

BEFORE THE ARIZONA STATE BOARD OF NURSING

IN THE MATTER OF NURSING PROGRAM
APPROVAL ISSUED TO:

BRECKINRIDGE SCHOOL OF NURSING @
ITT TECHNICAL INSTITUTE

RESPONDENT

CONSENT AGREEMENT
AND

ORDER NO. 141104RN96406

CONSENT AGREEMENT

Complaints alleging violations of the Nurse Practice Act by BRECKINRIDGE SCHOOL OF NURSING @ ITT TECHNICAL INSTITUTE (“Respondent”) were received by the Arizona State Board of Nursing (“Board”). In the interests 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 Factual Allegations and Conclusions of Law:

FACTUAL ALLEGATIONS

1. Respondent holds Board-issued, provisional approval for an associate degree nursing program, originally issued on August 4, 2009.
2. On July 7, 2014, Respondent and the Board entered into Consent Agreement and Order Numbers 131013RN96406, 070512RN96406, 310811RN96406 (“CA”), attached and incorporated by reference, for 36 months probation, with the possibility of early termination after one year, assuming compliance with probation.
3. On April 8, 2015, the Board issued a Notice of Charges, alleging violations of the CA, *inter alia*.

4. Statements from Respondent ITT's catalogue examined on 11/12/2014 indicate that Respondent is not required to provide advance notice to students of changes in the educational program, as required in R4-19-205(F). This violation has been ongoing through the present, as of May, 2015. The above also constitutes a violation of Term of Probation, paragraph 6 of the CA.
5. Respondent's clinical contract, in place in November 2014, with Abrazo Health, did not have a termination clause consistent with R4-19-201(F)(4). This violation has been ongoing through the present, as of May, 2015. The above also constitutes a violation of Term of Probation, paragraph 6 of the CA.
6. Control of Respondent's program, including day to day classroom activities, such as testing requirements, daily schedule, calculation of grades and curriculum, rests with ITT Educational Services, Inc. (corporate) and not the local faculty and program administrator, as required in R4-19-201(D) and R4-19-203 (C)(1). This violation has been an ongoing violation since before the original CA in 2014, and has been ongoing through the present, as of May, 2015. This also constitutes a violation of Term of Probation, paragraph 6 of the CA.
7. Respondent's student surveys and evaluations are not anonymous, as required in R4-19-201(G) and constitutes a violation of R4-19-201(G) and Term of Probation, paragraph 6 of the CA. This has been an ongoing violation, through the present, as of May, 2015.
8. Respondent's systematic evaluation plan does not incorporate continuous improvement based on evaluative data, does not include measurable outcomes and logical methodologies, and does not include actual outcomes and actions taken as required in R4-19-201(I) and constitutes a violation of R4-19-201(I) and Term of Probation, paragraph 6 of the CA. This has been an ongoing violation, through the present, as of May, 2015

9. Additionally, Respondent's systematic evaluation plan does not fully evaluate the following areas, as required in R4-19-201(I) *et. seq.*: curriculum; educational facilities, resources and support services; student achievement of program outcomes; graduation; attrition; NCLEX pass rates; faculty performance; and protection of patient safety. The above constitutes a violation of R4-19-201(I) and Term of Probation, paragraph 6 of the CA. This has been an ongoing violation, through the present, as of May, 2015.
10. Respondent's fall, 2014, semester curriculum lacked unit objectives for thirteen courses, as required in R4-19-206(B). The above constitutes a violation of R4-19-206(B) and Term of Probation, paragraph 6 of the CA.
11. In a self-study submitted by Respondent on December 12, 2013 in preparation for a site visit, an inaccurate document entitled "Associate Degree Nursing Program: Curriculum Map Nursing Courses," regarding curriculum elements was found beginning on page 196, a violation of R4-19-211(10), and Term of Probation, paragraph 6 of the CA.
12. On Board staff's site visit of Respondent, conducted on 11/12/14, 11/13/14 and 11/24/14, Respondent failed to provide Board staff with either documents or evidence that current students received program outcome goals or objectives as required in R4-19-206(B); or course sequences in public documents as required in in R4-19-205 (E). The above constitutes violations of R4-19-206(B) and 205(E) and Term of Probation, paragraph 6 of the CA.
13. On Board staff's site visit of Respondent, conducted on 11/12/14, 11/13/14 and 11/24/14, Respondent did not provide Board staff with faculty clinical supervision policies as required in R4-19-203(C)(6)(e): validation of nursing skills of faculty in faculty files as required by Respondent's own policy, a violation of R4-19-203(C)(9); or clinical safety policies for faculty as required in R4-19-203 (C)(8). The above is also a violation of term 6 of the CA.

