING**  
**4747 North 7<sup>th</sup> Street, Suite 200**  
**Phoenix, Arizona 85014-3655**  
**602-771-7800**

IN THE MATTER OF	)	
NURSING ASSISTANT	)	<b>CONSENT AGREEMENT</b>
TRAINING PROGRAM NO. 8911	)	<b>FOR</b>
ISSUED TO	)	<b>VOLUNTARY SURRENDER</b>
	)	
CNA ARIZONA, RESPONDENT,	)	<b>ORDER NO. 1112001-8911</b>
BY AND THROUGH	)	
ITS ADMINISTRATOR,	)	
<u>NED OPFEL, RN</u>	)	

A complaint charging CNA ARIZONA (“Respondent”), located at 801 S. Power Rd., Suite 203, Mesa, AZ 85208, by and through its administrator, Ned Opfel, R.N., with violation of the Nurse Practice Act has been received by the Arizona State Board of Nursing (“Board”). In the interest of a prompt and speedy settlement of the above-captioned matter, consistent with the public interest, statutory requirements, and the responsibilities of the Board, and pursuant to A.R.S. Section 32-1605.01(D), Respondent voluntarily surrenders its program approval for a minimum of 2 years.

Based on the evidence before it, the Board makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Respondent holds Board-issued Nursing Assistant Training Program Certificate of Approval No. 8911, issued on December 23, 2009 for a period of two years.
2. On or about December 5, 2011, Board staff received a complaint against Respondent by a student (“Student A”) who has requested to remain anonymous. Student

A initially complained that Opfel was unresponsive to the student's telephone calls and emails. Based on this complaint, the Board initiated an investigation.

3. In the course of investigating that initial complaint, Board staff interviews with Student A and 17 other students of Respondent revealed that during the period from August 1, 2011 through December 22, 2011, and perhaps beginning as early as March, 2010, Respondent had not provided the students with the minimum number of program hours, as required by rule. The minimum required by A.A.C. R4-19-801(B)(3)(a), R4-19-801(D)(2) and R4-19-802(A) is 120 total program hours, including a minimum of 40 hours of clinical instruction. Based on course schedules provided by the students, as well as their individual recollections, some students received as few as 77 program hours.

4. Throughout the period from August 1, 2011 through December 22, 2011, and perhaps beginning as early as March, 2010, Respondent provided false and/or fraudulent documents to the Board in violation of A.R.S. Section 32-1601(18)(h), in the form of Certificates of Completion avowing students had completed 120 program hours when they had not. Some of Respondent's students received CNA certification from the Board based on these false Certificates of Completion.

5. The maximum ratio in a CNA training program is 10 students to 1 instructor during clinical instruction. Board staff's review of Respondent's records and interviews with the above-referenced students revealed that there were up to 16 students in a clinical group with 1 instructor at various times from July, 2011 to December, 2011, and perhaps beginning as early as March, 2010, in violation of rule A.A.C. R4-19-801(D)(1).

6. Respondent utilized a program coordinator, Ned Opfel, R.N., who did not meet the requirements of A.A.C. R4-19-801(C)(1)(b). Opfel did not have 1 year of

nursing experience in the provision of long-term care facility services, which is required in order to qualify as a program coordinator. During a meeting between Opfel and Board staff on or about December 22, 2011, Opfel stated he had been acting as program coordinator for the past year (approximately December, 2010 – December, 2011). On Respondent's application for Nursing Assistant Training Program Application for Renewal Approval provided to Board staff at the meeting, Ned Opfel listed his long-term care experience as "St. George Care Center, RN, 5/2007-6/2008." A telephone call by Board staff to Human Resources personnel at St. George Care Center in St. George, Utah on or about December 23, 2011, revealed that Opfel had not worked there as an RN, but as an LPN and that his dates of employment as a nurse at that facility were from June 16, 2007 – May 21, 2008. Thus, Opfel has less than 1 year of long-term care experience and does not meet the requirements to be a program coordinator. When Board staff confronted Opfel with this information at a meeting at the Board offices on or about February 2, 2012, he did not dispute it.

7. Throughout 2010-2011, Respondent employed CNA instructors without providing notice to the Board as required by A.A.C. R4-19-801(F)(1). Interviews with students and a survey of Respondent's website revealed that Shanna Wessing, RN; Abby Weigele, RN, and others were being utilized as CNA instructors by Respondent without notice to the Board.

8. Sometime prior to August, 2011, and throughout the remainder of 2011, Respondent added a clinical site without providing notice to the Board as required by A.A.C. R4-19-801(F)(4). Interviews with students and Respondent's attendance records revealed that Respondent's CNA training program utilized Springdale Village, Mesa, AZ, as a clinical site without notice to the Board.

9. On or about December 22, 2011, Respondent provided inaccurate attendance records to Board staff during a site visit. These attendance records overstated the number of hours students were in class, as per the students' statements. R4-19-801(D)(6)(c) requires that a CNA training program maintain attendance records.

