

SacksTierney P.A.

ATTORNEYS

Ellen K. Aiken	Jeffrey D. Gardner	Shannon M. Mason
James W. Armstrong	Steven M. Goldstein	Matthew B. Meaker
Adrian L. Barton	Bryan J. Gottfredson	Phoebe Moffatt
Steven R. Beeghley	Gaye L. Gould	Sharon S. Moyer
Stephen Aron Benson	John K. Hanson	Michael R. Rooney
Brian E. Ditsch	Helen R. Holden	David L. Rose
Judith M. Dworkin	Robert G. Kimball	Laura Schiesl
Patty A. Ferguson	Michael C. Lamb	Sharon B. Shively
Roxann S. Gallagher	Stephen A. Lenn	David C. Tierney
	Jeffrey S. Leonard	Aaron G. York

Seymour Sacks (1932 – 2011)

Marvin S. Cohen (1931 – 2009)

Gary E. Pace, CLM, Executive Director

March 21, 2013

Via Email Transmission
ABieda@acics.org



Writer's Direct Line: 480.425.2673

Writer's Direct Facsimile: 480.425.4973

Writer's E-mail: Roxann.Gallagher@SacksTierney.com

Anthony S. Bieda
Director of External Affairs
Accrediting Council for Independent Colleges and Schools
750 First Street, NE, Suite 980
Washington, DC 20002-4223

Re: Breckinridge School of Nursing at ITT Technical Institute status with the Arizona State Board of Nursing.

Dear Mr. Bieda:

As you know, we represent the Breckinridge School of Nursing at ITT Technical Institute (the "School") with respect to the School's regulation by the Arizona State Board of Nursing (the "Board"). This letter is in response to your March 12, 2013 request for updated information regarding the concerns of the Board. Since our previous correspondence with you in November 2012, our status with respect to the Board is unchanged and the School has provisional approval. The Board has neither commenced any disciplinary proceeding against the School nor dismissed any of the existing "complaints." There has also been no further investigation by the Board as to these matters. We understand that the Board has still not yet determined whether any of the Board's investigative findings, many of which are two years old, merit disciplinary action against the School. Notably, throughout the process, neither the Board nor its attorneys have ever cited or referenced any rule or regulation that the School was alleged to have violated. The School does not believe that there is any factual or legal basis for disciplinary action and will oppose any sanction proposed by the Board with respect to the Board's investigation.

Attached hereto are copies of all formal correspondence between the Board and the School, including a letter from Pam Randolph requesting responses to new complaints from February 2013 and the School's responses thereto. The School believes these complaints are also without merit and will oppose any disciplinary action should the Board continue to investigate these matters.

Anthony S. Bieda
Accrediting Council for Independent
Colleges and Schools
March 21, 2013
Page 2

In the event that you have questions regarding the above or the attached or require additional information, you are welcome to contact the School or me directly.

Sincerely,

SACKS TIERNEY P.A.

(b)(6)

A rectangular box with a black border, used to redact the signature of Roxann S. Gallagher. The text "(b)(6)" is written in the top-left corner of the box.

Roxann S. Gallagher

RSG:sr

c: Shawn Crawford, David Catalano, Stephe Guptill, Debra Colbert, Gene McWhorter, Susan Ciardullo, Bryan Gottfredson

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Julianne C. Wheeler
Aaron G. York

February 12, 2013

Seymour Sacks (1932 – 2011)

Marvin S. Cohen (1931 – 2009)

Gary E. Pace, CLM, Executive Director



Writer's Direct Line: 480.425.2643

Writer's E-mail: Bryan.Gottfredson@SacksTierney.com

Mr. John R. Tellier
Office of the Attorney General
1275 West Washington Street
Phoenix, AZ 85007-2926

408 CONFIDENTIAL SETTLEMENT COMMUNICATION

Re: Breckinridge ITT School of Nursing - Request for Settlement Conference.

Dear John:

Several weeks ago, I presented you with a verbal settlement proposal from our client. You agreed to share that proposal with the Arizona State Board of Nursing ("Board") and let us know if it was acceptable. We have not yet heard from you with regards to whether our proposal is acceptable to the Board. We spoke with Pam Randolph yesterday and mutually agreed that a settlement conference would be an efficient step toward resolving all of the open issues between our client and the Board. We understood that we had permission from the Attorney General's office to communicate with Ms. Randolph. You informed us this morning that all communications should be directed only to you, and thus, going forward we will only communicate with you.

As you know, it is apparent that the Board's position and our client's are far apart. For example, both parties have recently proposed the replacement and/or forced resignation of key personnel from the other side. We can assure you that a settlement conference will be futile if the Board attempts to dictate who our client may employ. I presume that you and the Board have similar beliefs on this subject. The purpose of the settlement conference would be for our client and the Board to address any and all outstanding issues between them and attempt to reach a resolution whereby our client could move forward with its objective of ultimately obtaining full approval from the Board pursuant to certain procedures that are stipulated to by both sides. We would have our client's key Phoenix (and out-of-state) representatives available by phone and we would expect that the Board members with authority to settle this dispute, including Ms. Randolph and yourself will attend.

We are generally available during the last week of February or the second week of March. We would also welcome the inclusion of a third-party neutral mediator if you think this would help. For purposes of efficiency at the settlement conference, I would like to work with you in advance of the

February 12, 2013

Page 2

conference to develop an agenda and/or list of outstanding items that both sides intend to address at the settlement conference. Please let us know this week when you and your client's representatives are available.

Very truly yours,

SACKS TIERNEY P.A.

(b)(6)

Bryan J. Gottfredson

cc: Shawn Crawford
Eugene McWhorter
Roxann S. Gallagher, Esq.

SacksTierney P.A.

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Seymour Sacks (1932 – 2011)

Marvin S. Cohen (1931 – 2009)

Gary E. Pace, CLM, Executive Director

March 1, 2013

VIA E-MAIL AND U.S. MAIL



Writer's Direct Line: 480.425.2673

Writer's Direct Facsimile: 480.425.4973

Writer's E-mail: Roxann.Gallagher@SacksTierney.com

Pamela Randolph, RN, MS, FRE
Arizona State Board of Nursing
4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655

Re: Complaints - Breckinridge Nursing Program

Dear Ms. Randolph:

This cover letter accompanies the response provided by Debra Colbert, Program Chair, Breckinridge School of Nursing at ITT Technical Institute (the "School"), to your Nursing Program Investigative Questionnaire to be returned to your attention on March 1, 2013. Please note that these responses have been prepared without the benefit of seeing any of the complaints which have not been provided by the Arizona State Board of Nursing (the "Board") to the School as of the date of this response. Ms. Colbert has provided detailed responses to the various complaints, in most cases through notes logged in a special software system (IRIS) nearly contemporaneously with the alleged event. Due to the increased scrutiny of the School by the Board, the School's staff and faculty have been undertaking this procedure in order to provide more accurate records of events. In the interest of full disclosure, I have made certain non-substantive revisions to Ms. Colbert's responses. I have not modified any underlying facts.

1. Pediatric Clinical Rotation Schedule

With respect to the complaint regarding students attending pediatric clinical rotations before didactic sessions on pediatric nursing, regardless of the factual basis for this complaint, there is no allegation that a statute or regulation applicable to the School has been violated and no adverse outcome has been reported. Further, the School is in the process of altering clinical scheduling to improve the educational experience. As a result, we respectfully request that this complaint be immediately dismissed by the Board without additional inquiry, investigation, or delay. The School should not be forced to incur any additional administrative time, effort, and legal expenses to answer these charges.

2. December 13, 2012 Medication Error

The School does not dispute the medication error which was immediately discovered, reported, and remedied under the appropriate protocol. There was no adverse outcome. While any medication error is serious and regrettable, published literature, anecdotal evidence and the Board's own disciplinary records indicates that they are unfortunately not uncommon. In the past four years, the Board has received no more than three reports of medication errors made under the supervision of School instructors, none resulting in an adverse outcome. In each case, the instructors were educated, qualified, and experienced nurses who had no negative history to indicate a pattern of medication errors or misconduct. In each case, all dosage and dispensing protocols were followed. These were isolated human errors.

3. Open Lab Schedules

Through a combination of open labs, mentoring, and tutoring programs, the School's students have a great deal of flexibility in scheduling educational assistance. The School voluntarily provides each of these programs, without any additional cost to students, in an effort to enhance student outcomes. Why would the Board want to punish the School over the scheduling of these discretionary student assistance programs? There is no statute or regulation that requires the School to have any of these programs or that otherwise governs the conduct or scheduling of these programs. Therefore, it is not the Board's proper role to sanction the School for holding the labs, for instance, at 2:00 on Tuesday instead of 3:00 on Wednesday. Because a complaint that the open lab is not convenient for a given student's schedule is not an appropriate subject for Board inquiry or investigation, we respectfully request that this complaint be immediately dismissed without additional investigation, inquiry, or delay. The School should not be forced to incur any additional administrative time, effort, and legal expenses to answer these charges.

4. Student Reprimand and Tutoring

In complaint 2 above, the School must answer for a medication error. In this complaint, the School must answer for its good faith efforts to prevent future medication errors. By pursuing both of these complaints simultaneously, the Board is unfortunately sending the message that it intends to keep the School in a no win situation.

The decision regarding the appropriate level of tutoring or testing for any given student is not one best left for the Board to make. Generally speaking, instructors and faculty must be able to evaluate and grade students fairly without fear of reprisals from the Board or an angry student. Because you already have a copy of the clinical warning presented to Ms. Olson Simpson, you are well aware that the counseling (i.e., "reprimand") and dosage calculation tests in this instance are needed to address obvious student deficiencies that could ultimately lead to unsafe nursing practices and/or student academic failure. Logically the Board should be supporting the School's efforts in this respect—not seeking to punish it. Nevertheless, this internal grievance against the School does not allege any violation of applicable law and therefore does not mandate Board intervention. We respectfully request that this complaint be immediately dismissed without additional investigation,

inquiry, or delay. The School should not be forced to incur any additional administrative time, effort, and legal expenses to answer these charges.

5. No Clinical Orientation

Regardless of the factual basis for this complaint, there is no allegation that a statute or regulation applicable to the School has been violated and no adverse outcome has been reported. As a result, we respectfully request that this complaint be immediately dismissed by the Board without additional inquiry, investigation, or delay. The School should not be forced to incur any additional administrative time, effort, and legal expenses to answer these charges.

We look forward to the successful resolution of the immediate complaints and all other issues currently pending between the Board and the School. As you know, the School would like to meet with you as soon as possible to resolve these longstanding issues. Ideally, we would like to put a settlement agreement in front of the Board to be blessed at the March Board meeting. We believe that this cooperative effort would be beneficial to all interested parties. Please contact Debra Colbert, and copy me, if there is any additional information you may need to move toward that goal.

Sincerely,

SACKS, TIERNEY & ASSOCIATES, P.C.

(b)(6)

Roxann S. Gallagher

RSG:sr

Cc: Emma Mamaluy
John Tellier
Debra Colbert
Gene McWhorter
Shawn Crawford
Bryan Gottfredson



Janice K. Brewer
Governor

Joey Ridenour
Executive Director

Arizona State Board of Nursing

4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655
Phone (602) 771-7800 Fax (602) 771-7888
E-Mail: arizona@azbn.gov
Home Page: <http://www.azbn.gov>

NURSING PROGRAM INVESTIGATIVE QUESTIONNAIRE

ATTENTION: Pamela Randolph RN, MS, FRE

PLEASE COMPLETE AND RETURN THIS FORM BY: March 1, 2013

I. RESPONDENT INFORMATION

Nursing Program Name:

Breckinridge School of Nursing@
ITT Technical Institute

Name of Nursing Program Administrator

Debra L. Colbert, RN, MSN, ED., Nursing Program
Chair

Address:

10220 North 25th Avenue, Suite 100
Phoenix, Arizona 85201

E-Mail: dcolbert@itt-tech.edu

Phone:

602-749-7900
602-749-7950 FAX

TO BE COMPLETED BY BOARD STAFF

Nature of concern or complaints submitted against the program:

1. Pediatric clinical rotation was scheduled for approximately half the students in the 8th quarter cohort (December 2012) before didactic sessions on pediatric nursing
2. On December 13, 2012, a student made a medication error while under the direct supervision of faculty member Cindy Jung RN
3. Skill labs on campus were not available for practice at times convenient to students' clinical schedules in the 7th quarter of this cohort.
4. A student was reprimanded for seeking help from another student with a math dosage calculation and required to pass additional dosage calculation tests at 100%.
5. There was no orientation to the clinical agency prior to the start of clinical for the 8th quarter at Hacienda (a pediatric residential facility) on or about December 13, 2012

(It is a violation of R4-19-403.25(a.) to fail to furnish in writing a full and complete explanation covering the matter reported pursuant to A.R.S. § 32-1664).

II. PROGRAM RESPONSE TO COMPLAINT

Provide information regarding the complaint or complaints filed against the nursing program at the Arizona State Board of Nursing, i.e., describe events and include any information and copies of documents that would be helpful for the Board in understanding the allegations.

ITEM 1--Pediatric clinical rotation was scheduled for approximately half the students in the 8th quarter cohort (December 2012) before didactic sessions on pediatric nursing.

NU 260 Maternal Child Nursing is a ten week didactic and clinical experience in which both OB and pediatrics clinicals co-exist. It has been in the Breckinridge curriculum since the conception of our Phoenix school in December 2009. The didactic instructor begins the course with the OB portion, then advancing to the pediatric portion. Because this class is given in the eighth quarter of a nine quarter program, the students are expected to demonstrate advanced skill level for second year nursing students.

Just as the medical surgical classes do not teach everything in the weeks prior to clinical, neither does the OB/pediatrics didactic. In the medical surgical example, a nursing student may be studying endocrine on the adult patient in week two of the quarter but may select a telemetry patient in clinical even if the didactic for telemetry is not taught until the eighth week of the nursing course. Similarly, the OB didactic instructor may be lecturing antepartum in week one but the student in clinical may be assigned to labor and delivery or the newborn nursery that same week.

We instruct all of our nursing students that patients will not always follow the order of the lectures and caution them that it is also the case in nursing. Patients may present with conditions that the nurse has not previously seen. Nevertheless, we expect our students to be as prepared as possible, including by selecting patients prior to clinical and studying the relevant medical conditions before clinical when possible, and to be professional.

We have had no incidents as a result of our OB/pediatric clinical structure. However, like all nursing programs, we constantly strive to make improvements. In this case, I consulted with NU 260 didactic lead Gerri French and together we developed a plan to use the first week of clinical in the School's nursing lab where the teaching session will include head to toe assessments of the infant, toddler, adolescent, and antepartum and postpartum female. That session will also differentiate between situations that the student is likely to encounter in the pediatrics versus the OB context, provide additional orientation, and address student expectations. I am also consulting with our clinical coordinator so that we can implement a policy of booking the OB clinicals first and then the pediatrics clinical. We intend to hire additional instructors if needed to make this program change.

ITEM 2-- On December 13, 2012, a student made a medication error while under the direct supervision of faculty member Cindy Jung RN.

Cindy Jung, RN, is our newest instructor. On December 13, 2012, during the first week of pediatric clinical at Hacienda Del Los Angeles, a student nurse administered a blood pressure medication to her patient at 0800 when it was not due until 2000 hours. The error was quickly detected and Ms. Jung, the clinical instructor, then followed the protocol for medication errors. An incident report was completed, and the patient's RN, physician and family were notified. Orders were given to monitor the patient's vital signs every 30 minutes for 3-4 hours, hold the evening dose of the medication and then to resume the regular order the following day. The patient experienced no adverse outcome.

ITEM 3-- Skill labs on campus were not available for practice at times convenient to students' clinical schedules in the 7th quarter of this cohort.

Open lab, which is a voluntary student service provided by the School, is available one day per week. This day changes each quarter based on the quarter schedule in an attempt to conduct the open lab when the students are not at clinical. Open lab is held in the afternoon when students are out of lecture and there is always a full time qualified nursing instructor who conducts the open lab. The School keeps a log book requiring students to sign in and out and note the topic they reviewed. Therefore, we are able to gauge usage. Unfortunately, with 64 students and with five days a week of classes, it is not possible to make open lab convenient to each student's clinical schedule.

However, the School also provides student mentoring which gives each adult student learner every opportunity to seek educational assistance and tutoring in any area they choose and at individual times convenient for their schedules. Full-time faculty mentors are assigned when students enter the program. Each student is emailed their mentor's contact information at the beginning of the each quarter. Each faculty mentor maintains 13-15 students from the time they begin the program and is available for tutoring, counseling and career information. Students are responsible for requesting appointments which are generally scheduled for thirty minutes to an hour per week, depending on both student and instructor availability. Students can be tutored on anything from didactic to lab/skill instruction. This program has improved student retention and engagement.

Additionally, I do academic advising for all subjects in the program, on-line, ground, general education, technical and core courses in weeks four and eight and failure advising in week 12. Students are assigned letter grades in week nine and can drop any class prior to that time. At week four, I contact any student under 80% via phone or email requesting a meeting time. All contacts are documented in IRIS, our computer database for cataloging student issues. Student meetings are intended to develop individualized strategies needed for the student to succeed in the nursing program. At week eight, I re-evaluate the students and meet with any student still under 80% again. At that time, we discuss, in detail, all options then available to the student and determine how to achieve the best possible outcome for the student. Options can include completing the class or dropping the class. While I provide projections and expectations of what would be needed to pass a class and the consequences of certain actions, ultimately it's the student's informed choice of how to proceed. I always encourage mentor follow-up and offer access to School resources for needed tutoring.

ITEM 4 – A student was reprimanded for seeking help from another student with a math dosage calculation and required to pass additional dosage calculation tests at 100%.

Ms. Jung conducts pediatric clinical rotations at Hacienda. On January 10, 2013, in week three of the quarter, I made a site visit to the clinical location and observed student nurse Kim Olson Simpson conducting a medication pass with the instructor. Given the student's length of time in the program, her knowledge about the medication was insufficient and she required more extensive instruction on administering the medication than should have been needed. My observation was consistent with reports from Ms. Jung who was also concerned with the student's math and dosage calculation skills. Ms. Jung mentioned a prior incident where the student was asked to calculate patient medication and did not perform the task accurately. Ms. Olson Simpson instead had a classmate set the problem up but even when using the other student's formula, Ms. Olson Simpson was still initially unable to derive the safe dosage.

Ms. Olson Simpson further demonstrated a need for tutoring with respect to head to toe assessments and the verification of vital signs. Ms. Olson Simpson was unreceptive and defensive when discussing these issues with Ms. Jung and accepted little responsibility for patient care. In that

conversation and in future correspondence and conversations with her instructor and with me, she complained of inadequate math instruction and limited access to training with respect to medication administration. A complete record of the student's classes and grades, multiple sessions of math tutoring in June 2011, and evidence of that she was provided with her mentor's contact information early on are contained in our IRIS system.

Nevertheless, considering our observations and the student's own assessment that her needs had not been met, Ms. Jung and I discussed a plan of action. The student's mentor, Gerri French, Ms. Jung and I met with the student on January 16, 2013. Ms. Olson Simpson was angry and accusatory during the meeting. A clinical warning (which you have a copy of and which provides more details) was provided to the student with conditions requiring tutoring with her mentor and the math tutor in the LRC for a total of four hours per week until the end of the quarter. Tutoring areas were to focus on nursing assessment, medication math and administration. To determine the efficacy of the tutoring, a 5-10 question math quiz for the area of clinical rotation would be given with the qualification that Ms. Olson Simpson must demonstrate 100% accuracy before she could pass clinical medications each week. The quizzes are assessment tools that have no grade value. The student was reminded that as an adult learner, she is responsible for seeking help if she needs it. She was also cautioned against using the work of other students where the task was assigned to her and being hostile or unprofessional in her interactions with instructors and administrators. Ms. Olson Simpson was given a remediation log and was instructed to have each instructor sign it and Ms. Olson Simpson was to turn the log into me each Friday.

All of the conditions are in Ms. Olson Simpson's best interest and promote safe nursing practices. In NU 280 next quarter, the student will be required to take a dosage calculations test and has only two opportunities to achieve the required score of 90%. If the score is not achieved the student will fail and must retake the class. Students are dropped from the nursing program for two course failures. Therefore, the School believes that early intervention is important for student retention. Ms. Olson Simpson has been actively working with her mentor and the LRC tutor, Sam Spire, and her quizzes each week have been 100% accurate. She is making satisfactory process.

ITEM 5 -- There was no orientation to the clinical agency prior to the start of clinical for the 8th quarter at Hacienda (a pediatric residential facility) on or about December 13, 2012.

Hacienda Del Los Angeles is part of the OCO system and students do the majority of clinical orientation on-line. Ms. Jung had never been to Hacienda and unfortunate timing and scheduling resulted in Ms. Jung visiting the facility for the first time with the students. While this was not ideal, Ms. Jung had assignments ready as well as evaluations and expectations of the clinical. To my knowledge, no adverse incident has resulted from this situation.

III. WITNESSES

A witness is anyone who can verify the information you provided. List the witnesses you would like contacted regarding the complaint(s):

Name	Address	Phone No.	e-mail	Involvement in complaint
Cindy Jung, RN	(b)(6)			
Debra Colbert, RN				
Gerri French, RN				

IV. REQUEST FOR ADDITIONAL INFORMATION

Please provide a copy of the following requested information and/or documents with your response.

- Classroom and clinical schedule for the 8th quarter (Dec, 2012) cohort
- Copy of open skill lab hours for the 7th quarter of the above cohort
- Names and contact information of all students in the above cohort attending clinical at Hacienda de Los Angeles in December, 2012-January 2013

V. Attach any other documentation related to the complaint you would like reviewed.

If no response is received, the Investigative Report will proceed and your case will be presented at a future Board of Nursing meeting for discussion and recommendations. Be advised that failing to cooperate with the Board by not furnishing in writing a full and complete explanation covering the matter reported pursuant to A.R.S. § 32-1664 is considered unprofessional conduct and is grounds for disciplinary action.

I verify that the above information provided by me is true, complete and correct to the best of my knowledge and belief.

(b)(6)

2/1/13
Date

Thank you for your assistance. Please return to:

**Attention: Pamela Randolph RN, MS, FRE
Arizona State Board of Nursing
4747 North 7th Street, Suite 200
Phoenix, Arizona 85014-3655**

FAX: 602-771-7888

NU 260 Roster Cohort #6 Beginning 12/2012

(b)(6)

OPEN LAB SCHEDULE

JULY

SUN	MON	TUE	WED	THU	FRI	SAT
1 WK 3	2	3	4	5	6	7
8 WK 4	9	10	11	12	13	14
15 WK 5	16	17	18	19	20	21
22 WK 6	23	24	25	26 1300 - 1430	27	28
29 WK 7	30	31				

AUGUST

	MON	TUE	WED	THU	FRI	SAT
			1	2 1300 - 1430	3	4
5 WK 8	6	7	8	9 1300 - 1430	10	11
12 WK 9	13	14	15	16 1300 - 1430	17	18
19 WK 10	20	21	SUN	23 1300 - 1430	24	25
26 WK 11	27	28	29	30	31	

SEPTEMBER

	MON	TUE	WED	THU	FRI	SAT
						1
2 WK 12	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

NU 260 CLINICAL NURSING ASSIGNMENTS (PEDS)

	Week 1 1/31/13	Week 2 2/7/13	Week 3 2/14/13	Week 4 2/22/13	Week 5 3/8/13
(b)(6)					

NU 260 Maternal Child Nursing

Instructor: Gerri French, RN MSN
Email: gfrench@itt-tech.edu
602-749-7920 (office)
916-524-5604 (cell)

Class: Wednesday 0900-1225
Clinical: Thursday 0630-1830
Phoenix Baptist Hospital
12/13 – 2/28

Theory Room 5
Clinical: Thursday 0630-1830
Hacienda Healthcare
12/13 – 2/21, 3/8

Office Hours: Wednesday: 1pm-3pm, Tuesday: by appointment

I am always available by email and will make every effort to reply to you within 24 hours. The best way to meet with me is by appointment. This will allow me to set a specific amount of time aside just for you.

Classroom Guidelines

Attendance:

- Be on time for class and stay for the entire class.
- Attend class regularly. You cannot learn material that you are not here to receive.
- There will be quizzes given at the beginning of class, randomly throughout the quarter. If you are absent or late and miss the quiz, you will receive a grade of ZERO. There are no make ups for quizzes.
- If a situation arises that will keep you from attending class or clinical, the instructor must be notified prior to the start of the class or clinical.
- All clinical experiences are MANDATORY. Your notifying the clinical instructor no later than one hour prior to the scheduled start of that clinical will afford you the opportunity to make up your clinical hours. If the instructor is not notified, you will not be able to make up the clinical hours, and will therefore FAIL the course.
- As per your attendance agreement, you are not allowed to miss the first or last day of either clinical experience (OB or Peds). Doing so will result in failure of the clinical component and the course. If you miss a clinical day, (weeks 2, 3, 4, 7, 8, or 9) those 12 hours will be made up on campus within 7 days. If you are not in compliance with this, you will receive an Unsatisfactory in the clinical portion of the course and FAIL the entire course. You are only allowed to make up one clinical day.
- If you are not prepared for your clinical day upon arrival to the facility. You will be asked to leave and receive an absence for the day. You will be required to makeup those clinical hours.

Assignments:

- All assignments must have a professional appearance.
- If your penmanship is not legible, your assignments will not be graded and there will be no opportunity for resubmission.
- All assignments are due at the beginning of class. If submitted after that time, there will be an automatic grade deduction of 20%. No assignment will be accepted after the date it is due.
- Refer to the Calendar of Events for the due dates for all of your writing assignments and exams.

Together we will embark on a journey into the world of Maternal Child Nursing. We have a long way to go and a short time to get there. To ensure that each student has the opportunity to master these concepts, your full cooperation and participation is necessary.

You are ultimately responsible for your experience in this course. It is my role to guide and instruct you. When any circumstances arise that may hinder your learning, you are encouraged to use your chain of command appropriately. I will serve as your first line of communication. I have an open door policy and want you to understand that it is imperative that we work together to make this a positive learning experience for you. Please also use your mentor and ultimately the program chair if needed. Her contact information is below:

Debra Colbert, RN, MSN Ed.
Nursing Chair
Breckinridge School of Nursing
@ ITT Technical Institute
10220 N. 25th Ave, Suite 100
Phoenix, AZ 85021
(602) 749-7926 Office
(602) 749-7950 Fax

Tell me and I'll forget, show me and I may remember, involve me and I'll understand. ~ Ancient Chinese Proverb

NU260 Calendar of Events

WEEK	DATE	UNIT	VCE DUE	EXAM
1	12/12/12	Introduction to Maternal Child Nursing	NONE	
2	12/19/12	Introduction to Pediatric Nursing	Labor & Delivery paper VCE 15- Exercise 1	
3	1/9/13	Care of the Patient During Pregnancy	VCE 6- Exercise 1 VCE 8- Exercise 1 VCE 9- Exercise 2	
4	1/16/13	Care of the Patient During Labor and Delivery	VCE 10- Exercise 1 VCE 11- Exercise 1	Unit 1-3 Exam
5	1/23/13	Care of the Patient During the Postpartum Period	Postpartum paper VCE 12- Exercise 1&2	
6	1/30/13	Care of the Newborn	Newborn paper	
7	2/6/13	Special Needs, Illness, and Hospitalization	VCE 22	Unit 4-6 Exam
8	2/13/13	Health Promotion for Children with Oxygenation Problems	VCE 14- Exercise 2	
9	2/20/13	H.P. for Children with Nutrition, Skin, and Tissue Integrity, Fluid, Electrolyte and Elimination	VCE 25	
10	2/27/13	H.P. for Children with Sensory Perception, Cognition, and Mobility Problems	VCE 23 Exercise 2	Unit 7-9 Exam
11	3/6/13 3/7/13		NONE	Comprehensive Final Exam HESI Exam

Common Obstetrical Abbreviations

AB	Abortion	LGA	Large for Gestational Age
AFI	Amniotic Fluid Index	LMP	Last Menstrual Period
AGA	Appropriate for Gestational Age	LS	Lecithin/Sphingomyelin
AMP	Ampicillin	LTV	Long Term Variability
AROM	Artificial Rupture of Membranes	MEC	Meconium
BOW	Bag of Waters	N & V	Nausea & Vomiting
BUFA	Baby Up For Adoption	NICU	Neonatal Intensive Care Unit
CPD	Cephalo-Pelvic Disproportion	NPC	No Prenatal Care
CVX	Cervix	NST	Non Stress Test
C/S	Cesarean Section	NSVD	Normal Spontaneous Vaginal Delivery
CIRC	Circumcision	NSY	Nursery
CTX	Contraction	OA	Occiput Anterior
CST	Contraction Stress Test	OB	Obstetrician
DECEL	Deceleration	OFC	Occipital Frontal Circumference
DTR	Deep Tendon Reflex	OP	Occiput Posterior
D&C	Dilation & Curettage	P	Para
DIC	Disseminated Intravascular Coagulation	PCN	Penicillin
EAB	Elective Abortion	PIH	Pregnancy Induced Hypertension
EBL	Estimated Blood Loss	PIT	Pitocin
EDC	Estimated Date of Confinement	PG	Prostaglandin
EFM	Electronic Fetal Movement	PKU	Phenylketonuria
EGA	Estimated Gestational Age	PNV	Prenatal Vitamins
FTP	Failure to Progress	PP	Postpartum
FHT	Fetal Heart Tones	PROM	Premature Rupture of Membranes
FM	Fetal Movement	PTL	Preterm Labor
FOB	Father of Baby	SAB	Spontaneous Abortion
FT	Fingertip	SGA	Small for Gestational Age
FF	Fundus Firm	SROM	Spontaneous Rupture of Membranes
GBS	Group Beta Streptococcus	STV	Short Term Variability
GDM	Gestational Diabetes	T	Term Pregnancy
G	Gravida	TAB	Therapeutic Abortion
IUGR	Intrauterine Growth Restriction	TERB	Terbutaline
IUP	Intrauterine Pregnancy	U	Umbilicus
IUPC	Intrauterine Pressure Catheter	US	Ultrasound
L	Living Children	VB	Vaginal Bleeding
L&D	Labor & Delivery	VBAC	Vaginal Birth after Cesarean
LDR	Labor/Delivery/Recovery	VE	Vaginal Exam
LDRP	Labor/Delivery/Recovery/Postpartum	WIC	Women, Infant, Child (Nutritional Program)

Common OB Medications

For your learning.....

Antepartum	Antibiotics
Betamethasone Rhogam Progesterone Prenatal Vitamins Folic Acid	Penicillin Ampicillin Ancef Clindamycin Gentamycin
Induction/Augmentation	Tocolytics
Pitocin Cytotec Cervidil Prepidil	Magnesium Sulfate Terbutaline Nifedipine Vistaril
Pain Control	Postpartum
Nubain Stadol Demerol Morphine Duramorph Fentanyl Percocet Tylenol 3 Darvocet Dilaudid	Colace ibuprofen Dermoplast Toradol MMR vaccine TDap Influenza vaccine Lanolin cream Tucks pads Rhogam Simethicone
Pre-Operative	Newborn
Bicitra Zofran Reglan Ancef	Vitamin K Erythromycin Eye Ointment Hepatitis B Vaccine

Writing Assignments

You will write three papers in this course. Each student will choose topics from the approved list. You will choose one topic from each of three lists: Labor & Delivery, Post Partum, and Nursery. You will write a 1000 - 1250 word paper on each of your chosen topics.

Your papers should be in APA format and include the following information:

- Pathophysiology
- Diagnostic measures
- Nursing diagnoses
- Nursing interventions
- Significance of care as related to the mother or the fetus or both

A copy of the rubric should be submitted with each of your papers. You may use your text as a guide for this assignment. However, the majority of your research should be from scholarly nursing and or medical journals and peer reviewed journal articles. **Wikipedia, Google, and Yahoo are not** acceptable sources. This paper is to be in APA format. Below is a website that you can use as a guide to your APA format.