14. During a Board Staff site visit conducted on 11/12/14, 11/13/14 and 11/24/14, Respondent failed to establish that their curriculum incorporated Quality and Safety Education for Nurses (QSEN) competencies as required in R4-19-206 (D)(1)(c). The above is also a violation of Term of Probation, paragraph 6 of the CA.
15. Minutes of Respondent's faculty meeting dated 7/15/14 report that faculty offered no changes to admission standards. However, on 11/24/14, faculty members who attended the 7/15/14 meeting reported to Board staff that faculty had proposed policy changes, specifically related admission policies that were to be changed to be more stringent. The faculty stated they approved changing admissions to require a 75% on both the English and Math portions of the HESI A2 admission exam. The above is a violation of R4-19-204 (G) and Term of Probation, paragraphs 2 and 6 of the CA.
16. Respondent held a faculty meeting on 1/12/15. One of the reported agenda items for this meeting was to address admission standards in light of paragraph 19. Respondent's report of the meeting as detailed in Respondent's second quarterly report does not acknowledge a faculty role in determining admission standards. Respondent Faculty E, interviewed on 2/23/15, verified that faculty members were not asked to develop or approve admission standards at this meeting. Consistent with Respondent's self-report, Faculty E confirmed that this meeting was to clarify the corporate-developed admission standards, not to permit faculty input at the Phoenix campus. The above is a violation of Term of Probation, paragraphs 2 and 6 of the CA.
17. Respondent's Admission Policy 1.2, effective July 15, 2014, clearly prohibits faculty or the nursing program administrator from determining Respondent's admission standards, a violation of R4-19-204 (G) and Term of Probation, paragraphs 2 and 6 of the CA.

18. On Board staff's site visit of Respondent, conducted on 11/12/14, 11/13/14 and 11/24/14, Respondent refused to supply the Board with national data on attrition and NCLEX pass rates. This conduct is a violation of R4-19-211 (11) and Term of Probation, paragraphs 4 and 6 of the CA.
19. NCLEX RN reports for calendar year 2014 reveal the Respondent's NCLEX® RN first-time pass rate for 2014 was 43%, a violation of R4-19-206(G) which requires a minimum 80% pass rate and is a violation of Term of Probation, paragraph 6 of the CA.
20. Respondent's Annual Report to the Board submitted to the Board on or about February 3, 2015 reports an on-time graduation rate of 7% (14 students admitted to nursing clinical courses with only 1 graduating on-time, 6 lagging, 7 dropped). The above conduct is a violation of R4-19-206(H), which requires an on-time graduation rate of 45%, and Term of Probation, paragraph 6 of the CA.
21. Respondent has not reported all written complaints as required by its Consent Agreement, entered into on July 7, 2014. Specifically, in its 3rd Quarterly Report, submitted to the Board on April 30, 2015, Respondent failed to identify student complaints on student evaluations of instructors, and has not provided evidence of resolution of these areas of dissatisfaction. This violates Respondent's applicable policy, entitled "Academic Affairs—Student Surveys and Evaluations Policy" (SA 12.0), dated 8/18/14, which states: "(t)he Dean, Associate Dean and School Chairs must review the [survey results]...and identify areas of student dissatisfaction with a course and/or instructor." Furthermore the policy goes on to state that administrative personnel are required to investigate the area of dissatisfaction and implement an appropriate action plan to improve student satisfaction (page 1). None of the areas of dissatisfaction contained in the surveys of instructors from the 3rd Quarter were addressed in the quarterly

reports. Respondent has not reported any changes to this policy. The above constitutes a violation of the CA, specifically Term of Probation, paragraphs 3 and 6.

