



Ohio Board of Nursing

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17 South High Street, Suite 400 • Columbus, Ohio 43215-7410 • (614) 466-3947

BEFORE THE OHIO BOARD OF NURSING

IN THE MATTER OF:

ORDER: 2234
CASE # 11-00054

ATS INSTITUTE OF TECHNOLOGY,
ASSOCIATE OF APPLIED SCIENCE IN
NURSING PROGRAM

ADJUDICATION ORDER

This matter came for consideration before the Ohio Board of Nursing (hereinafter "Board") on November 18, 2011. At such time the Board granted Respondent's motion for an extension of time to submit its Objections to the Hearing Examiner's Report and Recommendation, and the Board verified that it reviewed the following materials prior to consideration of this matter:

Hearing Transcript; State's Exhibits; Respondent's Exhibits; Hearing Examiner's Report and Recommendation; Respondent's Objections to Hearing Examiner's Report and Recommendation; Respondent's Request to Address the Board; Respondent's Board Address; and State's Board Address.

Ronda Shamansky was the Hearing Examiner designated in this matter pursuant to Section 119.09, Ohio Revised Code (ORC). *A true copy of the Report and Recommendation of Ronda Shamansky is attached hereto and incorporated herein.*

On this date, the Board accepted all of the Findings of Fact, Conclusions of Law and Recommendation in the Hearing Examiner's Report and Recommendation and ORDERED that the provisional approval status of the **ATS INSTITUTE OF TECHNOLOGY, ASSOCIATE OF APPLIED SCIENCE IN NURSING (PROGRAM)** be withdrawn and full approval status be denied; and that the **PROGRAM** may apply for conditional approval status to operate a registered nursing education program, in accordance with the requirements specified in the Nurse Practice Act and Chapter 4723-5, OAC, after a period of not less than two (2) years from the effective date of this Order.

The rationale for specifying a two-year period of time for re-application is as follows: The **PROGRAM** has been provided opportunities to correct the issues that resulted in the **PROGRAM**'s failure to meet and maintain the minimum requirements established for registered nursing education programs and has demonstrated a lengthy, historic inability to comply with these minimum requirements. In addition, the **PROGRAM** places the public at risk by

graduating students who do not obtain an education that meets the minimum standards established in the Nurse Practice Act and rules, including, for example, failing to provide students clinical experience in specified practice areas (Findings of Fact Nos. 3, 4, and 6) and graduating students who had not obtained passing grades in clinical areas, as required by the **PROGRAM's** own progression policies (Finding of Fact No. 2).

This ORDER shall become effective immediately and is hereby entered upon the Journal of the Board for the 18th day of November, 2011.

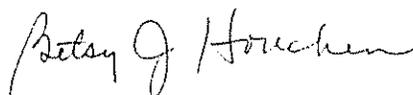
TIME AND METHOD TO PERFECT AN APPEAL

Any party desiring to appeal shall file a Notice of Appeal with the Ohio Board of Nursing, 17 S. High St., Ste 400, Columbus OH 43215-7410, setting forth the order appealed from and the grounds of the party's appeal. A copy of such Notice of Appeal shall also be filed by the appellant with the Franklin County Court of Common Pleas, Columbus, Ohio. Such notices of appeal shall be filed within fifteen (15) days after the mailing of the notice of the Ohio Board of Nursing's Order as provided in Section 119.12 of the Ohio Revised Code.

CERTIFICATION

The State of Ohio
County of Franklin

I, the undersigned Betsy J. Houchen, Executive Director for the Ohio Board of Nursing, hereby certify that the foregoing is a true and exact reproduction of the original Order of the Ohio Board of Nursing entered on its journal, on the 18th day of November, 2011.



Betsy J. Houchen, R.N., M.S., J.D.
Executive Director

November 18, 2011
Date

(SEAL)

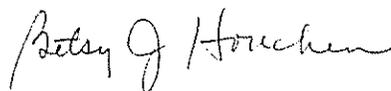
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Adjudication Order, concerning **ATS INSTITUTE OF TECHNOLOGY, ASSOCIATE OF APPLIED SCIENCE IN NURSING PROGRAM (PROGRAM)** was sent via certified mail; return receipt requested, this 21st of November, 2011 to the following:

ATS Institute of Technology, Associate of Applied Science in Nursing Program
Elizabeth Stolkowski, Administrator
325 Alpha Park
Highland Heights, OH 44143
Canton, OH 44710-1797

Elizabeth Y. Collis, Attorney at Law
1650 Lake Shore Drive, Suite 225
Columbus, Ohio 43204

Eric Plinke, Attorney at Law
Dinsmore & Shohl, LLP
191 West Nationwide Blvd., Ste. 300
Columbus, Ohio 43215



Betsy J. Houchen, R.N., M.S., J.D.
Executive Director

cc: Henry Appel, Assistant Attorney General

Certified Mail Receipt No. 7011 1150 0002 0937 1990
Attorney Certified Mail Receipt No. (Collis) 7011 1150 0002 0937 2003
Attorney Certified Mail Receipt No. (Plinke) 7011 1150 0002 0937 2010

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

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In the Matter of
**ATS Institute of Technology,
Associate of Applied Science
in Nursing Program**

Ronda Shamansky
Hearing Examiner

Case No. 11-0054
October 6, 2011

REPORT AND RECOMMENDATION

Appearances: For the Ohio Board of Nursing: Mike DeWine, OHIO ATTORNEY GENERAL, and Henry Appel, Senior Assistant Attorney General, Health & Human Services Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215-3400. Telephone: (614) 466-8600; Fax: (866) 441-4738

For the Respondent-Licensee:

Elizabeth Collis, COLLIS, SMILES & COLLIS, 1650 Lake Shore Drive, Suite 225, Columbus, Ohio 43204. Telephone: (614) 486-3909; Fax: (614) 486-2129

Eric Plinke, DINSMORE & SHOHL, LLP, 191 W. Nationwide Blvd., Columbus, Ohio 43215-8120. Telephone: (614) 227-4213; Fax: (614) 628-6890.

Hearing Date: September 12-13-14, 2011

SUMMARY OF THE EVIDENCE

All exhibits, even if not specifically mentioned, were thoroughly reviewed and considered by the Hearing Examiner prior to preparing this Report and Recommendation.

Background

1. ATS Institute of Technology [ATS] is a private, for-profit school in Highland Heights, Ohio, owned by Mark Bykov. His wife, Helen Bykov, is the school's CEO. ATS offers two nursing education programs: a one-year Practical Nursing program that prepares students to become licensed practical nurses [LPN's], and a two-year Associate of Applied Science in Nursing program that prepares students to become registered nurses [RN's]. This program is sometimes referred to as the Associate Degree in Nursing or "ADN program" or the "RN program." Some of the students in the RN course of study are on a "bridge program" to get further training, having

already obtained LPN certification either through the course at ATS or elsewhere. (Transcript [Tr.] at 87, Tr. Vol. 3 at 18-19, 41-42) The Assistant Attorney General representing the State conceded during the opening statement that the LPN program at ATS is “fairly well run.” (Tr. at 18) This hearing concerned only the RN program.

2. ATS currently has 160 students enrolled in the 2-year RN program. The Program Administrator, Elizabeth Stolkowski, testified that ATS caters to nontraditional students such as single parents trying to better themselves. Many of the students have earned GED’s, and some are graduates of Cleveland public schools with limited science skills. ATS offers remedial classes for students who do not meet all of the prerequisites to enter the nursing program, or who have not done well on the entrance exam. (Tr. at 381-385) The two-year program is offered at a cost of about \$34,000 per student, with each student required to complete 81 credit hours at \$421 per credit hour. Students are able to get federal financial aid to pay for the cost of their programs. (Tr. Vol. 3 at 18-19, 41-42)
3. ATS has been before the Board for alleged deficiencies in its RN program several times in the past five years. Sometimes the allegations resulted in a Consent Agreement or an Addendum agreement. In one case, they resulted in a hearing, which was held approximately two years ago. (State’s Exhibit [St. Ex.] 29) The Report and Recommendation issued after that hearing was attached and incorporated into the current Notice of Opportunity for Hearing. (St. Ex. 1 at 2, 13-31) Because the current hearing included some discussion of whether the new issues were a repetition of the previous problems, ATS’s history with the Board as detailed in the earlier Report and Recommendation, is briefly summarized in this report.

History of Board Action

4. The Ohio Revised Code [R.C.] grants broad authority to the Ohio Board of Nursing [Board] to license and regulate nurse education programs in this State. R.C. 4723.06(A)(4) requires the Board to establish minimum standards for nursing education programs. Subsections (A)(5), (6) and (7) authorize the Board to survey, inspect, and grant approval to those programs that meet certain criteria. There are three different types of approval that the Board may grant to nursing education programs. Under R.C. 4723.06(A)(5), the Board may grant “full approval” to a program that meets the standards established by the Rules of Ohio Administrative Code [OAC] Chapter 4723-5. Under R.C. 4723.06(A)(6), the Board may grant “conditional approval” to a new program or a program that is being reestablished after ceasing to operate, if the program meets the minimum standards in the Rules. Under R.C. 4723.06(A)(7), the Board may place a program that has ceased to meet and maintain the minimum standards set out in the Rules on “provisional approval” for a period of time specified by the Board. At the end of the time period specified,

the Board is required to reconsider whether the program meets the minimum standards provided by the laws and rules. If it does, the Board will grant full approval of the program. If it does not, the Board may withdraw its approval of the program.

5. In May 2006, ATS filed an application for approval of its new nursing education program with the Board, and the Board issued conditional approval of the program. The Board made an initial site visit approximately one year later in May 2007, and found deficiencies in the program. It documented those deficiencies in a Survey Report in December 2007, citing various problems with the program that were discovered during the Board's visit to the school. ATS submitted a response to the Board's report in February 2008.

March 2008 Consent Agreement

6. Because of the deficiencies cited in the Board's December 2007 Survey Report, the Board and ATS entered into a Consent Agreement in March 2008. In the Consent Agreement, ATS acknowledged several deficiencies in its program, including the following:

ATS hired an unqualified teaching assistant to teach clinical assignments.

ATS failed to notify the Board that its program was implemented differently than originally proposed. Specifically, ATS instituted a new student admission policy without notifying the Board of the change.

ATS admitted six students into the program without obtaining documentation that they met the admission requirements, and later had to dismiss the students when it was determined that they did not meet the admission criteria.

ATS had inconsistent student admission policies stated in its school catalog and student handbook.

During the May 2007 Survey Visit, ATS did not have students' evaluations for an obstetrical clinical course. ATS explained that the instructor of the course abruptly left her position, refused to submit the evaluations, and did not respond to its attempts to obtain the evaluations.

(St. Ex. 1 at 14-15)

7. Pursuant to the terms of the Consent Agreement, the Board granted ATS full approval of its nursing education program, subject to terms and conditions that would apply to the school for a minimum of 3 years. For its part, ATS agreed to pay a fine of \$1,000. ATS also agreed that it would not expand its operations to any new locations; that it would cooperate with announced or unannounced Survey Visits by the Board, ensuring that all materials requested were timely made available to the Board or its representatives; and that it would revise its Student Handbook, Policy

Manual, and School Catalog so that all policies, including the student admission policy, were consistently stated. (St. Ex. 1 at 15 at paragraph 5)

8. In the Consent Agreement, ATS also agreed that it would provide notification to every facility with whom it had an affiliation agreement to secure clinical experiences for its students, notifying them that it had obtained full approval of its program, subject to monitoring by the Board. ATS was required to provide notification of the Consent Agreement to any new facility providing clinical experiences with its students, and to provide a complete copy of the Consent Agreement to any facility that requested it. ATS was also required to provide a complete copy of the Consent Agreement to all faculty members, and to provide notification to all students that a complete copy of the Consent Agreement was available on request. (St. Ex. 1 at 15, paragraph 6)
9. The Consent Agreement also required ATS to submit written progress reports to the Board on a quarterly basis, beginning June 1, 2008, to identify and explain any changes in the implementation of the program, the effective date of those changes, the rationale for the changes, and how the changes were implemented, verifying that the program was complying with the terms of the Consent Agreement and the requirements of OAC Chapter 4723-5. (St. Ex. 1 at 15, paragraph 7)
10. The Consent Agreement also provided that ATS and its administrator would not submit or cause to be submitted any false, misleading, or deceptive statements, information, or documentation to the Board, or to ATS's students or applicants for admission. In a section titled "Failure to Comply," ATS agreed that its "full approval" status would be automatically changed to "provisional approval" status if it appeared to the Board that ATS had violated any terms or conditions of the Consent Agreement. (St. Ex. 1 at 15, paragraph 8)

July 2008 Addendum to Consent Agreement

11. Four months after it entered into the Consent Agreement with the Board, ATS was found to have violated the terms of that Agreement. Rather than acting upon its authority to change ATS's status to "provisional approval," the Board offered ATS the opportunity to enter into an Addendum to the Consent Agreement, which became effective in July 2008. In the Addendum, ATS acknowledged that it had failed to comply with some of the terms and conditions of the March 2008 Consent Agreement, including the following:

ATS failed to revise its Student Handbook, Policy Manual, and School Catalog so that all policies, including the student admission policy, were consistent.