<http://www.univ.edu/library/ibnaw/ac-examples.cfm>

There is also a copy of the APA manual 6th ed in the LRC for your use.

Hot Topics

For clinical presentation, you will choose a "hot topic" from the approved list to research and present. This presentation will be done during post conference of your last OB clinical day. You will present your topic to the class including a 1 page handout or pamphlet. I encourage you to be as creative as you would like. Don't forget to bring enough handouts for the class and the instructor.

1 Roxann S. Gallagher 022049
Roxann.Gallagher@Sackstierney.com
2 Bryan J. Gottfredson 025140
Bryan.Gottfredson@Sackstierney.com
3 SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
4 Scottsdale, AZ 85251-3693
Telephone: 480.425.2600
5 Facsimile: 480.425-4970
Attorneys for Nursing Program
6

7
8 **BEFORE THE ARIZONA STATE BOARD OF NURSING**

9 In re:

10 BRECKINRIDGE SCHOOL OF
NURSING AT ITT TECHNICAL
11 INSTITUTE
12
13

**REQUEST FOR HEARING ON BEHALF
OF BRECKINRIDGE SCHOOL OF
NURSING AT ITT TECHNICAL
INSTITUTE**

14 At the September 20, 2012 open meeting (the "Open Meeting") of the Arizona State
15 Board of Nursing (the "Board"), the Board voted to bring a notice of charges for 33
16 "complaints" from various parties, including the Board, against the Breckinridge School of
17 Nursing at ITT Technical Institute (the "School"). The School and the undersigned, as
18 legal counsel to the School, appeared at the Open Meeting and contested the 33 complaints
19 as well as certain administrative procedures utilized by the Board that were in direct
20 violation of the Arizona Administrative Procedure Act, A.R.S. § 41-1001 *et seq.*, other
21 provisions of Arizona law, and the Board's own regulations.

22 On October 17, 2012, the Board provided written notice to the School reflecting the
23 Board's unanimous vote at the Open Meeting to issue a Notice of Charges and proceed to
24 administrative hearing. However, as of this March 18, 2013, the School has not yet
25 received the Notice of Charges and the School remains in administrative purgatory. In an
26 effort to avoid further administrative delay and to commence the formal administrative
27 hearing process, pursuant to A.R.S. § 41-1092.03(B), the School hereby submits this fifth
28

1 request for administrative hearing.¹ In accordance with A.R.S. § 41-1092.03(B), the
2 School (i) “will be adversely affected by the appealable agency action or contested case;”
3 (ii) exercised its right to comment on the action being appealed or contested; and (iii) the
4 grounds for this request for hearing are limited to issues raised in the School’s comments.

5 With respect to the 33 complaints, most have been fashioned by Board staff who
6 should have a command of existing Board policies and the applicable law regarding the
7 submission, investigation, and dismissal of complaints.² And yet, several of the 33
8 complaints wholly or substantially consist of rumors, general discontentment, or other
9 grievances, which though concerning to the School, are the type of complaints that the
10 Board specifically discourages as low risk issues not involving patient care, professional
11 judgment or wrongdoing under applicable rules and regulations.³ Several of the complaints
12 have no basis in fact. Several of the complaints are redundant or relate to matters which
13 have already been investigated, in some cases repeatedly, by the Board without any
14 recommendation for discipline. Several of the complaints are simply scurrilous attacks on

15
16 ¹ In November 2011, the Board voted to offer the School a consent agreement for various potential deficiencies
17 alleged by Board staff. The School declined to enter into the consent agreement and instead opted to have a full
18 evidentiary hearing before an administrative law judge. Though it is more than a full year later, the Board has never
19 held or even scheduled the hearing. The School also requested an administrative hearing by submitting this request on
20 October 3, 2012 and renewing that request via email to the Board’s legal counsel on October 4, 2012, and on October
21 10, 2012.

22 ² The Board has declined to disclose which of the 33 complaints, if any, are actual third-party complaints received by
23 the Board and which are instead select paraphrases of interviews, reports or other documents that the Board has
24 transformed into complaints but were not intended by the makers as such.

25 ³ See <https://www.azbn.gov/DisciplineFaqs.aspx#1> “What conduct is not typically reportable to the Board?” On its
26 website, the Board states:

27 Examples of low risk issues not involving patient care, professional judgment or
28 wrongdoing that do not require reporting to the Arizona Board of Nursing may
include: rudeness to peers, co-worker disputes, personality conflicts,
absenteeism, tardiness, labor-management disputes such as work
schedules/wages/wrongful termination, resignation without notice whereby a
patient assignment has not been accepted.

Also, the official Education Department Complaint Form available on the Board’s website specifically mandates that
“a complaint must relate to a violation of the Nurse Practice Act and Rules of the Board.” However, not one of the 33
complaints provided to the School, even though drafted by Board staff, claims any violation of a particular statute or
Board rule.

1 the School, not accompanied by any charge that a law has been violated, and therefore
2 serve no purpose but to disparage the School. To date, and despite request, the Board has
3 not articulated which rule of law each of the 33 complaints purportedly violates. The
4 Board staff's creation of these unfounded complaints is an abuse of the investigative
5 process and has no purpose but for the systematic persecution, harassment and intimidation
6 of the School.

7 As expressed at the Open Meeting, the School further believes that many of the
8 Board's actions related to the development, investigation, and adjudication of the
9 complaints, including but not limited to, the conduct of its investigatory interviews and
10 inspections, its formal notice and meeting procedures, its public declaration that the School
11 is "under investigation," and its refusal to provide public records violate Arizona law. As
12 part of its defense against the complaints, the School intends to raise these various incidents
13 of Board misconduct. Specifically:

- 14 • Board inspections do not comply with A.R.S. § 41-1009 as required.
- 15 • Board disciplinary interviews do not comply with A.R.S. § 32-3206 as
16 required.
- 17 • Board meetings where the School's legal rights, duties and privileges have
18 been affected have not been noticed and held as "contested cases" in violation
19 of several provisions of the Administrative Procedure Act and the School's
20 right to due process under Arizona common law.
- 21 • There is no authority under Arizona law permitting the Board to devise, much
22 less publicly post, an unprecedented "under investigation" castigation as a
23 direct result of a regulated party electing to exercise its legally mandated right
24 to present evidence through an administrative hearing.
- 25 • A.R.S. § 32-3214 prohibits the Board from posting any nondisciplinary order
26 or action, which would include Board action to commence or continue an
27 investigation and the pendency of an administrative hearing, on its website.
- 28 • In branding the School "under investigation," a status that was never before

1 attached to any nursing program for any purpose, the Board acted in an
2 arbitrary and capricious fashion and effectively punished the School in
3 violation of Arizona common law.

- 4 • By maintaining the unfair and misleading “under investigation” status in red,
5 underlined font⁴ on the Board’s website, declaring it removable only
6 following an administrative hearing, and then failing to ever hold or even
7 schedule such administrative hearing, the Board deprived the School of due
8 process protections, impugned the reputation of the School, its students, staff
9 and alumni, and wrongfully interfered with the School’s business
10 relationships and prospects in violation of Arizona common law.
- 11 • The Board has denied the School’s requests for certain public information
12 including complaints filed against other nursing programs. Such complaints
13 must be disclosed under A.R.S. §§ 32-3214, 39-121, and 41-1010.
- 14 • Under the Regulatory Bill of Rights set forth in A.R.S. § 41-1001.01, the
15 School is “entitled to have an agency not base a licensing decision in whole
16 or in part on licensing conditions or requirements not specifically authorized”
17 by statute or rule yet the Board has repeatedly exceeded its authority and
18 abused its discretion in this respect.
- 19 • In violation of A.R.S. § 32-1664(A)(2), the Board has abused its subpoena
20 power by forcing the School to produce information and respond to
21 allegations unrelated to unlawful practices or otherwise irrelevant to
22 complaints being investigated.
- 23 • The Board has used its investigative powers to harass, intimidate, embarrass,
24 and annoy the School in violation of Arizona common law.

25 Pursuant to A.R.S. § 41-1092.03(B), the School respectfully requests the Board to
26

27 ⁴ Based on a review of historical website postings provided by the Board, the large, red, underlined font reserved for
28 the School's “under investigation” status has otherwise never been used by the Board to denote a program status.

1 immediately provide notification of this request for hearing to the office of administrative
2 hearings (or such other administrative hearing forum that will be utilized to conduct the
3 requested hearing) so that the hearing can be scheduled and held within 60 days as required
4 by A.R.S. § 41-1092.05(A).

5 DATED this 18th day of March, 2013.

6 SACKS TIERNEY P.A.

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By: _____
Roxann S. Gallagher
Bryan J. Gottfredson
Attorneys for Breckinridge School of
Nursing at ITT Technical Institute

COPY OF THE FOREGOING HAND-DELIVERED
AND MAILED this 18th day of March, 2013, to:

(b)(6)



Janice K. Brewer
Governor

Joey Ridenour
Executive Director

Arizona State Board of Nursing

4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655
Phone (602) 771-7800 Fax (602) 771-7888
E-Mail: arizona@azbn.gov
www.azbn.gov

October 17, 2012

Debra L. Colbert, RN, MSN Ed.
Breckinridge School of Nursing
@ ITT Technical Institute
10220 North 25th Avenue, Suite 100
Phoenix, Arizona 85201

Re: Arizona State Board of Nursing
September 2012 Board Meeting Results

Dear Ms. Colbert:

Please be advised that on September 20, 2012 in open meeting the Arizona State Board of Nursing unanimously voted, based upon the findings of fact and statute/rule violations identified in the investigative report, to issue Notice of Charges and proceed to hearing. The Board directed Assistant Attorney General Staff to provide legal advice regarding notices on the website.

Should you have any questions or concerns, please contact Debra McGinty, Education Program Administrator 602-771-7877 or dmcginty@azbn.gov.

Sincerely,

(b)(6)

Joey Ridenour RN, MS
Executive Director

Pamela K. Randolph RN, MS
Associate Director of Education and
Evidence Based Regulation

JR:PKR:hme



November 10, 2014

ID Code 00015354

ID Code 00016046

ID Code 00023908

VIA E-MAIL ONLY

Mr. Shawn Crawford
Vice President, Compliance and Regulatory Affairs
ITT Educational Services, Inc.
13000 North Meridian Street
Carmel, IN 46032-1404

Dear Mr. Crawford:

This letter is a request for updated information regarding the following adverse issues regarding ITT Campuses in various locations:

- ITT Phoenix, AZ - The current status with the Arizona Board of Nursing; copies of any further correspondence received from the Board as well as copies of any responses to said correspondence.
- ITT Louisville, KY – The current status of the lawsuit against ITT Technical Institute filed by Mr. Rodford Seabolt et al. in the Jefferson County Court, KY.
- ITT, Indianapolis, IN – The current status of the Consumer Federal Protection Bureau (CFPB) lawsuit against ITT Educational Services Inc., for predatory student lending.

Please respond by **November 21, 2014**. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs

July 25, 2014

Anthony S. Bieda
Vice President for External Affairs
Accrediting Council for Independent Colleges and Schools
750 First Street, NE, Suite 980
Washington, DC 20002-4223

Re: ITT Technical Institute –Adverse Action Update

Dear Mr. Bieda:

The ITT Technical Institutes have an established record of compliance with the *Accreditation Criteria*, including Section 2-2-152. In response for your request for updated information on previously reported issues, I am pleased to communicate the following developments:

- ITT Technical Institute, Phoenix, AZ – The Breckinridge School of Nursing and Health Sciences @ ITT Technical Institute entered into a Consent Agreement with the Arizona State Board of Nursing earlier this month. A copy of this Consent Agreement is enclosed for your reference.
- ITT Technical Institute, Louisville, KY – ITT Technical Institute filed a motion to dismiss the lawsuit in January 2014 with the Jefferson County Court, and resolution of that motion is still pending.
- ITT Technical Institute, Indianapolis, IN – ITT Technical Institute filed a motion to dismiss the Consumer Federal Protection Bureau’s lawsuit in April 2014 with the Southern District of Indiana, and resolution of that motion is still pending.

We will continue to keep ACICS apprised of any material developments. If you require any additional information relating to the reported non-substantive change to the campus operations of the ITT Technical Institutes in the interim, please let me know.

Sincerely,

(b)(6)

Shawn J. Crawford
Vice President, Compliance and Regulatory Affairs

BEFORE THE ARIZONA STATE BOARD OF NURSING

IN THE MATTER OF NURSING PROGRAM
APPROVAL ISSUED TO:

BRECKINRIDGE SCHOOL OF NURSING @
ITT TECHNICAL INSTITUTE

RESPONDENT

**CONSENT AGREEMENT
AND**

**ORDER NO. 131013RN96406,
070512RN96406, 310811RN96406**

CONSENT AGREEMENT

Complaints alleging violations of the Nurse Practice Act by BRECKINRIDGE SCHOOL OF NURSING @ ITT TECHNICAL INSTITUTE ("Respondent") were received by the Arizona State Board of Nursing ("Board"). In the interests of a prompt and speedy settlement of the above-captioned matter, consistent with the public interest, statutory requirements and the responsibilities of the Board, and pursuant to A.R.S. § 41-1092.07(F)(5), the undersigned parties enter into this Consent Agreement as a final disposition of this matter.

Based on the evidence before it, the Board makes the following Factual Allegations and Conclusions of Law:

FACTUAL ALLEGATIONS

1. Respondent holds Board-issued, provisional approval for an associate degree nursing program, originally issued on August 4, 2009.
2. Between 2011 and 2013, Respondent's Nursing Program Administrator and Faculty did not have control over the Program, as required by Board rules, including admission standards, progression standards, and graduation policy.
3. Between 2012 and 2013, during Respondent's clinical sessions, three medication errors and multiple instances of late medication administration occurred involving care provided

to patients by Respondent's students who were under the supervision of Respondent's faculty. Some of the errors occurred as a result of improper direction to students by Respondent's faculty.

4. Between 2011 and 2013, Respondent did not adequately ensure the safe care of patients when it failed to assess student ability and properly prepare students prior to permitting students to care for patients in clinical sessions. This included some students being required to provide care to patient populations before receiving classroom training for that population.

5. Between 2011 and 2013, Respondent failed to consistently follow its own student grievance policies and to properly make the policies available to students.

CONCLUSIONS OF LAW

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

The parties agree that if the factual allegations were found to be true, the conduct and circumstances alleged in the Factual Allegations would constitute violations of A.R.S. § 32-1663 (D) as defined in A.R.S. § 32-1601 (22) (d) (Any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public); and (j) Violating this chapter or a rule that is adopted by the board pursuant to this chapter, specifically:

Arizona Administrative Code ("A.A.C.") A.A.C. Rule 4-19-201 (D) and (E) (effective from March 7, 2005 to July 6, 2013) D. The parent institution shall center the administrative control of the nursing program in the nursing program administrator; A.A.C. Rule 4-19-203 (C) (1) and (6) (effective March 7, 2005 to July 6, 2013) C. The administrator shall: 1. Administer the nursing education program; D. The faculty shall supervise all students in clinical areas in accordance with the acuity of the patient population, clinical objectives, demonstrated competencies of the student, geographic placement of the student, and requirements established by the clinical

agency; R4-19-204 G. The nursing faculty, together with the program administrator, shall: 1. Develop, implement, and evaluate the program of learning; and 2. Develop and implement standards for the admission, progression, and graduation of students; A. A. C. Rule 4-19-205 (A) and (B) (effective March 7, 2005 to July 6, 2013) A. A nursing program shall have written policies available to students and the public regarding admission, readmission, transfer, advanced placement, progression, graduation, withdrawal, and dismissal. B. A nursing program shall have written policies available to students that address student rights, responsibilities, grievances, health, and safety; A.A.C. Rule 4-19-206 (C) (1) (a) and (c) (effective March 7, 2005 to July 6, 2013) C. A nursing program shall provide for progressive sequencing of classroom and clinical instruction sufficient to meet the goals of the program. 1. A registered nursing (RN) program shall provide clinical instruction that includes, at a minimum, selected and guided experiences that develop a student's ability to apply core principles of nursing in varied settings when caring for: a. Adult and geriatric patients with acute, chronic, and complex, life-threatening, medical and surgical conditions; c. Neonates, infants, and children.

Respondent does not admit to the Board's Factual Allegations.

In lieu of a formal hearing on these issues, and as final disposition of complaints related to Respondent received by the Board through March 26, 2014, Respondent agrees to issuance of the attached Order and waives all rights to a hearing, rehearing, appeal or judicial review relating to this matter. Respondent further waives any and all claims or causes of action, whether known or unknown, that Respondent may have against the State of Arizona, the Board, its members, officers, employees and/or agents arising out of this matter, as reflected in the Notice of Charges.

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

Without making any admissions, Respondent understands that the Factual Allegations in this Consent Agreement and Order ("Agreement") are not conclusive evidence of a violation of the Nurse Practice Act and may not be used for any other purposes, including civil litigation and arbitration, but may be used for purposes of determining sanctions in any future disciplinary matter(s) with the Board, which arise out of conduct not specifically alleged in the Board's December 31, 2013, Notice of Charges.

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

Respondent understands that this Consent Agreement is effective upon its acceptance by the Board and by Respondent as evidenced by the respective signatures thereto. Respondent's signature obtained via facsimile shall have the same effect as an original signature. Once signed by Respondent, the Agreement cannot be withdrawn without the Board's approval or by stipulation between Respondent and the Board's designee. The effective date of this Order is the date the Consent Agreement is signed by the Board and by Respondent. If the Consent Agreement is signed on different dates, the later date is the effective date.



(b)(6)

Respondent *Ronald F. Hamm, RNP/PA-C BS NNAAP*

Dated: 6-30-2014

ARIZONA STATE BOARD OF NURSING

(b)(6)

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

Dated: July 7, 2014

ORDER

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

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

B. Respondent's program approval is placed on probation for three (3) years. Respondent is eligible for early termination of this Order and, if Respondent has remained compliant with this Order, may petition the Board for release from probationary status after one (1) year from the effective date of this Order, and no sooner than every six (6) months thereafter.

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

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

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

TERMS OF PROBATION

1. Within seven days of the effective date of this Order, the Board shall note the probationary status of the program on the list of approved programs with the following notation: "VOLUNTARY CONSENT TO PROBATION".

2. Respondent shall only admit students pursuant to admission standards developed in compliance with Arizona Administrative Code Rule 4-19-204(G).

3. Respondent shall provide the Board with accurate and complete quarterly reports containing the following, when applicable: Faculty minutes, student or faculty verbal and written complaints and grievances made to any employee of ITT Phoenix campus, responses to complaints and grievances, resolutions of complaints and grievances, attrition data for each cohort, admissions data, graduation data, student satisfaction, faculty control of program, faculty teaching and clinical assignments including qualifications to teach the particular subject or clinical area, HESI scores and any accompanying analyses, clinical incidents, if any, and substantive policy changes.

The quarterly reports are due 30 days after the conclusion of each academic quarter, beginning not later than October 30, 2014.

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

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

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

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

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

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



ARIZONA STATE BOARD OF NURSING

(b)(6)

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

Dated: July 7, 2014

JR/bs:

COPY mailed this 7th day of July, 2014 by First Class Mail, to:
Bryan Gottfredson, Esq.

(b)(6)

Signed in the Board Office this _____ day of _____, 2014.

By: T. Smith



July 15, 2014

ID Code 00015354

ID Code 00016046

ID Code 00023908

VIA E-MAIL ONLY

Mr. Shawn Crawford
Vice President, Compliance and Regulatory Affairs
ITT Educational Services, Inc.
13000 North Meridian Street
Carmel, IN 46032-1404

Dear Mr. Crawford:

This letter is a request for updated information regarding the following adverse issues regarding ITT Campuses in various locations:

- ITT Phoenix, AZ - The current status with the Arizona Board of Nursing; copies of any further correspondence received from the Board as well as copies of any responses to said correspondence.
- ITT Louisville, KY – The current status of the lawsuit against ITT Technical Institute filed by Mr. Rodford Seabolt et al. in the Jefferson County Court, KY.
- ITT, Indianapolis, IN – The current status of the Consumer Federal Protection Bureau (CFPB) lawsuit against ITT Educational Services Inc., for predatory student lending.

Please respond by **July 25, 2014**. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs



March 7, 2014

ID Code 00023908

VIA E-MAIL ONLY

Mr. Eugene McWhorter
Director
ITT Technical Institute
10220 North 25th Avenue, Suite 100
Phoenix, AZ 85021

Dear Mr. McWhorter:

This letter is a request for updated information regarding the concerns of the Arizona Board of Nursing. Please provide the Council with an update which includes: your current status with the Board of Nursing; copies of any further correspondence received from the Board as well as copies of any responses to said correspondence.

Please respond by **March 21, 2014**. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs

CC: Shari Campfield, ITT Tech, Carmel, Indiana

November 25, 2013

Anthony S. Bieda
Director of External Affairs
Accrediting Council for Independent Colleges and Schools
750 First Street, NE, Suite 980
Washington, DC 20002-4223

Re. Breckinridge School of Nursing @ ITT Technical Institute status with the Arizona State Board of Nursing.

Dear Mr. Bieda:

This letter is in response to your November 14, 2013 request for updated information regarding Breckinridge School of Nursing at ITT Technical Institute (the "School") and the concerns of the Arizona State Board of Nursing (the "Board").

Since our previous correspondence with you in August 2013, our status with respect to the Board is unchanged and the School has provisional approval. However, the Board held a meeting on November 22, 2013. At this meeting, the Board represented that it would issue a formal notice to identify all pending complaints, in an effort to have these reviewed and resolved at a hearing. We expect that the notice will be issued shortly. At such time, we will provide an update with additional details.

In the event that you have questions regarding the above or require additional information, you are welcome to contact the School or me directly. Thank you for your cooperation.

Sincerely,

(b)(6)

Eugene McWhorter
Director

cc: Stephanie Guptill



November 14, 2013

ID Code 00023908

VIA E-MAIL ONLY
Mr. Eugene McWhorter
Director
ITT Technical Institute
10220 North 25th Avenue, Suite 100
Phoenix, AZ 85021

Dear Mr. McWhorter:

This letter is a request for updated information regarding the concerns of the Arizona Board of Nursing. Please provide the Council with an update which includes: your current status with the Board of Nursing; copies of any further correspondence received from the Board as well as copies of any responses to said correspondence.

Please respond by **November 21, 2013**. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs



July 16, 2013

ID Code 00023908

VIA E-MAIL ONLY

Mr. Eugene McWhorter
Director
ITT Technical Institute
10220 North 25th Avenue, Suite 100
Phoenix, AZ 85021

Dear Mr. Whorter:

This letter is a request for updated information regarding the concerns of the Arizona Board of Nursing. Please provide the Council with an update which includes: your current status with the Board of Nursing; copies of any further correspondence received from the Board as well as copies of any responses to said correspondence. Please respond by **July 26, 2013**. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Vice President of External Affairs

SacksTierney P.A.

ATTORNEYS

Ellen K. Aiken	Jeffrey D. Gardner	Shannon M. Mason
James W. Armstrong	Steven M. Goldstein	Matthew B. Meaker
Adrian L. Barton	Bryan J. Gottfredson	Phoebe Moffatt
Stephen R. Beeghly	Gaye L. Gould	Sharon S. Moyer
Stephen Aron Benson	John K. Hanson	Michael R. Rooney
Brian E. Ditsch	Helen R. Holden	David L. Rose
Judith M. Dworkin	Robert G. Kimball	Laura Schiesl
Patty A. Ferguson	Michael C. Lamb	Sharon B. Shively
Roxann S. Gallagher	Stephen A. Lenn	David C. Tierney
	Jeffrey S. Leonard	Aaron G. York

Seymour Sacks (1932 – 2011)

Marvin S. Cohen (1931 – 2009)

Gary E. Pace, CLM, Executive Director

March 21, 2013



Via Email Transmission
ABieda@acics.org

Writer's Direct Line: 480.425.2673
Writer's Direct Facsimile: 480.425.4973
Writer's E-mail: Roxann.Gallagher@SacksTierney.com

Anthony S. Bieda
Director of External Affairs
Accrediting Council for Independent Colleges and Schools
750 First Street, NE, Suite 980
Washington, DC 20002-4223

Re: Breckinridge School of Nursing at ITT Technical Institute status with the Arizona State Board of Nursing.

Dear Mr. Bieda:

As you know, we represent the Breckinridge School of Nursing at ITT Technical Institute (the "School") with respect to the School's regulation by the Arizona State Board of Nursing (the "Board"). This letter is in response to your March 12, 2013 request for updated information regarding the concerns of the Board. Since our previous correspondence with you in November 2012, our status with respect to the Board is unchanged and the School has provisional approval. The Board has neither commenced any disciplinary proceeding against the School nor dismissed any of the existing "complaints." There has also been no further investigation by the Board as to these matters. We understand that the Board has still not yet determined whether any of the Board's investigative findings, many of which are two years old, merit disciplinary action against the School. Notably, throughout the process, neither the Board nor its attorneys have ever cited or referenced any rule or regulation that the School was alleged to have violated. The School does not believe that there is any factual or legal basis for disciplinary action and will oppose any sanction proposed by the Board with respect to the Board's investigation.

Attached hereto are copies of all formal correspondence between the Board and the School, including a letter from Pam Randolph requesting responses to new complaints from February 2013 and the School's responses thereto. The School believes these complaints are also without merit and will oppose any disciplinary action should the Board continue to investigate these matters.

Anthony S. Bieda
Accrediting Council for Independent
Colleges and Schools
March 21, 2013
Page 2

In the event that you have questions regarding the above or the attached or require additional information, you are welcome to contact the School or me directly.

Sincerely,

SACKS TIERNEY P.A.

(b)(6)

Roxann S. Gallagher

RSG:sr

c: Shawn Crawford, David Catalano, Stephie Guptill, Debra Colbert, Gene McWhorter, Susan Ciardullo, Bryan Gottfredson

SacksTierney P.A.

ATTORNEYS

James W. Armstrong
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David C. Tierney
Julianne C. Wheeler
Aaron G. York

Seymour Sacks (1932 – 2011)

Marvin S. Cohen (1931 – 2009)

Gary E. Pace, CLM, Executive Director

February 12, 2013



Writer's Direct Line: 480.425.2643

Writer's E-mail: Bryan.Gottfredson@SacksTierney.com

Mr. John R. Tellier
Office of the Attorney General
1275 West Washington Street
Phoenix, AZ 85007-2926

408 CONFIDENTIAL SETTLEMENT COMMUNICATION

Re: Breckinridge ITT School of Nursing - Request for Settlement Conference.

Dear John:

Several weeks ago, I presented you with a verbal settlement proposal from our client. You agreed to share that proposal with the Arizona State Board of Nursing ("Board") and let us know if it was acceptable. We have not yet heard from you with regards to whether our proposal is acceptable to the Board. We spoke with Pam Randolph yesterday and mutually agreed that a settlement conference would be an efficient step toward resolving all of the open issues between our client and the Board. We understood that we had permission from the Attorney General's office to communicate with Ms. Randolph. You informed us this morning that all communications should be directed only to you, and thus, going forward we will only communicate with you.

As you know, it is apparent that the Board's position and our client's are far apart. For example, both parties have recently proposed the replacement and/or forced resignation of key personnel from the other side. We can assure you that a settlement conference will be futile if the Board attempts to dictate who our client may employ. I presume that you and the Board have similar beliefs on this subject. The purpose of the settlement conference would be for our client and the Board to address any and all outstanding issues between them and attempt to reach a resolution whereby our client could move forward with its objective of ultimately obtaining full approval from the Board pursuant to certain procedures that are stipulated to by both sides. We would have our client's key Phoenix (and out-of-state) representatives available by phone and we would expect that the Board members with authority to settle this dispute, including Ms. Randolph and yourself will attend.

We are generally available during the last week of February or the second week of March. We would also welcome the inclusion of a third-party neutral mediator if you think this would help. For purposes of efficiency at the settlement conference, I would like to work with you in advance of the

February 12, 2013
Page 2

conference to develop an agenda and/or list of outstanding items that both sides intend to address at the settlement conference. Please let us know this week when you and your client's representatives are available.

Very truly yours,

SACKS TIERNEY P.A.

(b)(6)

Bryan J. Gottfredson

cc: Shawn Crawford
Eugene McWhorter
Roxann S. Gallagher, Esq.

SacksTierney P.A.

ATTORNEYS

James W. Armstrong
Adrian L. Barton
Steven R. Beeghley
Stephen Aron Benson
Brian E. Ditsch
Judith M. Dworkin
Patty A. Ferguson
Roxann S. Gallagher
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David L. Rose
Laura Schiesl
Sharon B. Shively
David C. Tierney
Aaron G. York

March 1, 2013

Seymour Sacks (1932 - 2011)

Marvin S. Cohen (1931 - 2009)

Gary E. Pace, CLM, Executive Director

VIA E-MAIL AND U.S. MAIL



Writer's Direct Line: 480.425.2673

Writer's Direct Facsimile: 480.425.4973

Writer's E-mail: Roxann.Gallagher@SacksTierney.com

Pamela Randolph, RN, MS, FRE
Arizona State Board of Nursing
4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655

Re: Complaints - Breckinridge Nursing Program

Dear Ms. Randolph:

This cover letter accompanies the response provided by Debra Colbert, Program Chair, Breckinridge School of Nursing at ITT Technical Institute (the "School"), to your Nursing Program Investigative Questionnaire to be returned to your attention on March 1, 2013. Please note that these responses have been prepared without the benefit of seeing any of the complaints which have not been provided by the Arizona State Board of Nursing (the "Board") to the School as of the date of this response. Ms. Colbert has provided detailed responses to the various complaints, in most cases through notes logged in a special software system (IRIS) nearly contemporaneously with the alleged event. Due to the increased scrutiny of the School by the Board, the School's staff and faculty have been undertaking this procedure in order to provide more accurate records of events. In the interest of full disclosure, I have made certain non-substantive revisions to Ms. Colbert's responses. I have not modified any underlying facts.

1. Pediatric Clinical Rotation Schedule

With respect to the complaint regarding students attending pediatric clinical rotations before didactic sessions on pediatric nursing, regardless of the factual basis for this complaint, there is no allegation that a statute or regulation applicable to the School has been violated and no adverse outcome has been reported. Further, the School is in the process of altering clinical scheduling to improve the educational experience. As a result, we respectfully request that this complaint be immediately dismissed by the Board without additional inquiry, investigation, or delay. The School should not be forced to incur any additional administrative time, effort, and legal expenses to answer these charges.

2. December 13, 2012 Medication Error

The School does not dispute the medication error which was immediately discovered, reported, and remedied under the appropriate protocol. There was no adverse outcome. While any medication error is serious and regrettable, published literature, anecdotal evidence and the Board's own disciplinary records indicates that they are unfortunately not uncommon. In the past four years, the Board has received no more than three reports of medication errors made under the supervision of School instructors, none resulting in an adverse outcome. In each case, the instructors were educated, qualified, and experienced nurses who had no negative history to indicate a pattern of medication errors or misconduct. In each case, all dosage and dispensing protocols were followed. These were isolated human errors.

3. Open Lab Schedules

Through a combination of open labs, mentoring, and tutoring programs, the School's students have a great deal of flexibility in scheduling educational assistance. The School voluntarily provides each of these programs, without any additional cost to students, in an effort to enhance student outcomes. Why would the Board want to punish the School over the scheduling of these discretionary student assistance programs? There is no statute or regulation that requires the School to have any of these programs or that otherwise governs the conduct or scheduling of these programs. Therefore, it is not the Board's proper role to sanction the School for holding the labs, for instance, at 2:00 on Tuesday instead of 3:00 on Wednesday. Because a complaint that the open lab is not convenient for a given student's schedule is not an appropriate subject for Board inquiry or investigation, we respectfully request that this complaint be immediately dismissed without additional investigation, inquiry, or delay. The School should not be forced to incur any additional administrative time, effort, and legal expenses to answer these charges.

4. Student Reprimand and Tutoring

In complaint 2 above, the School must answer for a medication error. In this complaint, the School must answer for its good faith efforts to prevent future medication errors. By pursuing both of these complaints simultaneously, the Board is unfortunately sending the message that it intends to keep the School in a no win situation.