22. Additionally, while Respondent addressed some issues contained in a written student complaint, dated 3/2/15, there was neither recognition nor resolution regarding allegations of incorrect instruction by Faculty Member A that was inconsistent with the text book. The above constitutes a violation of the CA, specifically Term of Probation, paragraph 6.
23. Respondent failed to address a written student complaint regarding Respondent's Faculty Members A and B providing inaccurate instruction to students that contradicted the text-book or other instruction. The above constitutes a violation of the CA, specifically Term of Probation, paragraphs 3 and 6.
24. In its most recent, 3rd Quarterly Report, dated April 30, 2015, Respondent failed to address or submit documentation demonstrating that it had resolved ongoing allegations during this time period, including violations listed in the April, 2015, Notice of Charges. These violations constitute violations of the CA, specifically Term of Probation, paragraphs 3 and 6.

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.

For purposes of this Consent Agreement and Order, the Board only, has determined that the conduct and circumstances alleged in the Factual Allegations constitute violations of A.R.S. § 32-1663 (D) as defined in A.R.S. § 32-1601 (22) (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); (i) Failing to comply with a stipulated agreement, consent agreement or board order; and (j) Violating this chapter or a rule that is adopted by the board pursuant to this chapter, specifically:

A.A.C. Rule 4-19-201 (D)(F)(G) and (I) (effective July 6, 2013)

- D. The parent institution shall center the administrative control of the nursing program in the nursing program administrator and shall provide the support and resources necessary to meet the requirements of R4-19-203 and R4-19-204
- F. A nursing program shall have a written agreement between the program and each clinical agency where clinical experience is provided to the program's students that:
 - 1. Defines the rights and responsibilities of both the clinical agency and the nursing program,
 - 2. Lists the role and authority of the governing bodies of both the clinical agency and the nursing program,
 - 3. Allows faculty members of the program the right to participate in selecting learning experiences for students, and
 - 4. Contains a termination clause that provides sufficient time for enrolled students to complete the clinical experience upon termination of the agreement.
- G. A nursing program shall implement written policies and procedures that provide a mechanism for student input into the development of academic policies and procedures and allow students to anonymously evaluate faculty, nursing courses, clinical experiences, resources and the overall program.
- I. A nursing program shall develop and implement a written plan for the systematic evaluation of the total program that is based on program and student learning outcomes and that incorporates continuous improvement based on the evaluative data. The plan shall include measurable outcome criteria, logical methodology, frequency of evaluation, assignment of responsibility, actual outcomes and actions taken. The following areas shall be evaluated:
 - 1. Internal structure of the program, its relationship to the parent institution, and compatibility of program policies and procedures with those of the parent institution;
 - 2. Mission and goals;
 - 3. Curriculum;
 - 4. Education facilities, resources, and student support services;
 - 5. Clinical resources;
 - 6. Student achievement of program educational outcomes;
 - 7. Graduation and attrition for each admission cohort including at a minimum:
 - a. Number and percent of students who left the program;
 - b. Number and percent of students who are out of sequence in the program; and
 - c. Number and percent of students who graduated within 100%, 150% or greater than 150% of time allotted in the curriculum plan.
 - 8. Graduate performance on the licensing examination;
 - 9. Faculty performance; and
 - 10. Protection of patient safety including but not limited to:
 - a. Student and faculty policies regarding supervision of students, practicing within scope and student safe practice;

- b. The integration of safety concepts within the curriculum;
- c. The application of safety concepts in the clinical setting; and
- d. Policies made under R4-19-203(C)(6).

