



# Ohio Board of Nursing

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

February 01, 2010

ATS Institute of Technology ATS  
325 Alpha Park  
Highland Hts, OH 44143

Dear ATS:

Enclosed is your Adjudication Order. Please review the document carefully. You may contact Lisa Ferguson-Ramos, Compliance Manager at the Board office at (614)995-3635 if you have any questions concerning the document content.

Sincerely,

A handwritten signature in cursive script that reads "Betsy J. Houchen".

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

LFR/akm

cc: Leah O'Carroll, Assistant Attorney General

Peggy Noble Maguire  
Attorney at Law

Certified Mail  
Receipt No. 7009 2250 0004 1407 2188

Attorney Certified Mail  
Receipt No. 7009 2250 0004 1407 2195



# Ohio Board of Nursing

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

## BEFORE THE OHIO BOARD OF NURSING

IN THE MATTER OF:

ORDER 1840  
CASE # 08-4687

**ATS INSTITUTE OF TECHNOLOGY  
ASSOCIATE OF APPLIED SCIENCE DEGREE  
IN NURSING PROGRAM**

### ADJUDICATION ORDER

This matter came for consideration before the Ohio Board of Nursing (hereinafter "Board") on January 22, 2010. At such time the Board verified that it reviewed the following materials prior to consideration of this matter:

Hearing Transcript; State's Exhibits; and Respondent's Exhibits.

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

On this date, the Board accepted all of the Findings of Fact, Conclusions of Law, and the Recommendation in the Hearing Examiner's Report and Recommendation.

Upon this Report and Recommendation and upon the approval and confirmation by vote of the Board on the above date, the following ORDER is hereby entered on the Journal of the Ohio Board of Nursing for the above date.

The Ohio Board of Nursing hereby ORDERS that **ATS INSTITUTE OF TECHNOLOGY, ASSOCIATE OF APPLIED SCIENCE DEGREE IN NURSING PROGRAM (ATS)** shall remain on provisional approval status for a minimum period of two (2) years from the date of the January 2009 Notice of Automatic Placement on Provisional Approval Status, until January 21, 2011, at which time **ATS's** status will be reviewed by the Board, pursuant to Section 4723.06(A)(6), ORC.

**ATS is subject to the following terms, conditions, and limitations:**

1. **ATS** shall comply with all of the requirements established in Chapter 4723, ORC, and Chapter 4723-5, OAC, for nursing education programs.
2. **ATS** shall not expand its operations to any new locations prior to January 21, 2011.
3. At least one (1) survey visit of **ATS** will be conducted, no later than October 15, 2010, in accordance with Rule 4723-5-06, OAC, prior to the Board's consideration of **ATS's** program approval status at the January 2011 Board meeting. **ATS** agrees that representatives from the Board may conduct announced or unannounced survey visits, including but not limited to, auditing student records, to determine if **ATS** is complying with the terms and conditions of this Order meeting in addition to meeting and maintaining the requirements of Chapter 4723-5, OAC. **ATS** agrees to cooperate with all survey visits and ensure that all materials are timely made available to the Board or its representative.
4. **By February 15, 2010**, **ATS** shall provide a copy of this Order to all faculty members. **By March 1, 2010**, **ATS** shall submit documentation to the Board signed by each faculty member verifying that he or she has received a copy of this Order.
5. **ATS** is under a continuing duty to provide a copy of this Order to any new faculty members.
6. **By February 15, 2010**, **ATS** shall provide written notification to all students that a copy of this Order is available upon request. Such notification shall be displayed in a prominent manner in a common area, such as a student bulletin board. Upon request from a student, **ATS** shall provide a copy of this Order. Further, **by March 1, 2010**, **ATS** shall submit documentation to the Board explaining how it provided written notification to all students and attesting that, when requested, **ATS** has provided a copy of this Order.
7. **ATS** is under a continuing duty to provide written notification to all new students that a copy of this Order is available upon request.
8. **By March 1, 2010**, **ATS** shall submit to the Board, for review and approval, a draft of notification to every facility with whom it has an affiliation agreement securing clinical experiences for its students, in accordance with Rule 4723-5-17, OAC. The notification shall inform the facility that **ATS's** provisional approval status is subject to the terms and conditions of this Order and that this Order is available on the Board's website or will be provided by **ATS** upon the facility's request. **Within thirty (30) days of receiving Board approval of the notification**, **ATS** shall provide the notification to every facility. Further,

**within thirty (30) days of providing the notification to every facility, ATS shall submit documentation to the Board identifying each facility that has received the Board-approved notification; identifying each facility that requested a copy of this Order; and attesting that, when requested, ATS has provided a copy of this Order to the requestor.**

9. **ATS** is under a continuing duty to provide notification and, upon request, a copy of this Order to any new facility providing clinical experiences for its students, in accordance with Rule 4723-5-17, OAC.
10. **ATS**, through its administrator, shall submit written progress reports to the Board on or before the following dates: **March 1, 2010, June 1, 2010, September 1, 2010, and December 1, 2010**. The progress reports shall identify any change in the implementation of the program and its effective date, explain the rationale for enacting the change, and describe how the change was implemented. Along with each quarterly report, **ATS** shall attest that the program is complying with the terms and conditions of this Order in addition to complying with the requirements of Chapter 4723-5, OAC.
11. **ATS** and its administrator shall not submit or cause to be submitted any false, misleading, or deceptive statements, information, or documentation to its staff, its students, its applicants for admission, or to the Board or its representatives.
12. **ATS** shall submit the reports and documentation required by this Order or any other documents required by the Board in order to determine the program's compliance with Chapter 4723-5, OAC, to the attention of the Education Unit, Ohio Board of Nursing, 17 South High Street, Suite 400, Columbus, OH 43215-7410.
13. **ATS** shall verify that the reports and documentation required by this Order are received in the Board office.
14. In addition to the requirements set forth in Rule 4723-5-09(D)(1), OAC, **ATS** shall inform the Board within ten (10) business days, in writing, of any change in its administrator.