The decision regarding the appropriate level of tutoring or testing for any given student is not one best left for the Board to make. Generally speaking, instructors and faculty must be able to evaluate and grade students fairly without fear of reprisals from the Board or an angry student. Because you already have a copy of the clinical warning presented to Ms. Olson Simpson, you are well aware that the counseling (i.e., "reprimand") and dosage calculation tests in this instance are needed to address obvious student deficiencies that could ultimately lead to unsafe nursing practices and/or student academic failure. Logically the Board should be supporting the School's efforts in this respect—not seeking to punish it. Nevertheless, this internal grievance against the School does not allege any violation of applicable law and therefore does not mandate Board intervention. We respectfully request that this complaint be immediately dismissed without additional investigation,

inquiry, or delay. The School should not be forced to incur any additional administrative time, effort, and legal expenses to answer these charges.

5. No Clinical Orientation

Regardless of the factual basis for this complaint, there is no allegation that a statute or regulation applicable to the School has been violated and no adverse outcome has been reported. As a result, we respectfully request that this complaint be immediately dismissed by the Board without additional inquiry, investigation, or delay. The School should not be forced to incur any additional administrative time, effort, and legal expenses to answer these charges.

We look forward to the successful resolution of the immediate complaints and all other issues currently pending between the Board and the School. As you know, the School would like to meet with you as soon as possible to resolve these longstanding issues. Ideally, we would like to put a settlement agreement in front of the Board to be blessed at the March Board meeting. We believe that this cooperative effort would be beneficial to all interested parties. Please contact Debra Colbert, and copy me, if there is any additional information you may need to move toward that goal.

Sincerely,

(b)(6)

Roxann S. Gallagher

RSG:sr

Cc: Emma Mamaluy
John Tellier
Debra Colbert
Gene McWhorter
Shawn Crawford
Bryan Gottfredson



Janice K. Brewer
Governor

Joey Ridenour
Executive Director

Arizona State Board of Nursing

4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655
Phone (602) 771-7800 Fax (602) 771-7888
E-Mail: arizona@azbn.gov
Home Page: <http://www.azbn.gov>

NURSING PROGRAM INVESTIGATIVE QUESTIONNAIRE

ATTENTION: Pamela Randolph RN, MS, FRE

PLEASE COMPLETE AND RETURN THIS FORM BY: March 1, 2013

I. RESPONDENT INFORMATION

Nursing Program Name:
Breckinridge School of Nursing@
ITT Technical Institute

Name of Nursing Program Administrator
Debra L. Colbert, RN, MSN, ED., Nursing Program
Chair

Address:
10220 North 25th Avenue, Suite 100
Phoenix, Arizona 85201

E-Mail: dcolbert@itt-tech.edu

Phone:
602-749-7900
602-749-7950 FAX

TO BE COMPLETED BY BOARD STAFF

Nature of concern or complaints submitted against the program:

1. Pediatric clinical rotation was scheduled for approximately half the students in the 8th quarter cohort (December 2012) before didactic sessions on pediatric nursing
2. On December 13, 2012, a student made a medication error while under the direct supervision of faculty member Cindy Jung RN
3. Skill labs on campus were not available for practice at times convenient to students' clinical schedules in the 7th quarter of this cohort.
4. A student was reprimanded for seeking help from another student with a math dosage calculation and required to pass additional dosage calculation tests at 100%.
5. There was no orientation to the clinical agency prior to the start of clinical for the 8th quarter at Hacienda (a pediatric residential facility) on or about December 13, 2012

(It is a violation of R4-19-403.25(a.) to fail to furnish in writing a full and complete explanation covering the matter reported pursuant to A.R.S. § 32-1664).

II. PROGRAM RESPONSE TO COMPLAINT

Provide information regarding the complaint or complaints filed against the nursing program at the Arizona State Board of Nursing, i.e., describe events and include any information and copies of documents that would be helpful for the Board in understanding the allegations.

ITEM 1--Pediatric clinical rotation was scheduled for approximately half the students in the 8th quarter cohort (December 2012) before didactic sessions on pediatric nursing.

NU 260 Maternal Child Nursing is a ten week didactic and clinical experience in which both OB and pediatrics clinicals co-exist. It has been in the Breckinridge curriculum since the conception of our Phoenix school in December 2009. The didactic instructor begins the course with the OB portion, then advancing to the pediatric portion. Because this class is given in the eighth quarter of a nine quarter program, the students are expected to demonstrate advanced skill level for second year nursing students.

Just as the medical surgical classes do not teach everything in the weeks prior to clinical, neither does the OB/pediatrics didactic. In the medical surgical example, a nursing student may be studying endocrine on the adult patient in week two of the quarter but may select a telemetry patient in clinical even if the didactic for telemetry is not taught until the eighth week of the nursing course. Similarly, the OB didactic instructor may be lecturing antepartum in week one but the student in clinical may be assigned to labor and delivery or the newborn nursery that same week.

We instruct all of our nursing students that patients will not always follow the order of the lectures and caution them that it is also the case in nursing. Patients may present with conditions that the nurse has not previously seen. Nevertheless, we expect our students to be as prepared as possible, including by selecting patients prior to clinical and studying the relevant medical conditions before clinical when possible, and to be professional.

We have had no incidents as a result of our OB/pediatric clinical structure. However, like all nursing programs, we constantly strive to make improvements. In this case, I consulted with NU 260 didactic lead Gerri French and together we developed a plan to use the first week of clinical in the School's nursing lab where the teaching session will include head to toe assessments of the infant, toddler, adolescent, and antepartum and postpartum female. That session will also differentiate between situations that the student is likely to encounter in the pediatrics versus the OB context, provide additional orientation, and address student expectations. I am also consulting with our clinical coordinator so that we can implement a policy of booking the OB clinicals first and then the pediatrics clinical. We intend to hire additional instructors if needed to make this program change.

ITEM 2-- On December 13, 2012, a student made a medication error while under the direct supervision of faculty member Cindy Jung RN.

Cindy Jung, RN, is our newest instructor. On December 13, 2012, during the first week of pediatric clinical at Hacienda Del Los Angeles, a student nurse administered a blood pressure medication to her patient at 0800 when it was not due until 2000 hours. The error was quickly detected and Ms. Jung, the clinical instructor, then followed the protocol for medication errors. An incident report was completed, and the patient's RN, physician and family were notified. Orders were given to monitor the patient's vital signs every 30 minutes for 3-4 hours, hold the evening dose of the medication and then to resume the regular order the following day. The patient experienced no adverse outcome.

ITEM 3-- Skill labs on campus were not available for practice at times convenient to students' clinical schedules in the 7th quarter of this cohort.

Open lab, which is a voluntary student service provided by the School, is available one day per week. This day changes each quarter based on the quarter schedule in an attempt to conduct the open lab when the students are not at clinical. Open lab is held in the afternoon when students are out of lecture and there is always a full time qualified nursing instructor who conducts the open lab. The School keeps a log book requiring students to sign in and out and note the topic they reviewed. Therefore, we are able to gauge usage. Unfortunately, with 64 students and with five days a week of classes, it is not possible to make open lab convenient to each student's clinical schedule.

However, the School also provides student mentoring which gives each adult student learner every opportunity to seek educational assistance and tutoring in any area they choose and at individual times convenient for their schedules. Full-time faculty mentors are assigned when students enter the program. Each student is emailed their mentor's contact information at the beginning of the each quarter. Each faculty mentor maintains 13-15 students from the time they begin the program and is available for tutoring, counseling and career information. Students are responsible for requesting appointments which are generally scheduled for thirty minutes to an hour per week, depending on both student and instructor availability. Students can be tutored on anything from didactic to lab/skill instruction. This program has improved student retention and engagement.

Additionally, I do academic advising for all subjects in the program, on-line, ground, general education, technical and core courses in weeks four and eight and failure advising in week 12. Students are assigned letter grades in week nine and can drop any class prior to that time. At week four, I contact any student under 80% via phone or email requesting a meeting time. All contacts are documented in IRIS, our computer database for cataloging student issues. Student meetings are intended to develop individualized strategies needed for the student to succeed in the nursing program. At week eight, I re-evaluate the students and meet with any student still under 80% again. At that time, we discuss, in detail, all options then available to the student and determine how to achieve the best possible outcome for the student. Options can include completing the class or dropping the class. While I provide projections and expectations of what would be needed to pass a class and the consequences of certain actions, ultimately it's the student's informed choice of how to proceed. I always encourage mentor follow-up and offer access to School resources for needed tutoring.

ITEM 4 – A student was reprimanded for seeking help from another student with a math dosage calculation and required to pass additional dosage calculation tests at 100%.

Ms. Jung conducts pediatric clinical rotations at Hacienda. On January 10, 2013, in week three of the quarter, I made a site visit to the clinical location and observed student nurse Kim Olson Simpson conducting a medication pass with the instructor. Given the student's length of time in the program, her knowledge about the medication was insufficient and she required more extensive instruction on administering the medication than should have been needed. My observation was consistent with reports from Ms. Jung who was also concerned with the student's math and dosage calculation skills. Ms. Jung mentioned a prior incident where the student was asked to calculate patient medication and did not perform the task accurately. Ms. Olson Simpson instead had a classmate set the problem up but even when using the other student's formula, Ms. Olson Simpson was still initially unable to derive the safe dosage.

Ms. Olson Simpson further demonstrated a need for tutoring with respect to head to toe assessments and the verification of vital signs. Ms. Olson Simpson was unreceptive and defensive when discussing these issues with Ms. Jung and accepted little responsibility for patient care. In that

conversation and in future correspondence and conversations with her instructor and with me, she complained of inadequate math instruction and limited access to training with respect to medication administration. A complete record of the student's classes and grades, multiple sessions of math tutoring in June 2011, and evidence of that she was provided with her mentor's contact information early on are contained in our IRIS system.

Nevertheless, considering our observations and the student's own assessment that her needs had not been met, Ms. Jung and I discussed a plan of action. The student's mentor, Gerri French, Ms. Jung and I met with the student on January 16, 2013. Ms. Olson Simpson was angry and accusatory during the meeting. A clinical warning (which you have a copy of and which provides more details) was provided to the student with conditions requiring tutoring with her mentor and the math tutor in the LRC for a total of four hours per week until the end of the quarter. Tutoring areas were to focus on nursing assessment, medication math and administration. To determine the efficacy of the tutoring, a 5-10 question math quiz for the area of clinical rotation would be given with the qualification that Ms. Olson Simpson must demonstrate 100% accuracy before she could pass clinical medications each week. The quizzes are assessment tools that have no grade value. The student was reminded that as an adult learner, she is responsible for seeking help if she needs it. She was also cautioned against using the work of other students where the task was assigned to her and being hostile or unprofessional in her interactions with instructors and administrators. Ms. Olson Simpson was given a remediation log and was instructed to have each instructor sign it and Ms. Olson Simpson was to turn the log into me each Friday.

All of the conditions are in Ms. Olson Simpson's best interest and promote safe nursing practices. In NU 280 next quarter, the student will be required to take a dosage calculations test and has only two opportunities to achieve the required score of 90%. If the score is not achieved the student will fail and must retake the class. Students are dropped from the nursing program for two course failures. Therefore, the School believes that early intervention is important for student retention. Ms. Olson Simpson has been actively working with her mentor and the LRC tutor, Sam Spire, and her quizzes each week have been 100% accurate. She is making satisfactory process.

ITEM 5 -- There was no orientation to the clinical agency prior to the start of clinical for the 8th quarter at Hacienda (a pediatric residential facility) on or about December 13, 2012.

Hacienda Del Los Angeles is part of the OCO system and students do the majority of clinical orientation on-line. Ms. Jung had never been to Hacienda and unfortunate timing and scheduling resulted in Ms. Jung visiting the facility for the first time with the students. While this was not ideal, Ms. Jung had assignments ready as well as evaluations and expectations of the clinical. To my knowledge, no adverse incident has resulted from this situation.

III. WITNESSES

A witness is anyone who can verify the information you provided. List the witnesses you would like contacted regarding the complaint(s):

Name	Address	Phone No.	e-mail	Involvement in complaint
Cindy Jung, RN	(b)(6)			
Debra Colbert, RN				
Gerri French, RN				

IV. REQUEST FOR ADDITIONAL INFORMATION

Please provide a copy of the following requested information and/or documents with your response.

- Classroom and clinical schedule for the 8th quarter (Dec, 2012) cohort
- Copy of open skill lab hours for the 7th quarter of the above cohort
- Names and contact information of all students in the above cohort attending clinical at Hacienda de Los Angeles in December, 2012-January 2013

V. Attach any other documentation related to the complaint you would like reviewed.

If no response is received, the Investigative Report will proceed and your case will be presented at a future Board of Nursing meeting for discussion and recommendations. Be advised that failing to cooperate with the Board by not furnishing in writing a full and complete explanation covering the matter reported pursuant to A.R.S. § 32-1664 is considered unprofessional conduct and is grounds for disciplinary action.

I verify that the above information provided by me is true, complete and correct to the best of my knowledge and belief.

(b)(6)

3/1/13
Date

Thank you for your assistance. Please return to:

Attention: Pamela Randolph RN, MS, FRE
Arizona State Board of Nursing
4747 North 7th Street, Suite 200
Phoenix, Arizona 85014-3655

FAX: 602-771-7888

NU 260 Roster Cohort #6 Beginning 12/2012

(b)(6)

ED0001752

OPEN LAB SCHEDULE

JULY

SUN	MON	TUE	WED	THU	FRI	SAT
1 WK 3	2	3	4	5	6	7
8 WK 4	9	10	11	12	13	14
15 WK 5	16	17	18	19	20	21
22 WK 6	23	24	25	26 1300 - 1430	27	28
29 WK 7	30	31				

AUGUST

	MON	TUE	WED	THU	FRI	SAT
			1	2 1300 - 1430	3	4
5 WK 8	6	7	8	9 1300 - 1430	10	11
12 WK 9	13	14	15	16 1300 - 1430	17	18
19 WK 10	20	21	SUN	23 1300 - 1430	24	25
26 WK 11	27	28	29	30	31	

SEPTEMBER

	MON	TUE	WED	THU	FRI	SAT
						1
2 WK 12	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

NU 260 Maternal Child Nursing

Instructor: Gerri French, RN MSN
Email: gfrench@itt-tech.edu
602-749-7920 (office)

(b)(6)

Class: Wednesday 0900-1225
Clinical: Thursday 0630-1830
Phoenix Baptist Hospital
12/13 – 2/28

Theory Room 5
Clinical: Thursday 0630-1830
Hacienda Healthcare
12/13 – 2/21, 3/8

Office Hours: Wednesday: 1pm-3pm, Tuesday: by appointment
I am always available by email and will make every effort to reply to you within 24 hours. The best way to meet with me is by appointment. This will allow me to set a specific amount of time aside just for you.

Classroom Guidelines

Attendance:

- Be on time for class and stay for the entire class.
- Attend class regularly. You cannot learn material that you are not here to receive.
- There will be quizzes given at the beginning of class, randomly throughout the quarter. If you are absent or late and miss the quiz, you will receive a grade of ZERO. There are no make ups for quizzes.
- If a situation arises that will keep you from attending class or clinical, the instructor must be notified prior to the start of the class or clinical.
- All clinical experiences are MANDATORY. Your notifying the clinical instructor no later than one hour prior to the scheduled start of that clinical will afford you the opportunity to make up your clinical hours. If the instructor is not notified, you will not be able to make up the clinical hours, and will therefore FAIL the course.
- As per your attendance agreement, you are not allowed to miss the first or last day of either clinical experience (OB or Peds). Doing so will result in failure of the clinical component and the course. If you miss a clinical day, (weeks 2, 3, 4, 7, 8, or 9) those 12 hours will be made up on campus within 7 days. If you are not in compliance with this, you will receive an Unsatisfactory in the clinical portion of the course and FAIL the entire course. You are only allowed to make up one clinical day.
- If you are not prepared for your clinical day upon arrival to the facility. You will be asked to leave and receive an absence for the day. You will be required to makeup those clinical hours.

Assignments:

- All assignments must have a professional appearance.
- If your penmanship is not legible, your assignments will not be graded and there will be no opportunity for resubmission.
- All assignments are due at the beginning of class. If it submitted after that time, there will be an automatic grade deduction of 20%. No assignment will be accepted after the date it is due.
- Refer to the Calendar of Events for the due dates for all of your writing assignments and exams.

Together we will embark on a journey into the world of Maternal Child Nursing. We have a long way to go and a short time to get there. To ensure that each student has the opportunity to master these concepts, your full cooperation and participation is necessary.

You are ultimately responsible for your experience in this course. It is my role to guide and instruct you. When any circumstances arise that may hinder your learning, you are encouraged to use your chain of command appropriately. I will serve as your first line of communication. I have an open door policy and want you to understand that it is imperative that we work together to make this a positive learning experience for you. Please also use your mentor and ultimately the program chair if needed. Her contact information is below:

Debra Colbert, RN, MSN Ed.
Nursing Chair
Breckinridge School of Nursing
@ ITT Technical Institute
10220 N. 25th Ave, Suite 100
Phoenix, AZ 85021
(602) 749-7926 Office
(602) 749-7950 Fax

Tell me and I'll forget, show me and I may remember, involve me and I'll understand. ~ Ancient Chinese Proverb

NU260 Calendar of Events

WEEK	DATE	UNIT	VCE DUE	EXAM
1	12/12/12	Introduction to Maternal Child Nursing	NONE	
2	12/19/12	Introduction to Pediatric Nursing	Labor & Delivery paper VCE 15- Exercise 1	
3	1/9/13	Care of the Patient During Pregnancy	VCE 6- Exercise 1 VCE 8- Exercise 1 VCE 9- Exercise 2	
4	1/16/13	Care of the Patient During Labor and Delivery	VCE 10- Exercise 1 VCE 11- Exercise 1	Unit 1-3 Exam
5	1/23/13	Care of the Patient During the Postpartum Period	Postpartum paper VCE 12- Exercise 1&2	
6	1/30/13	Care of the Newborn	Newborn paper	
7	2/6/13	Special Needs, Illness, and Hospitalization	VCE 22	Unit 4-6 Exam
8	2/13/13	Health Promotion for Children with Oxygenation Problems	VCE 14- Exercise 2	
9	2/20/13	H.P. for Children with Nutrition, Skin, and Tissue Integrity, Fluid, Electrolyte and Elimination	VCE 25	
10	2/27/13	H.P. for Children with Sensory Perception, Cognition, and Mobility Problems	VCE 23 Exercise 2	Unit 7-9 Exam
11	3/6/13 3/7/13		NONE	Comprehensive Final Exam HESI Exam

Common Obstetrical Abbreviations

AB	Abortion	LGA	Large for Gestational Age
AFI	Amniotic Fluid Index	LMP	Last Menstrual Period
AGA	Appropriate for Gestational Age	LS	Lecithin/Sphingomyelin
AMP	Ampicillin	LTV	Long Term Variability
AROM	Artificial Rupture of Membranes	MEC	Meconium
BOW	Bag of Waters	N & V	Nausea & Vomiting
BUFA	Baby Up For Adoption	NICU	Neonatal Intensive Care Unit
CPD	Cephalo-Pelvic Disproportion	NPC	No Prenatal Care
CVX	Cervix	NST	Non Stress Test
C/S	Cesarean Section	NSVD	Normal Spontaneous Vaginal Delivery
CIRC	Circumcision	NSY	Nursery
CTX	Contraction	OA	Occiput Anterior
CST	Contraction Stress Test	OB	Obstetrician
DECEL	Deceleration	OFC	Occipital Frontal Circumference
DTR	Deep Tendon Reflex	OP	Occiput Posterior
D&C	Dilation & Curettage	P	Para
DIC	Disseminated Intravascular Coagulation	PCN	Penicillin
EAB	Elective Abortion	PIH	Pregnancy Induced Hypertension
EBL	Estimated Blood Loss	PIT	Pitocin
EDC	Estimated Date of Confinement	PG	Prostaglandin
EFM	Electronic Fetal Movement	PKU	Phenylketonuria
EGA	Estimated Gestational Age	PNV	Prenatal Vitamins
FTP	Fallure to Progress	PP	Postpartum
FHT	Fetal Heart Tones	PROM	Premature Rupture of Membranes
FM	Fetal Movement	PTL	Preterm Labor
FOB	Father of Baby	SAB	Spontaneous Abortion
FT	Fingertip	SGA	Small for Gestational Age
FF	Fundus Firm	SROM	Spontaneous Rupture of Membranes
GBS	Group Beta Streptococcus	STV	Short Term Variability
GDM	Gestational Diabetes	T	Term Pregnancy
G	Gravida	TAB	Therapeutic Abortion
IUGR	Intrauterine Growth Restriction	TERB	Terbutaline
IUP	Intrauterine Pregnancy	U	Umbilicus
IUPC	Intrauterine Pressure Catheter	US	Ultrasound
L	Living Children	VB	Vaginal Bleeding
L&D	Labor & Delivery	VBAC	Vaginal Birth after Cesarean
LDR	Labor/Delivery/Recovery	VE	Vaginal Exam
LDRP	Labor/Delivery/Recovery/ Postpartum	WIC	Women, Infant, Child (Nutritional Program)

Common OB Medications

For your learning.....

Antepartum	Antibiotics
Betamethasone Rhogam Progesterone Prenatal Vitamins Folic Acid	Penicillin Ampicillin Ancef Clindamycin Gentamycin
Induction/Augmentation	Tocolytics
Pitocin Cytotec Cervidil Prepidil	Magnesium Sulfate Terbutaline Nifedipine Vistaril
Pain Control	Postpartum
Nubain Stadol Demerol Morphine Duramorph Fentanyl Percocet Tylenol 3 Darvocet Dilaudid	Colace Ibuprofen Dermoplast Toradol MMR vaccine TDap Influenza vaccine Lanolin cream Tucks pads Rhogam Simethicone
Pre-Operative	Newborn
Bicitra Zofran Reglan Ancef	Vitamin K Erythromycin Eye Ointment Hepatitis B Vaccine

Writing Assignments

You will write three papers in this course. Each student will choose topics from the approved list. You will choose one topic from each of three lists: Labor & Delivery, Post Partum, and Nursery. You will write a 1000 - 1250 word paper on each of your chosen topics.

Your papers should be in APA format and include the following information:

- Pathophysiology
- Diagnostic measures
- Nursing diagnoses
- Nursing interventions
- Significance of care as related to the mother or the fetus or both

A copy of the rubric should be submitted with each of your papers. You may use your text as a guide for this assignment. However, the majority of your research should be from scholarly nursing and or medical journals and peer reviewed journal articles. Wikipedia, Google, and Yahoo are not acceptable sources. This paper is to be in APA format. Below is a website that you can use as a guide to your APA format.

<http://www.umuc.edu/library/libhow/apa-examples.htm>

There is also a copy of the APA manual 6th ed in the LRC for your use.

Hot Topics

For clinical presentation, you will choose a "hot topic" from the approved list to research and present. This presentation will be done during post conference of your last OB clinical day. You will present your topic to the class including a 1 page handout or pamphlet. I encourage you to be as creative as you would like. Don't forget to bring enough handouts for the class and the instructor.

1 Roxann S. Gallagher 022049
Roxann.Gallagher@Sackstierney.com
2 Bryan J. Gottfredson 025140
Bryan.Gottfredson@Sackstierney.com
3 SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
4 Scottsdale, AZ 85251-3693
Telephone: 480.425.2600
5 Facsimile: 480.425-4970
Attorneys for Nursing Program
6

7 **BEFORE THE ARIZONA STATE BOARD OF NURSING**

8
9 In re:

10 BRECKINRIDGE SCHOOL OF
NURSING AT ITT TECHNICAL
11 INSTITUTE

**REQUEST FOR HEARING ON BEHALF
OF BRECKINRIDGE SCHOOL OF
NURSING AT ITT TECHNICAL
INSTITUTE**

12
13
14 At the September 20, 2012 open meeting (the "Open Meeting") of the Arizona State
15 Board of Nursing (the "Board"), the Board voted to bring a notice of charges for 33
16 "complaints" from various parties, including the Board, against the Breckinridge School of
17 Nursing at ITT Technical Institute (the "School"). The School and the undersigned, as
18 legal counsel to the School, appeared at the Open Meeting and contested the 33 complaints
19 as well as certain administrative procedures utilized by the Board that were in direct
20 violation of the Arizona Administrative Procedure Act, A.R.S. § 41-1001 *et seq.*, other
21 provisions of Arizona law, and the Board's own regulations.

22 On October 17, 2012, the Board provided written notice to the School reflecting the
23 Board's unanimous vote at the Open Meeting to issue a Notice of Charges and proceed to
24 administrative hearing. However, as of this March 18, 2013, the School has not yet
25 received the Notice of Charges and the School remains in administrative purgatory. In an
26 effort to avoid further administrative delay and to commence the formal administrative
27 hearing process, pursuant to A.R.S. § 41-1092.03(B), the School hereby submits this fifth
28

1 request for administrative hearing.¹ In accordance with A.R.S. § 41-1092.03(B), the
2 School (i) “will be adversely affected by the appealable agency action or contested case;”
3 (ii) exercised its right to comment on the action being appealed or contested; and (iii) the
4 grounds for this request for hearing are limited to issues raised in the School’s comments.

5 With respect to the 33 complaints, most have been fashioned by Board staff who
6 should have a command of existing Board policies and the applicable law regarding the
7 submission, investigation, and dismissal of complaints.² And yet, several of the 33
8 complaints wholly or substantially consist of rumors, general discontentment, or other
9 grievances, which though concerning to the School, are the type of complaints that the
10 Board specifically discourages as low risk issues not involving patient care, professional
11 judgment or wrongdoing under applicable rules and regulations.³ Several of the complaints
12 have no basis in fact. Several of the complaints are redundant or relate to matters which
13 have already been investigated, in some cases repeatedly, by the Board without any
14 recommendation for discipline. Several of the complaints are simply scurrilous attacks on

15 _____
16 ¹ In November 2011, the Board voted to offer the School a consent agreement for various potential deficiencies
17 alleged by Board staff. The School declined to enter into the consent agreement and instead opted to have a full
18 evidentiary hearing before an administrative law judge. Though it is more than a full year later, the Board has never
19 held or even scheduled the hearing. The School also requested an administrative hearing by submitting this request on
20 October 3, 2012 and renewing that request via email to the Board’s legal counsel on October 4, 2012, and on October
21 10, 2012.

22 ² The Board has declined to disclose which of the 33 complaints, if any, are actual third-party complaints received by
23 the Board and which are instead select paraphrases of interviews, reports or other documents that the Board has
24 transformed into complaints but were not intended by the makers as such.

25 ³ See <https://www.azbn.gov/DisciplineFaqs.aspx#1> “What conduct is not typically reportable to the Board?” On its
26 website, the Board states:

27 Examples of low risk issues not involving patient care, professional judgment or
28 wrongdoing that do not require reporting to the Arizona Board of Nursing may
include: rudeness to peers, co-worker disputes, personality conflicts,
absenteeism, tardiness, labor-management disputes such as work
schedules/wages/wrongful termination, resignation without notice whereby a
patient assignment has not been accepted.

Also, the official Education Department Complaint Form available on the Board’s website specifically mandates that
“a complaint must relate to a violation of the Nurse Practice Act and Rules of the Board.” However, not one of the 33
complaints provided to the School, even though drafted by Board staff, claims any violation of a particular statute or
Board rule.

1 the School, not accompanied by any charge that a law has been violated, and therefore
2 serve no purpose but to disparage the School. To date, and despite request, the Board has
3 not articulated which rule of law each of the 33 complaints purportedly violates. The
4 Board staff's creation of these unfounded complaints is an abuse of the investigative
5 process and has no purpose but for the systematic persecution, harassment and intimidation
6 of the School.

7 As expressed at the Open Meeting, the School further believes that many of the
8 Board's actions related to the development, investigation, and adjudication of the
9 complaints, including but not limited to, the conduct of its investigatory interviews and
10 inspections, its formal notice and meeting procedures, its public declaration that the School
11 is "under investigation," and its refusal to provide public records violate Arizona law. As
12 part of its defense against the complaints, the School intends to raise these various incidents
13 of Board misconduct. Specifically:

- 14 • Board inspections do not comply with A.R.S. § 41-1009 as required.
- 15 • Board disciplinary interviews do not comply with A.R.S. § 32-3206 as
16 required.
- 17 • Board meetings where the School's legal rights, duties and privileges have
18 been affected have not been noticed and held as "contested cases" in violation
19 of several provisions of the Administrative Procedure Act and the School's
20 right to due process under Arizona common law.
- 21 • There is no authority under Arizona law permitting the Board to devise, much
22 less publicly post, an unprecedented "under investigation" castigation as a
23 direct result of a regulated party electing to exercise its legally mandated right
24 to present evidence through an administrative hearing.
- 25 • A.R.S. § 32-3214 prohibits the Board from posting any nondisciplinary order
26 or action, which would include Board action to commence or continue an
27 investigation and the pendency of an administrative hearing, on its website.
- 28 • In branding the School "under investigation," a status that was never before

1 attached to any nursing program for any purpose, the Board acted in an
2 arbitrary and capricious fashion and effectively punished the School in
3 violation of Arizona common law.

- 4 • By maintaining the unfair and misleading “under investigation” status in red,
5 underlined font⁴ on the Board’s website, declaring it removable only
6 following an administrative hearing, and then failing to ever hold or even
7 schedule such administrative hearing, the Board deprived the School of due
8 process protections, impugned the reputation of the School, its students, staff
9 and alumni, and wrongfully interfered with the School’s business
10 relationships and prospects in violation of Arizona common law.
- 11 • The Board has denied the School’s requests for certain public information
12 including complaints filed against other nursing programs. Such complaints
13 must be disclosed under A.R.S. §§ 32-3214, 39-121, and 41-1010.
- 14 • Under the Regulatory Bill of Rights set forth in A.R.S. § 41-1001.01, the
15 School is “entitled to have an agency not base a licensing decision in whole
16 or in part on licensing conditions or requirements not specifically authorized”
17 by statute or rule yet the Board has repeatedly exceeded its authority and
18 abused its discretion in this respect.
- 19 • In violation of A.R.S. § 32-1664(A)(2), the Board has abused its subpoena
20 power by forcing the School to produce information and respond to
21 allegations unrelated to unlawful practices or otherwise irrelevant to
22 complaints being investigated.
- 23 • The Board has used its investigative powers to harass, intimidate, embarrass,
24 and annoy the School in violation of Arizona common law.

25 Pursuant to A.R.S. § 41-1092.03(B), the School respectfully requests the Board to
26

27 ⁴ Based on a review of historical website postings provided by the Board, the large, red, underlined font reserved for
28 the School’s “under investigation” status has otherwise never been used by the Board to denote a program status.

1 immediately provide notification of this request for hearing to the office of administrative
2 hearings (or such other administrative hearing forum that will be utilized to conduct the
3 requested hearing) so that the hearing can be scheduled and held within 60 days as required
4 by A.R.S. § 41-1092.05(A).

5 DATED this 18th day of March, 2013.

6 SACKS TIERNEY P.A.

7
8 By: _____
9 Roxann S. Gallagher
10 Bryan J. Gottfredson
11 Attorneys for Breckinridge School of
12 Nursing at ITT Technical Institute

13 COPY OF THE FOREGOING HAND-DELIVERED
14 AND MAILED this 18th day of March, 2013, to:

14 (b)(6)
15
16
17
18
19
20
21
22
23



Janice K. Brewer
Governor

Joey Ridenour
Executive Director

Arizona State Board of Nursing

4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655
Phone (602) 771-7800 Fax (602) 771-7888
E-Mail: arizona@azbn.gov
www.azbn.gov

October 17, 2012

Debra L. Colbert, RN, MSN Ed.
Breckinridge School of Nursing
@ ITT Technical Institute
10220 North 25th Avenue, Suite 100
Phoenix, Arizona 85201

Re: Arizona State Board of Nursing
September 2012 Board Meeting Results

Dear Ms. Colbert:

Please be advised that on September 20, 2012 in open meeting the Arizona State Board of Nursing unanimously voted, based upon the findings of fact and statute/rule violations identified in the investigative report, to issue Notice of Charges and proceed to hearing. The Board directed Assistant Attorney General Staff to provide legal advice regarding notices on the website.