The notice that ATS was required to provide to each facility with whom it had an affiliation agreement to secure clinical experiences for its students was found to be subject to misinterpretation.

(St. Ex. 1 at 16, paragraph 10)

12. In the Addendum, ATS agreed that future notification statements would be pre-approved by the Board. Further, ATS agreed to pay a fine of \$500 and stipulated that by September 1, 2008, it would revise its Policy Manual so that all policies, including the student admission policy, were consistent in substance with the policies stated in ATS's Student Handbook and School Catalog. ATS agreed to submit copies of the Policy Manual to the Board by September 15, 2008, so that the Board could review the policies for consistency with the other school literature, and to submit an explanation as to how ATS informed all staff of the revised Policy Manual, and how the Policy Manual was made available to staff.
13. The Addendum also provided that ATS was under a continuing duty to supply the Board-approved notification of the Consent Agreement and Addendum to any new facility providing clinical experience for ATS's students, and to provide a copy of the Addendum to every faculty member. ATS was required to notify students that copies of the Consent Agreement and Addendum were available upon request. (St. Ex. 1 at 17, paragraph 14)
14. The Addendum contained a "Failure to Comply" clause, to which ATS agreed by signing the Addendum:

FAILURE TO COMPLY

The Board and ATS agrees [sic] that the Board shall send written notice of possible violations or breaches to ATS if it appears to the Board that ATS has violated or breached any terms or conditions of the March 2008 Consent Agreement or this Addendum. ATS shall have thirty (30) days from the mailing of the written notice to submit to the Board evidence demonstrating that a violation or breach has not occurred or has been cured. The Board, at its meeting following receipt of ATS's response, may automatically place ATS on provisional approval status if it finds sufficient evidence that a violation or breach has occurred and not been cured. Following the automatic placement, the board shall notify ATS via certified mail of the specific nature of the charges and automatic placement on provisional approval status. Upon receipt of this notice, ATS may request a hearing regarding the charges.

(St. Ex. 1 at 17-18, paragraph 15)

September 2008 Survey Visit by Ohio Board of Nursing

15. In September 2008, the Board of Nursing conducted an announced Survey Visit to ATS, to ensure that the school was complying with all terms of the March 2008 Consent Agreement and the July 2008 Addendum, as well as with the laws and rules governing nursing programs. Several problems became apparent during the Survey Visit, and the Board identified those problems in a letter to ATS in October 2008. ATS provided a response in November 2008. The Board reviewed the Survey Visit findings, as well as ATS's response, during its regular meeting in January 2009.

(St. Ex. 1 at 18)

January 2009: Automatic Placement on Provisional Approval Status October 2009: Administrative Hearing

16. The Board found the response submitted by ATS insufficient, and on January 15, 2009, the Board issued a Notice of Automatic Placement on Provisional Approval Status as well as a Notice of Opportunity for Hearing to ATS. The Notice cited the "Failure to Comply" paragraph of the July 2008 Addendum, and advised ATS that the Board had automatically placed it on provisional approval status for a minimum of two years from the date of the Notice. The Notice detailed numerous deficiencies found during the Survey Visit. ATS requested a hearing, which was held on October 19, 2009, and resulted in a Report and Recommendation by the hearing examiner. (St. Ex. 1 at 18-19, 13-31)

January 2010: Continuation of Provisional Approval Status

17. The hearing examiner's Report and Recommendation, issued on November 9, 2009, found that ATS had not complied with several terms of its Consent Agreement and Addendum with the Board, including the following:

ATS had not complied with a requirement that it submit quarterly progress reports with a signed attestation by the Program Administrator. (It submitted an unsigned report.)

ATS provided false information to the Board concerning who made the decision to change from the ERI exit exam to the HESI exam.

ATS provided false information to the Board concerning who made the decision to change the curriculum to replace a clinical preceptorship to an NCLEX review course.

ATS provided false information to the Board concerning who made the decision to change from the NET entrance exam to the PSB entrance exam.

ATS submitted inconsistent information to the Board concerning the relationship between the program and its controlling agency. ATS's previous Program Administrator, Alice Somich made false statements to the Board about faculty evaluations having been completed, when in fact, they had not been.

(St. Ex. 1 at 28-30)

18. The Board considered the Report and Recommendation at its meeting on January 22, 2010, and issued an Adjudication Order continuing the school's provisional approval status for a minimum of two years, retroactive to January 2009 when it had issued the Notice of Opportunity for Hearing against the program. Item 3 of the Board's Order provided that there would be at least one Survey Visit of ATS's program by October 15, 2010, to determine whether the program was complying with the terms of the Order and with the rules governing nurse education programs in the State of Ohio, as set forth in OAC Chapter 4723-5. Finally, the Board's Order provided that it would review ATS's status again in January 2011. (St. Ex. 1 at 8-12, 13-31)

Survey Visits on May 5, 2010 and September 20-21, 2010

19. The Board conducted two Survey Visits to ATS in 2010, both of which were announced in advance. The first visit was on May 5, 2010, and focused on the program's pass rates for the NCLEX, the national licensing examination for nurses. OAC Rule 4723-5-23 requires Board review of any program whose pass rate falls below 95% of the national average, and at that time, ATS's pass rate had been below that mark for three consecutive years. (St. Ex. 23)
20. The Survey Visit on September 20 and 21, 2010 had a broader scope, and was for the purpose of assuring the program's compliance with the Board's January 2010 Order and with the rules contained in Chapter 4723-5. That survey was conducted by Theda (known as "Jody") Hostetler and Kristy Oles. Following the Survey Visit, the Board sent ATS a Survey Visit Report dated November 24, 2010. (St. Ex. 5) That report identified the standards that the Board found were not being met by the program. ATS submitted a response to the Survey Visit Report, which the Board received on December 20, 2010. (St. Ex. 6)
21. The Board met in January 2011 to consider the Survey Visit Report as well as ATS's written response to the report. The Board members voted to issue a Notice of Opportunity for Hearing [January 2011 Notice or simply "the Notice."] The Notice alleged that ATS had failed to meet numerous rules set forth in Chapter 4723-5, and therefore, that it had failed to comply with the terms of the Board's January 2010 Order. Because some of the alleged violations related to the academic treatment of certain students, the Notice included a confidential Student Key to identify the

students who were being referred to as "Student #1, Student #2, etc." The Student Key has been admitted as State's Exhibit 4, and is a sealed exhibit. (St. Ex. 1 at 2, St. Ex. 4)

22. ATS requested a hearing through its counsel on February 10, 2011. (St. Ex. 2) By agreement of the parties, the hearing was held September 12 through 14, 2011. At the hearing, both the Board and ATS presented witnesses and documents, and had the opportunity to cross-examine witnesses. Also at the hearing, the parties entered into Stipulations of Uncontested Facts, which are contained in Joint Exhibit 1.

Program Deficiencies Cited:

23. The Board's January 2011 Notice proposed to withdraw the Board's approval of ATS's RN program, based on the following allegations set forth in detail in the Notice:

A. Failure to implement established policies for student progression as written

24. OAC Rule 4723-5-12(A)(4) requires a program to "establish and implement" written policies for student progression, which must include the level of achievement a student must meet to progress from one level to the next, and the requirements for satisfactory completion of each course in the curriculum. Jody Hostetler and Kristy Oles were the Board's Education Regulatory Surveyors who conducted the Survey Visit on September 20-21, 2010. Ms. Hostetler testified that ATS provided its student progression policies in the Pre-Survey Visit Report that it sent to the Board in advance of the Survey Visit. (Tr. at 190-191) Ms. Hostetler identified State's Exhibit 21 as an attachment to ATS's Pre-Survey Visit Report, calling attention to the school's policy on "Clinical Grades," which provides in pertinent part as follows:

Clinical evaluations will reflect individual strengths and needs of the students. A main consideration is safe nursing practice. Students must achieve a grade of "Satisfactory" in all clinical objectives in order to pass the course.

(St. Ex. 21 at 8)

25. The syllabus for ATS's pediatric nursing course, "NUR 2130: Nursing of Children," states that the course includes 45 hours of lab/clinical experiences, and that in those clinical experiences, a student "must receive satisfactory grades in all clinical objectives to pass the course." (St. Ex. 14 at 1, 4)
26. The Board's surveyors, Jody Hostetler and Kristy Oles, reviewed the student evaluations that were completed for each student at the end of this course. The

student records appear in Respondent's Exhibit B, and are subdivided into Exhibits B-1, B-2, etc., with the number corresponding to the number of the Student referred to in the Notice. For example, Exhibit B-2 is the evaluation for the student referred to as "Student #2" in the Notice. (Tr. at 144-145, 168-172)

27. The Board's surveyors found that for some of the clinical objectives stated on the evaluation form, students received an "N/A," instead of an "S" for "satisfactory. The surveyors acknowledged that a few of the objectives were more applicable to a maternity nursing course than this pediatric course, such as objective 2(a):

(a) Apply knowledge of physiologic and psychological changes which occur in pregnancy and delivery to assist in utilizing the nursing care plan for the individual patient.

However, they maintained that most of the objectives were very relevant to a pediatric nursing course. Ms. Hostetler and Ms. Oles constructed a grid to show the nine stated objectives on ATS's evaluation form, and whether each student received an "S" or an "N/A" in that objective. (St. Ex. 15, Tr. at 144-145, 168-172)

28. Ms. Oles testified that they saw some trends. For example, in the following objectives related to pediatrics, many of the students received an "N/A" instead of an "S:"

4. Utilize teaching-learning skills to meet identified learning needs of clients and families to promote, maintain, or restore health.

- a. Assist with discharge instructions for the new parent(s) and/or children and families.
- b. Allow increased time for repetition and explanation if necessary.
- c. Teach ways to promote safety for infants and children.

5. Calculate, prepare, and administer medications correctly in a timely manner. Observe effects, record and report. Seek assistance as appropriate.

- a. Utilize patient rights consistently.
- b. Administer medications using correct technique to mothers, infants, or children.
- c. Demonstrate techniques of dosage calculation and administration of medications.
- d. Utilize knowledge of prescribed medications to ensure safety in administration of medications.
- e. Collect data for responses to medication in a timely manner.

6. Utilize communication and computer skills to report and record nursing observations and care.

- a. Document observations and interventions in a timely manner.
- b. Report pertinent data and significant changes to staff and instructor in a timely manner.

8. Delegate tasks appropriate to the scope of practice of the registered nurse.

- a. Accept responsibility for tasks delegated to unlicensed persons.