### **FAILURE TO COMPLY**

If it appears that **ATS** has violated or breached any terms and conditions of this Order prior to January 21, 2011, the Board may issue a Notice of Opportunity for Hearing and propose to withdraw **ATS's** provisional approval status and deny full approval status in accordance with Chapter 119, ORC. The Board shall notify **ATS** via certified mail of the specific nature of the charges and the opportunity to request a hearing on the charges.

This ORDER shall become effective immediately upon the date of mailing indicated on the attached Certificate of Service and is hereby entered upon the Journal of the Board for the 22nd day of January, 2010.

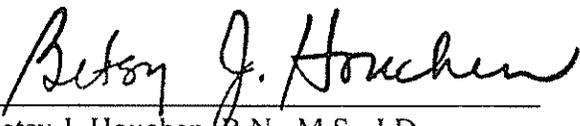
### **TIME AND METHOD TO PERFECT AN APPEAL**

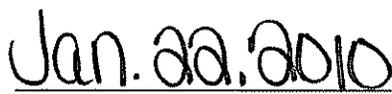
Any party desiring to appeal shall file a Notice of Appeal with the Ohio Board of Nursing, 17 S. High St., Ste 400, Columbus OH 43215-7410, setting forth the order appealed from and the grounds of the party's appeal. A copy of such Notice of Appeal shall also be filed by the appellant with the Franklin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

### **CERTIFICATION**

The State of Ohio  
County of Franklin

I, the undersigned Betsy J. Houchen, Executive Director for the Ohio Board of Nursing, hereby certify that the foregoing is a true and exact reproduction of the original Order of the Ohio Board of Nursing entered on its journal, on the 22nd day of January, 2010.

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

  
\_\_\_\_\_  
Date

(SEAL)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Adjudication Order, concerning **ATS INSTITUTE OF TECHNOLOGY, ASSOCIATE OF APPLIED SCIENCE DEGREE IN NURSING PROGRAM (ATS)** was sent via certified mail; return receipt requested, this 1 day of Feb., 2010 to ATS, c/o Bernita Cavulich, Program Administrator, 325 Alpha Park, Highland Heights, Ohio, 44143 and to Peggy Noble Maguire, Attorney for ATS, 470 Olde Worthington Road, Suite 200, Westerville, Ohio, 43082.

I also certify that a copy of the same was sent via regular U.S. mail this 1 day of Feb., 2010 to David Krupnick, SAC, Sanctions & Exclusions, Department of Health and Human Services, Office of Inspector General, Office of Investigations, PO Box 81020, Chicago IL 60601-81020.



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

tlb

cc: Melissa L. Wilburn, Assistant Attorney General

Certified Mail Receipt No. 7009 2250 0004 1407 2188  
Attorney Certified Mail Receipt No. 7009 2250 0004 1407 2195

OHIO STATE BOARD OF NURSING  
2009-10-09 9 AM 11:01

**BEFORE THE OHIO BOARD OF NURSING**

**In the Matter of**

⌘

**Case No. 08-4687**

**ATS Institute of Technology,**

⌘

**Ronda Shamansky  
Hearing Examiner**

**Respondent.**

⌘

**November 9, 2009**

**REPORT AND RECOMMENDATION**

Appearances

Richard Cordray, Attorney General, by Melissa Wilburn, Assistant Attorney General, on behalf of the State of Ohio.

Peggy Noble Maguire, Law Offices of Peggy Maguire, on behalf of ATS Institute of Technology.

Hearing Date: October 19, 2009

**SUMMARY OF THE EVIDENCE**

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

**Background**

1. ATS Institute of Technology [ATS] is a school in Highland Heights, Ohio, that offers two nursing education programs: a one-year Practical Nursing program that prepares students to become licensed practical nurses [LPN's], and a two-year Associate Degree in Nursing program that prepares students to become registered nurses [RN's]. There is also a "bridge program" for students who have completed the LPN course and wish to get further training to become RN's. The school was founded by Yelena Bykov and her husband, Mark Bykov, who came to the United States approximately 15 years ago from the Ukraine.<sup>1</sup> Ms. Bykov testified that she worked as an educator in the fields of mathematics, science, and computer science for 20 years in the Ukraine before coming to the United States. Although she considers herself an educator by profession, she never applied to be licensed as a teacher in Ohio, because it was not necessary to hold a license in order to teach at a private institution. At one time, ATS also offered diploma programs in Computerized Accounting, Computer Programming and Design, and an Associate Degree program in Applied Science and Business. Now, the only program offered in addition to the two nursing programs is an

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<sup>1</sup> Yelena Bykov goes by the name "Helen". She is referred to as "Helen" in some of the documents and testimony

English as a Second Language program. Until the summer of 2009, Ms. Bykov's title was CEO and Education Director. She testified that now she is only the CEO.