Should you have any questions or concerns, please contact Debra McGinty, Education Program Administrator 602-771-7877 or dmcginty@azbn.gov.

Sincerely,

(b)(6)

Joey Ridenour RN, MS
Executive Director

Pamela K. Randolph RN, MS
Associate Director of Education and
Evidence Based Regulation

JR:PKR:hme



March 12, 2013

ID Code 00023908

VIA E-MAIL ONLY

Mr. Eugene McWhorter
Director
ITT Technical Institute
10220 North 25th Avenue, Suite 100
Phoenix, AZ 85021

Dear Mr. Whorter:

This letter is a request for updated information regarding the concerns of the Arizona Board of Nursing. Please provide the Council with an update which includes: your current status with the Board of Nursing; copies of any further correspondence received from the Board as well as copies of any responses to said correspondence. Please respond by **March 22, 2013**. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6781 or abieda@acics.org.

Sincerely,

(b)(6)

Anthony S. Bieda
Director of External Affairs



November 19, 2012

ID Code 00023908

VIA E-MAIL ONLY

Mr. Eugene McWhorter
Director
ITT Technical Institute
10220 North 25th Avenue, Suite 100
Phoenix, AZ 85021

Dear Mr. McWhorter:

This letter is a request for updated information regarding the concerns of the Arizona Board of Nursing. Please provide the Council with an update which includes: your current status with the Board of Nursing; copies of any further correspondence received from the Board as well as copies of any responses to said correspondence. Please respond by **November 27, 2012**. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6849 or serby@acics.org.

Sincerely,

(b)(6)

Shameka S. Erby
Senior Accreditation Support Coordinator

1

Gallagher, Roxann

From: Gottfredson, Bryan
Sent: Thursday, November 01, 2012 5:30 PM
To: Tellier, John (John.Tellier@azag.gov)
Cc: Gallagher, Roxann
Subject: RE: ITT Breckinridge

John,

Thank you for the update. I was going to file a lawsuit in Superior Court tomorrow requesting, among other things, that the Court order that the status on the website be withdrawn. It appears that at least this issue has been removed from contention for the time being. This is a helpful step in the right direction.

We now have the issue of the 33 allegations against the School, which we feel do not merit any type of disciplinary action and are causing our client time and diverting their attention from running the School and working toward full approval. The primary objective for the School is obtaining full approval and we have limited time to achieve it because of a statutory imposed deadline.

The School needs to know from the Board that this will be possible and without the Board taking further punitive action against the School (as it relates to allegations that we are currently aware of). The School simply cannot afford to be set back by continued and unwarranted resistance from the Board. If the Board continues to act outside of its scope and authority, we have no choice but to seek help from the Court.

I appreciate your efforts and involvement in this matter. Would you and perhaps a Board representative be able to meet with Roxann Gallagher and I next week, before your working session, to discuss how the School and the Board can work together to towards the School's objective of obtaining full approval?

Regards,

Bryan Gottfredson

Bryan Gottfredson
SACKS TIERNEY P.A., Lawyers,
a Member of **Meritas** Law Firms Worldwide
4250 N. Drinkwater Blvd., Fourth Floor
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www.sackstierney.com

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From: Tellier, John [<mailto:John.Tellier@azag.gov>]
Sent: Thursday, November 01, 2012 11:34 AM
To: Gottfredson, Bryan
Subject: RE: ITT Breckinridge

They will be taking down the website reference; it is inaccurate since no hearing is pending. I will be having a working session with them in the near future to go through the various issues and try to narrow the focus, if possible, so we are all in a position to move this forward. Please note that we disagree with the use of pejorative characterizations like "drummed up;" using such phrases does nothing to advance this toward a resolution, and, if anything, tends to harden positions.

From: Gottfredson, Bryan [<mailto:Gottfredson@SacksTierney.com>]
Sent: Wednesday, October 31, 2012 2:10 PM
To: Tellier, John
Cc: Gallagher, Roxann
Subject: RE: ITT Breckinridge

John:

When we spoke last week you mentioned that you were planning on having a face to face meeting with Ms. Ridenour this week to discuss the issues our client has been raising. Will you please let me know if you have met with her and if the website is going to change this week? I also need to know the status of the 33 "complaints" drummed up by the Board and if there is actually an administrative hearing scheduled. Please let me know as soon as possible.

Regards,
Bryan

Bryan Gottfredson
SACKS TIERNEY P.A., Lawyers,
a Member of Meritas Law Firms Worldwide
4250 N. Drinkwater Blvd., Fourth Floor
Scottsdale, Arizona 85251-3693
480.425.2643 DID Telephone
Bryan.Gottfredson@SacksTierney.com
www.sackstierney.com

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From: Tellier, John [<mailto:John.Tellier@azag.gov>]
Sent: Friday, October 12, 2012 11:09 AM
To: Gallagher, Roxann
Cc: Gottfredson, Bryan; Mamaluy, Emma
Subject: RE: ITT Breckinridge

My direct number is (b)(6)

From: Gallagher, Roxann [<mailto:Gallagher@SacksTierney.com>]
Sent: Friday, October 12, 2012 11:07 AM
To: Tellier, John
Cc: Bryan Gottfredson
Subject: Re: ITT Breckinridge

Does 1:00 work for you?

Sent from my iPhone

On Oct 12, 2012, at 11:05 AM, "Tellier, John" <John.Tellier@azag.gov> wrote:

Sure, what time did you have in mind?

From: Gallagher, Roxann [<mailto:Gallagher@SacksTierney.com>]
Sent: Friday, October 12, 2012 11:04 AM
To: Tellier, John
Cc: Mamaluy, Emma; Gottfredson, Bryan
Subject: Re: ITT Breckinridge

John,

I think a short conversation among us would be helpful at this point. Are you available for a brief call this afternoon?

Sent from my iPhone

On Oct 12, 2012, at 10:53 AM, "Tellier, John" <John.Tellier@azag.gov> wrote:

There seems to be some confusion here over the effect of the investigation being conducted, and the point at which an investigation becomes a contested case. I think we can all agree that an investigation is simply that, an investigation. While it may lead to a contested case, just as an acorn may become an oak tree, it also may come to nothing, just as an acorn may end up being squirrel food rather than a tree. It is up to the board or agency conducting the investigation to determine if and when to start a contested case. That is not the prerogative of the subject of the investigation. If it were, once a licensee became aware of an investigation it could immediately derail it by demanding a hearing before the investigating body had been able to marshal its witnesses and evidence. That is not and ought not to be the law. That would seem to be especially true in a situation where the licensee refuses to comply with a subpoena, as is the case here. We can all agree that at some point, i.e. when the Board takes steps toward disciplinary action, a hearing must be held. That point has not yet been reached. If your client truly wishes to move this forward, compliance with the subpoena would seem to be a step toward that end.

From: Gallagher, Roxann [<mailto:Gallagher@SacksTierney.com>]
Sent: Wednesday, October 10, 2012 5:27 PM
To: Mamaluy, Emma
Cc: Tellier, John; Gottfredson, Bryan
Subject: RE: ITT Breckinridge

Thank you for your prompt response to our request to remove the "under investigation" status. However, we are obviously anxious to have the new status go away as well, particularly since according to your below statement we are not actually "pending administrative hearing" at this time. Therefore, the new status remains both false and an unprecedented Board action against a nursing program.

With respect to your statement that the Administrative Procedure Act (the "APA") is not applicable in our case, you are, and have been, wrong.

It is true that the Board has not yet taken any "disciplinary action" within the meaning of the defined term (though it did attempt to do so by offering the consent agreement in November 2011 and making defamatory status posts is unquestionably punitive) and there has not yet been an "appealable agency action." However, the reason why neither has occurred is because the Board is required to hold an administrative hearing

before it can do so under A.R.S. § 32-1664(H). It is exactly this statutory requirement mandating an administrative hearing that makes the APA apply at this stage of the proceedings. Our request for a hearing within 60 days under A.R.S. § 41-1092.05 was made pursuant to A.R.S. § 41-1092.03. Both of those statutes are part of the APA and each applies to both appealable agency actions and **contested cases**.

A.R.S. § 41-1001(4) defines "contested case" as "any proceeding, including rate making, price fixing and licensing, in which the legal rights, duties or privileges of a party are required or permitted by law, other than this chapter, to be determined by an agency **after an opportunity for an administrative hearing**. (Emphasis added). In *Oliver v. Arizona Department of Racing*, 708 P.2d 764, 767 (Ariz. App. 1985)(reversed on other grounds), the court noted that "the term 'proceeding' is a very comprehensive one that means a prescribed course of action for enforcing legal rights" and that "the term may refer to a mere procedural step as well as to a complete remedy." In *Oliver*, the court determined that an agency hearing where neither testimony nor exhibits were permitted or provided (notably similar to the Board's open meeting) was an agency process for the formulation of an agency order and therefore comprised a contested case under the APA. See also *Cartaro Water Users' Association v. Steiner*, 714 P.2d 836 (Ariz. App. 1985)(reversed on other grounds)(holding that agency proceedings were not a contested case because no opportunity for a hearing was required by a law before an agency could make a licensing determination).

Because the Board is required to provide an administrative hearing before it can issue a notice of deficiency, order discipline, revoke, modify or suspend nursing program approval, each step of the Board's procedural process for doing the same is subject to the APA. Indeed the APA applies to the Board's inspections, investigations, disciplinary interviews, public hearings, and all other proceedings for which the ultimate outcome requires an administrative hearing. Your often articulated stance that the Board has no legal obligation to provide the due process protections afforded by the APA but may provide them as a courtesy from time to time, is incorrect. Of course we intend to address the Board's deliberate and repeated failure to comply with the APA in all litigation and administrative proceedings that become necessary in our case.

In November 2011, we requested an administrative hearing. On October 3, 2012 we again requested an administrative hearing via letter delivered to you and Ms. Ridenour. On October 4, we renewed the request via the below email. This is our fourth request. We are tired of the ever growing list of excuses and delays that continue to deny us our legal right to an objective evidentiary hearing. Please provide a record of your notification to the administrative hearing office in response to our repeated requests no later than the close of business on Friday, October 12. If we do not receive it, we will promptly commence court action against the Board.

Thank you,

Roxann S. Gallagher
SACKS TIERNEY P.A., Attorneys,
a Member of **Meritas** Law Firms Worldwide
4250 N. Drinkwater Blvd., Fourth Floor
Scottsdale, Arizona 85251-3693
480.425.2673 DID Telephone
480.425.4973 DID Facsimile
Roxann.Gallagher@SacksTierney.com
www.sackstierney.com/gallagher

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From: Gallagher, Roxann
Sent: Thursday, October 04, 2012 3:49 PM
To: 'Emma Mamaluy'; Gottfredson, Bryan
Cc: john.tellier@azag.gov
Subject: RE: ITT Breckinridge

Emma,

Bryan is out of the office today so I am responding to the below.

As you are well aware, at the Board's July open meeting, I formally requested that the Board take down the unfair and misleading "under investigation" status related to the School and advised you and the Board of some legal issues implicit in the Board staff's decision to post such a status for the first time in the history of the Board and in direct violation of Arizona law. At that time you and I had detailed correspondence (which I am happy to resend) and on at least two occasions you indicated that you were looking into the issue and would provide me with your response. You never did. For nearly a year now the School has been plagued with the arbitrary designation that it notably received as a result of merely asking for an administrative hearing which the Board has never held or even scheduled. On September 20, I provided you and the Board a demand letter again detailing our position with respect to the "under investigation" issue. Since that time, you have taken no action other than to begin to transfer files. Respectfully, due to the severe impact on the School's operations, we cannot wait another ten days (or so) for you to get around to dealing with this issue. If you do not take this status down immediately—meaning by the close of business tomorrow—we will proceed to seek a remedy in Maricopa County Superior Court. Though you have apparently not had the time to do so, we have had the opportunity to analyze the statutes and case law and believe that we are on firm legal ground in demanding immediate removal of this made up status.

Emma--you have been kind to me with respect to providing certain insight regarding matters between our clients and I say this to return the courtesy—if for no other reason than merely as a precautionary measure to protect your client, you should advise Board staff to take down that status pending the completion of your analysis. In my view, allowing the Board to continue on a course which even the lawyer on the Board felt was legally questionable at first blush is unwise.

With regard to the hearing, based on our past experience of requesting an administrative hearing that has yet be scheduled nearly a full year later, we have opted not to wait for the Board's notice of charges to commence the administrative hearing process (particularly since we are the Board's "under investigation" hostage for so long as we are forced to wait for a hearing). Yesterday, in accordance with the Administrative Procedure Act, we preemptively filed a request for hearing that requires the Board to immediately notify the administrative hearing forum of the request (for your convenience I have attached a copy and evidence of your receipt). Following the delivery of the Board's corresponding notice to the administrative hearing forum, again

in accordance with the Administrative Procedure Act, the administrative hearing must be held within 60 days.

Finally, since Board staff developed most, if not all, of the 33 complaints themselves from their own investigative records and have already brought them before the Board for a disciplinary action, I would hope that you already have enough evidence to support each of complaints as violations of applicable law. If not, as part of the discovery related to that administrative hearing process, certainly you will be able to at least request, if not receive, any information that has been previously denied by the School. I fail to see the need for subpoena enforcement through a separate court proceeding.

On September 20 it was made clear by the Board that they intended for the School to finally have the administrative hearing that we have long been legally entitled to—any further excuses for indefinite delay are in contravention to your client's express wishes, are without justification, and further result in real harm to the School.

At your earliest convenience, please provide a record of your notification to the administrative hearing forum in response to our attached request. Thank you.

Kind regards and best wishes as you add to your family,

Roxann S. Gallagher
SACKS TIERNEY P.A., Attorneys,
a Member of **Meritas** Law Firms Worldwide
4250 N. Drinkwater Blvd., Fourth Floor
Scottsdale, Arizona 85251-3693
480.425.2673 DID Telephone
480.425.4973 DID Facsimile
Roxann.Gallagher@SacksTierney.com
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From: Emma Mamaluy [<mailto:EMamaluy@azbn.gov>]
Sent: Thursday, October 04, 2012 2:25 PM
To: Gottfredson, Bryan
Cc: Gallagher, Roxann; john.tellier@azag.gov
Subject: RE: ITT Breckinridge

Bryan:

As we discussed on Monday over the phone, I am in the process of transferring this case to another AAG litigator. The AAG who had intended to take over was pulled away on some other matters, so there will be a different AAG assigned shortly. In the interim, my supervisor, Licensing and Enforcement Section Chief John Tellier (copied on this email), and I will manage the case.

Regarding your email, and to clarify, the first part of the Board motion was to issue Notice of Charges, which is preliminary step before the Complaint and Notice of Hearing is issued. The second part of the motion directed Board counsel to provide the Board with legal advice regarding the "under investigation" designation on the AZBN website.

As we discussed Monday, the Board, in its motion, did not state that it would "take down" the under investigation status; nor did the Board's motion state that this was "not an appropriate 'tag' on (its) website." Naturally, our advice to the Board will be attorney-client privileged and confidential. However, I expect we will soon (approximately 10 days or so) provide you with an update as to what, if anything, the Board intends to do related to the under investigation status of Breckinridge.

With regard to when the hearing will be set: Breckinridge chose not to cooperate with the Board's subpoena for records, which will likely result in a significant delay while the Board pursues an enforcement action. This delay could be several months, depending largely on the length of time it takes for the Court to set dates and render a decision.

Sincerely,

Emma Lehner Mamaluy
Assistant Attorney General
Licensing and Enforcement Section
Office of the Arizona Attorney General
1275 West Washington
Phoenix, Arizona 85007
Tel.: 602.771.7852
Fax: 602.771.7884

Urgent Matters: Please contact my assistant, Vicky, at (b)(6) or Jami, at 602-

(b)(6)

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From: Gottfredson, Bryan [<mailto:Gottfredson@SacksTierney.com>]

Sent: Thursday, September 27, 2012 2:07 PM

To: Emma Mamaluy

Cc: Gallagher, Roxann

Subject: ITT Breckinridge

Emma:

We understood that at the last Board meeting a motion was made and passed that: (1) the 2 cases against the Breckinridge school would be set for an administrative hearing before an AL; and (2) that the Board would review its procedures and take down the "under investigation status" as that is not an appropriate "tag" on the Board's website.

We have not received anything regarding a hearing or hearing date. When can we expect to receive information on the hearing?

Also, will you please let us know when the "under investigation" tag will come down? It has been a week since the Board approved a motion to review that issue.

Regards,
Bryan

Bryan Gottfredson
SACKS TIERNEY P.A., Lawyers,
a Member of **Merits** Law Firms Worldwide
4250 N. Drinkwater Blvd., Fourth Floor
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480.425.2643 DID Telephone
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SacksTierney P.A.

ATTORNEYS

James W. Armstrong
Adrian L. Barton
Steven R. Beeghley
Stephen Aron Benson
Brian E. Ditsch
Judith M. Dworkin
Patty A. Ferguson
Roxann S. Gallagher
Jeffrey D. Gardner

Steven M. Goldstein
Bryan J. Gottfredson
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David C. Tierney
Julianne C. Wheeler
Aaron G. York

Seymour Sacks (1932 – 2011)

Marvin S. Cohen (1931 – 2009)

Gary E. Pace, CLM, Executive Director

November 27, 2012



VIA E-MAIL

Writer's Direct Line: 480.425.2673
Writer's Direct Facsimile: 480.425.4973
Writer's E-mail: Roxann.Gallagher@SacksTierney.com

Shameka S. Erby
Senior Accreditation Support Coordinator
Accrediting Council for Independent Colleges and Schools
750 First Street, NE, Suite 980
Washington, DC 20002-4223

Re: Breckinridge School of Nursing at ITT Technical Institute status with the Arizona State Board of Nursing.

Dear Ms. Erby:

As you know, we represent the Breckinridge School of Nursing at ITT Technical Institute (the "School") with respect to the School's regulation by the Arizona State Board of Nursing (the "Board"). This letter is in response to your November 19, 2012 request for updated information regarding the concerns of the Board. Since our previous correspondence with you in early August, the Board, at the School's insistence, has concluded the investigation against the School that was commenced over a year ago. In consultation with its legal counsel, the Board is currently in the process of determining whether any of the Board's investigative findings merit disciplinary action against the School. The School does not believe that there is any factual or legal basis for disciplinary action and will oppose any sanction proposed by the Board with respect to this investigation.

Attached hereto are copies of all formal correspondence from the Board received by the School, the School's formal responses to the same and some informal correspondence that is helpful in understanding the various issues between the Board and the School. Further, the following timeline (since our last correspondence with you) references the attached correspondence and is instructive:

1. On August 3, 2012, Board staff provided a partial response to the School's public records request dated August 2, 2012 and failed to produce all of the requested documents (the documents that were provided are not attached to this letter).

Shameka S. Erby
Accrediting Council for Independent
Colleges and Schools
November 27, 2012
Page 2

2. On August 20, 2012, the Board issued a Subpoena Duces Tecum (the "Subpoena") to the School for the production of certain documents.

3. On August 21, 2012, the Board informed the School that the Board "received additional complaints against the Breckinridge nursing program" and included a list of 33 "complaints filed against the Breckinridge School of Nursing Program."

4. On August 22, 2012, this office sent an email to Board staff asking for clarification regarding the source of the 33 "complaints" since it was obvious that the 33 complaints were not new third party complaints received by the Board as represented but were instead comprised of allegations created by the Board staff.

5. On August 30, 2012, the School and this office provided a partial response to the Subpoena (the provided documents are not attached to this letter) and objected to the production of information that was repeatedly produced in the past, was irrelevant to the subject matter of the investigation, and/or did not evidence any unlawful practice.

6. On September 4, 2012, Board staff provided a letter to the School confirming that the 33 complaints were developed by Board staff during the course of its investigation.

7. On September 6, 2012, the Board advised the School that the investigation of the School was on the Board's September 19 and 20, 2012 open meeting agenda and the School would be allotted some time, "not to exceed five minutes," to make a presentation to the Board.

8. On September 19, 2012, our office notified the Board that in connection with a possible lawsuit by the School against the Board, the Board had the obligation to preserve certain information.

9. On September 19, 2012, our office sent a letter to the Board reciting the School's grievances against the Board and demanding the immediate removal of the "under investigation" status from the Board's website. This letter was also provided to each Board member at the September 20, 2012 open meeting.

10. On September 20, 2012 our office sent a letter to the Board requesting the Board to provide additional information regarding the subject matter of the September 19 and 20, 2012 open meeting.

11. On September 20, 2012, the School and attorneys from this office appeared at the Board's open meeting and requested that (1) the Board's year-old investigation be terminated; (2)

Shameka S. Erby
Accrediting Council for Independent
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Page 3

the Board remove the “under investigation” status from the Board’s website; and (3) either a full evidentiary hearing for the 33 complaints be held or that those completely be dismissed. The Board unanimously voted to conclude the investigation and issue a Notice of Charges and proceed to an administrative hearing for each of the 33 complaints. However, upon guidance from its legal counsel, the Board has declined to issue a Notice of Charges and has not commenced the administrative hearing process.

12. On September 27, 2012, our office commenced a chain of correspondence with the Board’s legal counsel again demanding removal of the “under investigation” status from the Board’s website and inquiring about the administrative hearing date and procedure. On October 5, 2012, the Board removed the “under investigation” status and replaced it with a “pending administrative hearing” status. On November 1, 2012, the Board removed the “pending administrative hearing” status since no hearing is currently pending. The final e-mail in the chain was sent by this office on November 1, 2012.

13. On October 3, 2012, this office delivered a formal request for hearing to the Board which should have triggered an administrative hearing within 60 days. This request has been repeatedly ignored by the Board.

14. On October 17, 2012, the Board sent a letter reciting the formal actions taken by the Board at the September 20, 2012 open meeting.

Since October 17, 2012, on more than one occasion this office has spoken with the Board’s legal counsel to determine the status of the open complaints against the School. As of the date of this letter, the Board’s legal counsel has not determined what action, if any, the Board will take with respect to the Board’s completed investigation. The Board has not advised when it will make that determination. As demonstrated by the enclosed correspondence, the School adamantly disagrees with both the legal and factual basis of the allegations against it. Should the Board move forward with an administrative hearing, as it relates to those complaints, a required procedural step prior to administering any sanctions, the School intends on defending itself to the fullest extent possible. The School is also considering other avenues that might accelerate the full and final resolution of any open issues between the School and the Board which would then allow the School to immediately apply for full approval under the Board’s regulations.

Shameka S. Erby
Accrediting Council for Independent
Colleges and Schools
November 27, 2012
Page 4

In the event that you have questions regarding the above or the attached or require additional information, you are welcome to contact the School or me directly.

Sincerely,

SACKS TIERNEY P.A.

(b)(6)

Roxann S. Gallagher

RSG/sr

c: Shawn Crawford, David Catalano, Stephie Guptill, Debra Colbert, Gene McWhorter, Susan Ciardullo, Bryan Gottfredson

ITT Technical Institute- Phoenix, Arizona

School Name: ITT Technical Institute

Location: Phoenix, Arizona

Summary of Issues: The Arizona Board of Nursing has issued several Notices of Deficiency to the school, citing them for several organizational and administrative issues. The two latest areas of non-compliance concern lack of evidence that the school is ensuring that students are physically and mentally able to provide safe care before sending them on clinical placements and the lack of faculty involvement in the admissions process, which the Board feels has a direct correlation on students' successful progression through the program.

April 2012 Status: The school responded to our initial inquiry, sending us a copy of their response to the Nursing Board. However, the Nursing Board did hold a meeting March 19th and 20th - with ITT scheduled to be on the agenda. Staff will contact the school for an update and the results of that meeting.

August 2012 Status: The school has retained legal counsel to address what they feel is a bias against them by Nursing Board. Staff received a copy of their legal counsel's initial request for information to the Board, dated August 2. The request called for any and all materials concerning deficiencies, complaints, and disciplinary actions.

Current Status: Both the school and the Nursing Board have retained legal counsel. The Nursing Board responded to the request for information and also subpoenaed documents from the school, some of which the school provided, others they objected to (including records of complaints against the program, HESI scores, and faculty evaluations). The Board received 33 complaints specific to the Nursing program and asked the school for a response to those complaints, sending them a synopsis of the complaints filed. The school demanded to see the actual complaint forms, instead of a synopsis of the complaints themselves, but the Board has resisted complying with that request. The Nursing Board completed their investigation against the school and is now in the process of determining whether any of their findings merit disciplinary action. They are having another hearing with the school but it has not been scheduled. The school is strongly considering moving forward with the lawsuit.



November 19, 2012

ID Code 00023908

VIA E-MAIL ONLY

Mr. Eugene McWhorter
Director
ITT Technical Institute
10220 North 25th Avenue, Suite 100
Phoenix, AZ 85021

Dear Mr. McWhorter:

This letter is a request for updated information regarding the concerns of the Arizona Board of Nursing. Please provide the Council with an update which includes: your current status with the Board of Nursing; copies of any further correspondence received from the Board as well as copies of any responses to said correspondence. Please respond by **November 27, 2012**. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6849 or serby@acics.org.

Sincerely,

(b)(6)

Shameka S. Erby
Senior Accreditation Support Coordinator

1 Roxann S. Gallagher 022049
Roxann.Gallagher@Sackstierney.com
2 Bryan J. Gottfredson 025140
Bryan.Gottfredson@Sackstierney.com
3 SACKS TIERNEY P.A.
4250 N. Drinkwater Blvd., 4th Floor
4 Scottsdale, AZ 85251-3693
Telephone: 480.425.2600
5 Facsimile: 480.425-4970
Attorneys for Nursing Program

6
7 **BEFORE THE ARIZONA STATE BOARD OF NURSING**

8
9 In re:

10 BRECKINRIDGE SCHOOL OF
11 NURSING AT ITT TECHNICAL
INSTITUTE

**REQUEST FOR HEARING ON BEHALF
OF BRECKINRIDGE SCHOOL OF
NURSING AT ITT TECHNICAL
INSTITUTE**

12
13
14 At the September 20, 2012 open meeting (the "Open Meeting") of the Arizona State
15 Board of Nursing (the "Board"), the Board voted to bring a notice of charges for 33
16 "complaints" from various parties, including the Board, against the Breckinridge School of
17 Nursing at ITT Technical Institute (the "School"). The School and the undersigned, as
18 legal counsel to the School, appeared at the Open Meeting and contested the 33 complaints
19 as well as certain administrative procedures utilized by the Board that were in direct
20 violation of the Arizona Administrative Procedure Act, A.R.S. § 41-1001 *et seq.*, other
21 provisions of Arizona law, and the Board's own regulations.

22 As of the date hereof, the School has not yet received the notice of charges for any
23 of the 33 complaints. In an effort to avoid further administrative delay and to commence
24 the formal administrative hearing process, pursuant to A.R.S. § 41-1092.03(B), the School
25 hereby submits this request for administrative hearing.¹ In accordance with A.R.S. § 41-
26

27
28 ¹ In November 2011, the Board voted to offer the School a consent agreement for various potential deficiencies
alleged by Board staff. The School declined to enter into the consent agreement and instead opted to have a full
evidentiary hearing before an administrative law judge. Though it is nearly a full year later, the Board has never held

1 1092.03(B), the School (i) "will be adversely affected by the appealable agency action or
2 contested case;" (ii) exercised its right to comment on the action being appealed or
3 contested; and (iii) the grounds for this request for hearing are limited to issues raised in the
4 School's comments.

5 With respect to the 33 complaints, most have been fashioned by Board staff who
6 should have a command of existing Board policies and the applicable law regarding the
7 submission, investigation, and dismissal of complaints.² And yet, several of the 33
8 complaints wholly or substantially consist of rumors, general discontentment, or other
9 grievances, which though concerning to the School, are the type of complaints that the
10 Board specifically discourages as low risk issues not involving patient care, professional
11 judgment or wrongdoing under applicable rules and regulations.³ Several of the complaints
12 have no basis in fact. Several of the complaints are redundant or relate to matters which
13 have already been investigated, in some cases repeatedly, by the Board without any
14 recommendation for discipline. Several of the complaints are simply scurrilous attacks on
15 the School, not accompanied by any charge that a law has been violated, and therefore
16 serve no purpose but to disparage the School. To date, and despite request, the Board has

17
18 or even scheduled the hearing.

19
20 ² The Board has declined to disclose which of the 33 complaints, if any, are actual third-party complaints received by
the Board and which are instead select paraphrases of interviews, reports or other documents that the Board has
transformed into complaints but were not intended by the makers as such.

21
22 ³ See <https://www.azbn.gov/DisciplineFaqs.aspx#1> "What conduct is not typically reportable to the Board?" On its
website, the Board states:

23 Examples of low risk issues not involving patient care, professional judgment or
24 wrongdoing that do not require reporting to the Arizona Board of Nursing may
25 include: rudeness to peers, co-worker disputes, personality conflicts,
absenteeism, tardiness, labor-management disputes such as work
schedules/wages/wrongful termination, resignation without notice whereby a
patient assignment has not been accepted.

26 Also, the official Education Department Complaint Form available on the Board's website specifically mandates that
27 "a complaint must relate to a violation of the Nurse Practice Act and Rules of the Board." However, not one of the 33
28 complaints provided to the School, even though drafted by Board staff, claims any violation of a particular statute or
Board rule.

885036.

1 not articulated which rule of law each of the 33 complaints purportedly violates. The
2 Board staff's creation of these unfounded complaints is an abuse of the investigative
3 process and has no purpose but for the systematic persecution, harassment and intimidation
4 of the School.

5 As expressed at the Open Meeting, the School further believes that many of the
6 Board's actions related to the development, investigation, and adjudication of the
7 complaints, including but not limited to, the conduct of its investigatory interviews and
8 inspections, its formal notice and meeting procedures, its public declaration that the School
9 is "under investigation," and its refusal to provide public records violate Arizona law. As
10 part of its defense against the complaints, the School intends to raise these various incidents
11 of Board misconduct. Specifically:

- 12 • Board inspections do not comply with A.R.S. § 41-1009 as required.
- 13 • Board disciplinary interviews do not comply with A.R.S. § 32-3206 as
14 required.
- 15 • Board meetings where the School's legal rights, duties and privileges have
16 been affected have not been noticed and held as "contested cases" in violation
17 of several provisions of the Administrative Procedure Act and the School's
18 right to due process under Arizona common law.
- 19 • There is no authority under Arizona law permitting the Board to devise, much
20 less publicly post, an unprecedented "under investigation" castigation as a
21 direct result of a regulated party electing to exercise its legally mandated right
22 to present evidence through an administrative hearing.
- 23 • A.R.S. § 32-3214 prohibits the Board from posting any nondisciplinary order
24 or action, which would include Board action to commence or continue an
25 investigation and the pendency of an administrative hearing, on its website.
- 26 • In branding the School "under investigation," a status that has never before
27 been attached to any nursing program for any purpose, the Board has acted in
28 an arbitrary and capricious fashion and has effectively punished the School in

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violation of Arizona common law.

- If the Board denies arbitrary and capricious behavior and instead claims that the creation and display of the “under investigation” status is Board’s policy, then the action is invalid for failure to comply with agency rulemaking regulations set forth in the Administrative Procedure Act and the Board’s own rules.
- By maintaining the unfair and misleading “under investigation” status in red, underlined font⁴ on the Board’s website, declaring it removable only following an administrative hearing, and then failing to ever hold or even schedule such administrative hearing, the Board has deprived the School of due process protections, impugned the reputation of the School, its students, staff and alumni, and wrongfully interfered with the School’s business relationships and prospects in violation of Arizona common law.
- The Board has denied the School’s requests for certain public information including complaints filed against other nursing programs. Such complaints must be disclosed under A.R.S. §§ 32-3214, 39-121, and 41-1010.
- Under the Regulatory Bill of Rights set forth in A.R.S. § 41-1001.01, the School is “entitled to have an agency not base a licensing decision in whole or in part on licensing conditions or requirements not specifically authorized” by statute or rule yet the Board has repeatedly exceeded its authority and abused its discretion in this respect.
- In violation of A.R.S. § 32-1664(A)(2), the Board has abused its subpoena power by forcing the School to produce information and respond to allegations unrelated to unlawful practices or otherwise irrelevant to complaints being investigated.