(St. Ex. 15, Respondent's Exhibit [Resp. Ex.] B, Tr. at 151-154)

29. Ms. Oles testified that these objectives did not seem at all out of place for a pediatric nursing course, and that skills such as educating patients, administering medications, using computerized records, and delegating tasks are things that nurses do on a regular basis. She added that many of these objectives are things that OAC Rule 4723-5-13 "Curriculum for a registered nurse education program," requires a program to teach. (Tr. at 158-161) Bernita Kavulich, the Program Administrator from March 2009 to January 2011, agreed that the objectives in skill areas 4, 5, 6, 7, 8, and 9 would apply to the pediatric setting. (Tr. at 78, 96)
30. On cross-examination, Ms. Oles acknowledged that she was using an evaluation tool that ATS had provided to her. She emphasized that ATS – not the Board - chose the objectives to put on the evaluation form, and she explained that she was merely checking to see if the program was following its own stated objectives. Also on cross-examination, Ms. Oles said that she spoke with students and with Program Administrator Bernita Kavulich, who told her that "N/A" meant "not applicable." She conceded that she had not spoken with any instructors for this course, and did not know if Jody Hostetler had. (Tr. at 155-158, 163-164)
31. In its written response to the Survey Visit Report, ATS explained that "N/A" meant that the experience was not available, and defended its decision to promote those students even if they had not achieved a "Satisfactory" evaluation for some objectives:

The SVR [Survey Visit Report] identified students enrolled in the course during the summer, 2010 who apparently did not complete all identified clinical objectives but were allowed to pass the course. (Please note, to clarify the notations used on the clinical evaluation forms – the "N/A" did not mean the objective was "not applicable." Rather it indicated the experience was "not available.") In accordance with ATS's progression policy, no student was allowed to progress who demonstrated unsatisfactory performance, which was the intent of the policy. The policy at issue did not address how to handle a situation where no opportunity arises for students to meet an identified clinical objective; therefore the application of the

progression policy was consistent with the underlying intent of the policy.

(St. Ex. 6 at 3)

32. Ms. Oles testified that she did not make a grid like the one at State's Exhibit 15 for every course, but that she paid particular attention to the pediatric and maternity nursing evaluations because the students that she interviewed told her that their clinical rotation did not take place in pediatrics or obstetrics. (Tr. at 162-163)
33. The other surveyor, Jody Hostetler, testified that the pediatric experience for this course was held at Aristocrat of Berea, a pediatric long-term care facility. She agreed that the patients there had disabilities serious enough to prevent them from living at home. While she stated that the patients did require ongoing skilled care such as the maintenance of gastric tubes, she said that some experiences common to acute care settings were lacking. For example, she said that diagnostic testing and pre-operative and post-operative experiences would not likely be provided at a long-term care facility. Nor would the students likely have the opportunity to perform physical and developmental assessments of children. (Tr. at 179-180, 219-220, 222-223)
34. Ms. Hostetler called attention to the last page of the evaluation, titled "Student Self-Evaluation." Some of the students wrote comments suggesting that they had not had sufficient clinical experiences in this course, including the following examples:

Student #7 wrote, "Needs: 1. To observe more patient needs in acute setting, and 2. To learn more about IV insertions." (Resp. Ex. B-7 at 4)

Student # 8 wrote, "Needs: 1. Some more time with peds [patient]" (Resp. Ex. B-8 at 5)

Student #17 wrote, "Needs: 1. A better pediatric experience, such as being in a hospital. 2. A more organized clinical experience." (Resp. Ex. B-17 at 4)

Student #20 wrote, "Needs: 1. More experience on medication passing. 2. Knowing basic [sic] of assessment of pediatric patient." (Resp. Ex. B-20 at 4)

Student #23 wrote, "Needs: Better med/surg experience and to know what I'm doing so I won't feel so incompetent." (Resp. Ex. B-23 at 4)

(Tr. at 174-178)

These students all got "N/A's" for skill areas 4, 5, and 8 – the ones involving patient education, medication passing, and delegation of tasks.

35. ATS entered into Stipulations of Uncontested Facts with the State prior to the hearing. In the first stipulation, ATS acknowledged that despite its student progression policy requiring a grade of "Satisfactory" in all clinical objectives, "its documentation for thirty (30) student files did not reflect that students had received a 'Satisfactory' grade in all clinical objectives, instead in several areas that students were awarded an 'n/a.'" (Joint Exhibit 1 at paragraph 1)
36. Elizabeth Stolkowski, the current Program Administrator, testified that she was not employed by ATS during the Summer 2010 pediatric clinical class, but she was aware that "N/A's" had sometimes been given on the evaluations for the class. Ms. Stolkowski explained that because of personnel changes, this class had three different instructors. The staff tried to quickly get an evaluation form in place, and resorted to using an evaluation form that had been used for a course on "Family Nursing" that was offered in the LPN program. That course combined maternity and pediatric coursework into one class. Because some of the maternity aspects of nursing were not being taught in the Nursing of Children course, students were at times given the grade "N/A" for those objectives on their evaluations. (Tr. at 387-389)
37. Patricia Comodeca was the Clinical Coordinator at ATS at the time of this class in the Summer 2010 semester. She confirmed that there were multiple clinical instructors for this course, and that when she preceptored one of the new instructors, she found that the students actually had passed medications:

Q: * * * Had students actually had experience passing meds in that clinical setting?

A: Yes. When she [a new instructor] first started, I went out three evenings with her or three of her clinicals with her, and I actually just preceptored her for those clinicals and we passed. I passed with her and that.

Q: So that was the peds summer of 2010 course?

A: Yes, uh-huh.

Q: Okay. So was the N/A that was designated on the form, was that for that particular clinical experience, the passing meds? Was that the correct grade?

A: No. It wouldn't have been because I knew of them passing, you know. I don't know what she did but, no, that wouldn't be correct.

Q: What – based on what you observed, what should the grades have been?

A: It should have been an S. I mean, the night I was with all of them they were passing fine but, you know, I don't know – I don't know what else they may have done.

Q: Okay. Was there any explanation given as to why the N/A was used for that particular clinical task?

A: I remember [the instructor] just saying to me that day in September that she – the students told her they had passed with the other teachers. And so she didn't feel that they had to pass with her so she put it as N/A.

(Tr. at 316-317)

On cross-examination, Ms. Comodeca admitted that she is not qualified to be an instructor because she does not have a master's degree. Her ability to evaluate whether students had successfully met a course objective was therefore called into question. (Tr. at 327-328)

38. Although Program Administrator Elizabeth Stolkowski acknowledged that skills such as delegation and medication administration are general skills that a nurse should have, she said that sometimes there is no opportunity for a student to practice each skill in the clinical experience because the opportunity does not arise. For example, the patient that a student sees during a clinical experience may not need any medications, so that student would not have the opportunity to practice administering medications. On cross-examination, she clarified that a student could sometimes get an "S" for a clinical objective even if he or she did not actually perform that task, if the student showed that he or she understood the skill being taught. Nonetheless, she acknowledged that ATS's policy required a student to receive an "S" on out clinical objectives before he or she can progress. (Tr. at 391-393, Tr. Vol. 3 at 28)
39. Ms. Stolkowski emphasized that the syllabus, and not the evaluation tool, determines what the objectives are for a course. Therefore, she said that if an evaluation tool includes additional objectives beyond what the syllabus listed, the student may still be able to pass the course, so long as he or she completes all objectives on the syllabus, even if some of the objectives on the evaluation are not fulfilled. She added that the faculty members are currently reviewing the clinical evaluation tools to make sure they flow from the syllabus of each class. (Tr. at 396-397)
40. Ms. Stolkowski testified that she has now reviewed all clinical evaluation tools, and that there is now a system in place to prevent this from happening in the future. She stated that ATS has purchased the Nursing Student Tracking System [NSTS] computer software, which provides a computerized clinical evaluation tool. The evaluation categories cannot be changed without the Program Administrator's

approval, and the software will not accept an evaluation of "N/A." In answers to later questions, Ms. Stolkowski said that the software has not yet been implemented, but she has seen the receipt showing that it was purchased. A kick-off date has been scheduled for November when the vendor will come to the school to facilitate staff in learning to use the software. (Tr. at 390-391, Tr. Vol. 3 at 45-46)

41. In June 2011, ATS retained R. Wynne Simpkins, a consultant who at one time served as the manager of the Board's nursing practice and education unit. Ms. Simpkins reviewed the school's RN program during three visits to the school in the summer of 2011. She prepared a table with her findings, which appears at Respondent's Exhibit Q. With respect to the allegations about the pediatric nursing course, "NUR 2130: Nursing of Children," Ms. Simpkins conceded that some students had been able to pass the course without having achieved a grade "S" in each clinical objective. Ms. Simpkins asserted that some of the objectives on the evaluation form where students received "N/A's" were skills that the students would have practiced in the lab portion of their maternity nursing course. However, on cross-examination, she acknowledged that with respect to delegating tasks, the evaluation for Student #2 shows that this objective was left blank for this student's evaluation in the pediatric course, and that the student received an "N/A" for the same objective in the maternity nursing course. (St. Ex. B-2 at 4, St. Ex. 19 at 2, Tr. at 238-239, 245-247, 280-282)

42. Ms. Simpkins testified that the program has made changes to make its evaluation forms more consistent with the syllabus for each course. She confirmed that the new software program requires an instructor to evaluate each objective, and that only the Program Administrator can specify the objectives on the evaluation forms. (Tr. at 248-249)

B. Failure to implement the curriculum as written, and failure to implement a program that provides students with clinical patient-care experiences across the life span.

43. Rule 4723-5-13(C) requires a program's curriculum objectives or outcomes, course objectives or outcomes, teaching strategies, and evaluation methods to be "implemented as written." A program writes its own curriculum, and then it must provide instruction that adheres to the curriculum that it wrote.

44. In conjunction with that section, another subsection provides for the inclusion of clinical experiences in a nursing school curriculum. Subsection (F)(8)(b) of OAC Rule 4723-5-13 requires as follows:

(F) The curriculum shall consist of course content in nursing art and science, the physical biological and technological sciences, and social

and behavioral sciences. This content may be integrated, combined, or presented as separate courses as follows:

* * *

(8) Clinical and laboratory experiences that:

- (a) Meet the established course objectives or outcomes;
- (b) Provide the nursing student with the opportunity to practice cognitive, psychomotor, and affective skills in the performance of a variety of nursing functions with individuals or groups across the life span;
- (c) Provide a nursing student with the opportunity to practice technical skills pertaining to intravenous therapy.
- (d) Are provided concurrently with the related theory instruction.

45. Two of the courses taught by ATS in the summer of 2010 were NUR 2031: Advanced Concepts in Adult Nursing, and NUR 2110: Mental Health Nursing. The Notice alleges that the curricula and syllabi for these courses described experiences in acute and/or critical care settings, but in fact, the program had no clinical contract with any acute and/or critical care facility. ATS entered into a stipulation with the State prior to the hearing conceding that the course descriptions for those classes included acute and/or critical care, and that ATS had no clinical contract with an acute and/or critical care facility, but instead used a facility that was a skilled long-term care facility. (Joint Exhibit 1 at paragraph 2) The issue with each course is outlined below:

NUR 2031: Advanced Concepts in Adult Nursing

46. The syllabus for Advanced Concepts in Adult Nursing stated that it included 60 lecture hours and 203 clinical hours. The course description stated that it would include experiences in acute care settings or critical care settings, providing in pertinent part as follows:

Content focuses on the needs of the client in acute care settings and behaviors the nurse utilizes as a leader including delegation, effective communication, mentoring, and manager of care while using an evidence-based practice. Care focuses on nursing management of 1) clients with acute/critical care requirements, 2) groups of clients whose care is provided by the nurse working collaboratively with others and 3) the skills and organization required in the role of a staff nurse. Clinical experience in an acute care setting affords the student opportunity to assist in providing care that is critical or emergency in nature in a specialized unit. (Emphasis added)

(St. Ex. 16)

47. Jody Hostetler testified that when she conducted her Survey Visit, the Program Administrator identified the clinical sites being used for courses during the Summer 2010 semester. In addition, ATS's Pre-Survey Visit Report had listed three facilities that were used for the clinical component of this course: Judson Park, Montefiore, and Cedarwood Plaza. There is no dispute that these facilities are all skilled long-term care centers, and not acute care settings or critical care settings. (St. Ex. 20 at 3, Joint Exhibit 1, Tr. at 184-186)
48. Ms. Hostetler explained that an acute care setting is one in which a patient has an acute problem that must be treated quickly, as opposed to the chronic conditions that patients in long-term care experience. (Tr. at 217-218)
49. Ms. Hostetler clarified that if a patient in a long-term care setting has an acute health issue, that patient is not usually treated at the long-term care center. Instead, the patient is sent to an acute care setting such as a hospital. (Tr. at 223)

NUR 2110: Mental Health Nursing

50. The syllabus for Mental Health Nursing stated that it included 30 lecture hours and 45 lab/clinical hours. The course description as well as some of the outcomes stated that this course would include experiences in "acute and community settings," providing in pertinent part as follows:

Relevant theories and therapies for nursing practice are discussed appropriate to various community and acute care settings. Emphasis is placed on mental health disorders that occur across the lifespan. The student has opportunity to demonstrate use of critical thinking and caring interventions in nursing practice with clients in clinical settings.