A.A.C. Rule 4-19-203 (C) (1), (2), (6), (8), and (9) (effective July 6, 2013)

- C. The administrator shall have the authority to direct the program in all its phases, including:
 - 1. Administering the nursing education program;
 - 2. Directing activities related to academic policies, personnel policies, curriculum, resources, facilities, services, and program evaluation;
 - 6. Together with faculty develop, enforce and evaluate equivalent student and faculty policies necessary for safe patient care and to meet clinical agency requirements regarding:
 - e. Supervision of clinical activities.
 - 8. Together with faculty develop, enforce and evaluate both student and faculty policies regarding minimal requisite nursing skills and knowledge necessary to provide safe patient care for the type of unit and patient assignment; and
 - 9. Enforcing consistent application of all nursing program policies.

A.A.C. Rule 4-19-204 (G) and (H) (effective July 6, 2013)

- G. Under the leadership of the nursing program administrator, nursing program faculty members shall:
 - 1. Develop, implement, evaluate, and revise the program of learning including the curriculum and learning outcomes of the program;
 - 2. Develop, implement, evaluate and revise standards for the admission, progression, and graduation of students;
 - 3. Participate in advisement and guidance of students.
- H. Together with the nursing program administrator, develop, implement and evaluate written policies for faculty orientation, continuous learning and evaluation.

A. A. C. Rule 4-19-205 (B), (E), and (F) (effective July 6, 2013)

- 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.
- E. A nursing program and parent institution shall provide accurate and complete written information that is readily available to all students and the general public about the program including
 - 1. The nature of the program, including course sequence, prerequisites, co-requisites and academic standards;
 - 2. The length of the program;
 - 3. Total program costs including tuition, fees and all program related expenses;

4. The transferability of credits to other public and private educational institutions in Arizona; and
 5. A clear statement regarding any technology based instruction and the technical support provided to students.
- F. A nursing program shall communicate changes in policies, procedures and program information clearly to all students, prospective students and the public and provide advance notice similar to the advance notice provided by an approved program of similar size and type.

A.A.C. Rule 4-19-206 (A): (effective March 7, 2005 to July 6, 2013)

- A. For the purposes of this Section, "clinical instruction" means the guidance and supervision provided by a qualified faculty member or designee while a nursing student is providing patient care.

A.A.C. Rule 4-19-206 (B), (D)(1), (G) and (H) (effective July 6, 2013)

- B. A nursing program shall provide a written program curriculum to students that includes:
1. Student centered outcomes for the program;
 2. A curriculum plan that identifies the prescribed course sequencing and time required;
 3. Specific course information that includes:
 - a. A course description;
 - b. Student centered and measurable didactic objectives;
 - c. Student centered and measurable clinical objectives, if applicable;
 - d. Student centered and measurable simulation objectives, if applicable;
 - e. A course content outline that relates to the course objectives;
 - f. Student centered and measurable objectives and a content outline for each unit of instruction.
 - g. Graded activities to demonstrate that course objectives have been met.
- 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.
1. A nursing program curriculum shall provide coursework that includes, but is not limited to:
 - c. Didactic content and supervised clinical experience in the prevention of illness and the promotion, restoration and maintenance of health in patients across the life span and from diverse cultural, ethnic, social and economic backgrounds to include:
 - i. Patient centered care,
 - ii. Teamwork and collaboration,
 - iii. Evidence-based practice,
 - iv. Quality improvement,
 - v. Safety, and
 - vi. Informatics,
- G. A nursing program shall maintain at least a 80% NCLEX® passing rate for graduates taking the NCLEX-PN® or NCLEX-RN® for the first time within 12 months of graduation. The

Board shall issue a notice of deficiency to any program that has a NCLEX® passing rate less than 80% for two consecutive calendar years or less than 75% for one calendar year.

