

BEFORE THE ARIZONA STATE BOARD OF NURSING

IN THE MATTER OF PRACTICAL
NURSING PROGRAM NO. US96101500
ISSUED TO:
BROWN MACKIE COLLEGE
PRACTICAL NURSING PROGRAM
4585 E. SPEEDWAY BLVD.
TUCSON, AZ 85712

CONSENT AGREEMENT
AND
ORDER NO. 1502002PN96101500

CONSENT AGREEMENT

A complaint charging Brown Mackie College Practical Nursing Program (“Respondent”) 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. § 41-1092.07(F)(5), the undersigned parties enter into this Consent Agreement as a final disposition of this matter.

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 provisional program approval for a practical nursing program at Brown-Mackie College on 4585 E. Speedway Blvd, Tucson, AZ, which was originally issued to Respondent in November, 2010.
2. The Board issued a Notice of Deficiency to Respondent (Order number 1501001PN96101500) on April 8, 2015. The facts and legal violations as stated in the Notice of Deficiency, attached, are hereby incorporated by reference and included in this Order for Summary Suspension.

3. Respondent failed to provide adequate learning resources, specifically clinical experiences, to support program processes and provide for a variety of clinical experiences, to certain students during the 2014-2015 academic year. Respondent repeatedly cancelled clinical sessions and provided no or inadequate make ups, and cancelled some didactic (classroom) sessions without make up. This constituted a misrepresentation by Respondent regarding its educational opportunities for these students, and resulted in Respondent's students failing to receive variety and number of clinical learning opportunities necessary for students to achieve program outcomes or minimal competence. Respondent also failed to supply documents related to these cancellations to the Board during the investigation, and falsely reported to the Board, in writing, that the cancellations were due to illnesses at the clinical facility, when in fact, at least some of the cancellations were due to Respondent's faculty's illness. This conduct is a violation of Arizona Administrative Code Rule (hereinafter "R") 4-19-211(1, 2, 4, 5, 6, 9, 10, 11, and 12, *inter alia*. For example, Respondent failed to meet its own syllabus clinical requirement of 24 hours for NUR 2850 (Care of Children and Adolescents) in April, 2015, when Respondent only provided 8 hours of clinical experience, a violation of R4-19-201 (J), R4-19-205 (B), R4-19-211 (4) and R4-19-206 (D) (3).
4. During a May, 2015, site visit, Board staff could not locate, and Respondent could not provide, current and accurate records documenting students' clinical attendance from August 2014 - February 2015, a violation of R4-19-202 (B)(1).
5. In January, 2015, Respondent did not provide appropriate clinical faculty supervision during NUR 2251 Adult Nursing II course, in January 2015, during clinical rotations with Agape Hospice, located in Tucson, Arizona. Specifically,

Respondent failed to meet the Arizona Nurse Practice Act clinical supervision requirements because Respondent failed to have either a clinical instructor present during patient care, or an established preceptorship program, with the requisite policies for preceptors, which constitutes a violation of R4-19-204 (C) and 206 (E).

6. Respondent failed to consistently document and enforce its written Laboratory/Clinical Attendance policies related to clinical session tardiness and attendance. Respondent admits it failed to maintain accurate clinical attendance records for the 2014-2015 academic year, prior to March 2015 (see paragraph 4, above). Respondent's faculty were instructed in 2014 by Respondent's Nursing Program Administrator to have students sign in on Mondays for the entire week. Multiple witnesses provided consistent statements to Board staff indicating that many clinical sessions were cancelled, or modified to alternative activities, however no documentation exists (or was provided to the Board) to document when or which sessions were cancelled or modified. Respondent also failed to provide the clinical hours as represented in its 2014-2015 course syllabi. R4-19-202(B)(1), 203(C)(9), R4-19-205 (D), 206(C)(5), and 211(1, 2, 4, 5, 6, 9, 11, 12).
7. Respondent assigned students to clinical sessions in January 2015, for NUR 2251 (Adult Nursing II) with Agape Hospice, located in Tucson, Arizona. The clinical rotation was observation only (students were not able to provide patient care) and included students following Agape Hospice nurses on home visits. According to the syllabus for NUR 2251 students completing these clinical sessions not be

able to achieve the following clinical objectives in an observation only clinical:

1) Demonstrate the use of nursing process in prioritizing care for clients to meet their health care needs and 2) Demonstrate the use of therapeutic communication skills to reinforce health information about health/illness continuum. Therefore, the clinical rotation failed to provide the experience necessary to meet the established clinical objectives, a violation of R4-19-206 (A) and R4-19-211 (4).