(St. Ex. 17)

In addition, some of the course outcomes listed skills associated with the nurse's role in acute and community settings, and interventions used in "psychiatric emergency situations." (St. Ex. 17 at 1-2, paragraphs 4 and 10)

51. Jody Hostetler testified that ATS's Pre-Survey Visit Report identified two sites used to fulfill the clinical component of this course: Greenbrier Senior Living and Montefiore. (St. Ex. 20 at 3) She said that both places are long-term care centers, and that neither facility provides an acute care experience in a mental health setting, as the course description suggests. (Tr. at 188-189)

52. On cross-examination, Ms. Hostetler reiterated her assessment that in a long-term care center, there is no opportunity to respond to psychiatric emergencies. She agreed that it might be possible to cover those objectives in the lecture part of the course, if students are able to describe appropriate interventions in various scenarios, for example. However, she maintained that if the course description states that the class provides clinical experience in an acute care setting, then the program is still held to the requirement that it follow its own course description and provide that setting. (Tr. at 210-212)
53. Bernita Kavulich, the former Program Administrator, testified that she believed the objectives listed as "course outcomes" in the syllabus could be accomplished in a classroom setting as well as a clinical setting. She added that for this Mental Health Nursing class, students were required to attend an Alcoholics Anonymous meeting. (Tr. at 97-98)
54. R. Wynne Simpkins, the consultant retained by ATS in June 2011, agreed that there was a problem with using a long-term care center for clinicals in this course if the content of the course concerns acute issues. However, she said that she spoke with students about their experiences and found that they did receive the necessary skills in their lab experiences. Ms. Simpkins testified that the issue has now been corrected because ATS has a contract with a long-term acute care [LTAC] facility, and the students are getting those skills in that setting. (Tr. at 250-251)
55. The current Program Administrator, Elizabeth Stolkowski, also acknowledged that the syllabi for Mental Health Nursing, as well as Advanced Concepts in Adult Nursing indicated that those classes would address acute care issues. While she did not dispute the assertion that Montefiore and Cedarwood Plaza were not sites where students could get acute care experience, she said that she believed the students are getting that experience now. Ms. Stolkowski stated that when she was hired at ATS in January 2011, the facility already had a contract in place with Kindred, which has an intensive care unit and a critical care unit. She identified Respondent's Exhibit J-1 as the contract that ATS entered into with Gateway Kindred in October 2010, and Respondent's Exhibit J-2 as a new contract that she signed on behalf of ATS with Fairhill Kindred. Ms. Stolkowski referred to Respondent's Exhibit K, the clinical assignment roster which shows that students were assigned to Kindred Gateway and Kindred Fairhill for the Advanced Concepts in Nursing Course that began on August 29, 2011. (Tr. at 397-400)
56. Patricia Comodeca, ATS's Clinical Coordinator, explained that the long-term acute care [LTAC] facilities, Gateway Kindred and Fairhill Kindred, are actual hospital settings where students get experience in "med-surg" nursing. Kindred Gateway is inside St. Vincent's Charity Hospital, and Kindred Fairhill is a three-floor hospital with an LTAC unit and an intensive care unit. She said that an LTAC facility provides a more acute level of care than a "subacute" unit, and added that in the

intensive care unit of those facilities, students would see the same kinds of conditions as in a typical hospital. However, on cross-examination, she acknowledged that patients are not transferred from the intensive care unit to the LTAC unit unless they are stable. (Tr. at 319-320, 331-334)

NUR 2130: Nursing of Children

57. The pediatric nursing course, Nursing of Children, is also included in this allegation. The Notice alleges that this course required completion of clinical objectives concerning pregnancy and delivery, and that 16 out of 20 students were evaluated as having completed this objective, despite the fact that the facility used for this course's clinical component did not provide any prenatal or labor and delivery care.
58. The evaluation form for this course included the following objective as one that students would be evaluated on:
 - 2.) Contribute to the nursing process using critical thinking skills
 - a) Apply knowledge of physiologic and psychological changes which occur in pregnancy and delivery to assist in utilizing the nursing care plan for the individual patient.

(Resp. Ex. B-2, B-3, B-4, etc. at 2)
59. The Notice alleges that the clinical experience for this pediatric course was provided at Aristocrat of Berea, a long-term care facility for children, which provided neither prenatal care nor labor and delivery services. It alleges that there was no contract in existence between ATS and any facility that provided obstetrical care, and that in spite of this, the following students "were successfully checked off by the Program's clinical instructor as successfully completing this objective during the student's experience at a long term care facility (Aristocrat Berea): Students #2-4, #6, #9, #11-14, #19-21, #25, #26, #28, and #29."
60. While there was no dispute that Aristocrat of Berea did not provide any pregnancy or delivery services, the evidence reflects that this citation of the Notice is incorrect. A review of the student evaluations for the 16 students included in this citation shows that each of these students received an "N/A" for this objective, and not an "S." While a grade of "S" would have indicated that the student had successfully or satisfactorily completed that objective, a grade of "N/A" does not.
61. My review of the relevant student evaluations for this class resulted in the following findings:

- Student #2 Received an "N/A" for this objective. (Resp. Ex. B-2 at 3)
- Student #3 Received an "N/A" for this objective. (Resp. Ex. B-3 at 2)
- Student #4 Received an "N/A" for this objective. (Resp. Ex. B-4 at 3)
- Student #6 Received an "N/A" for this objective. (Resp. Ex. B-6 at 3)
- Student #9 Received an "N/A" for this objective. (Resp. Ex. B-9 at 3)
- Student #11 Received an "N/A" for this objective. (Resp. Ex. B-11 at 3)
- Student #12 Received an "N/A" for this objective. (Resp. Ex. B-12 at 3)
- Student #13 Received an "N/A" for this objective. (Resp. Ex. B-13 at 3)
- Student #14 Received an "N/A" for this objective. (Resp. Ex. B-14 at 5)
- Student #19 Received an "N/A" for this objective. (Resp. Ex. B-19 at 4)
- Student #20 Received an "N/A" for this objective. (Resp. Ex. B-20 at 2)
- Student #21 Received an "N/A" for this objective. (Resp. Ex. B-21 at 3)
- Student #25 Received an "N/A" for this objective. (Resp. Ex. B-25 at 3)
- Student #26 Received an "N/A" for this objective. (Resp. Ex. B-26 at 4)
- Student #28 Received an "N/A" for this objective. (Resp. Ex. B-28 at 3)
- Student #29 Received an "N/A" for this objective. (Resp. Ex. B-29 at 3)

62. Most often, the students received an "N/A" for subpart (a) of this objective—the only one cited in the Notice -- as shown by the following example:

2. Contribute to the nursing process using critical thinking skills		
a Apply knowledge of physiologic and psychological changes which occur in pregnancy and delivery to assist in utilizing the nursing care plan for the individual patient.	N/A	N/A
b Gather data about the health status of the client using physical assessment skills, interviewing, medical records and other sources	S	S

(Resp. Ex. B-9 at 3)

In a few cases the student received an "S" for the objective as a whole, but an "N/A" was written by sub-part (a), which refers to pregnancy and delivery, as shown by the following example:

2. Contribute to the nursing process using critical thinking skills		
a Apply knowledge of physiologic and psychological changes which occur in pregnancy and delivery to assist in utilizing the nursing care plan for the individual patient.	N/A	S
b Gather data about the health status of the client using physical assessment skills, interviewing, medical records and other sources		

(Resp. Ex. B-6 at 3)

NUR 2120: Maternity Nursing

63. The Notice alleges two problems with the instruction of the Maternity Nursing course. First, it alleges that the course did not comply with the administrative rules because it provided no clinical instruction at all – only 30 hours of lecture, 42 hours

of simulation lab, and 3 hours of observation. Second, it alleges that 25 out of 29 students who completed the course did not even complete the 42 hours of simulation lab experience that the course required, and therefore, ATS did not implement its own policies as they were written.

64. Raja Shaheen is a nurse midwife who was employed by ATS as the instructor for the Maternity Nursing course from May 2009 until April 2011. She testified that during the time she was employed in that capacity, ATS was not able to secure any contracts with clinical sites that provided maternity services. Therefore, the program created a simulation lab, using a medical mannequin that simulates the delivery of a baby. In addition, she was able to arrange for students to observe for three hours at Northeast Ohio Neighborhood Services [NEON], where she was also employed. NEON was a provider of obstetrical services, but Ms. Shaheen clarified that the students' experience at NEON was a "shadowing" experience only and did not involve actual patient care. (Tr. at 42-45, 71-75)
65. Ms. Shaheen identified State's Exhibit 18 as the syllabus for the Maternity Nursing course that she taught. Some of the outcomes listed on the syllabus require the student nurse to assess or communicate with the patient, such as Item #7: "Provide education to families on normal and abnormal conditions of the newborn." (St. Ex. 18 at 2) Ms. Shaheen acknowledged that students had no opportunity to practice the objectives that required interaction with actual patients. Yet, on the evaluation form for this class, students were graded with "S's," even though they had not practiced those skills. (Tr. at 46-49)
66. Ms. Shaheen testified that she used the evaluation form at State's Exhibit 19 to assess the progress of her students who took the course in the 2010 summer semester. Some of the objectives on that evaluation involved skills used in relating to patients, such as Item 1(b): "Gathers relevant subjective/objective data from all available sources considering the psychological, cultural, physical, emotional, age and development factors of the client." And, Item 1(g): "Assess the emotional impact of hospitalization on the new family." (St. Ex. 19 at 2) Ms. Shaheen conceded that students passed the objectives by obtaining an "S," even though there was no clinical maternity experience:

Q: All right. Now, let's turn to the next page. There are clinical objectives listed here, correct?

A: Yes.

Q: And I see that everything is listed as satisfactory, S.

A: Yes.

Q: But, in fact, the students didn't get a clinical experience in any of these areas; is that right?

A: Yes.

Q: * * * The document without -- how it's actually filled out, this would have been the same form used for all the students in that class?

A: Yes.

Q: Would this have been typical that they would have been marked as satisfactory on all categories despite not actually having any hands-on clinical?

A: Yes, assuming they did the simulation lab.

(Tr. at 48-49)

67. The particular student being evaluated on the form which appears at State's Exhibit 19 was Student #2. Ms. Shaheen acknowledged that Student #2 got a satisfactory ["S"] grade for each component of the evaluation, despite the fact that the student had no clinical experience in a setting where there were actual patients. She pointed out that she had written "during simulation" or "during simulation and observation" on the heading of those categories. (St. Ex. 19) Ms. Shaheen explained that she attempted to cover the objectives involving patient communication by role-playing the part of the laboring woman. Students had to interact with her and make sure she stayed hydrated by bringing her water, for example. (Tr. at 48-51, 71-75)
68. After the September 2010 Survey Visit, Ms. Shaheen became aware that the Board found the simulation lab experience insufficient for the Maternity Nursing course. She tried to correct this problem by arranging for the students who took that course to get a supplemental experience at NEON, through her relationship with that facility. Each student who had completed the 2010 summer semester Maternity Nursing course through simulation only was able to go back and complete a 4-hour makeup clinical experience at NEON. This involved the student doing intake and taking patient histories, taking vital signs, and giving injections to patients, under Ms. Shaheen's supervision. Ms. Shaheen said that most of the experiences were with women having prenatal checkups, but some involved well-woman gynecological care. For those 4 hours, the students performed actual patient care. (Tr. at 52-53, 58-59, 73-74)
69. Ms. Shaheen acknowledged that some of the objectives on the clinical evaluation form, such as those concerning infant care, were not practiced at NEON. (St. Ex. 19 at 3, Item b) She explained that women came to NEON for prenatal checkups, but generally delivered their babies in a hospital since NEON did not have delivery services. Likewise, students had no opportunity to work with IV's, and therefore, could not practice the skill described on the evaluation form in Item k: "Monitors the administration of IV therapy following proper techniques including the recognition of local and systemic complications of IV therapy and initiating appropriate nursing interventions." (St. Ex. 19 at 3, Tr. at 55-56, 70-74)

70. Ms. Shaheen documented the 4-hour make-up clinical experience at Respondent's Exhibit N-1. Students who had taken the summer 2010 course without a clinical experience attended the make-up clinical at NEON in October and November 2010. Ms. Shaheen acknowledged that the evaluation form for this make-up experience had somewhat different objectives than the form used for the original class that students took in the summer semester of 2010. (See, eg., St. Ex. 19 at 2-4, Resp. Ex. N-1 at 9-10.) She conceded that a number of the clinical objectives from the evaluation form used for the original course had been removed by the time of the evaluation for the make-up experience. She further conceded that while it was hard to reach the dates on some of the evaluations, the one for Student #31 showed that it was completed on December 16, 2010, four months after the student had completed the Maternity Nursing course in the summer term. (Tr. at 70, 59-64)
71. Board Surveyor Jody Hostetler testified that she spoke with Bernita Kavulich, ATS's Program Administrator, during the May 2010 Survey Visit, and that she specifically recalled telling her that using the simulation lab only – with no actual clinical experience – was not acceptable. (Tr. at 212-213) In her answers to later questions, Ms. Hostetler stated that she remembered this conversation with Ms. Kavulich:

Q: * Did you have a conversation about whether the simulation lab was an appropriate clinical experience with Bernita Kavulich?**

A: Yes.