2. The Ohio Revised Code [R.C.] grants broad authority to the Ohio Board of Nursing [Board] to license and regulate nurse education programs in this State. R.C. 4723.06(A)(4) requires the Board to establish minimum standards for nursing education programs. Subsections (A)(5), (6) and (7) authorize the Board to survey, inspect, and grant approval to those programs that meet certain criteria. There are three different types of approval that the Board may grant to nursing education programs. Under R.C. 4723.06(A)(5), the Board may grant "full approval" to a program that meets the standards established by the Rules of Ohio Administrative Code [OAC] Chapter 4723-5. Under R.C. 4723.06(A)(6), the Board may grant "conditional approval" to a new program or a program that is being reestablished after ceasing to operate, if the program meets the minimum standards in the Rules. Under R.C. 4723.06(A)(7), the Board may place a program that has ceased to meet and maintain the minimum standards set out in the Rules on "provisional approval" for a period of time specified by the Board. At the end of the time period specified, the Board is required to reconsider whether the program meets the minimum standards provided by the laws and rules. If it does, the Board shall grant full approval of the program. If it does not, the Board may withdraw its approval of the program.
  
3. ATS filed an application for approval of its new nursing education program with the Board, and the Board issued conditional approval of the program in May 2006. Lisa Emrich, the Manager of the Board's Education, Practice and Administration Unit, testified that prior to a school's first graduation, Board staff members visit the school to assure that it has implemented its program as it proposed to do in its application for approval. The Board's first visit to ATS took place in approximately May 2007 for the initial site visit. Following that visit, the Board issued a Survey Report in December 2007, citing various problems with the nursing education program operated by ATS, that were discovered during the Board's visit to the school. ATS submitted a response to the Board's report in February 2008.

#### **March 2008 Consent Agreement**

4. Because of the deficiencies cited in the Board's December 2007 Survey Report, the Board and ATS entered into a Consent Agreement in March 2008. (State's Exhibit [St.Ex ] D) In the Consent Agreement, ATS stated that it recognized it had acted in error, and acknowledged several deficiencies, including the following:
  - ATS hired an unqualified teaching assistant to teach clinical assignments.
  - ATS failed to notify the Board that its program was implemented differently than originally proposed. Specifically, ATS instituted a new student admission policy without notifying the Board of the change.
  - ATS admitted six students into the program without obtaining documentation that they met the admission requirements, and later

had to dismiss the students when it was determined that they did not meet the admission criteria.

- ATS had inconsistent student admission policies stated in its school catalog and student handbook.
- During the May 2007 Survey Visit, ATS did not have students' evaluations for an obstetrical clinical course. ATS explained that the instructor of the course abruptly left her position, refused to submit the evaluations, and did not respond to its attempts to obtain the evaluations.

(St. Ex. D at 2-3)

5. Pursuant to the terms of the Consent Agreement, the Board granted ATS full approval of its nursing education program, subject to terms and conditions that would apply to the school for a minimum of 3 years. For its part, ATS agreed to pay a fine of \$1,000. ATS also agreed that it would not expand its operations to any new locations; that it would cooperate with announced or unannounced Survey Visits by the Board, ensuring that all materials requested were timely made available to the Board or its representatives; and that it would revise its Student Handbook, Policy Manual, and School Catalog so that all policies, including the student admission policy, were consistently stated.
6. In the Consent Agreement, ATS also agreed that it would provide notification to every facility with whom it had an affiliation agreement to secure clinical experiences for its students, notifying them that it had obtained full approval of its program, subject to monitoring by the Board. ATS was required to provide notification of the Consent Agreement to any new facility providing clinical experiences with its students, and to provide a complete copy of the Consent Agreement to any facility that requested it. ATS was also required to provide a complete copy of the Consent Agreement to all faculty members, and to provide notification to all students that a complete copy of the Consent Agreement was available on request.
7. In Paragraph 10 of the Consent Agreement, ATS agreed that it would submit written progress reports to the Board on a quarterly basis, beginning June 1, 2008, to identify and explain any changes in the implementation of the program, the effective date of those changes, the rationale for the changes, and how the changes were implemented. Along with each quarterly report, ATS agreed that it would "attest that the program is complying with the terms and conditions" of the Consent Agreement and the requirements of OAC Chapter 4723-5.
8. Paragraph 11 of the Consent Agreement provided that ATS and its administrator would not submit or cause to be submitted any false, misleading, or deceptive statements, information, or documentation to the Board, or to ATS's students or applicants for admission.
9. A section of the Consent Agreement titled "Failure to Comply" provided that ATS agreed that its "full approval" status would be automatically changed to "provisional approval" status if it appeared to the Board that ATS had violated any terms or conditions of the Consent Agreement.