- H. At least 45% of students enrolled in the first nursing clinical course shall graduate within 100% of the prescribed period. "Prescribed period" means the time required to complete all courses and to graduate on time according to the nursing program's curriculum plan excluding the time to complete program pre-requisite or pre-clinical courses.

A. A. C. Rule 4-19-211 (1), (2), (10), (11) and (12) (Effective July 6, 2013)

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;
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 Factual allegations, for purposes of the Board only, constitute sufficient cause pursuant to A.R.S. § 32-1664(N) to revoke, suspend or take disciplinary action against Respondent's associates degree nursing program approval.

Respondent admits to paragraphs 19 and 20 of the Board's Factual Allegations only.

While Respondent disputes the remaining Factual Allegations, it understands that for the Board's purposes only, the Board has determined the Factual allegations to be conclusive evidence of violations of the Nurse Practice Act and may be used by the Board for purposes of determining sanctions in any future disciplinary matter. Neither the Factual Allegations nor this Order may be used as conclusive evidence of such violations for any other purpose, including civil litigation and/or arbitration. In lieu of a formal hearing on these issues, Respondent agrees to issuance of the attached Order and irrevocably waives all rights to a hearing, rehearing, appeal, or judicial

review arising out of these matters. Respondent further irrevocably 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 these matters.

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 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 or its designee 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 Respondent and accepted by the Board or its designee.



Respondent Phil Frank, Sr. VP & General Counsel

Dated: 5-14-15

ARIZONA STATE BOARD OF NURSING



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

Dated: 5/15/15

ORDER

In view of the above Factual Allegations, Conclusions of Law and 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 hereby placed on probation for a maximum period of two years from the effective date of this Order. For the duration of this Order, Respondent shall not 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, or two years from June 30, 2015, whichever is sooner, 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 Respondent and accepted by the Board or its designee. If the Consent Agreement is signed on different dates, the later date is the effective date.
- D. Probation is subject to the following terms and conditions:

TERMS OF PROBATION

1. The Board shall continue to note the probationary status of the program on the list of approved programs with the following notation: "VOLUNTARY CONSENT TO

PROBATION” until the termination of this Order, at which time the status shall be listed as “VOLUNTARY SURRENDER OF PROGRAM APPROVAL”.

2. Respondent shall not admit any new students to its program.
3. Respondent shall provide the Board with accurate and complete quarterly reports containing the following, when applicable: Faculty minutes; all student or faculty verbal and written complaints and grievances, including negative comments on evaluations or surveys; responses to complaints and grievances; resolutions of complaints and grievances; attrition data for each cohort; graduation data; student satisfaction surveys; documentation reflecting faculty control of program; faculty teaching and clinical assignments including qualifications to teach the particular subject or clinical area; HESI scores and any accompanying analyses; all clinical incidents, if any; and substantive policy changes.

The quarterly reports are due 30 days after the conclusion of each academic quarter, beginning not later than July 30, 2015

4. Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice. Respondent shall cooperate with any announced or unannounced site visit by the Board or its designee. Respondent shall correct any deficiencies found by the Board or its designee within a reasonable time period as determined by the Board.

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

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

7. Respondent shall bear all costs of complying with this Order.


8. If Respondent is noncompliant with this Order in any respect, the Board or its designee may notify Respondent of the noncompliance. Additionally, the Board may revoke probation and 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.

9. Respondent may, at any time this Order is in effect, voluntarily request surrender of its approval.

Upon successful completion of the terms of the Order, Respondent's approval shall be deemed voluntarily surrendered for a minimum period of two years.

ARIZONA STATE BOARD OF NURSING

SEAL



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

Dated: 5/15/15

JR/ U:

COPY mailed this 15th day of May, 2015 by First Class Mail, to:

Bryan Gottfredson, Esq.
Sacks Tierney P.A.
4250 N. Drinkwater Blvd., 4th Floor
Scottsdale, AZ 85251-3693

Signed in the Board Office this 15th day of May, 2015.

By: Lyn Hedbetter
Legal Secretary