8. Between April 2014 and February 2015, Respondent failed to document or provide clinical instruction sufficient to meet the goals of the program in order to allow students to form necessary links of theoretical knowledge, clinical reasoning and practice. Board staff is unable to assess, due to Respondent's lack of documentation, if students have acquired the essential clinical knowledge and skills necessary to function in accordance with the definition and scope of practice specified in A.R.S. § 32-1601(16) and R4-19-401 for a practical nurse, a violation of R4-19-206 (D) and R4-19-211 (5, 6, 11, and 12). Respondent's students, Students B and C, both due to graduate in June, 2015, expressed concerns about their preparation to Board staff in February, 2015, with Student B stating that she felt unprepared, and Student C stating she felt unsafe to care for patients, due to failure of Respondent to provide adequate clinical and didactic instruction. Additionally, while Respondent's first time NCLEX pass rate for calendar year 2014 was 80%, which meets the 80% pass rate requirement in rule R4-19-206 (G), the 1st quarter pass rates for 2015 (from January-March, 2015) were 54.55%, which supports allegations made by students, and others, that Respondent's students have not received didactic and clinical instruction

sufficient to pass NCLEX or provide safe care.

9. Respondent failed to maintain standards of acceptable and prevailing educational or nursing practice when on or about January 27, 2015, Respondent Instructor Z allowed students in the NUR 2251 (Adult Nursing II) course to re-take the final examination, as the re-take examination failed to contain different items from the original exam, which the standard of educational practice requires. In addition, from April 2014 – Present (as of May, 2015), Respondent allowed for clinical make-ups in the form of papers, projects, power point presentations, ATI review, and skills lab; however, all of these activities fail to meet rule requirements in R4-19-206 for a clinical experience, which involves care of actual patients while applying nursing concepts, and is also a violation of R4-19-211 (1).
10. On or about January 26, 2015, Respondent Instructor Z provided information to clinical Group A for a final exam to be given on or about January 27, 2015. Standards of acceptable and prevailing educational or nursing practice require administration of a secure exam, which requires that exam items are not disclosed to students prior to the exam and exams are protected so that students cannot access the exam or exam items prior to the exam. Providing test questions and information prior to administration of exam is a violation of R4-19-211 (1).
11. BMC failed to respond to Board staff's written request for documentation on 5/6/2015 and due to Board staff on 5/12/2015 at 5:00pm for the following items:
1) List of all nursing student and contact information by cohort; 2) Total number of students enrolled in program; 3) Documentation of any clinical make-up by

students including date of absence or reason for make-up. This constitutes a violation of R4-19-211 (8), (11), and (12)

12. BMC provided false information to the Board regarding cancelation of clinical for NUR 2252 (Adult Nursing III) course, as clinical was canceled on 2/18/2015, 2/19/2015 and 2/20/2015 due to Instructor Z being out ill, rather than due to cancellation by the clinical facility as BMC claimed, a violation of R4-19-211 (10) and (12).
13. BMC failed to answer Board allegations as outlined in the investigative report regarding the canceling of clinical the last week in November, 2014 for NUR 1750 (Care of Older Adults) course when she had sent the students home to perform ATI review in lieu of clinical attendance, a violation of R4-19-211 (10) and (12)
14. For the 2014-2015 academic year, BMC did not have the tools needed to be successful, including books, clinical placement, supplies, and faculty. BMC was using veterinarian technician supplies because the BMC did not have enough appropriate supplies.