**July 2008 Addendum to Consent Agreement**

10. Four months after it entered into the Consent Agreement with the Board, ATS was found to have violated the terms of that Agreement. Rather than acting upon its authority to change ATS's status to "provisional approval," the Board offered ATS the opportunity to enter into an Addendum to the Consent Agreement, which became effective in July 2008. In the Addendum, ATS acknowledged that it had failed to comply with some of the terms and conditions of the March 2008 Consent Agreement, including the following:
  - ATS failed to revise its Student Handbook, Policy Manual, and School Catalog so that all policies, including the student admission policy, were consistent.
  - The notice that ATS was required to provide to each facility with whom it had an affiliation agreement to secure clinical experiences for its students was found to be subject to misinterpretation.
11. At the hearing, the Board's witnesses testified about some of the reasons that an Addendum to the Consent Agreement became necessary. Concerning the issue of inconsistent policies, Lisa Emrich testified that the Board found that the policies concerning student admissions remained inconsistently stated in ATS's literature, despite the fact that ATS had submitted a quarterly report in June 2008 stating that the policies had been revised and made consistent. (Tr. at 94-95)
12. Concerning the notice that ATS was required to provide to its affiliates where its students gained clinical experience, Ms. Emrich testified that the Board was concerned about misinterpretation, because ATS's notice implied that the Consent Agreement with the Board reflected favorably on ATS as a school, whereas in actuality, a Consent Agreement at that point in a school's licensure is not typical, and shows that deficiencies existed in its program. (Tr. at 95, 110) She identified State's Exhibit J, which is the Notice that ATS provided to advise its affiliates of the Consent Agreement. (Tr. at 96-98) That letter, from the Director of ATS's Nursing Programs, Alice Somich, provides in pertinent part, as follows:

Notification of FULL APPROVAL to ATS Institute of Technology ADN program

April 14, 2008

It is my pleasure to announce that at the March 14, 2008 Ohio Board of Nursing meeting, the Board of Nursing voted to grant FULL APPROVAL to our ADN program. This is the best result possible for the college and evidence of our hard work. The full approval by the Ohio Board of Nursing avows our efforts to provide our students with the proficiency and capacity necessary to become RN's, and by doing so allows our nursing students to continue to complete their education in a high quality program of nursing.

"I applaud the nursing program for this remarkable success, evidenced by the Ohio State Board of Nursing approval," said Yelena Bykov, Dean of the ATS Institute of Technology.

The ATS satisfied the concerns raised by the OBN and pledges to continue to provide exceptional nursing programs. A Consent Agreement has been signed between the Ohio Board of Nursing and ATS Institute of Technology. As part of the Consent Agreement, ATS has agreed to provide notification of the Consent Agreement to every facility affiliated with ATS with which we have an agreement in securing clinical experiences for our students. According to the Consent Agreement ATS will be monitored by the Board for the first three years. Board reviews of nursing programs are a regular and routine part of education in nursing. It is also required from us and assures our clinical agencies that our faculty and staff will continue to work diligently to prepare our students for the field of nursing while maintaining the high academic standards ATS is known for. We vow to continue to make ongoing improvements to our programs to keep up with the latest advancements in the field of nursing. A complete copy of the Consent Agreement is available upon request.

\* \* \*

(St. Ex. J)

13. In the Addendum, ATS agreed that future notification statements would be pre-approved by the Board. However, Yelena Bykov pointed out during her testimony that the Board did not require ATS to provide the re-drafted notice to those who had already received the first notice. (Tr. at 130) Further, ATS agreed to pay a fine of \$500 and agreed that by September 1, 2008, ATS would revise its Policy Manual so that all policies, including the student admission policy, were consistent in substance with the policies stated in ATS's Student Handbook and School Catalog. ATS agreed to submit copies of the Policy Manual to the Board by September 15, 2008, so that the Board could review the policies for consistency with the other school literature, and to submit an explanation as to how ATS informed all staff of the revised Policy Manual, and how the Policy Manual was made available to staff.
14. The Addendum also provided that ATS was under a continuing duty to supply the Board-approved notification of the Consent Agreement and Addendum to any new facility providing clinical experience for ATS's students, and to provide a copy of the Addendum to every faculty member. ATS was required to notify students that copies of the Consent Agreement and Addendum were available upon request.
15. The Addendum contained a "Failure to Comply" clause, to which ATS agreed by signing the Addendum:

FAILURE TO COMPLY

The Board and ATS agrees [sic] that the Board shall send written notice of possible violations or breaches to ATS if it appears to the Board that ATS

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

(St. Ex. E at 4)

### **September 2008 Survey Visit by Ohio Board of Nursing**

16. In September 2008, Michele Hubbard, an Education Consultant with the Board of Nursing, conducted an announced Survey Visit to ATS, to ensure that the school was complying with all terms of the March 2008 Consent Agreement and the July 2008 Addendum, as well as with the laws and rules governing nursing programs.<sup>2</sup> Several problems became apparent during the Survey Visit. Ms. Hubbard testified that she met with Alice Somich, R.N., the Program Administrator for ATS's nursing programs, and with Yelena Bykov, who was the Education Director at that time. Although she met with Ms. Somich and Ms. Bykov together, she had a second meeting with Ms. Somich individually. (Tr. at 35-36, 58) She also met separately with a group of at least 10 faculty members and with a full room of students. (Tr. at 58)

Through these meetings, Ms. Hubbard learned that several important decisions had been made, not by the Program Administrator or by faculty, but by ATS's Education Director, Yelena Bykov. That was of concern because Ms. Bykov is not a nurse, and yet it appeared that she was "very much involved" in making decisions that affected the content and curriculum of the nursing programs. (Tr. at 37) Ms. Hubbard also testified that she found that ATS was not implementing its programs the way it proposed to do so in its paperwork filed with the Board. As a result, she and the other agent involved in the Survey Visit prepared a written notice of the violations found during that visit, through a letter dated October 17, 2008. (St. Ex. G) ATS was provided 30 days in which to submit a response, and it did provide one, which was received by the Board on November 8, 2009. (St. Ex. H) The Board reviewed the report of the Survey Visit, as well as ATS's response at its January 2009 meeting.