Q: When was that?

A: That was at the May, 2010, survey visit.

Q: Do you specifically recall telling her that it wouldn't be acceptable to have only simulation lab experiences?

A: Yes --

(Tr. at 220-221)

72. Ms. Hostetler testified that when she returned for the Survey Visit in September 2010, she discovered that the program was using the simulation lab with no clinical experience for the Maternity Nursing course. She advised Ms. Kavulich that this was not in compliance with the administrative rules. (Tr. at 212-214)
73. On cross-examination, Ms. Hostetler explained that the Board's rules require that a program provide theory, laboratory, and clinical experiences throughout the lifespan, and that a clinical experience is one where the student is providing nursing care to actual patients who require it. She clarified that live patients are needed to make the experience a clinical one, rather than a laboratory one. (Tr. at 213-216, 224-225)

74. Lisa Emrich, the Board's Programs Manager for Education, Practice and Administration, also testified that nurse education programs in Ohio require actual clinical experiences. While Ohio's rules do not state any certain percentage of time that must be spent in clinical experiences versus a simulation lab, Ms. Emrich said that the simulation lab cannot completely substitute for a clinical experience. (Tr. Vol. 3 at 77)
75. ATS contends that there was a misunderstanding between its faculty members and the Board's surveyor at the May 2010 Survey Visit, and that faculty believed that the simulation lab experience could substitute entirely for a clinical experience in the Maternity Nursing course. In one of the attachments to the December 2010 response submitted by ATS to the Board's Survey Visit Report, ATS presented the following statement signed by five instructors, none of whom testified at the hearing. It provided the following explanation of the instructors' understanding:

The Institute recognizes the SVR finding that in May, 2010 the Board representative and Program Administrator addressed the need for clinical experience and the role of a laboratory simulator. Faculty of the Institute participated in a meeting with OBN representative on May 5, 2010. Faculty, as a result of their participation, concluded that it was their role and prerogative to determine the appropriate balance between clinical experience and the use of a laboratory simulator. Faculty, in this context, were faced with the difficulty of obtaining clinical experiences with facilities due to the approval status of the Institute. Because of this, and to meet the academic/clinical components of the curricula, faculty concluded that the experience offered to students which included observation at NEON and laboratory work would suffice.

The undersigned faculty who attended the meeting with Board representative in May, 2010, concur that their understanding of their role and their ability to determine the amount of clinical and laboratory experience as set forth above is correct.

(St. Ex. 13)(Reprinted as in original)

76. Elizabeth Stolkowski, ATS's current Program Administrator, testified that because faculty members believed simulation was an "approved replacement for clinical experience," the program "went full-tilt in terms of having the simulation while they were still looking for sites." (Tr. Vol. 3 at 49) While she acknowledged on cross-examination that this statement refers to an "appropriate balance" between simulation and actual clinical hours, she said that she was also taking into consideration that faculty members had said they believed the Board representative told them that simulation could be substituted for clinical experiences. Ms.

Stolkowski also pointed out that the administrative rules do not explicitly state that a simulation lab experience is insufficient. (Tr. Vol. 3 at 50-51, 46-47)

77. The Board's compliance agent, Jody Hostetler, was recalled on rebuttal to testify about her recollection of her meeting with ATS faculty in May 2010:

Q: Miss Hostetler, at the May, 2010 survey, did you tell anyone who worked at ATS that they could substitute simulation hours for clinical hours?

* * *

A: No, I did not.

HEARING OFFICER SHAMANSKY: Were you asked that question? Did they ask you that?

A: I don't recall them asking that.

(Tr. at 80-82)

78. Bernita Kavulich, ATS's former Program Administrator, testified that she intended to offer students a clinical experience in obstetrics, but was ultimately not able to do that after ATS was no longer sending its students to Hillcrest and Huron Road, the two Cleveland Clinic affiliates it had been using. (Tr. at 112-113)
79. Ms. Kavulich said that ATS purchased the simulation lab equipment for the maternity class in May or June 2010. (Tr. at 105) She related the details of her conversations with Jody Hostetler, the Board's Surveyor, when she was there in May 2010 for the Survey Visit. Ms. Kavulich explained that Jody Hostetler told her that clinical experience had to be provided throughout the program, and that she understood that simulation could also be used as part of a student's clinical experience throughout the program. In September 2010, when Ms. Hostetler returned to conduct the next Survey Visit, she learned that this was not the Board's position. "They said that it needed to be specifically across the lifespan which, again, is very general." (Tr. at 111) However, Ms. Kavulich admitted that no one from the Board had told her it was acceptable to use simulation lab experiences exclusively:

Q: Did anyone from the Board of Nursing tell you that simulation could completely replace clinical experience?

A: No.

(Tr. at 114)

At the end of her testimony, she summarized her understanding of how simulation could be used:

Q: From your meeting in May 2010 with Nursing Board representatives, what was your understanding as to what simulation could do?

A: Simulation could be used for part of the students' overall clinical experiences. It could not – there had to be clinical experiences at some point during their course work, during the entire course of work.

Q: So when the syllabus for that course reads 42 hours simulation and 3 hours observation, did you believe at that time in May of 2010 that that was satisfactory for the Board's standards?

A: I did.

(Tr. at 114-115)

80. On cross-examination, Ms. Kavulich acknowledged that she had signed a statement, which appears at Respondent's Exhibit M. She said that she had no input into the preparation of the statement. Instead, she related that Helen Bykov told her to "read it, review it, and sign it." However, she also said that nothing in the statement was untrue or inaccurate. (Tr. at 112, 115-116) The statement provides details of the alleged misunderstanding between ATS administration and staff and Jody Hostetler, the Board's compliance agent. It explains that although Jody Hostetler told Ms. Kavulich during the May 2010 Survey Visit that clinical experience must be provided, she did not say that it had to be provided in each area of study, nor which parts of the program required clinical experiences. The statement summarized, "There was a misunderstanding between Ms. Hostetler and me. I believed the clinical experience requirement was general throughout the program, not course specific." Ms. Kavulich's written statement says that during the September 2010 Survey Visit, she changed her understanding:

At the September, 2010 site visit, I told Ms. Hostetler that I thought the clinical experience did not have to be course specific, as long as there was clinical experience generally. I told her that I believed it was okay to not have clinical experience in maternity. Ms. Hostetler said, in response, that there must be clinical experience across the lifespan. I then understood her comment to mean that there must be clinical experience for the maternity course.

(Resp. Ex. M, paragraph 7)

Reason for Unavailability of Clinical Experiences

81. There have been several instances in which ATS has claimed that the reason it did not provide certain experiences was due to the fact that these experiences simply

could not be found. The first justification that ATS offered for the use of "N/A" on students' clinical evaluations came in its official response to the Board's Survey Visit Report. In that written response, the reason it advanced for the use of "N/A" on student evaluations was that the opportunity to fulfill certain clinical experiences was "not available." (St. Ex. 6 at 3) In another area of study, ATS has asserted that it resorted to using simulation lab experiences for the maternity course because it was difficult or impossible to find clinical sites that would allow its students to get their clinical experience.

82. Accordingly, the hearing included testimony related to why it was difficult for ATS to find appropriate sites for clinical experiences. The State called witnesses who testified that ATS lost its contracts with Cleveland Clinic affiliates after a medication error was made by one of ATS's students at a time when that student was not sufficiently supervised. It also presented testimony that ATS could not obtain affiliation agreements with University Health System because it was not accredited by the National League of Nursing. In contrast, ATS asserted that it lost its contracts because the Cleveland Clinic and other large hospital systems are no longer willing to have Associate Degree in Nursing [ADN] students in their facilities; instead, they want student nurses who are working towards bachelor's or master's degrees. That testimony is summarized below.
83. Jennie Pattison, a former associate program administrator at ATS, testified that the school used to provide clinical experiences at Hillcrest, a Cleveland Clinic facility. "We were doing most of our clinicals at Hillcrest," she related. (Tr. at 30) At one point around that time, Cleveland Clinic elected not to continue the contract. Ms. Pattison said that she tried to find alternative sites, making numerous phone calls to any facility within a reasonable distance, but was not able to do so. She identified a list that she began, to track which locations she had contacted. (Resp. Ex. J) Ms. Pattison said that the contact person for the Metro hospital system told her that it would not accept ATS's students because the school was not accredited by the National League of Nursing [NLN]. Since she was not able to find another clinical site, the program was restructured slightly to put the pediatric experience in the first half of the semester, leaving the school more time to try to find clinical obstetrics experiences, which it would hopefully be able to offer by the end of that semester. Ms. Pattison said that by the time she left, no other clinical site had been found. (Tr. at 24, 30, 36-40) Instructor Raja Shaheen also testified that students were not getting a clinical experience in obstetrics because, "There were no sites that would have the students." (Tr. at 44)
84. Bernita Kavulich, the Program Administrator from March 4, 2009 until January 21, 2011, confirmed that ATS once had clinical sites at two Cleveland Clinic affiliates: Hillcrest and Huron Road Hospital. The contract permitted either party to end the contract with 90 days' notice, and the Clinic chose to terminate it by sending a

certified letter to the school. Prior to its termination, the contract had been in existence for three years. (Tr. at 82, 116-117)

85. Although the termination letter from the Cleveland Clinic did not include any details about why the contract was being discontinued, Ms. Kavulich testified that the ending of the contract was in close proximity to an event in which an ATS student made a medication error at one of the clinical sites. The supervisor of the student voluntarily offered his resignation, and although ATS attempted to get back into the Cleveland Clinic system after that, it was not able to do so. ATS then purchased the simulation lab equipment in May or June 2010. Ms. Kavulich testified that ATS had difficulty obtaining clinical sites because a few large hospital systems including the Cleveland Clinic, University Hospital, and Metro Hospital, have control over most of the hospitals in Cleveland area and the surrounding areas. Ms. Kavulich said that she contacted University Hospitals about an affiliation with ATS, but she was told that ATS did not meet its requirements because the program was on provisional approval status and was not accredited by the National League of Nursing [NLN.] She described the NLN as the “national education arm of nursing” and added that ATS has never had NLN accreditation. (Tr. at 81-85, 116-117)
86. Patricia Comodeca, who has been employed as a Clinical Coordinator for ATS since May 2010, testified that she knew the contract with the Cleveland Clinic had been terminated. When she was asked if she knew why, she responded, “Well, I figured because of the incident that happened in the winter over at Hillcrest Hospital. There was a med error.” However, she acknowledged that she had no firsthand knowledge of the incident – only that there had been an error. (Tr. at 325)
87. Elizabeth Stolkowski, the Program Administrator since January 22, 2011, testified that when she looked into the clinical affiliation site issue, she found a letter from the Cleveland Clinic dated February 16, 2010. (Resp. Ex. W) It merely stated that the Clinic wished to terminate the agreement with ATS, pursuant to its option to do so in the contract. Ms. Stolkowski said that although she had heard rumors from students about a medication error, she believed the termination was simply because the Clinic was no longer accepting students from ADN programs. (Tr. at 402-406) She said that she had heard from some of her colleagues at Bryant and Stratton, another ADN program, that that program had also lost its affiliation agreement because the Clinic did not want contracts with associate degree programs, and that Helen Bykov did not supply any additional information beyond the fact that the Clinic had chosen not to renew the contract:

Q: * * * When you first started as the program administrator, were you ever advised by anyone at – about any issue at Cleveland Clinic that led to the termination of the Cleveland Clinic contract?