⁴ Based on a review of historical website postings provided by the Board, the large, red, underlined font reserved for the School’s “under investigation” status has otherwise never been used by the Board to denote a program status.

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- The Board has used its investigative powers to harass, intimidate, embarrass, and annoy the School in violation of Arizona common law.

Pursuant to A.R.S. § 41-1092.03(B), the School respectfully requests the Board to immediately provide notification of this request for hearing to the office of administrative hearings (or such other administrative hearing forum that will be utilized to conduct the requested hearing) so that the hearing can be scheduled and held within 60 days as required by A.R.S. § 41-1092.05(A).

DATED this 3rd day of October, 2012.

SACKS TIERNEY P.A.

By (b)(6)

Roxánn S. Gallagher
Bryan J. Gottfredson
Attorneys for Breckinridge School of
Nursing at ITT Technical Institute

COPY OF THE FOREGOING HAND-DELIVERED
AND MAILED this 3rd day of October, 2012, to:

(b)(6)

Rider, Sharon

From: Reed, Nellie
Sent: Wednesday, October 03, 2012 2:14 PM
To: Rider, Sharon
Subject: your Delivery

NATIONWIDE LEGAL, INC.
PROOF OF DELIVERY



Del: LICENSING AND ENFORCEMENT SECTION
1275 WEST WASHINGTON
PHOENIX AZ 85007
To See: EMMA LEHNER

Del Date: 10/03/12
Time: 14:09

Sign: DEL/DEBBIE

Nellie Reed, Operations Clerk
SACKS TIERNEY P.A. Attorneys
a Member of Meritas Law Firms Worldwide
4250 N. Drinkwater Blvd., Fourth Floor
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Janice K. Brewer
Governor

Joey Ridenour
Executive Director

Arizona State Board of Nursing

4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655
Phone (602) 771-7800 Fax (602) 771-7888
E-Mail: arizona@azbn.gov
www.azbn.gov

October 17, 2012

Roxann S. Gallagher, Attorney
Sacks Tierney P.A.
4250 North Drinkwater Boulevard,
4th floor
Scottsdale, AZ 85251-3693

Re: Arizona State Board of Nursing
September 2012 Board Meeting Results

Dear Ms. Gallagher:

Please be advised that on September 20, 2012 in open meeting the Arizona State Board of Nursing unanimously voted, based upon the findings of fact and statute/rule violations identified in the investigative report, to issue Notice of Charges and proceed to hearing. The Board directed Assistant Attorney General Staff to provide legal advice regarding notices on the website.

Should you have any questions or concerns, please contact Debra McGinty, Education Program Administrator 602-771-7877 or dmcginty@azbn.gov.

Sincerely,

(b)(6)

Joey Ridenour RN, MS
Executive Director

Pamela K. Randolph RN, MS
Associate Director of Education and
Evidence Based Regulation

JR:PKR:hme

cc: Debra L. Colbert, RN, MSN, Ed.

Gallagher, Roxann

From: Debra McGinty <dmcginty@azbn.gov>
Sent: Tuesday, September 04, 2012 6:11 PM
To: Gallagher, Roxann
Cc: Pam Randolph; gmcworter@itt-tech.edu; dcolbert@itt-tech.edu; SCiardullo@itt-tech.edu; Emma Mamaluy
Subject: Request for Complaint Forms
Attachments: Breckinridge LTR RESPONSE Complaint form request.doc

Dear Roxann,
Attached please find my response to your request for complaint forms.

Debra J. McGinty RN PhD
Education Program Administrator
Arizona State Board of Nursing
4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655
602-771-7877
602-771-7888 (Fax)
dmcginty@azbn.gov

From: Gallagher, Roxann [mailto:Gallagher@SacksTierney.com]
Sent: Tuesday, September 04, 2012 2:55 AM
To: Debra McGinty
Cc: Gottfredson, Bryan; gmcworter@itt-tech.edu; dcolbert@itt-tech.edu; SCiardullo@itt-tech.edu
Subject: FW: Program Request for Complaint Information Form [ST-EMM.FID46748]

Dr. McGinty,

It seems that you were out of town on August 22nd when I sent the email below (clarifying Debra Colbert's numerous requests for copies of Board complaints) and did not return until August 28th. Now that you have been back in the office a few days, can you please provide the requested documentation? As you know, we need to prepare for the Board's next meeting and obviously find it much easier to address concerns when we have copies of the actual complaints that were submitted to the Board (redacted to protect privacy of course). For your convenience, to save administrative expense, and to protect confidentiality, I can personally pick them up today, Tuesday, September 4th. Please advise. Thank you,

Roxann S. Gallagher
SACKS TIERNEY P.A., Attorneys,
a Member of **Meritas** Law Firms Worldwide
4250 N. Drinkwater Blvd., Fourth Floor
Scottsdale, Arizona 85251-3693
480.425.2673 DID Telephone
480.425.4973 DID Facsimile
Roxann.Gallagher@SacksTierney.com
www.sackstierney.com/gallagher

From: Gallagher, Roxann
Sent: Wednesday, August 22, 2012 6:06 PM
To: Debra McGinty; Debra Colbert at 119

Cc: Eugene McWhorter at 119; Susan Ciardullo at 119; Stephie Shaner Guptill at HQ; Scrawford@itt-tech.edu;
Gottfredson, Bryan
Subject: RE: Program Request for Complaint Information Form [ST-EMM.FID46748]

Dr. McGinty,

We have received your letter dated August 21, 2012 with a list of 33 complaints listed. While that information is very helpful, pursuant to Ms. Colbert's written request on the form you provided and in accordance with your previous policy, we would like copies of each of the complaint forms evidencing whether in each of the 33 instances an actual complaint from an aggrieved party or other individual demonstrating that the specific allegation was made to the Board in accordance with Section 32-1664(B) of the Arizona Revised Statutes.

If such a complaint form is not available for any of the 33 numbered complaints, please provide a brief description of the source of the complaint (e.g., that the allegation is not based upon the receipt of an actual complaint from an aggrieved or third party but is instead more properly a finding of Board's staff based upon Board staff's interviews or investigations). I understand that the identities of the complainants may be withheld and we are not requesting that information at this time. Essentially I want to know whether each of the 33 complaints were actually submitted to Board staff or developed by Board staff.

Please let me know if you have any questions regarding this clarification. Thank you for your cooperation.

Roxann S. Gallagher
SACKS TIERNEY P.A., Attorneys,
a Member of **Meritas** Law Firms Worldwide
4250 N. Drinkwater Blvd., Fourth Floor
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NOTICE: This e-mail may contain confidential and privileged material for the sole use of the intended recipient. Any review or distribution by others is strictly prohibited. If you are not the intended recipient, please contact the sender and delete and destroy all copies. To ensure IRS compliance, any tax advice included in this e-mail may not be used by any recipient to avoid penalties imposed under the Internal Revenue Code, state or local tax law provisions. Thank you.

From: Debra McGinty [<mailto:dmcginty@azbn.gov>]
Sent: Tuesday, August 21, 2012 12:39 PM
To: Debra Colbert at 119
Cc: Gallagher, Roxann; Eugene McWhorter at 119; Susan Ciardullo at 119; Stephie Shaner Guptill at HQ
Subject: RE: Program Request for Complaint Information Form

Thanks, Debra.
The complaints against the program went out this morning.
I'm sorry for your trouble.

Debra J. McGinty RN PhD
Education Program Administrator
Arizona State Board of Nursing
4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655
602-771-7877
602-771-7888 (Fax)
dmcginty@azbn.gov

From: Debra Colbert at 119 [<mailto:DColbert@itt-tech.edu>]
Sent: Tuesday, August 21, 2012 11:26 AM
To: Debra McGinty
Cc: Gallagher, Roxann; Eugene McWhorter at 119; Susan Ciardullo at 119; Stephe Shaner Guptill at HQ
Subject: RE: Program Request for Complaint Information Form

Dr. McGinty,

Please make note that I did fax the form that you attached yesterday to the number listed on your email yesterday. I have since taken the 3rd email that you sent me and faxed it to the number I faxed to yesterday that now appears on the updated form, I have emailed you this copy and we are Fed Ex overnighting the original.

Sincerely,

Debra Colbert, RN, MSN Ed.
Nursing Chair
Breckinridge School of Nursing
@ ITT Technical Institute
10220 N. 25th Ave, Suite 100
Phoenix, AZ 85021
(602) 749-7926 Office
(602) 749-7950 Fax



Success is not final, failure is not fatal: it is the courage to continue that counts.
Winston Churchill

From: Debra McGinty [<mailto:dmcginty@azbn.gov>]
Sent: Tuesday, August 21, 2012 10:54 AM
To: Debra Colbert at 119
Cc: Gallagher, Roxann; Eugene McWhorter at 119; Susan Ciardullo at 119; Stephe Shaner Guptill at HQ
Subject: RE: Program Request for Complaint Information Form

My apologies, Debra.
I attached the wrong document. Please find the updated document attached.

Debra J. McGinty RN PhD
Education Program Administrator
Arizona State Board of Nursing
4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655
602-771-7877
602-771-7888 (Fax)
dmcginty@azbn.gov

From: Debra Colbert at 119 [<mailto:DColbert@itt-tech.edu>]
Sent: Tuesday, August 21, 2012 10:49 AM
To: Debra McGinty
Cc: Gallagher, Roxann; Eugene McWhorter at 119; Susan Ciardullo at 119; Stephe Shaner Guptill at HQ
Subject: RE: Program Request for Complaint Information Form

Dr. McGinty, I printed the version you sent yesterday at 3:33 PM and compared it to the one you sent later at 4:32 PM and I am finding no differences in them. Can you guide me to those differences, please?

Thank you,

Debra Colbert, RN, MSN Ed.

Nursing Chair

Breckinridge School of Nursing

@ ITT Technical Institute

10220 N. 25th Ave, Suite 100

Phoenix, AZ 85021

(602) 749-7926 Office

(602) 749-7950 Fax



Success is not final, failure is not fatal: it is the courage to continue that counts.
Winston Churchill

From: Debra McGinty [<mailto:dmcginty@azbn.gov>]
Sent: Tuesday, August 21, 2012 10:42 AM
To: Debra Colbert at 119
Subject: RE: Program Request for Complaint Information Form

Debra

Please if you will do me the favor to execute the revised form and send it to me as the heading is incorrect.

Debra J. McGinty RN PhD
Education Program Administrator
Arizona State Board of Nursing
4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655
602-771-7877
602-771-7888 (Fax)
dmcginty@azbn.gov

From: Debra Colbert at 119 [<mailto:DColbert@itt-tech.edu>]
Sent: Tuesday, August 21, 2012 10:39 AM
To: Debra McGinty
Cc: Gallagher, Roxann; Eugene McWhorter at 119; Susan Ciardullo at 119; Stephe Shaner Guptill at HQ
Subject: RE: Program Request for Complaint Information Form

Dr. McGinty,

I took the form you sent me yesterday and did exactly as you requested. The copy went into the mail yesterday as well the fax and emailed versions. Will they not suffice?

Sincerely,

Debra Colbert, RN, MSN Ed.

Nursing Chair

Breckinridge School of Nursing

@ ITT Technical Institute

10220 N. 25th Ave, Suite 100
Phoenix, AZ 85021
(602) 749-7926 Office
(602) 749-7950 Fax



Success is not final, failure is not fatal: it is the courage to continue that counts.
Winston Churchill

From: Debra McGinty [<mailto:dmcginty@azbn.gov>]
Sent: Monday, August 20, 2012 4:32 PM
To: Debra Colbert at 119
Subject: Program Request for Complaint Information Form
Importance: High

Debra -
Please forgive me. Please if you would disregard the previous form attached and execute the form attached to this email.
It is more current than the previous. Thank you.

Debra J. McGinty RN PhD
Education Program Administrator
Arizona State Board of Nursing
4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655
602-771-7877
602-771-7888 (Fax)
dmcginty@azbn.gov



Janice K. Brewer
Governor

Joey Ridenour
Executive Director

Arizona State Board of Nursing

4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655
Phone (602) 771-7800 Fax (602) 771-7888
E-Mail: arizona@azbn.gov
www.azbn.gov

September 4, 2012

Roxann Gallagher
Sacks Tierney P.A.
4250 North Drinkwater Blvd, Fourth Floor
Scottsdale, AZ 85251

Re: Request for complaints

Dear Ms. Gallagher:

This letter is in response to your email dated August 22, 2012 requesting specific complaints from an aggrieved party or other individual demonstrating that the specific allegation was made to the Board in accordance with Section 32-1664(B), specifically:

A regulated party and a health care institution as defined in section 36-401 shall, and any other person may, report to the board any information the licensee, certificate holder, health care institution or individual may have that appears to show that a regulated party or applicant is, was or may be a threat to the public health or safety.

This is commonly referred to as the "Duty to Report" statute which informs regulated parties of the mandatory requirement to report public health and safety threats to the Board. The Board's authority to investigate stems from A.R.S. § 32-1606 (C):

The board may conduct an investigation on receipt of information that indicates that a person or regulated party may have violated this chapter or a rule adopted pursuant to this chapter. Following the investigation, the board may take disciplinary action pursuant to this chapter.

When Board staff discovers a potential Nurse Practice Act violation during the course of an investigation, staff may pursue the new violation as a new complaint. When persons provide confirmation or clarification of information received by the Board, new allegations may become evident and are investigated. I did not complete separate complaint forms for every allegation but reported allegations as they emerged during the course of the investigation. The information provided to the Breckinridge School of Nursing is a summary of complaints received during the course of the investigation and is consistent with the complaint allegations that will be provided to the Board.

Sincerely,

Debra J. McGinty
Education Program Administrator

cc: Pamela Randolph, Associate Director, Arizona State Board of Nursing
Emma Mamaluy, Assistant Attorney General



Janice K. Brewer
Governor

Joey Ridenour
Executive Director

Arizona State Board of Nursing

4747 North 7th Street, Suite 200
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Phone (602) 771-7800 Fax (602) 771-7888
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www.azbn.gov

September 6, 2012

Debra L. Colbert, RN, MSN Ed.
Breckinridge School of Nursing
@ ITT Technical Institute
10220 North 25th Avenue, Suite 100
Phoenix, Arizona 85201

Re: September 2012 Meeting of the Arizona State Board of Nursing

Dear Ms. Colbert:

Please be advised that the meeting of the Arizona State Board of Nursing will be held on September 19 and 20, 2012 beginning at 8:00 a.m. each day. You may view the agenda at www.azbn.gov approximately two weeks prior to the Board meeting. The investigation against Breckinridge School of Nursing @ ITT Technical Institute is tentatively scheduled for September 20, 2012 to follow the hearing department items at 8:00 am.

If you or another representative from the Breckinridge School of Nursing @ ITT Technical Institute and/or your legal representative choose to attend the meeting, you may make an oral presentation to the Board not to exceed five minutes. You may also choose to be available for questions, if any, from the Board; however, you are not required to attend, and no inferences will be made from your decisions in that regard.

Should you have any questions or concerns please contact Debra McGinty, Education Program Administrator at 602-771-7877 or dmcginty@azbn.gov.

Sincerely,

(b)(6)

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

JR/hme

SacksTierney P.A.

ATTORNEYS

James W. Armstrong	Steven M. Goldstein	Daniel B. Mestaz
Adrian L. Barton	Bryan J. Gottfredson	Phoebe Moffatt
Steven R. Beeghley	Gaye L. Gould	Sharon S. Moyer
Stephen Aron Benson	John K. Hanson	Michael R. Rooney
Brian E. Ditsch	Helen R. Holden	David L. Rose
Judith M. Dworkin	Robert G. Kimball	Laura Schiesl
Patty A. Ferguson	Michael C. Lamb	Sharon B. Shively
Roxann S. Gallagher	Stephen A. Lenn	David C. Tierney
Jeffrey D. Gardner	Jeffrey S. Leonard	Julianne C. Wheeler
	Shannon M. Mason	Aaron G. York

September 19, 2012

Seymour Sacks (1932 – 2011)

Marvin S. Cohen (1931 – 2009)

Gary E. Pace, CLM, Executive Director

VIA E-MAIL AND CERTIFIED MAIL



Writer's Direct Line: 480.425.2673

Writer's Direct Facsimile: 480.425.4973

Writer's E-mail: Roxann.Gallagher@SacksTierney.com

Joey Ridenour RN, MSN, Ed.
Executive Director
Arizona State Board of Nursing
4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655

Emma Lehner Mamaluy
Assistant Attorney General
Licensing and Enforcement Section
Office of the Arizona Attorney General
1275 West Washington
Phoenix, Arizona 85007

Re: Breckenridge School of Nursing at ITT Technical Institute "Under Investigation Status" with the Arizona State Board of Nursing.

Dear Ms. Ridenour and Ms. Mamaluy:

As a result of the Arizona State Board of Nursing's (the "Board") November 2011 investigation of the Breckenridge School of Nursing at ITT Technical Institute (the "School"), the Board proposed that the School execute a consent agreement requiring the School to suspend student admissions indefinitely until the Board unilaterally decided that the School could again enroll students. For a variety of reasons, the School disagreed with the legal and factual basis for the Board's proposal, declined to enter into the proposed consent agreement, and instead opted to exercise its legal right to participate in a full evidentiary hearing relating to the Board's determinations through an administrative hearing in accordance with Arizona Administrative Procedure Act, A.R.S. § 41-1001 *et seq.*

Under A.R.S. §§ 41-1092.03(B) and 41-1092.05(A)(2), the Board was required to hold an administrative hearing within 60 days of the School's November 2011 request. In violation of the aforementioned statutes, a hearing has never been held or even scheduled. In a letter to me from Emma Mamaluy, Assistant Attorney General, dated July 25, 2012, six months after the requested administrative hearing was required to be held, Ms. Mamaluy explained that since there was, at that time, then an additional open investigation of the School, in an effort "to be efficient" the Board was

waiting to hold the hearing while it could “combine the cases” against the School, and that it “does not make sense to pursue two separate hearings relatively close together in time for the same entity.”

First, it shocks the conscience that the Board’s own attorney has acknowledged that the Board *will* find a potential violation of law necessitating a hearing even though the new investigation *had not yet been completed*. Furthermore, at the time of Ms. Mamaluy’s letter, the new allegations against the School had not been brought before the Board and the School certainly had not (and could not have) responded or provided any information to the Board relating to the new investigations.

When the outcome of an investigation against a school is a foregone conclusion (such as the case here), there is both a gross denial of due process and a clear demonstration of the Board staffs’ bias.¹ Even more troubling however, is that there is no legal authority permitting the Board to unilaterally and indefinitely delay the hearing for its own administrative convenience, particularly in light of the Board’s continuing unlawful conduct during the time that the School’s legal right to a timely administrative hearing has been and continues to be ignored.

More specifically, soon after the School declined to sign the consent agreement and requested a meaningful administrative hearing, Board staff elected to publicly declare that the School was “under investigation” in bold red underlined font on the Board’s official website.² As explained by Pamela Randolph, Associate Director of Education and Evidence Based Regulation, in a letter to me dated August 3, 2012:

Relative to the “under investigation” status of the program, there were no other nursing programs that met criteria for this status in the past 13 years. The status specifically applies to the situation where an investigative report is reviewed by the Board and the Board offers a consent agreement for discipline. If the party does not sign the consent, the status is changed to “under investigation” while the case is pending an administrative

¹ Other Board staff have demonstrated a similar disregard for due process and the need to objectively conduct a full and fair factual inquiry before Board action is taken. On May 16, 2012, Pamela Randolph, Associate Director of Education and Evidence Based Regulation, prematurely terminated two interviews with School representatives because she did not want to provide a legal basis for her inquiries into the School’s affairs that were beyond the Board’s scope. As she exited the first interview, Ms. Randolph confidently pronounced that the School would “go to hearing” on the issues (regardless of what information or evidence was submitted to the Board from the School). Because Ms. Randolph essentially controls the evidence and the outcomes of Board meetings by producing the one-sided investigative reports, commentary, and recommendations that the Board relies on, the School is extremely concerned with Ms. Randolph’s willingness to seek Board action prior to fully developing the facts and prior to receiving the School’s full responses to the Board staff’s concerns. This failure to conduct an adequate and meaningful investigation into the relevant facts is an abuse of discretion. *See State v. Thomas*, 142 Ariz. 201, 688 P.2d 1093 (App. 1984).

²Notably, the font used in connection with the School’s “under investigation” tag is the only font that is underlined. A current printout from the website is attached hereto as Exhibit A.

hearing. As you will see from the documents provided, all other programs that were offered a consent for discipline signed the consent agreement.

As an initial matter, at the time the “under investigation” status was posted, there was in fact no open investigation against the school. The consent agreement was offered to the School following a completed investigation, as evidenced by the completed investigative report, and therefore there was then no ongoing investigation by the Board. The posting of this phrase, without a factual or legal basis, has injured the character and reputation of the School and continues to cause the School significant damages.

Additionally, there is absolutely no authority under Arizona law permitting the Board to devise, much less publicly post, an “under investigation” castigation as a direct result of a regulated party electing to exercise its legally mandated right to present evidence through an administrative hearing.³ This practice is a dangerous abuse of administrative power. As articulated by Ms. Randolph, the Board does not utilize the “under investigation” status in instances where the Board is investigating a complaint. Instead a regulated party can only achieve an “under investigation” designation when they disagree with Board findings and attempt to exercise their right to have the Board’s findings reviewed through an administrative hearing. The Board doesn’t list the status of these special offenders as “pending administrative hearing” but instead chooses the inaccurate and much more perjorative label “under investigation.” This practice deliberately misinforms the public and intentionally and unfairly punishes regulated parties who dare to seek the due process protections set forth in Arizona’s Administrative Procedure Act.

Every visitor to the Board’s website is purposefully given the impression that the School is guilty of some unspecified misconduct prior to the School being given any element of procedural due process. Thus, the “under investigation” status has the same effect as hanging a “guilty” sign around a criminal defendant who is *yet to be tried*. The Arizona legislature has specifically recognized the irreparable harm resulting from these types of official website postings and prohibits them. A.R.S. § 32-3214 prohibits the Board from posting any nondisciplinary order or action, which would include Board action to commence or continue an investigation and the pendency of an administrative hearing, on its website and instead makes records of these actions available upon public request.⁴ In doing so, the Arizona statutes provide a mechanism to protect the public interest

³ If Ms. Randolph’s letter of August 3, 2012 is intended to prove that publicly declaring regulated parties who refuse to sign a consent agreement to be “under investigation” is an existing agency practice (rather than an arbitrary designation used only once in 13 years with the effect of punishing the School), then the practice likely constitutes a rule under the Administrative Procedure Act and must comply with certain rulemaking procedures in order to be valid.

⁴ A.R.S. § 32-3214 states, in relevant part:

A. If a health profession regulatory board dismisses a complaint, the record of that complaint is available to that regulatory board and the public pursuant to section 39-121 but may not appear on the board's website. For the purposes of this subsection, “dismisses a complaint” means that a board does not

without publicly disparaging a regulated party where no misconduct has been *proven*. The Board's actions in this instance contravene A.R.S. § 32-3214 and the important public policy behind this law.

On July 19, 2012, the School formally requested that the Board remove the "under investigation" designation on the Board's website and notified the Board of the Board's failure to comply with Arizona law. Since that time, the Board has ignored the School's request, has updated its website and kept the offending language, and has notified the School that it intends to keep the "under investigation" status until the administrative hearing is held, which the Board has unlawfully refused to schedule. The Board's conduct is a blatant attempt to force the School to either voluntarily or involuntarily cease or suspend its Arizona operations. To date the School has tolerated the Board's misconduct in an effort to reach an expeditious, full, and fair resolution to all open issues between the School and Board. However, it has become clear that the Board has no intention of corralling its abusive practices. The School can no longer idly sit by as the Board impugns the reputation of the School, its students, staff and alumni, wrongfully interferes with the School's business relationships and prospects and misleads the public regarding the School's status for so long as the Board chooses. The defamatory "under investigation" status discourages students from enrolling in the School and deprives the School of significant revenue that it would otherwise be earning. The School's lost revenue will be assessed against the Board as damages should the School initiate a legal action based on the Board's unlawful conduct.

The School again demands that the Board immediately remove the misleading "under investigation" status on its website.

issue a disciplinary or nondisciplinary order or action against a licensee or certificate holder.

B. If a health profession regulatory board issues a nondisciplinary order or action against a licensee or certificate holder, the record of the nondisciplinary order or action is available to that board and the public pursuant to section 39-121, but may not appear on the board's website, except that a practice limitation or restriction, and documentation relating to that action, may appear on the board's website.

C. If a health profession regulatory board maintains a website, the board must display on its website a statement that a person may obtain additional public records related to any licensee or certificate holder, including dismissed complaints and nondisciplinary actions and orders, by contacting the board directly.

A.R.S. § 32-1601(8) defines "disciplinary action" as any combination of the following: (a) a civil penalty for each violation of this chapter, not to exceed one thousand dollars for each violation; (b) restitution made to an aggrieved party; (c) a decree of censure; (d) a conditional license or a conditional approval that fixed a period and terms of probation; (e) limited licensure; (f) suspension of a license, a certificate or an approval; (g) voluntary surrender of a license, a certificate or an approval; and (h) revocation of a license, a certificate or an approval.

September 19, 2012
Page 5

Sincerely,

SACKS TIERNEY P.A.

(b)(6)

Roxann S. Gallagher

RSG:pn

Cc: Shawn Crawford, David Catalano, Stephe Guptill, Debra Colbert, Gene McWhorter, Susan Ciardullo, Bryan Gottfredson

September 19, 2012
Page 6

EXHIBIT A

September 19, 2012 PRINTOUT FROM THE BOARD'S OFFICIAL WEBSITE



Joey Ridenour
Executive Director

ARIZONA STATE BOARD OF NURSING Approved Pre-licensure Nursing Programs

PRACTICAL NURSING, ASSOCIATE DEGREE RN,
ASSOCIATE DEGREE MULTIPLE EXIT,
BACCALAUREATE DEGREE,
MASTERS DEGREE

The following is a list of all practical nursing programs and registered nursing programs currently approved by the Arizona State Board of Nursing. For additional information and program admission requirements please visit the AZBN website at www.azbn.gov under the 'Resources' drop down menu and then under 'Educational Resources' or the individual program websites listed below.

NCLEX® quarterly reports, individual program pass rates, and additional information are available on the AZBN website. To view all reports click [here](#).

Type of Program	Program Director/ Administrator	NCLEX Code	Institutional Accreditation	National Nursing Program Accreditation	AZBN Status
PRACTICAL NURSING					
Brown Mackie College – Tucson 4585 E. Speedway Boulevard Tucson, Arizona 85712 520-319-3300 www.brownmackie.edu	Deborah L. Bird, RN MSN DSD PHN CCM CRRN ABDA Practical Nursing Program Administrator	PN 96-115	National Accrediting Council for Independent Colleges and Schools	N/A	* Provisional Approval 11/2010
East Valley Institute of Technology 1601 W. Main Mesa, Arizona 85201 480-461-4001 www.evit.com	Ronda Doolen, RN Director, Practical Nursing Program	PN 96-130	National North Central Association Commission on Accreditation and School Improvement	N/A	Provisional Approval 11/2010
Estrella Mountain Community College/ SouthWest Skill Center 3000 N. Dysart Rd Avondale AZ 85023 (623) 535-2700 www.emc.maricopa.edu/swsc/	Sandy Maas, RN MSN Nursing Director Bruno Talerico, RN SWSC PN Program Manager	PN 96-110	Regional North Central Association of College Schools Higher Learning Commission	N/A	** Full Approval
Fortis College 555 North 18 th Street, Suite 110 Phoenix, Arizona 85006 602-254-3099 www.fortiscollege.edu	Cheryl Staats, MSN, RN Director of Nursing	PN 96-213	Accrediting Commission of Career Schools and College of Technology	N/A	Provisional Approval 9/2009 Notice of Deficiency
GateWay Community College Fast Track PN Program 108 N. 40 th Street Phoenix, AZ 85034 602-286-8531 www.gatewaycc.edu	Margi Schultz, RN, PhD Director, Nursing Division	PN 96-154	Regional North Central Association of College Schools Higher Learning Commission	N/A	Full Approval

* "Full approval" means the status granted by the Board when a nursing program, after graduation of its first class, demonstrates the ability to provide and maintain a program in accordance with the standards provided by A.R.S. Title 32, Chapter 15 and A.A.C. Title 4, Chapter 19, Article 2.

** "Provisional approval" is a type of approval granted to new programs before the admissions of students. It means that the program has demonstrated the ability to meet the standards of the Board (A.R.S. Title 32, Chapter 15 and A.A.C. Title 4, Chapter 19, Article 2).