CONCLUSIONS OF LAW

Pursuant to A.R.S. §§ 32-1606, 32-1663 and 32-1664, the Board has subject matter and personal jurisdiction in this matter.

In addition to those violations identified within the Findings of Fact, the Board has determined that the conduct and circumstances described in the Findings of Fact constitute unprofessional conduct and grounds to take disciplinary action pursuant to A.R.S. 32-1663 and 32-1664, and pursuant to the following statutes and rules:

ARS § 32-1601 Definitions

22. "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) Committing an 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.

R4-19-201. Organization and Administration

J. The parent institution shall provide adequate fiscal, human, physical, and learning resources to support program processes and outcomes necessary for compliance with this Article.

R4-19-202. Resources, Facilities, Services, and Records

B. A nursing program shall maintain current and accurate records of the following:

1. Student records, including admission materials, courses taken, grades received, scores in any standardized tests taken, health and performance records, and health information submitted to meet program or clinical requirements for a minimum of three years after the fiscal year of program completion for academic records and one year after program completion for health records;

R4-19-203. Administrator; Qualifications and Duties

C. The administrator shall have the authority to direct the program in all its phases, including:

9. Enforcing consistent application of all nursing program policies.

R4-19-204. Faculty; Personnel Policies; Qualifications and Duties

C. The parent institution of a nursing program shall ensure that at least one nursing faculty member is assigned to no more than ten students while students are directly or indirectly involved in the care of patients including precepted experiences.

R4-19-205. Students; Policies and Admissions

B. A nursing program shall implement written student admission and progression requirements that are evidence-based, allow for a variety of clinical experiences and satisfy the licensure criteria of A.R.S. Title 32, Chapter 15 and A.A.C. Title 4 Chapter 19.

D. A nursing program and parent institution shall have and enforce written policies that are readily available to students in either the college catalogue or nursing student handbook that address student rights, responsibilities, grievances, health, and safety.

R4-19-206. Curriculum

A. A nursing program shall assign students only to those clinical agencies that provide the experience necessary to meet the established clinical objectives of the course.

C. A nursing program administrator and faculty members shall ensure that the curriculum:

5. Is designed so that a student who completes the program will have the knowledge and skills necessary to function in accordance with the definition and scope of practice specified in A.R.S. § 32-1601(16) and R4-19-401 for a practical nurse or A.R.S. § 32-1601(20) and R4-19-402

for a registered nurse.

D. A nursing program shall provide for progressive sequencing of classroom and clinical instruction sufficient to meet the goals of the program and be organized in such a manner to allow the student to form necessary links of theoretical knowledge, clinical reasoning, and practice

3. A practical nursing program shall provide clinical instruction that includes, at minimum, selected and guided experiences that develop a student's ability to apply core principles of practical nursing when caring for:

- a. Patients with medical and surgical conditions throughout the life span,
- b. Peri-natal patients, and
- c. Neonates, infants, and children in varied settings.

E. A nursing program may provide precepted clinical instruction.

Programs offering precepted clinical experiences shall:

- 1. Develop and adhere to policies that require preceptors to:
 - a. Be licensed nurses at or above the level of the program either by holding an Arizona license in good standing, holding multi-state privilege to practice in Arizona under A.R.S. Title 32, Chapter 15, or if practicing in a federal facility, meet requirements of A.R.S. § 32-1631(5);
 - b. For LPN preceptors, practice under the general supervision of an RN or physician according to A.R.S. § 32-1601(16).
- 2. Develop and implement policies that require a faculty member of the program to:
 - a. Together with facility personnel, select preceptors that possess clinical expertise sufficient to accomplish the goals of the preceptorship;
 - b. Supervise the clinical instruction according to the provisions of R4-19-204(C) and (D), and
 - c. Maintain accountability for student education and evaluation.