A: I’m trying to recall now. I wasn’t advised. I asked the question –

Q: Okay.

A: - to verify in terms of why do - why they were terminated because I told them that the scuttlebutt out there is that you were terminated because of your medication error.

Q: And what were you told when you asked the question?

A: That they were just not renewing the contract. That's what I was told.

Q: Okay. Okay.

HEARING OFFICER SHAMANSKY: By whom?

THE WITNESS: By Ms. Bykov.

(Tr. at 405-406)

88. R. Wynne Simpkins, the consultant that ATS retained to review its program, testified that Elizabeth Stolkowski and Mark and Helen Bykov had informed her that ATS lost its contract with the Cleveland Clinic because the Clinic preferred only those students who were working towards a bachelor's degree, and not ADN students. She testified that this was not surprising. Ms. Simpkins explained that programs often have a hard time finding clinical experiences for students because many hospitals today are large, corporately-owned facilities, and they make decisions that apply to their entire hospital systems. (Tr. at 252-253, 256-257)
89. The State presented rebuttal evidence to contradict the claim that the Cleveland Clinic no longer permits ADN students to gain clinical experiences at its facilities. Lisa Emrich testified that the Board had just conducted a Survey Visit at Lakeland Community College, another ADN program. She introduced a copy of one of that school's affiliation agreements, showing that it still has a contract to use Cleveland Clinic sites for student clinical experiences. (St. Exs. 30, 32) Ms. Emrich added that Lakeland Community College is accredited by the National League of Nursing Accreditation Committee, as well as by the North Central Association of Colleges and Schools. She referred to the second page of that document to demonstrate that Lakeland Community College still has agreements with Metro Health and University Hospital affiliates, in addition to the Cleveland Clinic affiliates. (Tr. Vol. 3 at 71-77)

Some Students Passed Maternity Nursing without Completing 42 Hours of Simulation

90. The Notice also alleged that while the Maternity Nursing course required 42 hours of participation in the simulation lab, most students were able to pass the course without having completed that requirement. The Notice alleges that 25 out of 29 students did not complete the 42 hours of simulation lab experience, and that some students, such as Student #13, Student #14, and Student #21 did not complete any hours at all. Board surveyor Jody Hostetler referred to the response to the Survey Visit Report that ATS submitted in December 2010 to explain the reason that 25 out

of 29 students passed the course without completing all of the simulation laboratory hours required by the syllabus. (St. Ex. 6, Tr. at 192-194) ATS explained in its response that the deficiency in the case of most students was due to the fact that classes were not held on July 4, and there was no policy in place at that time for a make-up class:

The SVR [Survey Visit Report] noted that 25 of 29 students who completed the course did not participate in 42 hours of laboratory simulation as required. For all 29 students each had their experience reduced by six hours because the hours were scheduled over the July 4th holiday. At that time ATS did not have a policy for make-up hours resulting from holidays and other occurrences. Since then ATS has implemented a policy to ensure make-up of classroom and clinical hours reduced because of a holiday or other occurrence.

(St. Ex. 6 at 6)

The response noted, however, that one of the students mentioned in this charge, Student #13, did not pass the course.

91. At the hearing, former Program Administrator Bernita Kavulich confirmed that when she conducted her investigation, she found that 25 out of 29 students did not have the sufficient simulation lab experience. She agreed that some students had even larger deficits than could be explained by the July 4th holiday, although she could not recall specifics. She also acknowledged that students did not make up the time that they missed because of the July 4th holiday. (Tr. at 98-101)
92. With its written response to the Survey Visit Report, ATS provided a copy of its newly-implemented policy on "Clinical and Class Time Affected by Scheduled Holidays and Unforeseen Occurrences." It provides as follows:

Policy: All cancelled class and clinical hours regardless of the reason must be made up so that the total number of hours is equal to what is stated on the course syllabus.

(St. Ex. 9)

Current Clinical Maternity Experiences at ATS

93. Rebecca Yakovac has been a faculty member at ATS since April 2011. She testified that ATS currently has clinical affiliation agreements at the Geauga County WIC [Women, Infants, and Children] Clinic, as well as at Womankind, a facility that provides free prenatal care through the 28th week of pregnancy. She secured the agreements with both facilities. At the WIC Clinic, students see pregnant women

and new mothers with children up to five years of age. They take developmental measurements of infants, provide nutrition education, screen for lead exposure and anemia, take vital signs and do heel sticks. At Womankind, the students work with doctors and certified nurse practitioners who volunteer their time. They test urine samples for protein and sugar, and take fundal measurements. (Tr. at 338-343)

94. On cross-examination, Ms. Yakovac admitted that ATS has no contract with a facility where students can see a baby being born. Neither the WIC Clinic nor Womankind provides delivery services. Moreover, in the list that instructor Jennie Pattison created to show which facilities she had contacted about providing clinical experience for students, she made the following observation about the WIC Program: “[T]hey do not have any shadowing opportunities with nurses or doctors or services related to medical care!!!!!!” Instead, Ms. Pattison’s notes indicate that the WIC program serves to safeguard the health of low-income women, infants, and children up to age 5 who are at nutritional risk by “providing nutritious foods to supplement diets, information on healthy eating, and referrals to health care” (Resp. Ex. J at 3)

95. Ms. Yakovac explained that on the east side of Cleveland, the major hospital is Hillcrest, adding that ATS would have to have a clinical site there to use that facility. She acknowledged that there is also no facility where students can work with neonates in the early weeks of life, unless a mother brings a very young baby to the WIC Clinic. Ms. Yakovic stated that she tried to obtain affiliation agreements with sites that provide these experiences, but was unable to do so. (Tr. at 344-347)

I think what I’ve been told by the people that I have contact in trying to get into those places is that -- that a place to do acute care to actually see a labor and delivery, you know, they want the advanced practice nurses, so they want the people that are going for their Master’s degree in maternity, OB, and they don’t want someone going for a Bachelor’s degree even or an Associate’s degree. They want the advanced practice degree because the moms, it’s very – hospitals are very client centered now and family focused and they are driven by the consumer and the consumer doesn’t want all the students coming in to see them in that state –

(Tr. at 348-349)

96. Ms. Yakovic stated that ATS tried to accommodate for the lack of clinical sites that perform deliveries by having a well-equipped simulation lab. Students watch videos of different kinds of deliveries, and work with “Noel,” a medical mannequin that goes through the process of labor and delivery. She concluded that she believes these experiences give students a good exposure to labor and delivery (Tr. at 350-351)

97. Elizabeth Stolkowski, the current Program Administrator, testified that she is trying to negotiate a contract with a birthing center in Middlefield, Ohio that is used by some Amish families. However, she said that there would be no guarantee that students would see a baby delivered, since births are not scheduled. Moreover, students could not very easily be "on call" to observe a birth because the facility is located 45 minutes away from the school. Finally, there are cultural implications that complicate the contract negotiations, such as the fact that this clinic does not want male nursing students present during deliveries. On cross-examination, Ms. Stolkowski agreed that she would like to have a contract with a site where babies are born, so that she could expose students to the widest range of experiences. She stated, "That would be the ideal." (Tr. at 407-408, Tr. Vol. 3 at 22.)

C. The program did not have written affiliation agreements with agencies used for clinical experiences.

98. OAC Rule 4723-5-17(A) provides as follows:

4723-5-17 Program contractual relationships

(A) When a program has any type of cooperative relationship with another entity or a separate division within the same entity including, but not limited to, clinical agencies, a written agreement with the cooperating entity shall:

(1) Exist and be current;

(2) Be entered into and signed by representatives of both the program and the entity or division with which it has entered into a cooperative relationship; and

(3) Be on file at the program office.

99. Jody Hostetler identified State's Exhibit 10 as attachments that ATS included with its Response to the Survey Visit Report. The attachments include the original affiliation agreements between clinical facilities and ATS's LPN program, along with an Amendment to each one that adds ATS's RN program to the scope of the agreement. The original contracts for the LPN program were entered into as early as 2005, and the amendments were added after the Board's May 2010 or September 2010 Survey Visit, during which the deficiencies were discovered. As of the May 5, 2010 Survey Visit, the following facilities did not have executed affiliation agreements that applied to the RN program: University Hospitals, Beachwood Point, Jennings Hall, Judson Park, Village of Marymount, Northcoast Behavioral, Breckenridge, Grandpoint, Ann Maria, Aristocrat of Berea, and Cedarwood Plaza. At the September 21-22, 2010 Survey Visit, the program still did not have executed affiliation agreements that extended to the RN program for the following four facilities: Judson Park, Cedarwood Plaza, Aristocrat of Berea, and Beachwood Point. ATS had

identified these sites as those being used for the Summer 2010 semester. (Tr. at 194-198, 221-222, St. Ex. 10)

100. In December 2010, ATS sent a written response to the Board's Survey Visit Report. It acknowledged the deficiencies with its affiliation agreements that were cited in the Survey Visit Report, and asserted that the deficiencies had been corrected by the amendments to the affiliation agreements with those facilities:

The [Survey Visit Report] identified four entities with whom ATS did not have current written affiliation agreements. The entities were Judson Park, Cedarwood Plaza, Aristocrat Berea, and Beachwood Point. ATS has entered into amendments to the affiliation agreements with each of these facilities. The amendments expand the affiliation to cover the requirements of the Associate Degree program, thus remediating the finding. * * * ATS acknowledges that the amendments to the affiliation agreements that expand them to include experience relevant to the Associate Degree Nursing Program were not completed in a timely manner. It was the intent of ATS to complete the amendments when the deficiency became apparent. Unfortunately, this did not occur, and the omission can only be attributed to human error.

(St. Ex. 6 at 6-7)

101. Former Program Administrator Bernita Kavulich testified that affiliation agreements were the responsibility of the associate program director, and that she had been assured that the appropriate agreements were on file. However, she said that she did not "double-check." (Tr. at 102)
102. Program Administrator Elizabeth Stolkowski agreed that for 11 of the 17 facilities listed in the Notice, the affiliation agreements did not state that they applied to the school's ADN program. Ms. Stolkowski testified that ATS had been sending its RN students to those clinical sites since 2006, and that the school's administration believed it had a contract in place for each site. However, when she reviewed the contracts with those facilities, she found that the contracts pertained to only the LPN program, and not the Associate Degree in Nursing Program, which prepares students to be RN's. She commented that ATS's new contracts simply state that they apply to the school's "nursing students" so there will not be a problem in the future. Ms. Stolkowski said that ATS currently has updated, accurate affiliation agreements with all locations where the school sends its students. (Tr. at 409-412)

D. Violation of Item 11 of the January 22, 2010 Order: False, misleading, or deceptive statements

103. The Notice alleged that through the violations described previously in this Report and Recommendation, ATS failed to comply with Item 11 of the Board's January 2010 Adjudication Order. That item provided as follows:

11. ATS and its administrator shall not submit or cause to be submitted any false, misleading, or deceptive statements, information, or documentation to its staff, its students, its applicants for admission, or to the Board or its representatives.

