

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

IN THE MATTER OF)	
NURSING ASSISTANT)	CONSENT AGREEMENT
TRAINING PROGRAM NO. 6001 &)	
MEDICATION ASSISTANT TRAINING)	
PROGRAM NO. M-6003)	FOR
ISSUED TO)	VOLUNTARY SURRENDER
)	
CACTUS WREN TRAINING)	
PROGRAM, RESPONDENT,)	ORDER NO. 15022001CNA6001
BY AND THROUGH)	
ITS ADMINISTRATOR,)	
<u>SHIRLEY SODEN, RN, BSN, MBA/HCM</u>)	

A complaint charging CACTUS WREN TRAINING PROGRAM ("Respondent"), located at 11024 N 28th Dr. Ste. 265, Phoenix AZ, 85029, by and through its administrator, Shirley Soden RN BSN MBA/HCM, 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. 6001, issued on December 08, 2012 for a period of two years and Medication Assistant Training Program Certificate of Approval No. M-6003, issued

on May 21, 2012. In 2010 and 2014, the Cactus Wren Training Program (CWTP) received Notices of Deficiencies from the Board. The 2010 Notice of Deficiency was resolved with the Board accepting CWTP's Plan of Correction. The 2014 Notice of Deficiency was also resolved, with an additional Letter of Concern related to student exam pass rates.

2. On or about February 4 - 5, 2015, Board staff received five written complaints from CWTP students, with numerous allegations, including class cancellation, inability of students to communicate with the program administrator, and other allegations.

Based on these complaints, the Board initiated an investigation.

3. In the course of investigating the initial complaints, Board staff interviews with 4 students in the CWTP day cohort with a program start date of 1/5/2015 revealed that the program was postponed due to no instructor being available until 1/12/2015. The program was unable to provide a qualified instructor for students and failed to offer all enrolled students a refund of all tuition and fees, a violation of R4-19-801 (A) (2).

4. Board staff interviews with 4 students in the CWTP day cohort with a program start date of 1/5/2015 revealed that CWTP failed to provide students in the day cohort with start date of 1/5/2015, with all a list of all program costs to the student that are not directly paid to program. Students were required to obtain a physical prior to clinical attendance. The cost of physical and requirement of physical was not provided to students upon enrollment, a violation of R4-19-801 (A) (5) (d).

5. Board staff reviewed student files of all 8 students in the evening cohort with a completion date of 02/01/2015 and all 4 students in the day cohort with a start date of 01/052015, review of documents revealed CWTP failed to follow its own admission

criteria policy by allowing student-Complainants A, B, D, and Students H, and I to attend clinical rotations without program required immunizations and documents. In addition, Student J was admitted into the CWTP program despite failing to meet program requirements on a reading comprehension exam. Student J was admitted based on scores 64% and 60% on reading comprehension exams when the program policy requires a minimum of 70% for admission; this is a violation of R4-19-801 (B) (3) (a) (i) and (ii).

6. Board staff interviews with Instructor X and with 7 of the 8 students in the evening cohort with a completion date of 02/01/2015 revealed that CWTP failed to administer a secure final examination. On 1/23/2015, Instructor X provided students with correct answers to the final exam, allowed students to make corrections and fill in unanswered questions, and allowed students to use the textbook and each other as resources during the exam, a violation of R4-19-801 (B) (3) (c) (1).

7. Board staff interviews with Instructor X and with 7 of the 8 students in the evening cohort with a completion date of 02/01/2015 revealed that Instructor X allowed students in the evening cohort with a completion date of 2/1/2015, to perform skills on patients or residents without an instructor present at bedside and prior to demonstrating competency, a violation of R4-19-801 (B) (3) (c) (2), R4-19-801 (C) (8) (e) and R4-19-802 (H).

8. Document review of student files revealed Instructor X failed to document each student performance, each day, consistent with course skills and clinical objectives, as evidenced by 4 of the 8 students in the evening cohort with completion date of 2/1/2015, not having a skills check list in their files, a violation of R4-19-801 (C) (10) (d) and R4-19-801 (D) (2) (b).

9. CWTP failed to maintain a course schedule for each admission cohort as required and evidenced by CWTP's inability to produce to Board staff, upon request, the schedules for all classes from 12/01/2014 to 03/01/2015, a violation of R4-19-801 (D) (1) (a).

10. Review of attendance records for all cohorts beginning 12/01/2014 revealed that CWTP failed to maintain an accurate attendance record for the evening cohort with start date of 2/2/2015. The attendance record does not reflect actual hours attended, as 7 out of 8 students on 2/3/2015 have end time noted as 9:15pm, when class was actually released at 5:00pm. In addition, CWTP's attendance record on 2/4/2015 reflects four students being present in class from 4:00 – 9:15pm when class was cancelled due to no instructor being present, a violation of R4-19-801 (D) (2) (c).