### **Automatic Placement on Provisional Approval Status in January 2009**

17. On January 15, 2009, the Board issued a Notice of Automatic Placement on Provisional Approval Status and a Notice of Opportunity for Hearing to ATS.<sup>3</sup> (St. Ex. A) The Notice cited

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<sup>2</sup> The survey was conducted by Michele Hubbard and another Education Consultant, Joyce Zurmehly, Ph.D., who is no longer with the Board, and did not testify at the hearing.

<sup>3</sup> A confidential student key was attached to the Notice, to identify students referred to in the allegations. Because the "Student Key" contains the names of individuals, it is ordered to be sealed.

the "Failure to Comply" paragraph of the July 2008 Addendum, and advised ATS that the Board had automatically placed it on provisional approval status for a minimum of two years from the date of the Notice. The Notice detailed numerous deficiencies found during the Survey Visit. ATS requested a hearing through a letter from its counsel dated February 9, 2009 (St. Ex. B). At the hearing on October 19, 2009, the Board and ATS presented evidence on the deficiencies alleged in the Board's Notice dated January 15, 2009.

#### **Reasons for Alleged Failure to Comply with Consent Agreement and Addendum**

18. The March 2008 Consent Agreement required ATS to submit written progress reports to the Board on a quarterly basis. The progress reports were required to identify any changes in the implementation of the program, the effective date of the change, the rationale for the change, and a description of how the change was implemented. The Consent Agreement also required that in each progress report, "ATS shall attest that the program is complying with the terms and conditions of this Consent Agreement in addition to complying with the requirements of Chapter 4732-5, OAC." Further, ATS agreed that it would "not submit or cause to be submitted any false, misleading or deceptive statements, information, or documentation to the Board, or to ATS's students or applicants for admission."
19. The Board alleges that ATS has violated its Agreement by making the following false or inconsistent statements:
  - In the August 2008 progress report, ATS identified a change in its final exit exam from the ERI to the HESI exam and implied that faculty were involved in the decision. However, during the September 2008 Survey Visit, the Program Administrator told Board agents that this decision was made by the Education Director, who is not a nurse. Also, in ATS's November 2008 response to the Survey Visit report, ATS indicated that the Education Director initiated this change and it was subsequently presented to the faculty.
  - In its August 2008 progress report, ATS stated that the "faculty decided" to replace a preceptorship program with an NCLEX review course. However, during the September 2008 Survey Visit, the Program Administrator told Board agents that this decision was made by the Education Director, despite the fact that the Rules require faculty involvement in curriculum planning. Also, in ATS's November 2008 response to the Survey Visit report, ATS indicated that the program administration initiated this change and subsequently informed faculty of the initiated review sessions.
  - In its August 2008 progress report, ATS identified a change in the entrance exam that it used to admit students, changing from the NET exam to the PSB exam, but did not identify the date of the change, the rationale for the change, or explain how it was implemented and how faculty were involved in determining program policy, as required by OAC Rule 4723-5-09(A)(2)(a). Moreover, during the September

2008 Survey Visit, the Program Administrator and the Education Director told Board agents that the Education Director, who is not a nurse, had decided to implement the PSB exam

- ATS provided inconsistent descriptions of its organizational structure. During the September 2008 Survey Visit, the Program Administrator admitted to Board agents that the Education Director, who is not a nurse, made decisions concerned with curriculum and entrance/exit examinations. In its November 2008 response to the Survey Visit report, ATS stated that the Program Administrator “has authority, accountability, and responsibility for all aspects of the Program,” but also stated that the Education Director “provides leadership for planning for the academic program” and “ensures the development and implementation of high quality programs.”
- During the September 2008 Survey Visit, ATS’s Program Administrator told Board agents that evaluations for faculty members were complete in July 2008. However, when the Board’s agents reviewed files, those employees’ files did not contain the evaluations, even though ATS’s written policy states that the written copy of the evaluation is to be placed in the employee’s file. And, although ATS supplied faculty evaluations in its November 2008 response to the Survey Visit report, most of the evaluations were signed by faculty members in November 2008, acknowledging that they had read and discussed the evaluations.