(St. Ex. 1 at 5)

104. This charge of the Notice alleges that ATS made a false statement, because, at the May 2005 Survey Visit, Board staff explained to the Program Administrator that OAC Rule 4723-5-01(F) did not permit the program to substitute laboratory simulation for actual clinical experience in obstetrics. It alleges that despite this, the Program Administrator distributed a syllabus for "NUR 2120: Maternity Nursing" that informed students that they would successfully complete the Program's curriculum requirements without engaging in obstetrical clinical experience. (St. Ex. 1)
105. The syllabus for NUR 2120: Maternity Nursing does not explicitly state, "Students will successfully complete the Program's curriculum requirements without engaging in obstetrical clinical experience." However, it does show the requirement that a student complete 42 simulation lab hours and 3 hours of observation. It simply does not refer to any time spent in an actual clinical setting. (St. Ex. 18)
106. At the hearing, Jody Hostetler said that she recalled discussing the use of simulation lab experiences with Bernita Kavulich at the May 2010 Survey Visit. She testified that she specifically recalled telling Ms. Kavulich that it would not be acceptable to have only simulation lab experiences, and that clinical experiences had to be provided, as well. However, Ms. Hostetler did not say that she told Ms. Kavulich that clinical experiences had to be provided in this particular course. (Tr. at 212-214, 220-221)
107. Bernita Kavulich, the Program Administrator at the time of the May 2010 Survey Visit, acknowledged that Jody Hostetler told her that clinical experiences had to be provided throughout the program. However, she explained in her written statement and in her testimony at the hearing that she believes there was a misunderstanding. While she admitted that no one from the Board had told her that simulation could completely replace clinical experience, Ms. Kavulich said she did not understand that clinical experience had to be provided in any particular course. (Tr. at 107-111, 114, Resp. Ex. M)

108. Ms. Kavulich testified that after the September 20-21, 2010 Survey Visit, she changed her understanding of what the administrative rules required:

Q: And can you explain how it came to be that your understanding changed?

A: They said that it needed to be specifically across the lifespan, which, again, is very general.

(Tr. at 110-111)

109. The language requiring clinical experiences to be provided "across the life span" appears in OAC Rule 4723-5-13(F)(8)(b). The rule is not new, and as the Program Administrator, Ms. Kavulich was responsible for the program's compliance with the Board's rules governing pre-license nursing education programs.
110. While Ms. Kavulich testified that she had a different understanding of the clinical requirements after the September 2010 Survey Visit, she said that she does not believe she did anything that was false, misleading, or deceptive while she was the Program Administrator. (Tr. at 102)

E. Violation of Item 1 of the Board's January 22, 2010 Order: Failure to comply with all requirements of R.C. Chapter 4723 and OAC 4723-5

111. The Notice alleged that through the violations described previously in this Report and Recommendation, ATS failed to comply with Item 1 of the Board's January 2010 Adjudication Order. That item provided as follows:

1. ATS shall comply with all of the requirements established in Chapter 4723, ORC, and Chapter 4723-5, OAC, for nursing education programs.

(St. Ex. 1 at 5)

The Failure to Comply clause of the Board's Order states that the Board may issue a Notice of Opportunity for Hearing proposing to withdraw ATS's provisional status, if it appears to the Board that ATS has violated or breached any term or condition of the Order.

NCLEX Pass Rates

112. There was no dispute among the witnesses at the hearing that ATS graduates have a very low pass rate for the NCLEX, the national examination to become licensed as a nurse. Lisa Emrich, the Board's Programs Manager for Education, Practice and

Administration, identified a memo she wrote summarizing ATS's pass rates for the last four years. She explained that the Board has a rule requiring a program to have a pass rate of 95% of the national average pass rate (i.e, a rate slightly lower than the average national pass rate). If a program's pass rate falls below that standard for one year, the school is asked to make a plan for improvement. If it continues for a second year, the school must review its plan and make changes. If it persists for a third year, the Board conducts a Survey Visit to determine why the pass rate is low. If it continues for a fourth year, the Board must place the program on conditional approval. (St. Ex. 23, Tr. at 133-142)

113. Ms. Emrich stated that since ATS is already on provisional approval, her purpose in creating the memo was to inform the Board of ATS's history of low pass rates. She testified that since the ATS program has been in existence, it has never met the requirement that it have a pass rate that is 95% of the national average. In 2007, the pass rate was 62.96%. In 2008, it was 59.09%. In 2009, the rate was 56.63%. In 2010, the rate improved to 74.70%. However, that is still far short of the 83.04% required to meet 95% of the national average for that year. (Tr. at 133-138)
114. In the second quarter of 2011, from April 1, 2011 until June 30, 2011 while Elizabeth Stolkowski was the Program Administrator, 20 students took the NCLEX and only 10 of them passed, for a pass rate of only 50%. (St. Ex. 23 at 6)
115. Ms. Stolkowski, the current Program Administrator, testified about the steps she has taken to try to improve NCLEX scores. She said that she split some of the courses into two separate courses, after realizing that it was bad for students' retention of the information if a course packed too much material into one class of perhaps 15 weeks. In addition, she changed the progression of the program to make courses logically follow from each other so that students have not forgotten the material from the first course by the time they get to the last course. Another major change is the use of the ATI exam instead of the HESI test to prepare students for the NCLEX. (Tr. at 412-419)
116. Ms. Stolkowski said that faculty members had been complaining that the HESI was cumbersome, and that they experienced a lack of support from the vendor if students were not able to log into the computer to take the exams. As a result, this testing system was not helpful to students in preparing for the NCLEX. Ms. Stolkowski said that she has worked with the ATI exam when she was an instructor at Bryant and Stratton, another nursing program. She thinks it is a better system in terms of its support, because ATI staff members come to the school to orient students and staff to the system. In addition, she finds it very user-friendly.
117. Ms. Stolkowski also spoke of her personal efforts to help prepare students for the NCLEX, commenting, "When I get them, I know that I'm able to get them to pass." She explained that some of ATS's students do not take the NCLEX right after they

graduate. Instead, they are sometimes busy working to support themselves and they do not want to make time to take the exam. She said that she has shown the students statistics that show it is to their advantage to take the exam right after they graduate. Ms. Stolkowski said that she has begun offering NCLEX review classes as early as the first semester to build their knowledge base and improve their application of that knowledge. She explained that NCLEX review classes are typically offered after graduation, but at that point, many students do not want to attend them. Ms. Stolkowski said that she expects to see the results of these changes within one and a half to two years, since the greatest impact will be felt by the students who are just beginning the program now. (Tr. at 415-421)

118. Consultant R. Wynne Simpkins agreed that the school's NCLEX pass rates are "very low." She suggested that the pass rates are likely to improve because the school is now using a different type of competency testing, the ATI exam. In the past, it used the HESI assessment exam. Ms. Simpkins said that the ATI uses content-based questions similar to what students will find on the NCLEX. Students can take exams to practice during the course, before taking the final proctored exam. She cautioned that the next NCLEX results will not likely show this improvement, explaining that since ATS provides a 2-year nursing program, results will not likely materialize until 2013. (Tr. at 261-266)
119. On cross-examination, Ms. Simpkins was directed to the transcript of ATS's 2009 Board hearing. Although she did not take part in that hearing, she agreed that this is the third time ATS had changed its testing to attempt to make its students better prepared for the NCLEX exam. In the previous hearing, ATS asserted that it was changing from the ERI exam to the HESI exam, and predicted that its students would be more successful on the NCLEX as a result. Now, it is switching from the HESI to the ATI exam. (Tr. at 296-300, St. Ex. 29 at 113, 121)

Mitigation Evidence

Testimony of Joseph Scaminace and Letters from ATS Supporters

120. Joseph Scaminace graduated from Solon High School in 1999 and then attended several colleges, including John Carroll University, Arizona State University, and Scottsdale Community College. He holds a bachelor's degree in psychology and in religious studies. He testified that while he was at Arizona State University, he considered other career options. Since he always wanted to help people, he said that he felt that nursing was his calling. He is now enrolled as in the RN program at ATS, and he expects to graduate in December 2011. (Tr. at 354-356)
121. Mr. Scaminace said that his overall experience at ATS has been "phenomenal." He stated that his clinical experiences have given him training in starting IV's and catheters and in interacting with patients. He described his clinical experience at

Kindred as one involving "total patient care," under the direction of a nurse who gives patient assignments. (Tr. at 357-359)

122. Mr. Scaminace commented that the program has improved since Elizabeth Stolkowski has been the Program Administrator. He said that she speaks frankly to the students, and that they trust her because her honesty has built their trust over time. Ms. Stolkowski meets with students and keeps them up to date on the Board action against the school. She is also conducting an NCLEX preparation class. (Tr. at 357-358)

123. Mr. Scaminace described ATS as the most challenging school he has attended, adding that it was improving despite its recent problems:

[I]t's a very good school. It's not perfect. I mean, we are all aware of that, but I don't know anything that's absolutely perfect. They are getting better and that's what I think is what matters.

(Tr. at 361)

He wrote a letter in support of the program because he said that he does not want the school to lose its approval status. (Resp. Ex. R-3, Tr. at 360)

124. Numerous other students, instructors, and employers of ATS students wrote letters in support of the program. Many of those writers expressed "a complete change for the better" since Elizabeth Stolkowski became the Program Administrator. (Resp. Ex. R-4 at 2) Sherri Barton, R.N., an ATS instructor who formerly worked for the Cleveland Clinic's Huron School of Nursing, was recruited by Elizabeth Stolkowski to teach at ATS. She described her apprehensions and her eventual positive experience under the leadership of Ms. Stolkowski:

Initially I had my doubts about even applying for this job due to their poor reputation and one graduate that I had met in practice who was a very poorly trained graduate from the school.

* * *

I was pleasantly surprised to see a very well-equipped school with excellent lab facilities and a very nice learning environment. The school was not what I had expected to see at all.

* * *

Lastly, I cannot speak to the past ways of ATS but I can attest to all of the positive things that I have seen since I recently started with ATS. Policies are being developed and revised and consistency is being stressed. I feel strongly that ATS should be given the opportunity to continue its ADN program due to the quality changes that have been

made and continue to be made under Beth Solkowski's [sic] leadership.

(Resp. R-4 at 2)

Investment in Students

125. R. Wynne Simpkins, the consultant hired by ATS, spoke about the program's willingness to make expenditures to benefit its students, commenting, "I have never seen a program that put so much back into the students." (Tr. at 265) She described some of the ways ATS has invested in its students:

For instance, they have a student of the month, and they are awarded things like gas cards to help get them to school. They are currently buying computers so that each student has access to a computer station at all times recognizing that those who do have computers at home might have a teenager also so they don't have access to their particular computer and that not all students have a computer at home. They have a lab that's phenomenal. I mean, they really have invested heavily in their student body. Usually when I see computers at a school, they will have a bank of computers that students have access to but there's not one per student. ATI - or ATS has one per student.

(Tr. at 265-267)

126. Program Administrator Elizabeth Stolkowski confirmed that she has been given an "open pocketbook" to make expenditures that she thinks are needed. She related that she asked for more computers, the new software program for student evaluations, as well as iPads and books for students. She added faculty members so that classes would be smaller. Upon taking her position at ATS, she replaced all of the old mannequins in the simulation lab. Now, she is looking into the possibility of acquiring a Sim-Man, an advanced medical mannequin that can simulate the occurrence of a heart attack. This type of mannequin ranges in cost from \$15,000 to \$100,000, and she has authorization to spend \$100,000 on it if she sees fit to do so. (Tr. at 385-386, 423-424)
127. Ms. Stolkowski also said that she recommended to the Bykovs that ATS continue working with its consultant, R. Wynne Simpkins, to make sure that the program maintains its compliance (Tr. Vol. 3 at 379-380)
128. Ms. Stolkowski testified about the nature of ATS's students, and her belief that this program provides a unique opportunity for them to get career training:

Our students are not your traditional students. These are single mothers who are trying to better themselves, also single fathers. We have a lot of GED graduates, a lot of students who are coming from Cleveland public school graduates that may not have had any science classes or was progressed because of whatever the system was doing. * * * [B]ut for, I think, a school like ATS where they are given the opportunity to bring themselves up to par enough to qualify them to be in the nursing program, they will never have a chance.

And a lot of these students have the ability. They just need a chance, and I know that because I've worked with a lot of the students who I have gotten to pass NCLEX the first time they took it and only taking 75 percent rather than taking the whole 265 questions so they have all the abilities to do it. They just need the opportunity and the guidance and the format to be able to showcase this and I think with the shortage of nurses that's coming up with the needs that's going to be happening.

I mean, a lot of these students will be contributing to society very well if done properly, and I think ATS is able to do that and capable of doing that. Yes, there are other schools, but the other schools were - it is not on the same mode, is very competitive, and students will either have to wait four to five years and, therefore, they'll say forget it, you know, these students who say here is the opportunity; I better get it. I am able to do it now, you know, and otherwise they never do it and I think we are giving that opportunity.