*** National League for Nursing Accrediting Commission (NLNAC)

**** Commission on Collegiate Nursing Education (CCNE)

Type of Program	Program Director/ Administrator	NCLEX Code	Institutional Accreditation	National Nursing Program Accreditation	AZBN Status
PRACTICAL NURSING continued					
Maricopa Skill Center 1245 E. Buckeye Road Phoenix, AZ 85034-4101 602-238-4367 www.maricopaskillecenter.com	Rebecca Lorimor, MSN, RN Program Administrator	PN 96-192	Regional North Central Association of College Schools Higher Learning Commission	N/A	Full Approval
Mohave Community College 1801 Detroit Avenue Kingman, AZ 86401 928-681-5640; 928-718-7084 Fax www.mohave.edu	Janet Byrd, RN, MSN Nursing Administrator	PN 96-155	Regional North Central Association of College Schools Higher Learning Commission	N/A	Provisional Approval 5/2011
Pima Community College – CTD Health Occupations Programs 5901 South Calle Santa Cruz Tucson, AZ 85709-6370 520-206-5140 www.pima.edu/business/training-ctc/center/	David Kutzler RN, CNM, MS Advanced Program Coordinator, Health Occupations Program	PN 96-195	Regional North Central Association of College Schools Higher Learning Commission	N/A	Full Approval
Type of Program	Program Director/ Administrator	NCLEX Code	Institutional Accreditation	National Nursing Program Accreditation	AZBN Status
ASSOCIATE DEGREE RN					
Brown Mackie College – Phoenix 13430 North Black Canyon Highway Phoenix, Arizona 85029 602-337-3044 www.brownmackiecollege.edu	M. Kitty Rogers, RN, MS Nursing Program Administrator	RN 96-404	National Accrediting Council for Independent Colleges and Schools	N/A	Provisional Approval 7/2010
Breckinridge School of Nursing @ ITT Technical Institute 10220 North 25 th Avenue, Suite 100 Phoenix, Arizona 85201 602-749-7900; 602-749-7950 Fax www.itt-tech.edu	Debra L. Colbert, RN MSN Ed. Nursing Program Chair	RN 96-406	National Accrediting Council for Independent Colleges and Schools	N/A	Provisional Approval 8/2009 <u>Under Investiga- tion</u>
Carriington College 2701 West Bethany Home Road Phoenix, AZ 85017 602-433-1333 www.apollocollege.edu	Vicki Bradshaw, MSN, RN Program Administrator	PN 96-141 RN 96-411	National Accrediting Council for Independent Colleges and Schools	NLNAC	Full Approval
Everest College - Phoenix 10400 North 25 th Avenue, Suite 190 Phoenix, Arizona 85021 602-942-4141 ext. 2715 www.everestcollegephoenix.edu	Susan Gonda, MSN RN Campus Nursing Director	RN 96-416	Regional North Central Association of College Schools Higher Learning Commission	N/A	Full Approval

Type of Program	Program Director/ Administrator	NCLEX Code	Institutional Accreditation	National Nursing Program Accreditation	AZBN Status
ASSOCIATE DEGREE RN with APPROVAL FOR PN OPTION	The decision to offer the LPN option rests with the program. The Board does not require programs approved to offer the PN option to offer special coursework related to the option.				
Arizona Western College PO Box 929 Yuma, AZ 85364 Phone: (928) 317-6049 www.azwestern.edu	Mary Rhona Francoeur, RN, MSN Director of Nursing	PN 96-191 RN 96-499	Regional North Central Association of College Schools Higher Learning Commission	*** NLNAC	Full Approval
Central Arizona College 8470 North Overfield Road Coolidge, AZ 85228 520-494-5330 www.centralaz.edu	Cherrie Evans, MSN, FNP-C, APRN Director of Nursing	PN 96-152 RN 96-492	Regional North Central Association of College Schools Higher Learning Commission	NLNAC	Full Approval
Cochise College 901 North Colombo Sierra Vista, AZ 85635-2317 520-364-7943 www.cochise.edu	Jennifer Lakosil, RN, MSN, PNP Director of Nursing & Health Technology	PN 96-150 RN 96-494	Regional North Central Association of College Schools Higher Learning Commission	NLNAC	Full Approval
Coconino Community College 3000 N. 4 th Street Flagstaff, AZ 86004-1825 928-526-7665 www.coconino.edu	Donald Johnson, MS, RN Director of Nursing	PN 96-135 RN 96-425	Regional North Central Association of College Schools Higher Learning Commission	N/A	Full Approval
Eastern Arizona College 615 N. Stadium Avenue Thatcher, Arizona 85552 928-428-8396 www.eac.edu	Carolyn J. McCormies, RN, MSN, APRN BC Director of Nursing	PN 96-140 RN 96-402	Regional North Central Association of College Schools Higher Learning Commission	N/A	Full Approval
MaricopaNursing at Chandler-Gilbert Community College 2626 E. Pecos Road Chandler, Arizona 85225 480-732-7000 www.cgc.maricopa.edu	Jill Anderson, RN, MSN, MBA Nursing Director	PN 96-209 RN 96-445	Regional North Central Association of College Schools Higher Learning Commission	NLNAC	Full Approval
MaricopaNursing at Estrella Mountain Community College 3000 N. Dysart Rd Avondale AZ 85023 (623) 535-2700 www.emc.maricopa.edu	Sandy Maas, RN MSN Nursing Director	PN 96-211 RN 96-447	Regional North Central Association of College Schools Higher Learning Commission	NLNAC	Full Approval

*** National League for Nursing Accrediting Commission (NLNAC)

Type of Program	Program Director/ Administrator	NCLEX Code	Institutional Accreditation	National Nursing Program Accreditation	AZBN Status
ASSOCIATE DEGREE RN with APPROVAL FOR PN OPTION (continued)	Note: The decision to offer the LPN option rests with the program. The Board does not require programs approved to offer the PN option to actually offer the option.				
MaricopaNursing at GateWay Community College 108 N. 40 th Street Phoenix, AZ 85034 602-286-8531 www.gatewaycc.edu	Margi Schultz, PhD, RN, CNE Nursing Director	PN 96-207 RN 96-443	Regional North Central Association of College Schools Higher Learning Commission	NLNAC	Full Approval
MaricopaNursing at Glendale Community College 6000 W. Olive Avenue Glendale, Arizona 85302 623-845-3000 www.gcc.maricopa.edu	Susan Mayer, EdD MSN RNC Nursing Director	PN 96-212 RN 96-448	Regional North Central Association of College Schools Higher Learning Commission	NLNAC	Full Approval
MaricopaNursing at Mesa Community College 1833 W. Southern Avenue Mesa, AZ 85202 480 461-7262 www.mc.maricopa.edu Site at: Boswell Center no longer accepting new students	Deb Bitter, MSN, RN, CNE Nursing Director	PN 96-210 RN 96-446	Regional North Central Association of College Schools Higher Learning Commission	NLNAC	Full Approval
MaricopaNursing at Paradise Valley C.C. 18401 North 32 nd Street Phoenix, Arizona 85032 602-787-6500 www.pvc.maricopa.edu	Rose Dermody, MSN, RN Nursing Director	PN 96-206 RN 96-442	Regional North Central Association of College Schools Higher Learning Commission	NLNAC	Full Approval
MaricopaNursing at Phoenix College 1202 W. Thomas Road Phoenix, AZ 85013 602-285-7133 www.pc.maricopa.edu	Mátilda Chavez, RN, MSN Nursing Director	PN 96-205 RN 96-441	Regional North Central Association of College Schools Higher Learning Commission	NLNAC	Full Approval
MaricopaNursing at Scottsdale Community College 9000 East Chaparral Road Scottsdale, Arizona 85256 480-423-6000 www.scottsdalecc.edu	Nick DeFalco, RN, MSN Nursing Director	PN 96-208 RN 96-444	Regional North Central Association of College Schools Higher Learning Commission	NLNAC	Full Approval
Mohave Community College 1977 W. Acoma Lake Havasu City, AZ 86403 928-505-3378; 928-505-3369 Fax www.mohave.edu Sites: Kingman, Bullhead City, Colorado City, & Lake Havasu City	Linda Riesdorff, RN, MSN Associate Dean of Instruction	PN 96-151 RN 96-487	Regional North Central Association of College Schools Higher Learning Commission	NLNAC	Full Approval

Type of Program	Program Director/ Administrator	NCLEX Code	Institutional Accreditation	National Nursing Program Accreditation	AZBN Status
ASSOCIATE DEGREE RN with APPROVAL FOR PN OPTION (continued)	Note: The decision to offer the LPN option rests with the program. The Board does not require programs approved to offer the PN option to actually offer the option.				
Northland Pioneer College PO Box 610 Holbrook, AZ 86025-0610 928-532-6136 www.npc.edu Sites: Show Low and Winslow	Margaret Erdman, RN, MSN, CNE Dean of Nursing and Allied Health	PN 96-120 RN 96-400	Regional North Central Association of College Schools Higher Learning Commission	NLNAC	Full Approval
Pima Community College 2202 W. Anklam Road Tucson, AZ 85709-0150 520-206-6661 www.pima.edu	Marty Mayhew, MSN, RN Academic Dean – Nursing & Health Related Professions	PN 96-104 RN 96-490	Regional North Central Association of College Schools Higher Learning Commission	NLNAC	Full Approval
Pima Medical Institute Mesa Campus 941 S. Dobson Road Mesa, Arizona 85202 480-644-0267, ext. 6230 www.pmi.edu	Sharon Akes-Caves, RNBC, MS, MSN Nursing Program Director	PN 96-111 RN 96-401	National Accrediting Bureau of Health Education Schools	N/A	Full Approval
Pima Medical Institute Tucson Campus 40 N. Swan Road, Suite 200 Tucson, Arizona 85711 520-318-2214 or 520-318-2212 www.pmi.edu	Jeannine Hayduk, PhD, RN Nursing Program Director	PN 96-106 RN 96-403	National Accrediting Bureau of Health Education Schools	N/A	Provisional Approval 9/2008
Yavapai College 1100 E. Sheldon Street Prescott, AZ 86301 928-776-2255 www.yavapai.cc.az.us Sites: Prescott, Verde Campus LPN EXIT OPTION CURRENTLY NOT AVAILABLE	Christine Witbeck, RN, MS Associate Dean	PN 96-102 RN 96-496	Regional North Central Association of College Schools Higher Learning Commission	NLNAC	Full Approval

Type of Program	Program Director/ Administrator	NCLEX Code	Institutional Accreditation	National Nursing Program Accreditation	AZBN Status
BACCALAUREATE DEGREE					
Arizona State University College of Nursing and Healthcare Innovation 500 N. 3 rd Street Phoenix, AZ 85004-0698 602-496-2644 www.nursing.asu.edu Campus sites: ASU-Downtown- Phoenix, ASU-Mayo-Scottsdale	Teri Britt Pipe, PhD, RN Dean College of Nursing and Health Innovation	RN 96-554	Regional North Central Association of College Schools Higher Learning Commission	**** CCNE	Full Approval
Brookline College School of Nursing 2445 W. Dunlap Avenue, Suite 100 Phoenix, AZ 85021 602-589-1313 http://brooklinecollege.edu	Carol S. Kleinman, PhD, RN, NEA-BC Vice President Of Nursing Education	RN 96-505	National Accrediting Council for Independent Colleges and Schools	N/A	Provisional Approval 5/2010
Chamberlain College of Nursing 2149 W. Dunlap Avenue Phoenix, AZ 85021-2995 602-870-0981 www.chamberlain.edu	Kimberly LaMar, DNP Program Administrator Campus President	RN 96-500	Regional North Central Association of College Schools Higher Learning Commission	CCNE	Full Approval
Grand Canyon University PO Box 11097 3300 W. Camelback Road Phoenix, AZ 85061 602-639-6167 (Phoenix, Tucson) www.gcu.edu	Anne McNamara, PhD, RN Dean, College of Nursing and Health Sciences	RN 96-595	Regional North Central Association of College Schools Higher Learning Commission	CCNE	Full Approval
Northern Arizona University 202 E. Pine Knoll, Building 72 Post Office Box 15035 Flagstaff, AZ 86011 928-523-2671 www.nau.edu	Debera Thomas, DNS Dean, School of Nursing	RN 96-599	Regional North Central Association of College Schools Higher Learning Commission	CCNE	Full Approval
University of Arizona 1305 N. Martin Avenue Post Office Box 210203 Tucson, AZ 85721-0203 520-626-6154 www.nursing.arizona.edu	Joan Shaver, PhD, RN, FAAN Dean, College of Nursing	RN 96-553	Regional North Central Association of College Schools Higher Learning Commission	CCNE	Full Approval
University of Phoenix LPN to BSN programs 4615 E. Elwood Street Phoenix, AZ 85040 480-557-1140 www.phoenix.edu	Pam Fuller, EdD, RN Dean	RN 96-598	Regional North Central Association of College Schools Higher Learning Commission	CCNE	Full Approval

*** Commission on Collegiate Nursing Education (CCNE)

Type of Program	Program Director/ Administrator	NCLEX Code	Institutional Accreditation	National Nursing Program Accreditation	AZBN Status
MASTERS DEGREE					
University of Arizona Masters Entry into Nursing Practice 1305 N. Martin Avenue Post Office Box 210203 Tucson, AZ 85721-0203 520-626-6154 www.nursing.arizona.edu	Joan Shaver, PhD, RN, FAAN Dean, College of Nursing	RN 96-555	Regional North Central Association of College Schools Higher Learning Commission	CCNE	Full Approval

OUT OF STATE PRE-LICENSURE NURSING PROGRAMS

Under A.A. C. R4-19-301 (C) a nursing program in another state or territory that has been assigned a program code by the National Council of State Boards of Nursing and meets educational requirements that are substantially comparable to Board standards for nursing programs under R4-19-201-206 is considered an approved program for the purpose of licensure of graduates of the program.

Type of Program	Program Director/ Administrator	NCLEX Code	Institutional Accreditation	National Nursing Program Accreditation	AZBN Status
OUT OF STATE NURSING PROGRAMS APPROVED FOR CLINICAL IN AZ					
Case Western Reserve University Bolton School of Nursing 10900 Euclid Avenue Cleveland, OH 44106-4904 1-800-825-2540	Lyme Lotas, Ph.D Associate Dean for Undergraduate Programs	RN 20-505	Regional North Central Association of College Schools Higher Learning Commission	NLNAC	Approval 9/2005
Excelsior College 7 Columbia Circle Albany, New York 12203-5159 Phone: (888) 647-2388 For information regarding the 120 hour preceptorship requirement, Excelsior students should contact the Excelsior State Boards Office at stateboards@excelsior.edu	Mary Lee Pollard, PhD, RN Dean, School of Nursing	BS 03-419	Regional Commission on Higher Education of the Middle States Association of Colleges & Schools	NLNAC	Approval 1/2006
University of Mary 7500 University Drive Bismarek, ND 58504 Phone: (701) 355-8173	Glenda Reemts, PhD Chair, Nursing Division MSN RN BC	RN 65-597	Regional North Central Association of College Schools Higher Learning Commission	NLNAC	Approval 3/2007
University of Wisconsin--Oshkosh 800 Algoma Blvd Oshkosh, WI 54901-8660 Phone: (920) 424-1824 Accelerated second degree program with precepted clinical experiences in AZ.	Suzanne Marnocha, PhD Traditional Program Director	RN 50-581	Regional North Central Association of College Schools Higher Learning Commission	CCNE	Approval 5/2003

Sacks Tierney P.A.

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Seymour Sacks (1932 – 2011)

Marvin S. Cohen (1931 – 2009)

Gary E. Pace, CLM, Executive Director

September 19, 2012



*Sent Via Certified Mail, Return Receipt Requested
and by Email*

Ms. Joey Ridenour
Executive Director

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Ms. Pamela Randolph
Associate Director of Education and Evidence
Based Regulation
Arizona State Board of Nursing
4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655
prandolph@azbn.gov

Re: Breckinridge School of Nursing at ITT Institute of Technology ("School") adv. Arizona State Board of Nursing ("Board")

Dear Ms. Ridenour and Ms. Randolph:

In connection with the School's claims against the Board and the possibility of an imminent lawsuit against the Board, the Board is obligated to preserve and retain all paper files and electronically stored information ("ESI") related to the School, in the broadest sense. The purpose of this letter is to provide you with an outline of the Board's preservation obligations and to provide recommendations for properly retaining all relevant information. As retaining print documents is more-straight forward, the bulk of this letter will focus on preserving ESI.

ESI Preservation Duties

The ESI to be preserved resides not only in areas of electronic, magnetic and optical storage media reasonably accessible to the Board, but also in areas you may deem not reasonably accessible. The Board is obliged to preserve potentially discoverable evidence from both these sources of ESI, even if you do not anticipate producing such ESI.

Thus, the Board must preserve in electronic format all data relevant to the subject matter of the potential lawsuit, or reasonably calculated to lead to the discovery of admissible evidence, that is contained within digital or analog electronic files, whether or not hard copies exist, including:

- Active data (i.e., data immediately and easily accessible on the Board's systems today);
- Archived data (i.e., data residing on backup tapes or other storage media);
- Deleted data (i.e., data that has been deleted from a computer hard drive but is recoverable through computer forensic techniques); and
- Legacy data (i.e., data created on old or obsolete hardware or software).

The Board must also preserve computers, other hardware, and media that may contain relevant data, including but not limited to:

- All electronic processing systems, even if they are replaced. This includes computer servers, stand-alone personal computers, hard drives, laptops, PDAs, and other electronic processing devices.
- Magnetic, optical or other storage media, including the hard drives or floppy disks used by the Board or the Board's employee computers.
- Backup media (i.e., other hard drives, backup tapes, floppies, cartridges, CD-ROMs) and the software necessary to reconstruct the data contained on the media.
- Archived media. Please act immediately to preserve discoverable ESI, including ESI that, for now, you may not believe is reasonably accessible.

Suspension of Routine Destruction

Adequate preservation of ESI requires more than simply refraining from efforts to destroy or dispose of such evidence. The Board must also intervene to prevent loss due to routine operations and employ proper techniques and protocols suited to protection of ESI. Be advised that sources of ESI are altered and erased by the continued use of computers and other devices.

Accordingly, it is necessary to immediately identify and modify or suspend features of the Board's information systems and devices that, in routine operation, operate to cause the loss of potentially relevant ESI, including the rotation, recycling or deletion of backup media that may contain any data relevant to the potential litigation. Examples of such features and operations that may delete discoverable ESI include:

- Purging the contents of e-mail repositories by age, capacity or other criteria;
- Using data or media wiping, disposal, erasure or encryption utilities or devices;
- Overwriting, erasing, destroying or discarding back up media;
- Re-assigning, re-imaging or disposing of systems, servers, devices or media;
- Running antivirus or other programs effecting wholesale metadata alteration;
- Releasing or purging online storage repositories;

- Using metadata stripper utilities;
- Disabling server or IM logging; and,
- Executing drive or file defragmentation or compression programs.

If your document retention policy previously resulted in the destruction of electronically stored information that can still be reasonably recovered, please recover this information immediately. If it is possible to recover information for a significant period of time, please contact me to discuss the relevant period of time for recovery.

Preservation in Native Form

You should anticipate that certain ESI, including Microsoft Office documents and any spreadsheets and databases, should be preserved and produced in the form or forms in which it is ordinarily maintained. Accordingly, please preserve ESI in such native forms, and do not select methods to preserve ESI that remove or degrade the ability to search the Board's ESI by electronic means or make it difficult or burdensome to access or use the information efficiently in the potential litigation.

Metadata

The Board should also anticipate the need to disclose and produce system and application metadata and act to preserve it. System metadata is information describing the history and characteristics of other ESI. This information is typically associated with tracking or managing an electronic file and often includes data reflecting a file's name, size, custodian, location and dates of creation and last modification or access. Application metadata is information automatically included or embedded in electronic files but which may not be apparent to a user, including deleted content, draft language, commentary, collaboration and distribution data and dates of creation and printing. Be advised that metadata may be overwritten or corrupted by careless handling or improper steps to preserve ESI. For electronic mail, metadata includes all header routing data and Base 64 encoded attachment data, in addition to the To, From, Subject, Received Date, CC and BCC fields.

Servers

With respect to servers like those used to manage electronic mail (e.g., Microsoft Exchange, Lotus Domino) or network storage (often called a user's "network share"), the complete contents of each user's network share and e-mail account should be preserved (i.e., for each user whose share may contain relevant information).

Home Systems, Laptops, Online Accounts and Other ESI Venues

Please also determine if any home or portable systems may contain potentially relevant data. To the extent that directors, administrators, officers or employees have sent or received potentially relevant e-mails or created or reviewed potentially relevant documents away from the office, the Board must preserve the contents of systems, devices and media used for these purposes (including

not only potentially relevant data from portable and home computers, but also from portable thumb drives, CD disks and the user's PDA, smart phone, voice mailbox or other forms of ESI storage). Similarly, if directors, administrators, employees or officers used online or browser-based e-mail accounts or services (such as AOL, Gmail, Yahoo Mail, MSN Mail or the like) to send or receive potentially relevant messages and attachments, the contents of these account mailboxes (including Sent, Deleted and Archived Message folders) should be preserved. While you do not need to forensically image the hard drives of every administrator, director, officer or employee, the hard drives and other media of the "key players" in this action should be sequestered and preserved to ensure the preservation of discoverable ESI.

Ancillary Preservation

The Board must preserve documents and other tangible items that may be required to access, interpret or search potentially relevant ESI, including logs, control sheets, specifications, indices, naming protocols, file lists, network diagrams, flow charts, instruction sheets, data entry forms, abbreviation keys, user ID and password rosters or the like.

Similarly, the Board must preserve any passwords, keys or other authenticators required to access encrypted files or run applications, along with the installation disks, user manuals and license keys for applications required to access the ESI.

The Board must also preserve any cabling, drivers and hardware if needed to access or interpret media on which ESI is stored. This includes tape drives, bar code readers, zip drives and other legacy or proprietary devices.

Paper Preservation of ESI is Inadequate

As hard copies do not preserve electronic search ability or metadata, they are not an adequate substitute for, or cumulative of, electronically stored versions. If information exists in both electronic and paper forms, both forms should be preserved.

Agents, Attorneys and Third Parties

The Board's preservation and production obligations extend beyond ESI in its care, possession or custody, and includes ESI in the custody of others that is subject to the Board's direction or control. Accordingly, please notify any current agent, attorney, administrator, director, officer, employee, custodian or contractor in possession of potentially relevant ESI or other documents to preserve such data to the full extent of your obligation to do so, and take reasonable steps to secure their compliance.

You must also contact any former agents, administrator, director, officer, employees, attorneys, custodians or contractors in possession of any potentially relevant ESI or related documents. It is critical to express the importance of all potentially relevant evidence. Feel free to have them contact me if they need any further explanation of their duty to preserve information.

September 19, 2012
Page 5

It is important that the Board act diligently and in good faith to secure and audit compliance with this letter, including by distributing your own preservation letters as necessary and circulating this letter to persons who are custodians for the information described herein.

Please feel free to contact me if you have any questions regarding this letter.

Very truly yours,

SACKS TIERNEY P.A.

(b)(6)

Bryan J. Gottfredson

BJG:jrd

cc: Debra Colbert (via email to dcolbert@itt-tech.edu)
Gene McWhorter (via email to EmcWhorter@itt-tech.edu)
Shawn Crawford (via email to Scrawford@itt-tech.edu)
Roxann S. Gallagher (via email to Roxann.Gallagher@sackstierney.com)

SacksTierney P.A.
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September 20, 2012

Seymour Sacks (1932 – 2011)
Marvin S. Cohen (1931 – 2009)
Gary E. Pace, CLM, Executive Director

*Sent Via Certified Mail, Return Receipt Requested
and by Email*

Ms. Joey Ridenour
Executive Director
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Ms. Emma Mamaluy, Esq.
Assistant Attorney General
Licensing and Enforcement Section
Office of the Arizona Attorney General
4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655
emamaluy@azbn.gov

Re: Breckinridge School of Nursing at ITT Institute of Technology ("School") - Contested Cases

Dear Ms. Ridenour and Ms. Mamaluy:

We are in receipt of your letter to the School dated, September 6, 2012 whereby you have advised the School of a meeting on Thursday, September 20, 2012 before the Arizona State Nursing Board ("Board"). Your letter informs the School only that "the investigation against [the School] is scheduled for September 20, 2012..." and that a representative from the School may attend. The letter makes no mention of what the investigation (or discussion of an investigation) pertains to or what alleged complaints are to be addressed at the hearing. Furthermore, the letter fails to inform the School of what rule or law is allegedly at issue with regard to the investigation and under what authority the Board is permitted to investigate the School's activities. Without this information and adequate time to respond and present evidence to the Board on any identifiable allegations, the School has no meaningful opportunity to be heard by the Board in a contested case such as this.¹

¹ "Contested case" means any proceeding, including rate making, price fixing and licensing, in which the legal rights, duties or privileges of a party are required or permitted by law, other than this chapter, to be determined by an agency after an opportunity for an administrative hearing. See A.R.S. § 41-1001; *Oliver v. Arizona Department of Racing*, 147 Ariz. 83, 708 P.2d 764.

Pursuant to A.R.S. § 41-1092.03, the Board is required by law to provide the following information as it relates to any contested case:

- (1) Identify the statute or rule that is alleged to have been violated...;
- (2) Identify with reasonable particularity the nature of any alleged violation, including, if applicable, the conduct or activity constituting the violation;
- (3) Include a description of the party's right to request a hearing on the appealable agency action or contested case; and
- (4) Include a description of the party's right to request an informal settlement conference pursuant to § 41-1092.06

As of 7:00 p.m. on September 19, 2012, the Board had not provided the School with any information relating to the subject matter of the September 20, 2012 Board meeting. Should the School be subject to any further investigation or disciplinary action based on the September 20, 2012 Board meeting, the School will object based on the Board's failure to provide adequate and meaningful notice as required by law.

Very truly yours,

SACKS TIERNEY P.A.

(b)(6)

Bryan J. Gottfredson

BJG:jrd

cc: Debra Colbert (via email to dcolbert@itt-tech.edu)
Gene McWhorter (via email to EmcWhorter@itt-tech.edu)
Shawn Crawford (via email to Scrawford@itt-tech.edu)
Roxann S. Gallagher (via email to Roxann.Gallagher@sackstierney.com)



August 3, 2012

ID Code 00023908

Ms. Shameka S. Erby
Supervisor, Campus Services
ACICS
750 First Street, NE, Ste. 980
Washington, DC 20002-4223

Dear Ms. Erby

In reference to your letter dated July 25, 2012, I wish to inform you that we have retained legal counsel to address the bias manifested by the Arizona State Board of Nursing.

You will find attached the letter from our legal counsel to the Arizona State Board of Nursing. I believe this letter to be self explanatory.

We will continue to keep you updated as we move to a resolution with the Arizona State Board of Nursing.

If you have any questions, please contact me at (602) 749-7900.

Sincerely,

(b)(6)

Gene McWhorter
Director

Encl.

SacksTierney P.A.

ATTORNEYS

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August 2, 2012

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Gary E. Pace, CLM, Executive Director



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Ms. Joey Ridenour
Executive Director

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Ms. Pamela Randolph
Associate Director of Education and Evidence
Based Regulation
Arizona State Board of Nursing
4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655
prandolph@azbn.gov

Re: Request for Information

Dear Ms. Ridenour and Ms. Randolph:

In accordance with A.R.S. §§ 39-121 and 39-121-01(D)(1), please promptly mail, provide, or make available, copies of the following documents:

- ITEM 1. Every notice of deficiency issued to a nursing program pursuant to R4-19-11 of the Rules of the State Board of Nursing (the "Rules") in the last five (5) years by the Arizona State Board of Nursing (the "Board").
- ITEM 2. With respect to each notice of deficiency listed in ITEM 1, any and all records demonstrating the manner and period of time for which an "under investigation" or similar status for the relevant nursing program was displayed on the Board's website.
- ITEM 3. Any and all records reflecting the disposition of each notice of deficiency listed in in ITEM 1.

- ITEM 4. Any and all records reflecting all disciplinary actions, as defined in Section 32-1601(8) of the Arizona Revised Statutes, ordered by the Board against any nursing program in the last five (5) years.
- ITEM 5. With respect to disciplinary actions listed in ITEM 4, any and all records demonstrating the manner and period of time for which the disciplinary status of the relevant nursing program was displayed on the Board's website.
- ITEM 6. Any and all complaints received by the Board against any nursing program in the past five (5) year period.
- ITEM 7. With respect to each complaint listed in ITEM 6, any and all records demonstrating the manner and period of time for which an "under investigation" or similar status for the relevant nursing program was displayed on the Board's website.
- ITEM 8. Any and all records reflecting the disposition of each complaint listed in in ITEM 6.
- ITEM 9. Any and all records demonstrating the manner and period of time for each instance that the status of any nursing program has been listed as "under investigation" on the Board's website.
- ITEM 10. Any and all records establishing the Board's formal policy for determining when and how to: (1) indicate that a nursing program is "under investigation"; and (2) identify the program on the Board's website as "under investigation".
- ITEM 11. For purposes of reconciling our records, any and all records related to all complaints received by the Board against the Breckinridge School of Nursing at ITT Technical Institute (the "School").
- ITEM 12. For purposes of reconciling our records, any and all records reflecting the current status of all complaints listed in ITEM 10.
- ITEM 13. For purposes of reconciling our records, any and all records of each notice of deficiency issued to the School.
- ITEM 14. For purposes of reconciling our records, any and all records reflecting the current status of all complaints listed in ITEM 10.
- ITEM 15. All resurvey reports for any nursing program prepared pursuant to Section 32-1644(D) of the Arizona Revised Statutes.

ITEM 16. In accordance with R4-19-606(2) of the Rules, all hearing records filed or produced in connection with any administrative hearing related to any Board action taken or order issued against a nursing program in the past five (5) years.

ITEM 17. In accordance with Section 39-121(D)(2) of the Arizona Revised Statutes, an index of records or categories of records requested in ITEMS 1-16 that have been withheld and the reasons for withholding the same.

Please be advised that in accordance with Arizona law, "records" are defined as books, papers, maps, photographs, or other documentary materials regardless of physical form or characteristics, made or received by an governmental agency in pursuance of law or in connection with the transaction of public business and preserved by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of government. Examples of public records and other matters include calendars, reports, legal memoranda, policies and procedures, accident reports, training videos and materials, tape recordings of meetings where there are no written minutes, personnel records, case files, and data bases.

In order to reduce printing costs and lessen administrative burden, it will be sufficient if all of the records are scanned and emailed to this office or copied to a cd and mailed to us.

If you have any questions regarding the above requests, please contact Roxann Gallagher at (480) 425-2673 or Roxann.Gallagher@sackstierney.com.

Very truly yours,

SACKS TIERNEY P.A.

(b)(6)

Bryan J. Gottfredson

BJG:jrd

cc: Debra Colbert (via email to dcolbert@itt-tech.edu)
Gene McWhorter (via email to EmcWhorter@itt-tech.edu)
Shawn Crawford (via email to Scrawford@itt-tech.edu)
Roxann Gallagher (via email to Roxann.Gallagher@sackstierney.com)

SacksTierney P.A.

ATTORNEYS

James W. Armstrong
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Stephen Aron Benson
Brian E. Ditsch
Judith M. Dworkin
Patty A. Ferguson
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Julianne C. Wheeler
Aaron G. York

Seymour Sacks (1932 – 2011)

Marvin S. Cohen (1931 – 2009)

Gary E. Pace, CLM, Executive Director

August 2, 2012



*Sent Via Certified Mail, Return Receipt Requested
and by Email*

Ms. Joey Ridenour

Executive Director

Arizona State Board of Nursing

4747 North 7th Street, Suite 200

Phoenix, AZ 85014-3655

Arizona@azbn.gov

Writer's Direct Line: 480.425.2643
Writer's Direct Facsimile: 480.425.4943
Writer's E-mail: Bryan.Gottfredson@SacksTierney.com

*Sent Via Certified Mail, Return Receipt Requested
and by Email*

Ms. Pamela Randolph

Associate Director of Education and Evidence
Based Regulation

Arizona State Board of Nursing

4747 North 7th Street, Suite 200

Phoenix, AZ 85014-3655

prandolph@azbn.gov

Re: Request for Information

Dear Ms. Ridenour and Ms. Randolph:

In accordance with A.R.S. §§ 39-121 and 39-121-01(D)(1), please promptly mail, provide, or make available, copies of the following documents:

- ITEM 1. Every notice of deficiency issued to a nursing program pursuant to R4-19-11 of the Rules of the State Board of Nursing (the "Rules") in the last five (5) years by the Arizona State Board of Nursing (the "Board").
- ITEM 2. With respect to each notice of deficiency listed in ITEM 1, any and all records demonstrating the manner and period of time for which an "under investigation" or similar status for the relevant nursing program was displayed on the Board's website.
- ITEM 3. Any and all records reflecting the disposition of each notice of deficiency listed in in ITEM 1.

- ITEM 4. Any and all records reflecting all disciplinary actions, as defined in Section 32-1601(8) of the Arizona Revised Statutes, ordered by the Board against any nursing program in the last five (5) years.
- ITEM 5. With respect to disciplinary actions listed in ITEM 4, any and all records demonstrating the manner and period of time for which the disciplinary status of the relevant nursing program was displayed on the Board's website.
- ITEM 6. Any and all complaints received by the Board against any nursing program in the past five (5) year period.
- ITEM 7. With respect to each complaint listed in ITEM 6, any and all records demonstrating the manner and period of time for which an "under investigation" or similar status for the relevant nursing program was displayed on the Board's website.
- ITEM 8. Any and all records reflecting the disposition of each complaint listed in in ITEM 6.
- ITEM 9. Any and all records demonstrating the manner and period of time for each instance that the status of any nursing program has been listed as "under investigation" on the Board's website.
- ITEM 10. Any and all records establishing the Board's formal policy for determining when and how to: (1) indicate that a nursing program is "under investigation"; and (2) identify the program on the Board's website as "under investigation".
- ITEM 11. For purposes of reconciling our records, any and all records related to all complaints received by the Board against the Breckinridge School of Nursing at ITT Technical Institute (the "School").
- ITEM 12. For purposes of reconciling our records, any and all records reflecting the current status of all complaints listed in ITEM 10.
- ITEM 13. For purposes of reconciling our records, any and all records of each notice of deficiency issued to the School.
- ITEM 14. For purposes of reconciling our records, any and all records reflecting the current status of all complaints listed in ITEM 10.
- ITEM 15. All resurvey reports for any nursing program prepared pursuant to Section 32-1644(D) of the Arizona Revised Statutes.

- ITEM 16. In accordance with R4-19-606(2) of the Rules, all hearing records filed or produced in connection with any administrative hearing related to any Board action taken or order issued against a nursing program in the past five (5) years.
- ITEM 17. In accordance with Section 39-121(D)(2) of the Arizona Revised Statutes, an index of records or categories of records requested in ITEMS 1-16 that have been withheld and the reasons for withholding the same.