### **Deficiencies in Faculty Evaluations**

- 20 The changes in testing and curriculum are discussed in greater detail later in this report. Concerning the alleged misstatements about faculty evaluations, Michele Hubbard testified that ATS is required pursuant to R.C. 4723.59 to have a written policy for evaluations in place and implemented as it is written. (Tr. at 52) ATS’s written policy stated that a written copy of an employee’s evaluation was to be placed in the employee’s personnel file. Ms. Hubbard testified that when she spoke with at least 10 faculty members during the Survey Visit, many told her they had never had an evaluation, and that they had signed up for them but were told they were cancelled. (Tr. at 52) Alice Somich gave her a list of faculty members and told her that “the ones with the check marks are done,” but when Ms. Hubbard looked in the files for those employees, she did not find signed, completed evaluations, and she documented that finding in her report. (Tr. at 54, St. Ex. G at 4) Ms. Hubbard explained that the Board did receive some evaluations from ATS in its November 2008 response to the Survey Visit, but that most of the evaluations were signed by employees in November, even though they were dated by ATS staff as being performed several months earlier. (Tr. at 53-54)

Lisa Emrich also testified about the deficiencies with faculty evaluations. She demonstrated with one evaluation, contained in ATS’s response to the Survey Visit report. (St. Ex. H at 43) The evaluation of instructor K. Clark was signed by Alice Somich on August 16, 2008, but has no signature of the instructor. There is a note that the employee did not sign because she was

fired, but the Board had been informed in July that all evaluations had been completed; it was not informed that one evaluation could not be completed because the employee had been fired. Also, the scale "ratings" assigning a number from 1 to 5 were not completed, nor was there a reason stated for her termination. (Tr. at 88-90)

In response, Yelena Bykov testified that at the time of the September 2008 Survey Visit, most faculty were new and had not been employed for one year; therefore, it was not yet time for them to have evaluations. (Tr. at 139-140) She said that, to her knowledge, Program Director Alice Somich did complete at least some of the faculty evaluations. She testified that she learned after reading the Survey Visit report that employees had not signed their evaluations. She explained that Alice Somich did not understand what was required in order to complete an employee evaluation. She did not realize that it entailed discussion with the employee, and that the employee should sign off on the evaluation. She said that Ms. Somich believed the evaluation was complete when she had done her part. Ms. Bykov testified that she discussed this with Ms. Somich, and then Ms. Somich called the faculty and asked them to sign their evaluations. She also testified that the evaluations had been kept in Ms. Somich's office and had not been placed in the employees' files. (Tr. at 141-142) Ms. Somich was terminated as the Program Director in January 2009. (Tr. at 117)

#### **Failure to Include an Attestation with the Progress Reports**

21. Concerning ATS's failure to submit progress reports with an attestation, Lisa Emrich testified that the quarterly report dated August 29, 2008 has a statement that says "I attest that this document is true and correct" as of the date it was submitted, but that no one signed this report. The document itself contains a blank for Ms. Somich's signature and for the date it was signed, as shown by the scanned image below:<sup>4</sup>

I attest that this document is true and correct as of August 29, 2008

\_\_\_\_\_  
Alice M. Somich RN, MSN  
Director of Nursing Programs  
ATS Institute of Technology

\_\_\_\_\_  
Date

Ms. Emrich explained that the Board expected a signature from the Program Administrator, verifying that the report is true and correct, and that in this way, the Board verifies that the Program Administrator is accountable for all aspects of the program. (Tr. at 86-88)

Although neither Yelena Bykov nor the current Program Administrator, Bernita Kavulich,<sup>5</sup> addressed the lack of an attestation in her testimony, ATS's counsel claimed in its closing statement that Alice Somich, as a non-lawyer did not realize that "attesting" required her to sign her name. ATS submits that Ms. Somich thought she *had* attested by placing her typewritten name at the bottom, and that the line alleged to be a signature line appears too long for a

<sup>4</sup> Hearing examiner notes in the right margin of the page were cropped from the scanned image

<sup>5</sup> The transcript spells Ms. Kavulich's name as "Cavulich." However, my notes from her testimony and the exhibits with her signature indicate that it is spelled "Kavulich." See, for example, faculty evaluations at Resp. Ex. C.

signature line. Therefore, ATS argues that Alice Somich did not realize that she was required to sign this document. (Tr. at 192-193)

**Program Deficiencies Cited:**

**No plan of organization and administration that clearly delineates the relationship of the program to the controlling agency, as required by OAC Rule 4723-5-09(A)(1).**

22. Pursuant to OAC Rule 4723-5-09(A)(1), a nursing education program must have and implement a plan of organization and administration that clearly delineates the relationship of the program to the controlling agency. The Controlling Agency for ATS's program is Computer and Communication Center, Inc., dba ATS Institute of Technology. (Respondent's Exhibit [Resp. Ex.] A) Yelena Bykov, one of the owners of ATS and its controlling agency, testified that the name of the controlling agency was changed in June or July 2009 from "Computer Communications Center, Inc." to "MDT College of Health Sciences" (Tr. at 115) Ms. Bykov explained that, until the name change, she was also the "Education Director" for ATS; now she is called the CEO:

Q: Now, in previous witness testimony, we had seen a table of organization that listed you as education director. Do you recall that exhibit?

A: Yes.

Q: Would you say that that was an accurate reflection of your role being involved in the nursing education when that table of organization was created?

A: Yes. Actually, when this table of organization was created, it was other programs in our institution including business programs and computer programs, and I was an education director of all programs that was in our institution. Since our institution moved to only nursing program, my role is changed to being not education director but Chief Executive Officer.