10. Per former CNA Arizona student Radel Ramos, Respondent permitted her to attend clinical training without an instructor present in violation of R4-19-801(B)(3)(e), R4-19-801(C)(5)(f)(g) and R4-19-801(D)(1)(2).

### CONCLUSIONS OF LAW

Pursuant to A.R.S. Sections 32-1601(18)(d)(h)(j), 32-1606, 32-1644, 32-1663, 32-1664 and 32-1667, the Board has subject matter and personal jurisdiction in this matter.

The conduct and circumstances described in the Findings of Fact constitute a violation of A.R.S. Section 32-1663(D) as defined in A.R.S. Sections 32-1601(18)(d)(h) and (j), A.R.S. Section 32-1667(1).

A.R.S. Section 32-1663(D) provides:

“If the board finds, after affording an opportunity to request an administrative hearing pursuant to title 41, chapter 6, article 10, that a person who holds a license or certificate issued pursuant to this chapter has committed an act of unprofessional conduct, it may take disciplinary action.”

A.R.S. Section 32-1601(18)(d)(h) and (j) provide:

“‘Unprofessional conduct’ includes the following whether occurring in this state or elsewhere:  
(d) Any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.  
(h) Any act that deceives, defrauds or harms the public.  
(j) Violating this chapter or a rule that is adopted by the board pursuant to this chapter.”

A.R.S. Section 32-1667(1) provides:

“A person is guilty of a class 6 felony who:

(1) Sells or fraudulently obtains or furnishes any nursing diploma, certificate, license, permit or record.”

The conduct and circumstances described in the Findings of Fact constitute a violation of A.A.C. R4-19-801(B)(3)(a), R4-19-801(D)(2) and R4-19-802(A).

A.A.C. R4-19-801(B)(3)(a) provides:

“3. A nursing assistant training program shall promulgate written policies and procedures that are consistent with the policies and procedures of the parent institution, if any, and contain an effective and review date for each policy or procedure. The program shall provide a copy of its policies and procedures to each student on or before the first day the student participates in a program. The program shall develop and adhere to policies and procedures in the following areas:

a. Student attendance ensuring that a student receives 120 hours of instruction or the equivalent of 120 hours.”

A.A.C. R4-19-801(D)(2) provides:

“A nursing assistant training program shall provide an instructor-supervised clinical experience for each nursing assistant student, which consists of at least 40 hours of direct patient or resident care, and includes at least 20 hours caring for long-term care facility residents.”

A.A.C. R4-19-802(A) provides:

“A nursing assistant training program shall provide at least 120 hours of instruction which can be met by the student completing either of the following:

1. A 120 hour curriculum consisting of at least 60 hours of classroom instruction with clinical instruction that satisfies the requirements of R4-19-801(D)(2); or
2. A curriculum of at least 60 hours of classroom instruction and 40 hours of supervised, clinical instruction that satisfies the requirements of R4-19-801(D)(2), followed by a long-term care facility-based traineeship.”

The conduct and circumstances described in the Findings of Fact constitute a violation of A.A.C. R4-19-801(B)(3)(e), which provides:

3. . . . “The program shall develop and adhere to policies and procedures in the following areas:
- e. Instructor supervision of students in the clinical area, providing for:
    - i. A method to contact the instructor that ensures the instructor is available as needed;
    - ii. Instructor rounds for each student according to patient or resident need and student ability;
    - iii. Direct observation and documentation of student performance, consistent with course and clinical objectives; and
    - iv. Only activities related to the direct supervision of students during the clinical session. “

The conduct and circumstances described in the Findings of Fact constitute a violation of A.A.C. R4-19-801(C)(5)(f)(g), which provides:

C.5 “For classroom and clinical, excluding hours spent in a traineeship, a program instructor shall:

- f. Supervise any student who provides care to clients in clinical areas, consistent with the requirements of subsection (B)(3)(e);
- g. Be present in the classroom during all instruction;”

The conduct and circumstances described in the Findings of Fact constitute a violation of A.A.C. R4-19-801(C)(1)(b), which provides:

“Program coordinator and instructor qualifications and responsibilities

- 1. A program coordinator shall:
  - b. Possess at least two years of nursing experience at least one year of which is in the provision of long-term care facility services.”

The conduct and circumstances described in the Findings of Fact constitute a violation of A.A.C. R4-19-801(D)(1)(2), which provides:

- 1. “A nursing assistant training program shall provide a minimum of one clinical instructor for every 10 students if students perform one or more nursing assistant activities for a patient or resident. The program shall ensure that the instructor is physically present in the health care setting during each performance of a nursing assistant activity for a patient or resident.”
- 2. “A nursing assistant training program shall provide an instructor-supervised clinical experience for each nursing assistant student, which consists of at least 40 hours of direct patient or resident care . . .”