11. CWTP failed to follow its program completion policy, as evidenced by CWTP electronically verifying in the D&S Diversified database, that 7 out of the 8 students in the evening cohort with completion date of 02/02/2015, had successfully completed all requirements for graduation of the nursing assistant program prior to locating lost final exams and verifying passing of a skills final, a violation of R4-19-801 (B) (3) (c) (i) and (ii) and R4-19-801 (B) (3) (i).

12. CWTP failed to provide students with a sufficient amount of required equipment necessary to practice skills, as evidenced by the lack of any adaptive utensils and only 1 manual blood pressure cuff available at CWTP during a Board site visit on 2/5/15, a violation of R4-19-802 (D) (2) (b and i) and R4-19-801 (C) (7) (b).

13. Board staff interviews with Instructor X and 7 of 8 students in the evening cohort, with a completion date of 2/1/2015 revealed that CWTP failed to provide students

with 20 hours of instructor supervised skills practice, a violation of R4-19-802 (D) (1) (b).

14. CWTP failed to provide students in evening cohort with start date of 2/2/2015 with textbooks for the first class session, as evidenced by class being cancelled on 2/3/2015 due to students not having textbooks, a violation of R4-19-801 (C) (7) (a).

CONCLUSIONS OF LAW

Pursuant to A.R.S. Sections 32-1601(22)(d)(g)(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(22)(d)(g)(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(22)(d)(g)(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.

(g) Willfully or repeatedly violating a provision of this chapter or a rule adopted pursuant to this chapter.

(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(A) (2).

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

“2. If at any time, a person or entity offering a training program cannot provide a qualified instructor for its students, it shall immediately cease instruction and, if the training program cannot provide a qualified instructor within 5 business days, the training program shall offer all enrolled students a refund of all tuition and fees the students have paid to the program.”

The conduct and circumstances described in the Findings of Fact constitute a violation of A.A.C. R4-19-801(A)(5)(a)(b)(d).

A.A.C. R4-19-801(A)(5)(a)(b)(d) provides:

“5. A training program that requires students to pay tuition for the program shall:

- a. Make all program costs readily accessible on the school’s website with effective dates,
- b. Publically post any increases in costs on the school’s website 30 days in advance of the increase;
- c. Include in the cost calculation and public posting, all fees directly paid to the program including but not limited to tuition, lab fee, clinical fee, enrollment fee, insurance, books, uniform, health screening, credit card fee and state competency exam fee; and
- d. Provide a description of all program costs to the student that are not directly paid to the program.”

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

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

“3. The program shall promulgate and enforce the following policies with accompanying procedures:

- a. Admission requirements including:

- i. Criminal background, health and drug screening either required by the program or necessary to place a student in a clinical agency; and
- ii. English language, reading and math skills necessary to comprehend course materials and perform duties safely.”

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

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

- “c. A final examination policy that includes the following provisions;
 - i. Require that its students score a minimum 75% correct answers on a comprehensive secure final examination with no more than one re-take. The program may allow an additional re-take following documented, focused remediation based on past test performance. Any re-take examination must contain different items than the failed exam, address all course competencies, and be documented with score, date administered and proctor in the student record”

The conduct and circumstances described in the Findings of Fact constitute a violation of A.A.C. R4-19-801(B)(3)(c)(ii), R4-19-801(C)(8)(e), and R4-19-802(H)(1-2)

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

- “c. A final examination policy that includes the following provisions;
 - ii. Require that each student demonstrate, to program faculty, satisfactory performance of each practical skill as prescribed in the curriculum before performance of that skill on patients or residents without the instructor’s presence, direct observation, and supervision.”

A.A.C. R4-19-801(C)(8)(e) provides:

- “8. A training program instructor shall:
 - e. Require satisfactory performance of all critical elements of each skill under R4-19-802 (H) for nursing assistant and R4-19-803(D)(4) for medication assistant before allowing a student to perform the skill on a patient or resident without the instructor’s presence at the bedside.”

A.A.C. R4-19-802(H)(1-2) provides:

“H. Skills: A nursing assistant instructor shall verify and document that the following skills are satisfactorily performed by each student before allowing the student to perform the skill on a patient or resident without the instructor present:

1. Hand hygiene, gloving and gowning; and
2. Skills in subsection (F)(7), (8) and (11)(a), (c), (d), (f), and (g).”

The conduct and circumstances described in the Findings of Fact constitute a violation of A.A.C. R4-19-801(C)(10)(d) and R4-19-801(D)(2)(b)

A.A.C. R4-19-801(C)(10)(d) provides:

“10. A qualified RN instructor shall supervise any student who provides care to patients or residents by:

- d. Documenting each student’s performance each day, consistent with course skills and clinical objectives”

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

“2. A training program shall maintain the following student records either electronically or in paper form for a minimum of three years for CNA programs and five years for CMA programs:

- b. A completed skill checklist containing documentation of student level of competency performing the skills in R4-19-802(F) for nursing assistant, and in R4-19-803(D)(4) for medication assistants”

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

A.A.C. R4-19-801(D)(1)(a) provides:

“D. Records

1. A training program shall maintain the following program records either electronically or in paper form for a minimum of three years for CNA programs and five years for CMA programs:
 - a. Curriculum and course schedule for each admission cohort”

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

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

“2. A training program shall maintain the following student records either electronically or in paper form for a minimum of three years for CNA programs and five years for CMA programs:

- c. An accurate attendance record, which describes any make-up class sessions and reflects whether the student completed the required number of hours in the course”

The conduct and circumstances described in the Findings of Fact constitute a violation of A.A.C. R4-19-801(B)(3)(c)(1-2) and R4-19-801(B)(3)(i)

A.A.C. R4-19-801(B)(3)(c)(1-2) provides:

“3. The program shall promulgate and enforce the following policies with accompanying procedures:

- c. A final examination policy that includes the following provisions;
 - i. Require that its students score a minimum 75% correct answers on a comprehensive secure final examination with no more than one re-take. The program may allow an additional re-take following documented, focused remediation based on past test performance. Any re-take examination must contain different items than the failed exam, address all course competencies, and be documented with score, date administered and proctor in the student record; and
 - ii. Require that each student demonstrate, to program faculty, satisfactory performance of each practical skill as prescribed in the curriculum before performance of that skill on patients or residents without the instructor’s presence, direct observation, and supervision;

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

“3. The program shall promulgate and enforce the following policies with accompanying procedures:

- i. Program progression and completion criteria”

The conduct and circumstances described in the Findings of Fact constitute a violation of A.A.C. R4-19-802(D)(2)(b) and (i) and R4-19-801(C)(7)(b)

A.A.C. R4-19-802(D)(2)(b) and (i) provides:

“2. A nursing assistant training program shall ensure that equipment and supplies are in functional condition and sufficient in number for each enrolled student to practice required skills. At a minimum, the program shall provide:

- b. Thermometers, stethoscopes, including a teaching stethoscope, aneroid blood pressure cuffs, and a scale;
- i. Feeding supplies including cups, glasses, dishes, straws, standard utensils, adaptive utensils and clothing protectors”

A.A.C. R4-19-801(C)(7)(b) provides:

“7. A training program shall provide, to all program instructors and enrolled students, access to the following instructional and educational resources:

- b. Equipment and supplies necessary to practice skills”

The conduct and circumstances described in the Findings of Fact constitute a violation of A.A.C. R4-19-802(D)(1)(b)

A.A.C. R4-19-802(D)(1)(b) provides:

“1. A nursing assistant training program shall ensure each graduate receives a minimum of 120 hours of total instruction consisting of:

- b. Instructor-supervised skills practice and testing in a laboratory setting for a minimum of 20 hours”

The conduct and circumstances described in the Findings of Fact constitute a violation of A.A.C. R4-19-801(C)(7)(a)

A.A.C. R4-19-801(C)(7)(a) provides:

“7. A training program shall provide, to all program instructors and enrolled students, access to the following instructional and educational resources:

- a. Reference materials, corresponding to the level of the curriculum”

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.

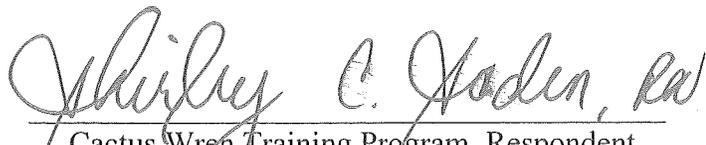
Representatives of Respondent understand that this action is against the training program and does not affect any complaint against the individual nursing licenses of owners, instructors or coordinators.

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.


Cactus Wren Training Program, Respondent,
by and through its Administrator,
Shirley Soden RN BSN MBA/HCM

Dated: 3/20/15

ARIZONA STATE BOARD OF NURSING

SEAL

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

Dated: March 20, 2015 JR

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. 6001 and Certificate of Approval of Medication Assistant Training Program No. M-6003, issued to Cactus Wren Training Program. 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 Certificates of Approval for a period of 2 years, and that Shirley Soden RN, BSN, MBA, HCM 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

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

Dated: March 20, 2015

hand delivered
COPY ~~mailed~~ this 20 day of March, 2015 by First Class Mail to: PR

Shirley Soden, RN, BSN, MBA, HCM
Administrator/Owner
11024 N 28th Dr. Ste. 265
Phoenix AZ 85029

By: _____