Please be advised that in accordance with Arizona law, "records" are defined as books, papers, maps, photographs, or other documentary materials regardless of physical form or characteristics, made or received by an governmental agency in pursuance of law or in connection with the transaction of public business and preserved by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of government. Examples of public records and other matters include calendars, reports, legal memoranda, policies and procedures, accident reports, training videos and materials, tape recordings of meetings where there are no written minutes, personnel records, case files, and data bases.

In order to reduce printing costs and lessen administrative burden, it will be sufficient if all of the records are scanned and emailed to this office or copied to a cd and mailed to us.

If you have any questions regarding the above requests, please contact Roxann Gallagher at (480) 425-2673 or Roxann.Gallagher@sackstierney.com.

Very truly yours,

SACKS TIERNEY P.A.

(b)(6)

Bryan J. Gottfredson

BJG:jrd

cc: Debra Colbert (via email to dcolbert@itt-tech.edu)
Gene McWhorter (via email to EmcWhorter@itt-tech.edu)
Shawn Crawford (via email to Scrawford@itt-tech.edu)
Roxann Gallagher (via email to Roxann.Gallagher@sackstierney.com)



Janice K. Brewer
Governor

Joey Ridenour
Executive Director

Arizona State Board of Nursing

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Phoenix, AZ 85014-3655
Phone (602) 771-7800 Fax (602) 771-7888
E-Mail: arizona@azbn.gov
www.azbn.gov

RECEIVED AUG 10 2012

August 3, 2012

Roxann Gallagher
Sacks Tierney P.A.
4250 North Drinkwater Blvd, Fourth Floor
Scottsdale, AZ 85251

Re: Public Records Request

Dear Ms. Gallagher:

This letter is in response to your public records request dated August 2, 2012. We are working to get the documents together for you as soon as possible.

Relative to the "under investigation" status of the program, there were no other nursing programs that met criteria for this status in the past 13 years. The status specifically applies to the situation where an investigative report is reviewed by the Board and the Board offers a consent agreement for discipline. If the party does not sign the consent, the status is changed to "under investigation" while the case is pending an administrative hearing. As you will see from the documents provided, all other programs that were offered a consent for discipline signed the consent agreement. Their status was changed to reflect the terms of their consent agreements. Therefore there are no documents relative to Items 2 and 7 of your request.

Relative to program status noted on the website, the Board started indicating Board actions other than letters of concern on the list of programs in 2008. We recently discovered a clerical error whereby the status of East Valley Institute of Technology PN program (EVIT) was not noted as "under probation" until quite late in the probation period. We believe all other Board actions related to nursing programs were consistently noted on the website.

Item 6 cannot be provided to you as complaints are confidential pursuant to A.R.S. 32-1664(L). Item 8 is available through the Board minutes for dismissed cases, and will be provided. Letters of concern to programs will also be provided to you. For Item number 15, I am assuming you only want the last 5 years. If you want to go back further than that, let me know.

Please be aware that there will be a service charge of 50¢ per page if more than 50 pages. An invoice will be supplied along with the flash drive or CD depending upon the amount of information supplied. A Money Order or check made payable to the Arizona State Board of Nursing must be remitted within two weeks of receipt of the order, along with a copy of the Invoice.

Sincerely,

(b)(6)

Pamela K. Randolph RN, MS
Associate Director of Education and
Evidence Based Regulation

PKR:hme

cc: Eugene McWhorter, Director
Debra Colbert, RN, MSN, Ed., Chair



Janice K. Brewer
Governor

Joey Ridenour
Executive Director

Arizona State Board of Nursing

4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655
Phone (602) 771-7800 Fax (602) 771-7888
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Home Page: <http://www.azbn.gov>

August 20, 2012

Debra Colbert
Nursing Chair
Breckinridge School of Nursing @ ITT Technical Institute
10220 North 25th Avenue, Suite 100
Phoenix, Arizona 85201

Dear Ms. Colbert:

Enclosed is a Subpoena Duces Tecum (subpoena to produce documents) which requests certified copies of specified records. Certification can be provided by officially notarizing all documents or by including a notarized cover letter. No testimony is required at this time.

Please comply by providing these documents to the Board of Nursing before the date noted. Because A.R.S. § 12-351 is not applicable in administrative proceedings, the Board will not reimburse for copying expenses. As a result you may want to have someone from your office appear with the documents at the time and place noted in the subpoena. Board personnel will copy the documents and return the originals to you.

PLEASE NOTE THAT THE REQUESTED DOCUMENTS ARE TO BE ADDRESSED TO:

Debra J. McGinty, Education Program Administrator
ARIZONA STATE BOARD OF NURSING
4747 NORTH 7TH STREET, SUITE 200
PHOENIX, AZ 85014-3655
For questions call at 602-771-7877.

Thank you for your cooperation.

Sincerely,

(b)(6)

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

JR/dm

Enclosure

BEFORE THE ARIZONA STATE BOARD OF NURSING

IN THE MATTER OF THE INVESTIGATION
OF
BRECKINRIDGE SCHOOL OF NURSING
@ ITT TECHNICAL INSTITUTE - PHOENIX

STATE OF ARIZONA

THE BOARD OF NURSING

COUNTY OF MARICOPA

SUBPOENA
DUCES TECUM

The State of Arizona to:

Debra Colbert
Program Chair
Breckinridge School of Nursing
@ ITT Technical Institute - Phoenix
10220 North 25th Avenue, Suite 100
Phoenix, Arizona 85201

PURSUANT TO A.R.S. § 32-1664(A) (2), YOU ARE COMMANDED, that all and singular business and excuses being laid aside, to submit forthwith, by *August 30, 2012*, to Debra McGinty, RN, PhD, Education Program Administrator, Arizona State Board of Nursing, 4747 N. 7th Street, Suite 200, Phoenix, Arizona 85014-3655, unaltered, certified copies of the following:

1. **2011 and Current Student Handbook**
2. **2011 and Current Faculty Handbook**
3. **Any and all policies regarding grade grievances and instructional grievances in effect from January 17, 2012 to present.**
4. **Any and all policies regarding clinical and classroom absences and make-up requirements in effect from January 17, 2012 to present.**
5. **Any and all records of nursing faculty and nursing student complaints and grievances filed with the nursing program or institutional administration since June 2011.**
6. **Any and all HESI scores for students since January 1, 2011.**
7. **Any and all incident and/or injury reports involving administrators, faculty and students since December 1, 2009, including reports related to clinical sites.**
8. **Curriculum outlines, objectives, and learning outcomes provided to students for remediation class sessions for the NU240 Gerontologic Nursing course held from February 6, 2012 through February 14, 2012. Study guides provided to students for the December 2011 NU240 Gerontologic Nursing course.**
9. **All administrative evaluations of faculty includeing records of faculty observations from March 26, 2012 to present.**

now in your possession.

Given under my hand and the seal of said Board on August 20, 2012.



SEAL

(b)(6)

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

In accordance with Title II of the Americans with Disabilities Act (ADA), this Board does not discriminate on the basis of disability in admission to and participation in hearings. People with a disability may request reasonable accommodation, such as a sign language interpreter, by contacting Joey Ridenour, Executive Director, at 602-771-7800. Requests for reasonable accommodation must be made at least 3 working days in advance of a scheduled proceeding.



Janice K. Brewer
Governor

Joey Ridenour
Executive Director

Arizona State Board of Nursing

4747 North 7th Street, Suite 200
Phoenix AZ 85014-3655
Phone (602) 771-7800 Fax (602) 771-7888
E-Mail: arizona@azbn.gov
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August 21, 2012

Debra Colbert, RN MSN Ed.
Breckinridge School of Nursing
Breckinridge Nursing Program Chair
10220 North 25th Avenue, Suite 100
Phoenix, Arizona 85201

Dear Ms. Colbert:

This letter is written to inform you that the Arizona State Board of Nursing (Board) received additional complaints against the Breckinridge nursing program. I am the Education Program Administrator assigned to investigate the complaints and due to the complex nature of the investigation please accept my apologies for the time required to prepare these complaints for your review and response.

In order to expedite this investigation, enclosed please find complaints that have been made against the Program. Please provide information not previously provided regarding the incidents leading to the complaints filed against the nursing program **within the next two weeks**. Please describe events and include any information that would be helpful for the Board in understanding the allegations. The Board does have the authority to withhold the complaint and/or the identity of the complainant in limited circumstances.

During the time of the investigation, the status of your program approval remains unchanged (under investigation) and without restrictions. If anyone should contact the Board and inquire about the status of your program, the agency is required to provide public information that there has been either a complaint or self report received, the date received and a general descriptor of the nature of the complaint.

Thank you in advance for providing me with the requested information and your prompt response. Should you have any questions, I can be contacted at (602) 771-7877. If I am not at my desk, please leave a voice message and I will return your call.

Sincerely,

(b)(6)

Debra J. McGinty, RN PhD
Education Program Administrator



Janice K. Brewer
Governor

Joey Ridenour
Executive Director

Arizona State Board of Nursing

4747 North 7th Street, Suite 200
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Complaints Filed Against the Breckinridge School of Nursing Program

Complaint #1: On January 17, 2012, during the course of her employment with Respondent while providing instruction in the December 2011 NU 240 Gerontology course, faculty member Romina Fae Mojica informed students of her prior diversion of a controlled substance (Ritalin) from her employer, and subsequent abuse of the drug. Mojica then suggested to students that if they chose to divert medications they should be "safe".

Complaint #2: Contrary to the syllabus and known policies of the Program, on or about February 1, 2012, the Program provided notice to students that they were expected to attend three additional "remediation" class sessions and complete three additional examinations for the December 2011 NU 240 Gerontology course due to prior ineffective instruction. One student did not attend any class sessions and did not attend two of the three examinations. Only 2 of 11 enrolled students passed the course.

Complaint #3: Mandatory remediation failed to cover the course chapters in sufficient depth, yet students were expected to pass three additional examinations, one of which was failed by most of the students. An outline provided to students by e-mail dated 02/1/12 by faculty member Kelly Smith for the remediation did not have objectives or content, merely chapter numbers with sessions lasting 1-2 hours to cover 6 or more chapters, and test dates. One test was scheduled the day following the remediation. The e-mail further directed students to come with 3 questions from their book to discuss during the remediation. Faculty C alleged that the remediation caused "test burnout" in students. Faculty A alleged that Smith only intended to teach the part of the content related to psychiatric nursing in the remediation. The Program never analyzed student performance to target remediation areas or develop a sound remediation plan to help students. This conduct further evidences impaired instruction and failure to plan and implement the curriculum.

Complaint #4: Nine of 11 students enrolled in the December 2011 NU 240 Gerontology course participated in remediation and 3 students continued in the course following the remediation with 2 out of 11 students eventually passing the course (18% pass rate), indicating further ineffective instruction and ineffective remediation. *(Consultant note: Average on-time graduation from an RN program is 66%--meaning the majority of students in other programs successfully complete every course the first time).*

Complaint #5: On February 24, 2012, Program Administrator Debra Colbert reported to the Board that many students from the Program, who were enrolled in the December 2011 NU 240 Gerontology could not formulate a plan of care for a geriatric patient and some had questionable skills. *(Consultant note: Students are in the 6th of 9 quarters of the nursing program and should have care plans and basic skills mastered).*

Complaint #6: On April 2, 2012, Faculty A indicated she "feared for the safety of the students and the safety of the public" when she observed students from the Program without adequate assessment and other skills in the Summer 2011 NU 230 Adult Health II course which required students to provide patient care in a clinical setting. Faculty A reported that the Program provides inadequate instructional resources, specifically that students are not adequately prepared in the laboratory to practice basic nursing skills in clinical practice environments and that there are too few resources to support students' learning and practice of dosage calculation.

Complaint #7: On May 17, 2012, under Program faculty member Kelly Smith's instruction and supervision, Student A and Student F administered medications two hours later than scheduled while enrolled in the NU240 Gerontology Course and assigned to the Grandview Care Center, Sun City West, Arizona. Student F reported, and Board staff observed, Smith using medication administration time to extensively question students and look up medications. Student H also reported late medication administration at Grandview Care Center on several occasions due to Smith's personal issues and confrontations with Student A which created an unsafe patient care situation. *(Consultant note: Board staff recommended students acquire information about medications prior to preparing the medications for administration at the medication cart).*

Complaint #8: On May 17, 2012, faculty member Smith delayed administration of Pentasa to Resident SM so that she could check and confirm the order that SM was to receive Pentasa 1 gram (4 - 250 mg capsules) at 0800. Smith then directed Student F to administer Pentasa 500 mg (2 - 250 mg capsules) (one-half the ordered dose) for the 0800 and 1200 doses to Resident SM at the Grandview Care Center on May 17, 2012. *(Staff note: Pentasa is an anti-inflammatory drug used to control ulcerative colitis; the usual dose is 1 gram 4 times a day; failure to adequately dose the patient could result in exacerbation of ulcerative colitis symptoms, bleeding and pain).*

Complaint #9: After Student A observed and reported faculty member Smith's inappropriate and profane communication to faculty members to Campus Director McWhorter, Student A was subject to additional scrutiny by Program Administrator Colbert and Smith despite McWhorter's assurances that retaliation would not occur. Student A was observed crying on multiple occasions at the clinical at Grandview Care Center. Student F, Nurse A, Faculty B and Student H all report that Student A was disliked by Smith and/or targeted. Board staff confirmed that Student A was subject to Colbert's unusual scrutiny in addition to Smith's during an observation at the Grandview Care Center on May 17, 2012. Board staff also observed that Smith inappropriately chastised Student A for not interrupting the medication pass. *(Consultant note: Interruptions in medication administration lead to increased errors).* Smith ultimately failed Student A for being "clinically unsafe," in her estimation.

Complaint #10: Student G transferred from the Breckinridge Program at the Phoenix, Arizona campus to the Breckinridge Program at the Boise, Idaho campus on or about June 18, 2012 because she feared retaliation from Program Administrator Colbert for reporting problems at the Program to the Board.

Complaint #11: When Student G transferred to the Breckinridge Program in Idaho, she informed Program Administrator Colbert that she might wish to return to Arizona. Colbert pressured Student G on multiple occasions to write a letter alleging Student A had failed to practice safely in the clinical area. On 06/27/12, Student G told Colbert she was not comfortable writing the letter and Colbert then told Student G she should "forget" about returning to the Phoenix program.

Complaint #12: Since August 2011, Campus Director McWhorter, Dean Ciardullo, Program Administrator Colbert and faculty members Mojica and Smith subjected students and faculty to intimidation, retaliation, disrespect and lack of responsiveness to serious problems. Student C stated that students are too intimidated to report problems. On 1/18/12 Student B reported that student evaluations are no longer anonymous so students are afraid to submit a negative evaluation as they could be contacted about their comments.

Complaint #13: Since Program Administrator Colbert and faculty member Smith have come to the Program, global administration problems between faculty and management such as directives issued by Colbert and Smith's unprofessional demeanor and communication created a difficult work environment which impaired instruction. Colbert issued an e-mail dated 4/27/12 chastising faculty for not directing students to come to her with complaints and further stated that if students went to the Board instead of to Colbert, "it will be your cross to bear".

Complaint #14: Graduates B and C stated that they would not recommend the Program to others because they found that faculty member Smith's demeanor and communication with students created a hostile learning environment.

Complaint #15: On 04/26/12, Faculty C reported that the Program's corporate pre-prepared exams included items that were outside of the scope of practice of an RN, evaluated knowledge of content not covered in the course, and provided incorrect answer keys. Faculty C reported that on a 50 item exam provided by corporate, only 3 questions were acceptable and that faculty had minimal authority to change or correct examinations, i.e., by written policy, faculty were allowed to change only 20% of the items on most exams, and could make no changes to final examinations. Faculty B also reported exam issues and stated that the Program's corporate directors do not want faculty to change exam questions and they are late in responding to problems. Faculty D indicated that many corporate prepared exam items do not reflect the learning objectives or content of the course. Board staff analyzed several exams from the Program and found many questions unrelated to nursing care or safety, confusing questions and multiple correct answers.

Complaint #16: On 04/23/12, Faculty B reported that students were overwhelmed with the NU205 Pharmacology course every semester because excessive content was condensed into too short a period of time resulting in poor student performance and contributing to attrition.

Complaint #17: Faculty A reported that, since she was hired in June 2011, she observed that students in the Program were unprepared to safely care for patients in clinical settings leading to potential patient harm, e.g., Program faculty failed to verify skills mastery in basic nursing courses. On 05/17/12, Nurse A reported that Breckinridge students did not perform timely accu-checks at the Grandview Care Center and were not familiar with medications.

Complaint #18: In an e-mail dated 4/28/12 from Faculty A to Program Administrator Colbert, Faculty A informed Colbert that faculty member Smith made "clear and obvious" errors in disease process and medication application.

Complaint #19: On 05/17/12, Program Administrator Colbert acknowledged to Board staff that she informed faculty member Smith that Smith's rationale for not mixing medications was incorrect prior to 5/17/12, however Smith persisted in giving Student A the same erroneous rationale on 5/17/12 as witnessed by Board staff.

Complaint #20: Student H reported she was afraid to approach faculty member Smith. Student H reported being terrified of Smith due to Smith's comments to and treatment of Student A. Student H reported that Smith dismissed Student A from clinical and then asked other students if they had any problems with Student A.

Complaint #21: On 07/17/12, Student H alleged that students did not have a clinical skills checklist when engaging in care of residents at Grandview in NUR 240 in both January and March cohorts 2012. *(Consultant note: Skills checklists are used to document what skills students have mastered and which needed*

additional instruction. Lack of such documentation could lead to inappropriately assigning a task to a student that they cannot safely perform.)

Complaint #22: On or about 06/27/12, the Program reported a very high attrition rate when compared to other nursing programs. For the three classes that have graduated: December 2009 admissions resulted in a 31% graduation rate although it is not known if that represents on-time graduations (32 admissions/10 graduates); March 2010 admissions resulted in a 16% graduation rate (24 admissions/4 graduates); and June 2010 admissions posted a 2.8% on-time graduation rate (35 admissions/1 on-time graduation/6 still in program). *(Consultant note: The on-time RN graduation rate in Arizona was 66% in 2011).*

Complaint #23: On or about 6/05/12, Student F contacted Board Staff McGinty, stating that it was an emergency. Student F reported to Board Staff McGinty and Randolph that Program Administrator Colbert called her at home and told her she would be dismissed from the Program because she violated HIPAA by discussing a medication error with another student and the Board. Student F subsequently obtained a lawyer to help her deal with the Program administration.

Complaint #24: Students D and E alleged and Faculty C confirmed that on or about February 14, 2012 she heard Program Administrator Colbert explain that Colbert had told students that the lowest grade of the NUR 240 remediation tests would be dropped. Student E missed one test which she assumed would be dropped. Colbert then changed her mind and decided not to drop the lowest grade but to drop the second test. This action directly harmed Student E, causing her receive a "0" on a test and ultimately fail the course. Despite assurances by Colbert to Board staff that all students agreed to the remediation, Student E stated she was unable to attend the remediation and did not agree to the remediation.

Complaint #25: Faculty members A, B, C, and D all witnessed faculty member Kelly Smith using various forms of the word "fuck" when chastising faculty. Students A and H alleged Smith use the word "fuck" on or about the 5th week of clinical during the March 2012 NU240 Gerontology Course clinical experience at Grandview Care Center, Sun City West, Arizona where residents could overhear.

Complaint #26: Program Administrator Colbert and faculty member Smith failed to teach or correct Student A when observing unsafe behaviors. On 5/17/12 Colbert informed Board staff McGinty that Student A failed to check the identity of her patient before administering medications and that Colbert did not correct the student's medication administration. On the same day, when Student A sought guidance regarding medication administration, Smith told her to do what she wanted. Failing to correct unsafe behaviors in students endangers both current and future patients.

Complaint #27: On 05/04/12, Faculty D alleged that Breckinridge has admitted students who were unprepared, stating, "they want bodies and they'll pull them off the street".

Complaint #28: Student H reported that Clinical Faculty Kelly Smith was more than an hour late on the first clinical day at Grandview on or about March 22, 2012. When Student I phoned Smith, Smith directed students to work with the staff nurse on the 8 am medications. Staff did not know the students. Smith had not previously assessed the students for safety in medication administration. (Staff note: "Clinical instruction" means the guidance and supervision provided by a qualified faculty member or designee while a nursing student is providing patient care.)

Complaint #29: Student A alleged on April 19, 2012 Clinical Faculty Smith and Program Administrator Debra Colbert refused to allow Student A to leave a patient room until she signed a notice of clinical probation. Smith instructed Student A that Addison's disease is an increase in cortisone. (Staff note: This statement is incorrect - Addison's disease is characterized by adrenal insufficiency which results in a decrease in corticosteroids.) Colbert instructed Student A that she could be dismissed for insubordination because she would not sign the probationary notice. (Staff note: Staff were unable to locate policies related to insubordination in the June 2012 IIT Student Handbook available online.) The interaction of Smith and Colbert was characterized by accusations, intimidation, threats, and bullying behavior and verbiage.

Complaint #30: On 07/17/12, Student H alleged she was required to make-up 2 clinical sessions in or about the end of April 2012. Student H alleged Program Administrator Colbert assigned Student H to work under the supervision of the department secretary. One clinical make-up session consisted of Student H reading journal articles and taking post-tests which had the answers in the journal. The other clinical make-up was unsupervised and Student H spent the time watching TV. On 07/17/12, Faculty B asserted to Board staff that the usual procedure for clinical make-ups was for the student to attend another faculty's clinical session in a patient care setting.

Complaint #31: On 07/17/12 Student H alleged that after taking a make-up multiple choice quiz on May 8, 2012, Clinical Faculty Smith asked Student H if her selection properly answered the question. When Student H answered she had considered two choices, Smith pointed to the correct answer, and told the student to "fix it". Student H alleged Smith told her to change two answers on a 5-point quiz by crossing out the wrong answer and circling the correct answer. Student H alleged Smith changed Student H's grade to reflect that Student H answered the items correctly, which improved Student H's score.

Complaint #32: Student H alleged in an interview with Board staff, on 7/17/2012, that if students complain at Breckinridge some of the teachers will

retaliate by treating them poorly. Student H reported that sharing concerns with Campus Dean Ciardullo and Campus Director McWhorter typically resulted in the advice, "you need to try harder". For example, Student H reported that during the March 2011 NU205 Pharmacology course, 6 students went to Ciardullo regarding nursing faculty Sophia Gonzales screaming in class and Ciardullo told them she (Gonzales) was probably having a bad day.

Complaint #33: On January 26, 2012, Student I administered the medication Namenda to the wrong patient at the Grandview Care Center at 1730 hours while Clinical Faculty Smith observed and supervised the administration. *(Staff note: Namenda is a medication for the treatment of Alzheimer's disease.)*



@ ITT Technical Institute.

Debra J. McGinty RN PhD
Education Program Administrator
Arizona State Board of Nursing
4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655
602-771-7877
602-771-7888 (Fax)
dmcginty@azbn.gov

August 30, 2012

Dr. McGinty,

Enclosed is the information that I am able to provide for the subpoena issued August 20, 2012. As you know, the school is represented by legal counsel, who advises us accordingly. Please see the cover letter from the lawfirm Sacks and Tierney attorney Roxann Gallagher.

Sincerely,

(b)(6)

Debra Colbert, RN, MSN Ed.
Nursing Chair
Breckinridge School of Nursing
@ ITT Technical Institute
10220 N. 25th Ave, Suite 100
Phoenix, AZ 85021
(602) 749-7926 Office
(602) 749-7950 Fax

SacksTierney P.A.

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David C. Tierney
Julianne C. Wheeler
Aaron G. York

Seymour Sacks (1932 – 2011)

Marvin S. Cohen (1931 – 2009)

Gary E. Pace, CLM, Executive Director

August 30, 2012



VIA E-MAIL AND COURIER

Writer's Direct Line: 480.425.2673

Writer's Direct Facsimile: 480.425.4973

Writer's E-mail: Roxann.Gallagher@SacksTierney.com

Debra J. McGinty, RN PhD
Education Program Administrator
Arizona State Board of Nursing
4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655

Re: Response to Subpoena Duces Tecum

Dear Dr. McGinty:

This cover letter accompanies the materials provided by Debra Colbert, Program Chair, Breckinridge School of Nursing at ITT Technical Institute (the "School"), in response to your Subpoena Duces Tecum (the "Subpoena") dated August 20, 2012 but received by the School at a later date. For your convenience, the numbered items below correspond with the numbered items in the Subpoena.

With respect to the information that you have requested:

1. The 2011 and current student handbook is attached.
2. The 2011 and current faculty handbook is attached.
3. Policies regarding all student grievances are included in the current student handbook provided under item 1.
4. Policies regarding absences are attached.
5. The School objects to this request. Pursuant to Section 32-1664(A)(2) of the Arizona Revised Statutes ("A.R.S."), Arizona Board of Nursing's (the "Board") subpoena power can only be used "in connection with an investigation," which, under Section (B) of 32-1664, can commence when information is reported to the Board that a regulated party "was or may be a threat to the public health or safety." In each of the four instances where the School has received a written complaint, there was no allegation of a threat to public health or safety and the complaint was processed and resolved internally. Pursuant to A.R.S. § 32-1664(A)(2), the School requests the Board to revoke, limit or modify the subpoena and to demonstrate how the evidence requested relates to any unlawful practice or is relevant to a specific charge that is the subject matter of an existing investigation.

Further with respect to the specific investigation that is the subject of this request, please provide a copy of the complaint form received by the Board alleging a threat to the public health or safety.

6. The School objects to this request. Pursuant to A.R.S. § 32-1664(A)(2), the School requests the Board to revoke, limit or modify the subpoena and to demonstrate how “any and all HESI scores for students since January 1, 2011” evidences any unlawful practice or is relevant to a specific charge that is the subject matter of an existing investigation. Further with respect to the specific investigation that is the subject of this request, please provide a copy of the complaint form received by the Board alleging a threat to the public health or safety.

7. All incident and injury reports are attached.

8. The School objects to this request. Under the Board's own rules, in connection with an investigation, the Board, based on its assessment of whether the conduct is or might be harmful or dangerous to the health of a client or the public, may make one comprehensive request for additional information. In this instance, the School has provided comprehensive written information regarding the February 2012 remediation of NU240 Gerontology Course to you on June 20, 2012, and on June 27, 2012. Further, Board staff has interviewed the Program Chair, the instructor and presumptively the students who may have complained to the Board about the remediation. Though Board staff has been actively investigating the remediation for over six months, Board has not been able to find a violation of law and should properly dismiss all remediation complaints under A.R.S. § 1664(G)(1). Repeated requests for information where there is no allegation that the remediation was harmful or dangerous to the health of a client or the public is unduly burdensome, harassing and abusive.

9. The School objects to this request. Pursuant to A.R.S. § 32-1664(A)(2), the School requests the Board to revoke, limit or modify the subpoena and to demonstrate how “any and all administrative evaluations of faculty from March 26, 2012” evidences any unlawful practice or is relevant to a specific charge that is the subject matter of an existing investigation. Further with respect to the specific investigation that is the subject of this request, please provide a copy of the complaint form received by the Board alleging a threat to the public health or safety. As a practical matter, providing evaluations for faculty members who are not subject to any Board complaints or investigations is an invasion of privacy and may be a violation of law. Further, if faculty members become aware that the Board is scrutinizing faculty evaluations without merit, it may create a chilling effect on the willingness of the faculty to provide honest and candid evaluations. Because these evaluations are crucial to the School's ability to retain qualified faculty as required by the Board's rules, the School cannot respond to this overbroad request.

Please contact Debra Colbert, and copy me, with any response to this letter and the corresponding data produced.

August 30, 2012
Page 3

Sincerely,

SACKS TIERNEY P.A.

(b)(6)

Roxann S. Gallagher

RSG:pn

Cc: Debra Colbert, Gene McWhorter, Shawn Crawford, Bryan Gottfredson



July 25, 2012

ID Code 00023908

VIA E-MAIL ONLY

Mr. Eugene McWhorter
Director
ITT Technical Institute
10220 North 25th Avenue, Suite 100
Phoenix, AZ 85021

Dear Mr. McWhorter:

This letter is a request for updated information regarding the concerns of the Arizona Board of Nursing. Please provide the Council with an update which includes: your current status with the Board of Nursing; copies of any further correspondence received from the Board as well as copies of any responses to said correspondence. Please respond by **August 3, 2012**. Until this matter is resolved, please continue to provide information to the Council as it becomes available.

If you have any questions, please contact me at (202) 336-6849 or serby@acics.org.

Sincerely,

(b)(6)

Shameka S. Erby
Supervisor, Campus Services



February 23, 2012

VIA E-MAIL ONLY

Ms. Wendy F. Kandel
Assistant Director Regulatory Affairs
ITT Educational Services, Inc.
13000 North Meridian Street
Carmel, IN 46032-1404

Dear Ms. Kandel:

ITT TECHNICAL INSTITUTE, PHOENIX, ARIZONA

ID CODE 00023908

The Council has been informed by the **Arizona Board of Nursing** that the above-mentioned campus of your institution has received several Notices of Deficiency regarding possible noncompliance of the nursing board's regulations between March 2009 and February 2012. The Council is required to review any adverse information regarding an institution once such information becomes known.

Please provide this office with a written response to this information, including, but not limited to the following data:

1. Copies of any and all correspondence received from the Arizona Board of Nursing regarding these issues; and
2. Copies of all materials sent from the campus in response to the nursing board's requests and Notices of Deficiency.

The Council will expect your response on or before **March 2, 2012**.

Your immediate attention to this matter is appreciated. If you have any questions, please contact me at (202) 336-6849 or serby@acics.org.

Sincerely,

(b)(6)

Shameka S. Erby
Supervisor, Campus Services

C: Mr. Eugene McWhorter, Phoenix additional location

Shameka Erby

From: Anthony Bieda
sent: Thursday, February 23, 2012 8:30 AM
To: Shameka Erby
Cc: Joseph Gurubatham; Albert C. Gray
Subject: FW: Breckinridge School of Nursing @ ITT Technical Institute

Adverse re: ITT Phoenix – nursing program.

1. Did you have this information already?
2. Are you available for a conference call Friday afternoon to review status and sequence with Ms. McGinty? Let me know.
3. Thanks.

Anthony S. Bieda

Director of External Affairs
202.336.6781

A C I C S

*Advancing Excellence in Education
for 100 Years*

From: Debra McGinty [mailto:dmcginty@azbn.gov]
Sent: Wednesday, February 22, 2012 7:00 PM
To: Anthony Bieda
Subject: RE: Breckinridge School of Nursing @ ITT Technical Institute

Information regarding actions by the Arizona Board of Nursing for the Breckinridge School of Nursing @ ITT Technical Institute.

March 2009

VII.B.3. Application for Nursing Program Proposal – ITT Tech

Nada Sperry was present and available for questions. Link moved, Scott seconded, and it was unanimously carried to grant proposal approved to ITT Tech to establish an Associate Degree Nursing program provided that an application for provisional approval is received within one year of proposal approval.

August 2009

VI.B.11. ITT Tech Application for Provisional Approval

Busby moved, Hardy seconded, and it was unanimously carried to grant provisional approval with a report 12 months after the admission of students regarding the differences between program implementation plan and actual implementation, one year results of program evaluation plan, and additional clinical placements secured. Board staff will conduct a site visit following the receipt of the one-year report.

November 2010

VII.B.8. ITT Tech Investigative Report

Nadia Sperry was present and addressed the Board. Perry moved, Link seconded, and it was unanimously carried to issue Notice of Deficiency for violation of R4-19-202 (A) (3), 204 (B) and 205 (C) (3) with 120 days to correct. Perry moved, Berrigan seconded, and it was unanimously carried to open a complaint on the instructor's license. Potential violations include R4-19-403 (16). "Removing, without authorization, any money, property or personal possessions...from an employer..." R4-19-403 (27). "Making a false or misleading statement to the Board or Board's designee during the course of an investigation" R4-19-402 (B) (2). An RN shall "demonstrate honesty and integrity".