(Tr. at 383-385)

FINDINGS OF FACT

1. The Board's Adjudication Order dated January 22, 2010 permitted ATS to remain on provisional approval for an additional two years beyond the original provisional period. The Order required ATS to "comply with all of the requirements established in Chapter 4723, ORC, and Chapter 4723-5, OAC, for nursing education programs" during that time.
2. ATS has not complied with OAC 4723-5-12(A)(4) because it failed to implement its own written policies for student progression in the course titled, "NUR 2130: Nursing of Children." ATS's policy stated that all students were required to achieve an "S" (satisfactory) grade in all clinical objectives in order to pass the course. However, numerous students were passed at the end of the course, even though their evaluations showed that they received a grade of "N/A" for some of the clinical

objectives. ATS's initial written explanation, that some of the experiences were "not available" is not an acceptable justification for the fact that students passed the course without completing some of the objectives. Likewise, the explanation that some of the objectives were "not applicable" to this pediatric course because the school was using a flawed evaluation tool that included maternity objectives, is also not acceptable. While it is true that some of the objectives related specifically to maternity aspects of nursing, many of the other objectives on which students received "N/A's" concerned more routine aspects of pediatric nursing, such as medication and delegation skills.

3. ATS has not complied with OAC 4723-5-13(C) and 4723-5-13(F)(8)(b) because the syllabus for "NUR 2031: Advanced Concepts in Adult Nursing" stated that clinical experience in an acute care setting would be provided. However, ATS had no contract with an acute care or critical care facility, and instead used three long-term care facilities for the clinical experience in this course. Therefore, it did not implement its curriculum as written, and it did not provide clinical experiences in the performance of a variety of nursing functions with individuals or groups across the life span.
4. ATS has not complied with OAC 4723-5-13(C) and 4723-5-13(F)(8)(b) because the syllabus for the course titled, "NUR 2110: Mental Health Nursing," stated that clinical experience would be provided in "acute and community settings." However, ATS had no contract with an acute care or critical care facility, and instead used two long-term care facilities for the clinical experience in this course. Therefore, it did not implement its curriculum as written, and it did not provide clinical experiences in the performance of a variety of nursing functions with individuals or groups across the life span.
5. There was no evidence to support the allegation in the Notice that 16 out of 20 students evaluated in the course titled, "NUR 2130: Nursing of Children" were evaluated as having completed objective 2(a) on the grading form, related to pregnancy and delivery skills. Instead, the evidence showed that the 16 students cited in this allegation received an "N/A" for this objective.
6. ATS has not complied with OAC 4723-5-13(F)(8)(b) because the course titled "NUR 2120: Maternity Nursing" included no actual clinical experience. Since ATS had no contract with a facility that provided clinical obstetrics experiences, it used a simulation laboratory exclusively, instead of a clinical experience. This rule, which requires clinical experiences "across the life span," can reasonably be interpreted to include at least maternity/birth, pediatrics, adult nursing, and geriatric nursing experiences, and licensing boards are given discretion in the interpretation of their

own rules.¹ Since ATS provided no clinical experience in maternity or obstetrics, it failed to provide an experience at this point on the life span. ATS also failed to comply with OAC 4723-5-13(C) because it did not implement its curriculum for this course as written, since some students passed without completing the requisite number of simulation lab hours stated on the syllabus. The explanation that most of the students were deficient because class was not held on the 4th of July holiday, and that the school did not at that time have a policy for make-up classes due to holidays, is not acceptable.

7. ATS has not complied with OAC 4723-5-17(A) because it did not have executed affiliation agreements with 11 out of 17 of the sites it used for clinical experiences, at the time of the May 5, 2010 Survey Visit. By the time of the September 20-21, 2010 Survey Visit, ATS still did not have executed affiliation agreements with four of those clinical sites. These were sites that ATS identified as the ones it had used for the Summer 2010 semester. Although the program had agreements with these sites for clinical experiences in its LPN program, the agreements did not apply to the RN program until an amendment was added later.
8. Although I find that ATS provided a Maternity Nursing course to its students that did not include any clinical experience, in violation of OAC Rule OAC Rule 4723-5-13(F)(8)(b), I cannot find that the Program Administrator made a false statement by distributing a syllabus that informed students they would meet the program's requirements by completing only simulation lab experiences. I find that the Program Administrator erred in her belief that simulation lab experience alone was sufficient. And, in her role as Program Administrator, she should have known that the pertinent rule required clinical experience "across the life span," which can reasonably be interpreted to include a maternity experience. However, I do not find that there was a "false statement" made because there was no deliberate, overt misrepresentation. I believe that this error resulted from an unacceptable lack of familiarity with the administrative rules, but not from an intent to deceive.
9. By failing to comply with some of the Rules in OAC Chapter 4723-5, as described in paragraphs 2, 3, 4, 6, and 7, above, ATS has failed to comply with the provision in the Board's January 22, 2010 Adjudication Order that it "shall comply with all of the requirements of Chapter 4723, ORC and Chapter 4723-5, OAC, for nursing education programs."

¹ *State ex. rel. Celebrezze v Natl Lime & Stone Co* (1994) 68 Ohio St 3rd 377, 382, citing "the long-accepted principle that considerable deference should be accorded to an agency's interpretation of rules the agency is required to administer "

CONCLUSIONS OF LAW

1. The Board has met its burden of proving, by a preponderance of the evidence, that ATS has failed to comply with some of the rules in Ohio Administrative Code Chapter 4723-5. Therefore, the program has violated the Board's January 22, 2010 Adjudication Order, which required it to comply with all of the requirements of Chapter 4723, ORC and Chapter 4723-5, OAC, for nursing education programs.
2. R.C. 4723.06(A)(7) permits the Board to place a program that has ceased to meet and maintain minimum standards on provisional approval status for a period of time specified by the Board. It further provides that at the end of the provisional status period, the Board shall reconsider whether the program meets the standards. If it does, the Board shall grant full approval to the program. If it does not, the Board may withdraw its approval of the program.
3. In the "Failure to Comply" provision of the Board's January 22, 2010 Adjudication Order, the Board order stated that it would issue a Notice of Opportunity and propose to withdraw ATS's provisional approval status and deny full approval if it appeared that ATS had violated or breached any terms and conditions of the Order. Because ATS has violated the Board's Order, the Board is authorized to withdraw its provisional approval of the ATS program if, in the Board's discretion, that action is found to be appropriate.

DISCUSSION

A decision about whether to withdraw approval of this program is one that can properly be made only by professional nurses. The Board members have been appointed by the Governor on the basis of their expertise in nursing and nursing education. Many of them have served as instructors or administrators of nursing programs and are in a unique position to be able to evaluate the extent to which any deficiencies affect the quality of a program, as well as the extent to which those deficiencies have been corrected. Therefore, while I can offer my findings and impressions, the resolution of this case must ultimately be left to the professional judgment of the team of experts serving on the Board.

The Board's January 2010 Adjudication Order permitted ATS to remain on provisional approval for an additional two years, dating back to the January 2009 Notice, despite its prior pattern of deficiencies. The Order expressed the Board's expectation that during that time, "ATS shall comply" with all of the laws and rules governing nurse education programs. Those two years were the time in which ATS was expected to show precise

compliance with the Board's laws and rules. The program failed to do that. Instead, it continued to have deficiencies in crucial areas such as providing sufficient clinical experiences to students.

The evidence showed a pattern of carelessness or "sloppiness" in the way the program was conducted during the additional two-year provisional approval period. It could not find adequate acute care experiences for students, so it sent them to long-term care facilities. It hastily tried to get an evaluation form in place for the pediatrics course by using one from a combined maternity/pediatric course that was not even part of the RN program. The former Program Administrator, Bernita Kavulich, admitted that she did not "double-check" that accurate affiliation agreements were in place because she thought it was the job of the Associate Program Administrator. Ms. Kavulich expressed her surprise in learning that the Board's rules required clinical experiences "across the life span," even though those words appear in the curriculum rule that the Program Administrator is charged with knowing. Even more puzzling is ATS's explanation that prior to the summer of 2010, it did not have a policy for students to make up hours that were missed because of a holiday or other unforeseen occurrence, and thus, students did not complete all of the laboratory hours required of them in the maternity course. In the four years that ATS's RN program existed prior to 2010, surely there were holidays that fell on dates when clinical experiences had been scheduled. It is inconceivable that the program never had occasion to address this issue prior to 2010. These examples call into question the competency of the administrators charged with running the program during that time.

On the other hand, there are factors that should be considered in mitigation. ATS was well-represented and exhibited a spirit of honest cooperation in entering stipulations acknowledging some of the program's shortcomings prior to the hearing. In addition, ATS presented evidence of dramatic improvements in the program since early 2011. The new Program Administrator, Elizabeth Stolkowski, appeared to be the consummate professional, and I had the impression that if anyone could resuscitate this program, it would be Ms. Stolkowski. She struck me as honest, hardworking, and well-educated, with an extensive knowledge of nursing and a law degree, making her well-qualified to ensure the program's compliance. She was well-spoken at the hearing, and as I watched her interact with some of the students, it was clear that she commands their respect. She appeared to be the ideal candidate for this difficult job in this troubled program. However, she was not hired until January 22, 2011, the day after the current Notice of Opportunity for Hearing was issued.

I was similarly impressed with the faculty members who testified at the hearing. I found all of the instructors who testified to be honest, experienced, talented professionals who truly want to give their students the best possible opportunities. Yet many of them were only recently hired in the spring of 2011 by Elizabeth Stolkowski. ATS did not retain its consultant, Wynne Simpkins, until June 2011, three months before the hearing. This leads me to the conclusion that although ATS has made considerable improvements in its program, it waited until just months before the hearing to do so.

ATS predicts that its NCLEX pass rates will improve because it has a new Program Administrator who has instituted important changes, such as the change from the use of the HESI exit exam to the ATI exam. However, at the 2009 hearing, ATS presented Bernita Kavulich as its new Program Administrator, and predicted that NCLEX rates would improve because of the change from the ERI exam to the HESI exam. At the 2009 hearing, Ms. Kavulich testified that faculty members had told her they believed they were seeing a "higher quality of student" because the school had begun using the PSB exam as the entrance exam to the program rather than the NET exam, suggesting that students would be better equipped to pass the NCLEX. These changes in administration and in testing methods failed to produce the improvements in test scores that the program predicted. Nonetheless, ATS is once again predicting that similar changes will yield the anticipated results if the program is given an additional one or two years.

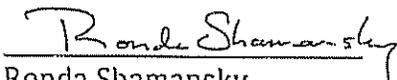
In reaching a decision about the outcome of this case, consideration must be given to the position of ATS's students. I recognize the disruption that a decision to withdraw approval would cause for current students. However, it is also troubling to consider the fact that students have invested their time and their money to pursue this program, when many of them have not been able to pass the licensing exam to become nurses at the end of the two-year process. This does not appear to be coincidental. There can be little doubt that inadequacies in a student's experiences during nursing school will have a measurable effect on a student's ability to pass the NCLEX and to perform as a well-trained nurse. Only the Board can effectively evaluate the whether all aspects of this program now meet the Board's standards, so that students are in fact more likely to have success on the NCLEX. The Board must determine, for example, if the program's current contracts with Womankind and the WIC Clinic provide adequate clinical experiences in obstetrics.

Because this is the second time ATS has come before the Board in a hearing, and because the evidence showed that deficiencies in the program continued to exist during the additional two-year provisional approval period that ATS was granted in the Board's January 2010 Order, I find that the Board has the authority to withdraw its approval from this program. However, if the Board finds that the mitigation evidence has shown that ATS is able to offer a high-quality program to its students in the immediate future, then it is the Board's prerogative to offer ATS an additional period of time in which it may remain on provisional approval.

RECOMMENDATION

Based on the evidence that ATS did not comply with the terms of the Board's January 2010 Adjudication Order, I recommend that the Board withdraw its provisional approval of this program, specifying that ATS may reapply for conditional approval of the program after a stated period of time, when it is able to demonstrate a plan for an RN program that meets

all of the requirements of R.C. Chapter 4723 and OAC Chapter 4723-5. However, if the Board finds from the mitigation evidence that ATS has made substantial progress in correcting the deficiencies, the Board may choose to extend ATS's provisional approval for the period of time that it finds appropriate.



Ronda Shamansky
Hearing Examiner