R4-19-211. Unprofessional Conduct in a Nursing Program

A disciplinary action, denial of approval, or notice of deficiency may be issued against a nursing or refresher program for any of the following acts of unprofessional conduct in a nursing program:

- 1. Failure to maintain minimum standards of acceptable and prevailing educational or nursing practice;
- 2. Deficiencies in compliance with the provisions of this Article;

4. Non-compliance with the program's or parent institution's mission or goals, program design, objectives, or policies;
5. Failure to provide the variety and number of clinical learning opportunities necessary for students to achieve program outcomes or minimal competence;
6. Student enrollments without necessary faculty, facilities, or clinical experiences;
8. Failure to comply with Board requirements within designate time-frames;
9. Fraud or deceit in advertising, promoting or implementing the program;
10. Material misrepresentation of fact by a nursing or refresher program in any advertisement, application or information submitted to the Board;
11. Failure to allow Board staff to visit the program or conduct an investigation including failure to supply requested documents;
12. Any other evidence that gives the Board reasonable cause to believe the program's conduct may be a threat to the safety and well-being of students, faculty, patients or potential patients.

The conduct and circumstances described in the Findings of Fact, for purposes of the Board only, constitute sufficient cause pursuant to A.R.S. § 32-1664(N) to revoke, suspend or take other disciplinary action against Respondent's program approval in the State of Arizona.

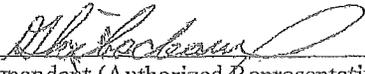
Respondent solely admits to the Board's Findings of Fact set forth in Paragraphs 4, 11, 12, the first two sentences of Paragraph 3, the second sentence of Paragraph 6, and the allegations in the first sentence of Paragraph 8 related to documenting clinical instruction. In lieu of a formal hearing on 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, offices, 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 solely admits to Paragraphs 4, 11, 12, the first two sentences of Paragraph 3, the second sentence of Paragraph 6, and the allegations in the first sentence of Paragraph 8 related to documenting clinical instruction of the Board's Findings of Fact. While Respondent disputes the remaining Findings of Fact, Respondent understands that, for the Board's purposes only, the Board has determined that 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. Neither the Findings of Fact nor this Order may be used as conclusive evidence of such violations for any other purpose, including civil litigation and/or arbitrations.

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

Respondent understands that this Consent Agreement is effective upon its acceptance by 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 Board's approval or by stipulation between Respondent and the Board's designee. The effective date of this Order is the date the Consent Agreement is signed by the Board and by Respondent. If the Consent Agreement is signed on different dates, the later date is the effective date.


Respondent (Authorized Representative) Debra Thibodeaux
Regional Vice President
Dated: 5-20-15

ARIZONA STATE BOARD OF NURSING



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

Dated: 5/21/15

ORDER

In view of the above Findings of Fact, Conclusions of Law, and the consent of Respondent, the Board hereby issues the following Order:

A. Respondent's consent to the terms and conditions of the Order and waiver of public hearing is accepted.

B. Respondent's program approval is placed on probation for a period of 2 years from the effective date of this Order. For the duration of this Order, Respondent shall not, except as set forth in Paragraph 4 of this Order, admit new students, but shall be permitted to complete instruction of the program ("teach out") for its current students, so long as Respondent remains compliant with the terms of Probation as described in this Order. Once all currently enrolled students in the program have either completed the program or ceased enrollment, Respondent hereby agrees that its program approval will be deemed voluntarily surrendered for a minimum period of two years.

C. This Order becomes effective upon the Board's and Respondent's acceptance of the Consent Agreement. The effective date of this Order is the date the Consent Agreement is signed by the Board and by Respondent. If the Consent agreement is signed on different dates, the later date is the effective date. Probation begins on the effective date of this Order.

D. If Respondent is noncompliant with any of the terms of the Order, Respondent's noncompliance shall be reviewed by the Board for consideration of possible further discipline of Respondent's program approval.

F. Probation is subject to the following terms and conditions:

TERMS OF PROBATION

1. Public Notification

Within seven days of the effective date of this Order, the Board shall note the probationary status of the program on the list of approved programs with the following notation: "VOLUNTARY PROBATION" until the termination of this Order, at which time the status shall be listed as "VOLUNTARY SURRENDER OF PROGRAM APPROVAL."