(Tr. at 116)

In the notice sent by ATS to its affiliates to advise them that ATS had entered a Consent Agreement with the Board, Ms. Bykov is called by yet another title, "Dean of the ATS Institute of Technology." (St. Ex. J) The organizational chart provided by ATS in its response to the Board's Survey Visit Report shows that the position of the Education Director is above all other personnel, including the Director of the Nursing Program. (St. Ex. H at 9) In ATS's response to the Board's Survey Visit report, it stated, "The ATS Education Director always participates in the development of the programs' policies and oversees student performance." (St. Ex. H at 3) By the date of the hearing, ATS presented a different organizational chart, which does not show the Director of Nursing reporting to Yelena Bykov (Resp Ex A) In this chart, Ms. Bykov is the CEO only, and appears to have no connection to the Nursing Program itself. Michele Hubbard testified that this chart is different than the one she was shown when she visited ATS for the Survey Visit. (Tr. at 42-44)

23. The Board alleges that Ms. Bykov, who is not a nurse, was involved in decision-making concerning the substantive content of the nursing program, including a decision to change

from the NET admission exam to the PSB exam for individuals who wanted to enter the program; a decision to require a mandatory NCLEX review course for graduating RN students in place of a clinical preceptor program; and a decision to change from the ERI exam to the HESI exam as a requirement for students graduating in August 2008. These changes are discussed in greater detail later in this report.

24. The Board also alleges that ATS's organizational chart does not include the position of Education Consultant, despite the fact that ATS has had one in its employ for some time, and that this is in further violation of OAC Rule 4723-5-09(A)(1). Michele Hubbard testified that she was aware that ATS used the services of Virginia Cooley as an Educational Consultant, but that the Organizational Chart provided with the August 2008 quarterly report did not show her position with ATS. She said that she asked to see Ms. Cooley's job description at the September 2008 Survey Visit, but that information was not provided to her. (Tr. at 39-40) She explained that she wanted to know Ms. Cooley's credentials and her job description, as well as whether or not she was a faculty member. She stated that the Organizational Chart she was shown at the Survey Visit was different than the one that ATS submitted with its response to the Survey Visit Report. (St. Ex. H at 9, Tr. at 42-43) She said that the organizational chart in ATS's response still did not answer her questions about how the Educational Consultant fits into the nursing program at the school.

ATS has not disputed that Virginia Cooley served as an Educational Consultant to the school. In its November 2008 response to the Board's Survey Visit report, ATS stated:

The ATS Education Consultant, who is a nurse educator with more than 20 years of experience, has worked for ATS for 5 years and was always involved in the process of program development or revision  
(St. Ex. H at 2)

Ms. Bykov acknowledged during her testimony that ATS consulted with Virginia Cooley, a registered nurse who had retired from Ursuline College after 20 years with the nursing program there. She testified that the Educational Consultant was hired to help establish ATS's program and ensure that it complied with all governmental rules and regulations, and that she was still employed with ATS in March 2008 when the first Consent Agreement was signed. (Tr. at 120, 155-156) However, ATS did not demonstrate that the Educational Consultant ever appeared on its organizational chart.

### **Decision to change entrance exam from the NET to the PSB**

25. Lisa Emrich testified that the Board was interested in the testing used by ATS because of the school's low pass rate on the NCLEX exam, which is the test used by all 50 states to license nurses. She explained that the Board requires programs to have an annual pass rate for all first-time test takers that is at least 95% of the national average. In 2007, ATS had a pass rate that was just 62.96%, well below the national average. In 2008, the pass rate was only 59.09%, again, well below the national average. (Tr. at 81-83) This caused concern about whether qualified students were being admitted to the program, since a relatively low percentage of them were able to pass the State's licensure examination.

Michele Hubbard testified that she first became aware of the change from the NET exam to the PSB exam as an admission test, through the quarterly report filed by ATS in August 2008. (Tr. at 49) OAC Rule 4723-5-09(A)(2)(a) requires faculty to be involved in determining curriculum planning, academic policies and procedures, and program policies and procedures. The response to the Survey Visit Report that ATS prepared in November 2008 acknowledges that Ms. Bykov was involved with this decision:

Based on faculty and Program Director suggestions for improvements in the quality of enrolling students, the Education Director conducted research and presented the PSB entrance exam, which is administered by other nursing schools, to the Program Administrator. The Program Administrator approved the new entrance exam and changes to the admission policy.

(St. Ex. H at 3)

At the Survey Review, Ms. Hubbard spoke with both Yelena Bykov and Alice Somich, the Nursing Program Administrator. She testified that both Ms. Somich and Ms. Bykov told her that it was Ms. Bykov's decision to change the admission test. (Tr. at 49, 64) Likewise, when Ms. Hubbard spoke to faculty that same day, they told her they had had no input into the decision to change the exam. (Tr. at 49) Ms. Hubbard explained that it is the responsibility of the Program Director to make this kind of change because it is a decision that must be made by someone with expertise in nursing. (Tr. at 50) She referred to OAC Rule 4723-5-12, which requires that policies have to come from nurses who can best evaluate proposed changes and what gain would come from them.

In her testimony at the hearing, Ms. Bykov said that she did not make this decision. She said that she learned, through reading minutes of the faculty meetings, that the faculty members were concerned about a noncorrelation between the results of the NET admission exam and students' class performance. (Tr. at 118) Those minutes were not produced at the hearing. She testified that the Program Director and the faculty had reviewed this and identified a "disconnect." Ms. Bykov had heard that other schools used a different entrance exam, the PSB, so she brought it to the attention of Program Director Alice Somich.<sup>6</sup> She stated that Ms. Somich told her she liked the exam and that she should "go ahead and order the test." (Tr. at 119-120) Ms. Bykov testified that Education Consultant Virginia Cooley was also involved in this decision, and that she also reviewed the PSB materials, before Ms. Somich recommended using the PSB exam instead of the NET exam. (Tr. at 120) The Education Consultant, Virginia Cooley, did not testify at the hearing.