The conduct and circumstances described in the Findings of Fact constitute a violation of A.A.C. R4-19-801(D)(6)(c), which provides:

5. "A nursing assistant training program shall maintain the following student records for three years:
  - c. Attendance record, which describes any make-up sessions."

The conduct and circumstances described in the Findings of Fact constitute a violation of A.A.C. R4-19-801(F)(1), which provides:

- "A nursing assistant training program shall submit written documentation and information regarding the following changes within 30 days of instituting the change:
- (1) For a change or addition of an instructor or coordinator, the name, license number, and documentation of meeting coordinator or instructor requirements of this Section, as applicable;"

The conduct and circumstances described in the Findings of Fact constitute a violation of A.A.C. R4-19-801(F)(4), which provides:

- "A nursing assistant training program shall submit written documentation and information regarding the following changes within 30 days of instituting the change:
- (4) For a change in a clinical facility, the name of the new facility and a copy of the clinical contract;"

Respondent admits the Board's Findings of Fact and Conclusions of Law.

In lieu of a formal hearing on these issues, Respondent agrees to issuance of the attached Order and waives all rights to a hearing, rehearing, appeal or judicial review relating to this matter. Respondent further waives any and all claims or causes of action, whether known or unknown, that Respondent may have against the State of Arizona, the Board, its members, officers, employees and/or agents arising out of this matter.

Respondent understands that all investigative materials prepared or received by the Board concerning these violations and all notices and pleadings relating thereto may be retained in the Board's file concerning this matter.

Respondent understands that the admissions in the Findings of Fact are conclusive evidence of a violation of the Nurse Practice Act and may be used for purposes of determining sanctions in any future disciplinary matter.

Respondent understands the right to consult legal counsel prior to entering into the Consent Agreement and such consultation has either been obtained or is waived.

Respondent understands that this Voluntary Surrender is effective upon its acceptance by the Executive Director or the Board and by Respondent as evidenced by the respective signatures thereto. Respondent's signature obtained via facsimile shall have the same effect as an original signature. Once signed by Respondent, the agreement cannot be withdrawn without the Executive Director's or the Board's approval or by stipulation between Respondent and the Executive Director or the Board.

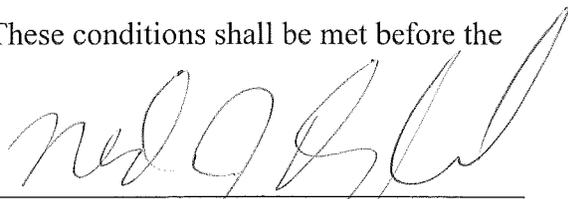
Representatives of Respondent understand that this action is against the training program and does not affect any complaint against the individual nursing licenses of owners, instructors or coordinators.

The effective date of this Order is the date the Voluntary Surrender is signed by the Executive Director or the Board and by Respondent. If the Voluntary Surrender is signed on different dates, the later date is the effective date.

Respondent understands that Voluntary Surrender constitutes disciplinary action. Respondent also understands that re-issuance cannot be applied for during the period of Voluntary Surrender.

Respondent agrees that re-issuance may be applied for after the period of Voluntary Surrender under the following conditions, and must comply with current law at the time of application for re-issuance:

The application for re-issuance must be in writing and shall contain therein or have attached thereto substantial evidence that the basis for the Voluntary Surrender has been removed and that the re-issuance of the approval does not constitute a threat to the public's health, safety and welfare. The Board may require any reports and/or affidavits regarding Respondent as it deems necessary. These conditions shall be met before the application for re-issuance is considered.

  
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CNA Arizona, Respondent, by and through  
its Administrator, Ned Opfel, R.N.,

Dated: 6/5/12

ARIZONA STATE BOARD OF NURSING

  
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Joey Ridenour, R.N., M.N., F.A.A.N.  
Executive Director

SEAL

Dated: 6/12/2012

**ORDER**

Pursuant to A.R.S. Section 32-1605.01(D) the Board hereby accepts the Voluntary Surrender of Certificate of Approval of Nursing Assistant Training Program No. 8911, issued to CNA Arizona. This Order of Voluntary Surrender hereby entered shall be filed with the Board and shall be made public upon the effective date of this Consent Agreement.

IT IS FURTHER ORDERED that Respondent may not apply for re-issuance of said Certificate of Approval for a period of 2 years, and that Ned Opfel, R.N. may not

own, operate, or serve as administrator, coordinator or instructor in a Nursing Assistant Training Program in the State of Arizona for a period of 2 years.

ARIZONA STATE BOARD OF NURSING

Seal

  
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Joey Ridefour, R.N., M.N., F.A.A.N.  
Executive Director

Dated: 6/12/2012

COPY mailed this 13 day of June, 2012 by First Class Mail to:

Ned Opfel, RN,  
Administrator  
CNA Arizona  
801 S. Power Rd.  
Mesa, AZ 85208

By: Helen M. Turner-Eggle