2. Quarterly Reports

Within 7 days of each assigned quarterly reporting due date, as provided by the Board or its designee, Respondent shall provide the Board with accurate and complete quarterly reports containing the following:

- a. All nursing program meeting minutes, including meetings with faculty, staff and students present, and corporate meetings that involve decisions made related to Respondent program;
- b. All nursing program personnel/staff changes;
- c. Data on all student admissions, graduations, and attrition;
- d. All written or verbal student or program staff complaints, areas of dissatisfaction or concerns regarding the nursing program, and their resolution. Complaints include all negative feedback, whether formal or informal, written or oral, anonymous or named, and include comments and evaluation results of anonymous surveys of faculty and the program.

e. Accurate student attendance records of all didactic (classroom), lab and clinical sessions including times of arrival of each student, times of dismissal of each and the instructor who was present during the entire session.

The first report is due on the first assigned quarterly report due date after the effective date of the Order.

3. Remedy of Deficiencies

Respondent shall provide evidence sufficient to establish, as determined by the Board or its designee, that all deficiencies contained in the April 8, 2015 Notice of Notice of Deficiency which is attached and incorporated by reference, are fully remedied within 12 months of the effective date of this Order.

4. Admissions

Respondent shall cease to admit students to its program, except that two former students who were previously promised readmission by Respondent may be re-admitted with the approval of Board staff, provided that these two students shall not be re-charged tuition or fees for courses they previously paid for.

5. Assessment and Remediation of Current Students

Respondent shall, at Respondent's sole expense, enter into an agreement with a qualified, independent entity ("Assessor"), which must be pre-approved in the reasonable judgment of the Board, or its designee, for the purpose of allowing the Assessor to comprehensively assess the clinical competence and knowledge of all current students and recommend remediation. Respondent, at its sole expense, shall provide each student full remediation with oversight by the Assessor and Board staff.

6. Graduation

During the term of this Order, Respondent shall obtain approval from the Board, or its designee, prior to permitting Respondent's students to graduate. Respondent shall provide to the Board a report regarding all students identified by Respondent as eligible for graduation, prior to permitting these students to graduate. The report shall be provided at minimum 30 days prior to the projected graduation date, and shall contain information based upon criteria identified by the Board, or its designee. The Board, or its designee, shall review the report and either approve the students for graduation, or instruct Respondent as to the additional assessments and/or remediation required prior to permitting the students to graduate. Respondent shall then provide, at its own cost, the requisite assessments and/or remediation, as directed by the Board, or its designee, and submit a revised report to the Board for review and possible approval by the Board, or its designee, prior to permitting the students to graduate. Reasonable efforts shall be made to ensure that any necessary reviews and approvals by Board staff are timely and efficient so that graduation dates are not delayed unnecessarily.

7. Renewal of Approval

In the event Respondent's nursing program approval is scheduled to expire while this Order is in effect, Respondent shall apply for renewal of approval and otherwise maintain approval for the nursing program in Arizona.

8. Obey All Laws

Respondent shall obey all laws/rules governing nursing education in this state and obey all federal, state and local criminal laws.

9. Costs

Respondent shall bear all costs of complying with this Order.

10. Violation of Probation

If Respondent is noncompliant with this Order in any respect, the Board may take further disciplinary action for noncompliance with this Order after affording Respondent notice and the opportunity to be heard. If a complaint or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

11. Voluntary Surrender of Approval

Respondent may, at any time this Order is in effect, voluntarily request to surrender their program approval.

ARIZONA STATE BOARD OF NURSING

SEAL

Joey Ridenour

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

Dated: 5/21/15

JR/u :

COPY mailed this 22 day of May, 2015 by First Class Mail, to:

Kory A. Langhofer
Brownstein Hyatt Farber Schreck, LLP
One East Washington Street, Floor 24
Phoenix, Arizona 85004

Roy Herrera, Jr.
Brownstein Hyatt Farber Schreck, LLP
One East Washington Street, Floor 24
Phoenix, Arizona 85004

Signed in the Board Office this 21 day of May, 2015.

By: Lyn Ledbetter
Legal Secretary