March 2011

VII.B.11. ITT Technical Institute Follow-up on Notice of Deficiency

Nadia Sperry was present and available for questions. McGinty addressed the Board with additional information. Johnson moved, Berrigan seconded, and it was unanimously carried to allow the program to admit students secondary to their plan as long as there is sufficient qualified faculty.

May 2011

VII.B.6. ITT Technical Institute RN Program Report of Interim Site Visit

Nadia Sperry and Leisa Chapman were present and available for questions. Quinn moved, Dalton seconded, and it was unanimously carried to continue provisional approval with report in 6 months to remedy any outstanding potential deficiencies. If not remedied, return to the Board for issue of Notice of Deficiency.

July 2011

VII.B.11. New Program Directors: ITT Technical Institute

Information was provided to the Board regarding the appointment of Lisa Chapman as Interim Program Chair of the ITT Technical Institute Nursing Program.

November 2011

VII.B.2. Nursing Program Changes: ITT Technical Institute's Associate Degree in Nursing program name change to Breckenridge School of Nursing @ ITT Technical Institute; the appointment of Debra McKinney as Nursing Program Chair for the Associate of Science in Breckenridge School of Nursing for ITT Technical Institute.

Information was provided to the Board regarding the appointment of Kelly Smith as Interim Program Chair of the ITT Technical Institute Nursing Program.

VII.B.22. ITT Tech Investigative Report

Gene McWhorter was present and addressed the Board. Kelly Smith was present and available for questions. Quinn moved, Berrigan seconded, and it was unanimously carried to offer consent for probation with terms to include suspension of student admissions until all Board rules are met as determined by the Board. Board staff shall conduct a comprehensive site visit to assess compliance following a receipt of a self study document which provides evidence of compliance with all regulations to be signed within 30 days or hearing.

January 2012

VII.B.2. Nursing Program Updates: Breckinridge School of Nursing @ ITT Technical Institute

Information was provided to the Board regarding the appointment of Debra Colbert as Nursing Program Chair.

VII.B.9. Analysis of Potential Deficiencies Breckinridge School of Nursing @ ITT Technical Institute

Debra Colbert and Eugene McWhorter were present and addressed the Board. Quinn moved, Berrigan seconded, and it was unanimously carried to return the Breckinridge School of Nursing program response for R4-19-203 (C) (6) and R4-19-204 (G) (2) to the Education Committee February 10, 2012 meeting for review and recommendation.

February 10, 2012

Education Committee

Recommend the Board issue a Notice of Deficiency for R4-19-204 (G) (2)

Debra J. McGinty RN PhD
Education Program Administrator
Arizona State Board of Nursing
4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655
602-771-7877
602-771-7888 (Fax)
dmcginty@azbn.gov

From: Anthony Bieda [<mailto:ABieda@acics.org>]
Sent: Saturday, January 28, 2012 12:18 PM
To: Debra McGinty
Subject: Re: ACICS Contact Inquiry

Yes. What is the issue?

From: Debra McGinty [<mailto:dmcginty@azbn.gov>]
Sent: Saturday, January 28, 2012 10:48 AM
To: Anthony Bieda
Subject: ACICS Contact Inquiry

Mr. Bieda,

Please are you the ACICS contact for the Breckinridge School of Nursing @ ITT Phoenix?

Debra J. McGinty RN PhD
Education Program Administrator
Arizona State Board of Nursing
4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655
602-771-7877
602-771-7888 (Fax)
dmcginty@azbn.gov

Arizona State Board of Nursing Notice of Deficiency Response
Breckinridge School of Nursing @ ITT Technical Institute
Phoenix, Arizona
January 30, 2012

History of Contact

The Breckinridge School of Nursing has diligently worked to address the concerns and recommendations made by the Board for the Associate of Science, Nursing Program. The Board identified R4-19-203 (C)(6) during the March 7-8 12 month provisional site visit. The Board provided written notices to the program on or about March 23, 2011 and May 24, 2011. On April 8, 2011, Education Committee identified potential violation of R4-19-204 (G)(2). (Report Attached) On May 25th, 2011, the Board voted unanimously to continue provisional approval with report in 6 months to remedy any outstanding potential deficiencies. If not remedied, return to the Board for issue of Notice of Deficiency. Additionally, an interview was held telephonically with Nadia Sperry, the former Chair, on October 4, 2011, as well as an interview with the new Interim Chair on November 8, 2011. Several meetings with Dr. Debra McGinty have commenced. The first meeting was held at the State Board building on December 27, 2011 at 3:00 P.M. with Eugene McWhorter, Director of ITT Technical Institute, Phoenix and Debra Colbert, new Chair for the Breckinridge School of Nursing. At which time, the Investigative Report (IR) was reviewed. Breckinridge requested but did not receive the IR, and no consent agreement was signed. A follow up meeting was called by Dr. McGinty on January 4, 2012, at the Breckinridge School of Nursing, Phoenix location, in which a copy of the IR was delivered by Dr. McGinty. An additional packet was provided by Dr. McGinty called "Potential Deficiency Tracking Document, Date of Board Decision 05/25/2011". A Notice of Deficiencies (NOD) to Nursing Program was emailed from Dr. McGinty to Debra Colbert on January 4, 2011 at 11:49 P.M as stated during the meeting earlier in the day. This was followed up with a letter from Debra Colbert to Dr. McGinty asking for clarification of the NOD. A group conference telephonically occurred, January 9, 2012 at approximately 10:00 A.M. with Dr. McGinty, Eugene McWhorter, Susan Ciardullo, and Debra Colbert.

Mission

Breckinridge School of Nursing seeks to keep the Arizona State Board of Nursing informed of our policies along with any additional developments required, so that the Board is aware of our intended cooperation and compliance. Breckinridge School of Nursing is dedicated to continuous improvement of its nursing program through education and experience. The following is the Breckinridge School of Nursing's response to above named documents. The response explanations and documents that accompany them will be directed at R4-19-203(C)(6) and R4-19-204(G)(2). The attached report verifies this statement. The Board identified violation of R4-19-201(D) on or about September 13, 2011 during a focused site visit. The Board addressed the matter on November 14, 2011 and voted unanimously to offer consent for probation with terms to include suspension of student admissions until all Board rules were met as determined by the board. Board staff shall conduct a comprehensive site visit to assess compliance following a receipt of a self-study document which provides evidence of compliance with all regulations to be signed within 30 days or hearing. Concerning the Consent Agreement, in a letter dated January 5, 2012, the Chair indicated the program had addressed the issues and was not inclined to sign the agreement. The Chair notified the Board the program plans to recruit for March 2012.

R4-19-203(C)(6). Administrator; Qualifications and Duties

C. The administrator shall:

6. Maintain, enforce, and evaluate written policies and procedures that require all students, faculty, and preceptors who participate in clinical practice settings to be physically and mentally able to provide safe care;

Compliance-

The Nursing program offered by the Breckinridge School of Nursing is in compliance with R4-19-203(C)(6). The program maintains policies to ensure that both faculty and students participating in clinical practice settings are mentally and physically safe to provide client care. The program also conducts quarterly student course evaluation surveys (SA 12.0) and ongoing feedback/comments are reviewed with the faculty member. The responses are maintained in the faculty members' personnel record.

Currently, our National Chair has developed a Clinical Evaluation Tool that will evaluate the clinical faculty member based on clinical site performance. This document will replace the previously used Faculty Observation Form. The document will be released for use prior to our next quarter beginning March 19, 2012.

Breckinridge also abides by the ITT Technical Institute Clinical Agreement – Nursing, item 3, pages 2 and 3; with particular attention to (a), (d), (f), and (g). These items outline patient safety in the clinical environment pertaining to students and faculty. Further, Breckinridge also abides by and will institute any measures outlined in any clinical contractual agreements that deviate from the standard ITT contract.

The job descriptions for the Chair, Breckinridge School of Nursing and the program's Nursing Instructors both list descriptions of what is expected of each faculty member to demonstrate the provision of safe client care as a requirement under the articulated "Duties and Responsibilities" for each position (see, numbers 5 and 8, respectively).

The institution's Code of Business Conduct and Ethics also reinforces the principles and standards that all employees are required to establish and manage a safe and healthy work environment, as well as recognizing that the use and abuse of alcohol and the illegal use of drugs can affect an employee's productivity and efficiency and jeopardize the safety of the employee and others. As a result, any violation of the company's prohibition against alcohol or illegal drugs constitutes grounds for disciplinary action up to and including dismissal. Further, any employee who comes to work under the influence of alcohol or illegal or illicitly used drugs (or the consumption of these substances during work hours) is prohibited, and will result in immediate termination of employment.

With respect to its students, the program requires that each admitted student read and sign a Student Clinical Agreement, Acknowledgment of Risk and Release. Among the requirements of the student's admission is the express acknowledgment of the mandatory physical and mental requirements that are intended to ensure safe client care. These include a description of the physical demands of students participating in clinical practice settings, an acknowledgement that the student is required to consent to and pass drug/alcohol testing, a physical examination and a background check. Students are also required to document that they are free from any contagious disease that would pose a health hazard to facility patients, employees, volunteers, or visitors, and/or have been immunized against certain illnesses and diseases. These requirements are set forth in the Drug Testing and Health Requirement Section and Student Clinical Agreement, Acknowledgment of Risk and Release.

Further, the Student Clinical Agreement, Acknowledgment of Risk and Release provides that immediate action may be taken to correct any situation in which any student fails to comply with any agreed upon policy or engages in any activity that may endanger patient care or the operations of the health care facility, including terminating the student's from the clinical practice setting at anytime an infraction were to occur.

Supplementing these requirements, the institution and its Nursing program have an additional four (4) policies to demonstrate compliance with this standard:

1. For-cause drug screens;
2. For-cause evaluations of physical fitness and ability;
3. Health/immunization requirements; and
4. Criminal background investigations.

Below we discuss these in further detail.

1. For-cause drug screens

Attached is the institution's Employee Relations Alcohol and Drug Abuse ER 12.0 Policy, which contains an ITT/ESI Impairment Checklist that chairs perform quarterly, along with the Faculty Observation Exhibit A for each classroom and clinical course that currently evaluates each class instructor quarterly. The institute's Employee Relations Alcohol and Drug Abuse ER 12.0 Policy discusses "for cause" drug testing on employees who exhibit signs of impairment. This policy also indicates the consequences of substance abuse and the procedures for processing an employee with impairment. Also attached is the Student Handbook Nursing Program Appendix which details Drug Testing and Health Requirements for students. All students are drug tested prior to attending the clinical rotation. Those students who fail the follow the testing guidelines or fail the drug screen itself are immediately removed from the program.

2. For-cause evaluations of physical fitness and ability

After careful review of the clinical site agreements, the contracts designate the student is to undergo the necessary CPR, medical requirements and required immunizations, but does not specifically indicate drug testing results be submitted for the student and makes no provisions regarding faculty in this area. The same requirement is listed in the Student Clinical Agreement, Acknowledge of Risk and Release. The Breckinridge School of Nursing policy allows for additional testing to be performed based on the Clinical agencies requirements or the State Board of Nursing requirements. Holding specifically to the guidelines of R4-19-203(C)(6); we feel that we meet this requirement by performing quarterly evaluations on all students and faculty.

3. Health/immunization requirements

Attached is an excerpt from the institute's March 2011 Implementation Guide for the Associate Degree Nursing program, entitled Faculty and Staff Policies and Procedures. In the Nursing Faculty section, the policy states that nursing faculty must meet State Board of Nursing requirements and NLNAC requirements. It then states that faculty "must meet all health requirements of clinical sites; keep documentation of health (immunizations, TB, titers) and clinical site training (i.e. blood borne pathogens, TB, CPR) in faculty files". During the new hire orientation, the Chair collects these health documents before the instructor begins teaching.

4. Criminal background investigations

Attached is the institution's Employee Background Investigation ER 2.0 Policy which establishes standards and procedures for background investigations of all employees. It is the policy of ITT/ESI to conduct pre-employment background investigations as a condition of employment.

As stated in the Student Clinical Agreement, Acknowledgment of Risk and Release states that prior to admission to the nursing program, any potential student is required to disclose information in a variety of areas that

directly focuses on safe patient/clinical environment. The informed student signs this document, but is not allowed clinical exposure if the background check results are unfavorable. The consequences are clearly documented in the Student Clinical Agreement, Acknowledgment of Risk and Release, which include denial of admission or termination from the program. The ITT Nursing Student Handbook, under Academic Policies titled, Drug Testing and Health Requirements also lists the requirements for participation for the clinical environment. Clinical contracts request a background check and do not specify the type, however all students are required to have their Level One Finger Print card with the Arizona Department of Public Services prior to attending clinical rotation. Breckinridge School of Nursing considers that to be one facet of the background check, which the AZBN rule does not specify is required of the student. Additionally, documents and requirements such as CPR, Immunizations, TB test, and fingerprint card are required to be kept current during the program. Several months prior to; impending clinical quarters, re-entry students, transfers, and admissions, students are notified of expired documentation and the deadline for updated materials. Students are not permitted to enter a clinical facility unless these documents are current with the school.

R4-19-204(G)(2). Faculty; Personnel Policies; Qualifications and Duties

G. The nursing faculty, together with the program administrator, shall:

2. Develop and implement standards for the admission, progression, and graduation of students.

Compliance-

Attached are the Admission Progression and Graduation (APG) committee meeting minutes for April 2011 through November 2011. *Please note some of the minutes were submitted under the template Nurse Faculty Organization Meeting (NFO).* At the top of the form is the Chair of the committee, Lisa Roberts, RN, who conducted six meetings. Also attached is a letter of summary from the chair in which she explains the activities of the APG committee; discussion, organization, submissions for change, and the results of those activities. Ms. Roberts has provided a list of functions established for both APG and the Faculty Curriculum Committee. In the documentation, Ms. Roberts also outlines specific student issues that were addressed by the APG committee and resolved. Additionally, beginning in July 2011, the APG committee discussed the student re-entry process with Interim Chairs, Leisa Chapman, Kelly Smith, and the Dean, Susan Ciardullo to streamline the process of readmitting students. Attached are three forms to demonstrate how the procedure has been adapted to allow the APG committee to be the fourth contact in the re-entry process, establishing student qualification to return by the APG committee before continuing the reenrollment process. Also attached are examples of forms the committee developed, first listed under the ITT parent company and then revised to reflect the Breckinridge School of Nursing. The forms include:

- Student Clinical Contract
- Student Clinical Contract Follow-up
- Admission, Progression, and Graduation Committee Decision/Communications

At the current time, the APG committee only addresses admission, re-entry or transfer of students into the nursing program. The APG committee is not responsible for disciplinary functions in student matters. Disciplinary matters are referred to the chair for determination and the Dean and Director are consulted for any disciplinary actions taken.

Attached are NFO Meeting minutes from 12 meetings held from July 2010 to December 2011. NFO meeting minutes does not exist for July 2011 due to no meeting was conducted and November 16, 2011 minutes were included in the binder; meetings conducted May and October 2011 minutes are missing. The meetings outline faculty participation discussing a multitude of topics:

- APG and Curriculum Committees
- Faculty Openings

- Staff Contact Hours
 - Catalogs Updates
 - Admissions Process
 - Student HESI Preparation
 - Student Failures
 - Student Successes
 - Nurse Staff Work Areas
 - Clinical Sites
 - Board Concerns and Decisions
 - Student Representatives
 - Uniforms and Dress Code
 - Instructor Expectations and Responsibilities
 - Drug Screening and Clinical Requirements
-
- Student Issues
 - Future Schedules
 - PAC Meeting Summaries
 - Suggestions
 - Development of Program Long and Short Term Goals
 - Various Events for Faculty and Students
 - Attendance Issues
 - AZBN Education Committee Hearing Discussion
 - Tutoring and Class Review
 - AZBN Site Visits
 - Faculty Changes
 - SPEP Committee Formation
 - Graduation Committee for Completion Students
 - Safety, Privacy and Security Issues
 - Communication of Student information
 - Learning Resource Center Projects and Assignments
 - In-services, Guest Lecturers, and Field Trips
 - Clinical Lab Policies
 - Orientation Check-list

The NFO meetings minutes show action plans in development, recapping previous meetings, new business and overall, shared governance.

Although the Chair exercises administrative control over the program, the Chair also works in conjunction with the Interim National Chair, Breckinridge School of Nursing to obtain advice and counsel. The institution recognizes that the Chair is ultimately responsible for the program, and has ensured that the Chair has a process to implement and effect programmatic changes that meet the particular needs of the program, including obtaining and acting on feedback from its respective constituents.

Further, while some constituents may provide suggestions or recommendations for changes, the final responsibility for decision-making in reliance on evidence-based data resides with the Chair.

Since the placement of a permanent Chair in December 2011, enhancements to committees and development of new committees have been established. Regular staff meetings for the year have been set, as well as the formation and consistency of regular meetings for subcommittees. As referenced in the first paragraph, the new Chair has been in consistent contact with the State Board of Nursing to provide cooperation with the Board in facilitating all issues with

responses in a timely manner. The Chair is currently conducting faculty observations for the quarter using the Faculty Observation Sheet and ITT /ESI Impairment Checklist to evaluate the effectiveness of the classroom and clinical environments. The Chair is meeting with all instructors to establish a foundation of reliability, trust, and team cohesion, so that the faculty members can come together as a team. As a collaborative team, the Breckinridge School of Nursing faculty members can embrace the program collectively, to problem solve and create a better environment for their students. Some examples of the events taken place since acquiring the permanent Chair include:

- December 28, 2011, faculty revised the APG committee to add new members.
- Faculty confirmed the establishment of future meetings and encouraged to bring all issues to share with peers.
- Faculty discussed the curriculum committee and the encouraged the input of all faculty to submit evidence based data to the Chair for submission to the National Chair.
- Faculty established members for the SPEP committees.

Page 6 of the Potential Deficiency Tracking Document refers to the program's self-study, stating four reasons students leave school. For a more comprehensive understanding of the data, attached is a table and pie chart that identifies the frequency of each drop reason:

- Financial or Personal Reasons 59.0%
- Criminal or Legal Background Issues 3.0%
- Academic Progression Causes 37.0%
- Academic Honesty Causes 1.0%

For further clarification, it should be noted that these four broad categories include multiple drop reasons, some of which are beyond school or student control.

- "Financial or Personal Reasons" includes students who dropped due to military deployment and pregnancy/bed rest.
- "Criminal or Legal Background Issues" includes students who became incarcerated while in school, not due to background issues.
- "Academic Progression Causes" includes students who did not fail courses but elected to drop, citing the rigors of an accelerated program.

In the IR, there were charts to document retention and persistence. Attached is additional retention information provided as of 1/9/12, for seven cohorts ranging from December 2009 to September 2011, to show students who have re-entered and those who are less than full-time students. In both cases, these students should be considered to be persisting in school, although they have fallen behind their original cohorts. Reentry students are counted on the drop reports, but are also now in Active status.

Finally, it should be noted that for two quarters, December 2010 and December 2011, some students who wished to continue courses at a part-time rate or as reentry students were unable to do so because we did not start a new cohort during those quarters. We anticipate allowing these students reentry in March 2012.

Given that the Breckinridge School of Nursing is still evolving and has changed Chair leadership, the school has worked extensively to address issues and develop solutions as quickly as possible to meet the needs of the students so they can meet the needs of the community.

14-19-201(D). Organization and Administration

As mentioned above, this rule had been cited but was resolved to be removed during a telephonic conversation with Dr. Debra McGinty on January 9, 2012. It is therefore not addressed in this response.

January 31, 2012

Debra McGinty, RN, PhD
Education Program Administrator
Arizona State Board of Nursing
4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655

Dear Dr. McGinty,

I would like to express my appreciation to you for meeting with us again today to review the persistence and resistance data. Hopefully, we have been successful in clarifying our student data. Enclosed, is an undated binder with our responses for the education committee. As you review the content, if you have any questions, please contact me immediately so that I may get corrections or additional documents to you before the submission date. Once again, thank you for working with us; we are dedicated to the students of Breckinridge School of Nursing and endeavor to abide by all state rules governing the nursing programs of Arizona.

Sincerely,

Debra Colbert, RN, MSN Ed.
Program Chair
Breckinridge School of Nursing
ITT technical Institute
(602) 749-7926 office
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ARIZONA STATE BOARD OF NURSING
4747 N. 7th Street Suite 200
Phoenix Arizona 85014-3655
602-771-7800

IN THE MATTER OF NURSING PROGRAM
APPROVAL ISSUED TO:

**NOTICE OF DEFICIENCIES TO
NURSING PROGRAM**

BRECKINRIDGE SCHOOL OF NURSING
@ ITT TECHNICAL INSTITUTE
RESPONDENT

The Arizona State Board of Nursing (“Board”) considered this matter in open meeting on January 24, 2012 following a site visit by the Board’s representative to the Breckinridge School of Nursing @ ITT Technical Institute (“Respondent”) which holds provisional nursing program approval pursuant to Arizona Administrative Code (“A.A.C.”) R4-19-207. The Board determined that Respondent’s nursing program is not maintaining required standards and voted to issue a Notice of Deficiencies to Respondent pursuant to Arizona Revised Statutes (“A.R.S”) § 32-1644 (D) and A.A.C. R4-19-211(A).

1. Respondent holds Board provisional approval for an associate degree nursing program, which was originally issued to Respondent on August 4, 2009.
2. The Board has authority pursuant to A.R.S. §§ 32-1606 (B) (1) (2) (8) (10), and 32-1664 (D) to impose disciplinary sanctions against nursing programs for violations of the Nurse Practice Act, A.R.S. §§ 32-1661 -1669 and A.A.C. Title 4, Chapter 19, Article 2.

NOTICE OF DEFICIENCIES

FACTUAL BACKGROUND:

1. On or about August 4, 2009, the Board granted Respondent provisional approval for a nursing program pursuant to A.A.C. R4-19-207 (E) with a report 12 months after admission of students regarding the differences between program implementation plan and actual implementation, one year results of program evaluation plan, and additional clinical placements secured. The Board ordered a site visit following receipt of the one-year report.

2. On or about October 13, 2010, October 18, 2010 and October 21, 2010, Board's representative conducted a focused site visit to investigate allegations of poor instruction by a faculty member. On or about November 29, 2010, the Board issued a Notice of Deficiencies for violations of R4-19-202 (A) (3), R4-19-204 (B) and R4-19-205 (C) (3) with 120 days to correct.

3. On or about March 7-8, 2011, Board's representative conducted a site visit for verification of deficiency correction and to satisfy requirements for the 12-month provisional report. Board staff reviewed documents, interviewed faculty, students, and administrators and observed clinical instruction. During the site visit, Board's representative verified previously noted deficiencies R4-19-202 (A)(3), R4-19-204 (B), and R4-19-205 (C) (3) were corrected.

4. During the March 7-8, 2011 site visit, the Board's representative noted potential deficiencies for R4-19-201 (F) (3) which requires written agreements between the program and clinical agency that allow faculty members the right to participate in selecting learning experiences for students. The agreement dated 02/21/08 between Respondent and HealthSouth states "the facility shall provide clinical instruction to the Student and supervise the Student's clinical experience". The Respondent

reported supervising faculty select learning experiences and provide instruction and supervision. Board's representative determined R4-19-201 (F) (3) was minimally met and recommended contract revision to accurately reflect the role of faculty and agency staff.

5. During the March 7-8, 2011 site visit, the Board's representative noted potential deficiencies for R4-19-201 (F) (4) which requires Respondent's contracts to contain a termination clause that provides sufficient time for enrolled students to complete the clinical experience upon termination of the agreement. Respondent's agreements with Arizona State Department of Health Services dated 11/20/08 and West Valley Hospital dated 06/22/09 provide 30 day termination clauses without language that provides for enrolled students to complete clinical experiences upon termination of the agreement. Board's representative determined the rule was minimally met and recommended contract revision to provide sufficient time for students to complete their clinical experience following termination.

6. During the March 7-8, 2011 site visit, the Board's representative noted potential violations of rules. Specifically Respondent violated R4-19-202 (A) (2) by failing to provide conveniently located faculty offices; R4-19-203 (C) (6) by failing to provide written policies and procedures that require all students, faculty, and preceptors to be physically and mentally able to provide safe client care; and R4-19-205 (C) (3) by failing to provide information about current cost of the program to all students and prospective students. A Board representative provided Respondent with a report delineating these deficiencies on March 23, 2011. Respondent provided corrections for factual errors on March 24, 2011.

7. On or about March 23, 2011, Respondent provided a list of estimated, current costs of the program available to all students and prospective students to resolve potential deficiency R4-19-205 (C) (3).

8. On or about March 23, 2011, Respondent reported to Board's representative that full-time faculty had dedicated workstations with telephone and computer to resolve potential deficiency R4-19-202 (A) (2).

9. On or about April 8, 2011, during a Board of Nursing Education Committee meeting, Respondent verified that faculty do not have input into the admission process. The Board of Nursing Education Committee identified this as potential violation of A.A.C. R4-19-204 (G) (2) in addition to those already identified. The Committee voted to recommend continued provisional approval with a report in 6 months to remedy any potential outstanding deficiencies. ITT Technical Institute representatives were present during the Committee meeting and received a revised report on or about May 24, 2011.

10. On or about May 25, 2011, the Board voted unanimously to continue provisional approval with a report in 6 months to remedy any outstanding potential deficiencies and if not remedied, return to the Board for issue of a Notice of Deficiency. The Respondent was notified in writing of the Board's decision on or about June 13, 2011.

11. On or about November 14, 2011, in an open meeting, the Board offered Respondent a consent for probation for R4-19-201 (D), failure to center the administrative control of the nursing program in the nursing program administrator. Respondent representatives were present during the

Committee meeting and received a revised report on or about May 24, 2011. Respondent received the written Consent Agreement on December 16, 2011.

12. On or about November 23, 2011, the Board received the Respondent's report addressing potential deficiencies, specifically R4-19-201 (F) (3) (4), R4-19-203 (C) (6), and R4-19-204 (G) (2).

LEGAL VIOLATIONS:

1. Pursuant to R4-19-203 (C), the administrator shall maintain, enforce, and evaluate written policies and procedures that require all students, faculty, and preceptors who participate in clinical practice settings to be physically and mentally able to provide safe client care. During a site visit conducted March 7-8, 2011 Board representatives could find no evidence that the Respondent maintains, enforces and evaluates policies and procedures that require faculty who participate in clinical practice settings to be physically and mentally able to provide safe client care. On or about November 11, 2011, the Respondent provided Board representatives with a faculty job description dated 11/9/11 via email. Respondent provided no information regarding how the job description is enforced and evaluated. Respondent's November 23, 2011 report provided the Employee Relations Background Investigation policy and the Resident Faculty Handbook without reference to specific policies. Respondent's November 23, 2011 report provided a correction to the April 23, 2009 Provisional Report and the March 7-8, 2011 12-month Provisional Report specifically that the Respondent does not employ drug screening as part of the hiring process. Respondent has not provided the Board with any written policies or procedures indicating that it requires all faculty who participate in clinical practice settings to be physically and mentally able to provide safe client care. This constitutes a violation of R4-19-203(C).

2. Pursuant to R4-19-204 (G) (2) nursing faculty, together with the program administrator, shall develop and implement standards for the admission, progression, and graduation of students. During the March 7-8, 2011 12-month Provisional site visit, Respondent indicated admission, progression, and graduation was a standing item of the Nursing Faculty Organization Meeting agenda. On March 7, 2011, Respondent reported to Board's representative that faculty did not have input into the admission process. During the April 8, 2011, Education Committee meeting, Respondent verified faculty do not develop and implement standards for admission. Committee members were concerned the lack of faculty involvement in the admission process related to the difficulty students experienced in reading and math when initially enrolled in the program.

CORRECTIVE ACTION

Respondent shall correct the deficiencies identified above within **3 months** of the date of service of this Notice. [A.A.C. R4-19-211(A)].

Respondent shall, within 30 days of the date of service of this Notice, file a plan to correct and implement that plan to correct each of the identified deficiencies after consultation with the Board or designated Board representative. [A.A.C. R4-19-211(A)(1)].

Failure to correct the deficiencies within the period of correction may result in restriction of Respondent's ability to admit new students and/or rescission of program approval. [A.R.S. § 32-1644 (D) and A.A.C. R4-19-211(B)(C)].

On or before the last day of the period of correction, the program shall file a report with the Board containing evidence that all deficiencies are remedied.

NOTICE OF APPEAL RIGHTS

Respondent may, within 30 days of the date of service of this Notice, submit a written request

for a hearing before the Office of Administrative Hearings to appeal the Board's determination of deficiencies. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6. [A.A.C. R4-19-211(A)(2)].

If the Board's determination is not appealed or is upheld upon appeal, the Board shall conduct periodic evaluations of the program during the time of correction to determine whether the deficiencies have been corrected. [A.A.C. R4-19-211(A)(3)].

For answers to questions regarding this Notice, contact Debra McGinty, RN, PhD, at (602) 771-7877.

Dated the _____ day of December, 2011

SEAL

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

Copy mailed certified this _____ day of December 2011 certificate number:
_____ and mailed by U.S. Certified Mail to:

Debra Colbert
Gene McWhorter
BRECKINRIDGE SCHOOL OF NURSING
@ ITT TECHNICAL INSTITUTE
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February 15, 2011

Debra Colbert, RN MSN Ed.
Chair

Breckinridge School of Nursing @
ITT Technical Institute Phoenix
10220 North 25th Avenue, Suite 100
Phoenix, Arizona 85201

Re: Arizona State Board of Nursing
Education Advisory Committee – February 10, 2012
Committee Meeting Results

Dear Ms. Colbert:

Please be advised that on February 10, 2012, in open meeting, the Arizona State Board of Nursing Education Advisory Committee, after careful review and consideration of the documentation submitted by Breckinridge School of Nursing @ ITT Technical Institute Phoenix, voted unanimously to recommend the Board issue a Notice of Deficiency for R4-19-204 (G)(2).

The meeting of the Arizona State Board of Nursing will be held on March 19 and 20, 2012 beginning at 8:00 a.m. each day. You may view the agenda at www.azbn.gov approximately two to four days prior to the Board meeting. Education Department matters are tentatively scheduled for Monday, March 19, 2012 to follow 3:00 p.m. If you, or another representative from Breckinridge School of Nursing @ ITT Technical Institute Phoenix, choose to attend the meeting, you may make an oral presentation to the Board not to exceed five minutes.

Should you have any questions or need further information, please do not hesitate to contact me as listed above.

Sincerely,

(b)(6)

Debra J. McGinty, RN PhD
Education Program Administrator

DM:hme

November 18, 2014

Anthony S. Bieda
Vice President of External Affairs
Accrediting Council for Independent Colleges and Schools
750 First Street, NE, Suite 980
Washington, DC 20002-4223



RE: ITT Technical Institute – Adverse Action Update

Dear Mr. Bieda:

The ITT Technical Institutes have an established record of compliance with the *Accreditation Criteria*, including Section 2-2-152. In response to your November 10, 2014 request for updated information on previously reported issues, the following statuses are provided:

- ITT Technical Institute, Phoenix, AZ – As communicated to ACICS in our last update dated July 25, 2014, the Breckinridge School of Nursing and Health Sciences @ ITT Technical Institute entered into a Consent Agreement with the Arizona State Board of Nursing in July. A copy of that Consent Order was sent with our prior correspondence, and we remain in compliance with the provisions of the Consent Order.
- ITT Technical Institute, Louisville, KY – ITT Technical Institute filed a motion to dismiss the lawsuit in January 2014 with the Jefferson County Court, and resolution of that motion is still pending.
- ITT Technical Institute, Indianapolis, IN – ITT Technical Institute filed a motion to dismiss the Consumer Financial Protection Bureau’s lawsuit in April 2014 with the Southern District of Indiana, and resolution of that motion is still pending.

We will continue to keep ACICS apprised of any material developments. If you require any additional information, please let me know.

Very truly yours,

(b)(6)

Shawn J. Crawford
Vice President, Chief Compliance Officer