#### **Decision to change from preceptorships to an NCLEX review course**

26. Concerning the decision to change from preceptorship hours to a mandatory NCLEX review course, Michele Hubbard testified that she first became aware of this change through the quarterly report filed by ATS in August 2008. (Tr. at 65, St. Ex. F) The

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<sup>6</sup> Ms. Bykov referred to Alice Somich at times as the "Program Director" and at other times as the "Program Administrator."

quarterly report filed by ATS states that “faculty decided these hours would be best put to use holding an in-school review for the graduating students” (St. Ex. F at 2) At the Survey Review in September 2008, Michele Hubbard spoke with both Yelena Bykov and Alice Somich, the Nursing Program Director, about the decision to eliminate preceptorships and substitute the NCLEX review course. Ms. Hubbard testified that Alice Somich told her that the Education Director, Yelena Bykov, had made the decision to implement the change, and that faculty were not involved in this decision. (Tr. at 38-39, 65) That was confirmed later that day when Ms. Hubbard spoke with faculty members, who told her they were not involved in the decision (Tr. at 38-39, 65) Ms. Hubbard testified that this change was of concern because it replaced an experience that provided actual hands-on patient care with a theory course, and because the decision was not made by faculty members.

In response, Ms. Bykov testified that Program Director Alice Somich came to her because she was having difficulty placing students in preceptorships. (Tr. at 123-124) Ms. Bykov explained that it is difficult to find enough positions for the students, because facilities are not open to accepting students, and because a preceptorship requires 1:1 supervision. Ms. Bykov identified emails between Alice Somich and Susan Zupancic, RN, of Huron Hospital. (Resp. Ex. E) In the emails, dated in June 2008, Ms. Somich sought placements for nursing students in preceptorships, but the response was that Ms. Zupancic would not be able to place any students at her facility. She explained in a subsequent email that her facility simply did not have enough preceptors to be able to accept any more students. (Resp. Ex. E) Ms. Bykov stated that she told Ms. Somich to check with the Ohio Board of Nursing to find out if there was a particular number of hours required for preceptorships, but that when Ms. Somich checked, she found that *no* preceptorship hours were required. (Tr. at 123-124) Therefore, in the summer of 2008, ATS implemented the NCLEX review course in place of preceptorships. (Tr. at 129)

### **Decision to change exit exam from the ERI to the HESI**

27. The quarterly report filed by ATS in August 2008 states that in July 2008, the HESI testing system was purchased from Elsevier, Inc. to be used in place of the ERI testing system as the exit exam for graduating students. That report also indicates that Yelena Bykov participated in a subcommittee to investigate and purchase the new test, and that after the ERI results were in, “faculty decided” to require the HESI test as the exit exam. (St. Ex. F at 1)

Michele Hubbard testified that when she visited ATS for her Survey Visit in September 2008, Program Administrator Alice Somich told her that this decision was not made by the faculty. This was confirmed by the faculty later in the day when Ms. Hubbard met with a group of them. (Tr. at 46-47) Ms. Hubbard’s Survey Report indicates that she checked the faculty minutes that were available on site, and those minutes also did not reveal any faculty involvement in the decision to implement the HESI exam. (St. Ex. G at 3)

Lisa Emrich testified that in July 2008, some ATS students called the Board to express concern that they would have to take a second exam to graduate, and that they were told they would need a score of at least 850. (Tr. at 79-80) Michele Hubbard testified that, prior to ATS's August 2008 report, she received telephone calls from students who told her that they had already taken the ERI exam, and then were told that they would have to take a second exam, only two weeks before the date in August when they were supposed to graduate. She said that the August 2008 quarterly report confirmed what the students had told her: that they were being required to take an additional test [the HESI] that was not part of the stated requirements to complete the program. (Tr. at 47-48) In addition, the Board was concerned because even after the policy was changed to require the HESI exam, three students who did not meet the minimum score of 850 were nonetheless permitted to graduate. In ATS's response to the Survey Visit report, Alice Somich explained:

Three students, identified in the OBN report, were given personal consideration before the above policy was adapted. Student #1 showed improvements in test scores and was awarded the degree. Student #2 scored only 4 points below the required 850 score and provided proof of extensive remediation. Both students scored above 700 and would have been granted degree [sic] under final adapted policy[sic]. The third student had an extraordinary family health situation that impacted her HESI test results. She did received [sic] a passing grade on the earlier ERI exam and was a good student meeting other graduation requirements. She had on her own initiative sign [sic] up for review sessions to assist her prior to taking the NCLEX exam. Accordingly, it was decided to award her the degree.<sup>7</sup>

(St. Ex. H at 6)

ATS's policy as of August 29, 2008 stated that a passing score on the HESI exam (not merely "any exit exam") was needed to complete the nursing program:

The Director of Nursing Programs will not send any student's Program completion Letter to the Board until the student has been successful with the HESI exam.

(St. Ex. F at 6)

In ATS's November 2008 response to the Survey Visit Report, ATS stated that students in the graduating class of 2008 who scored a 700 on the HESI exam and met all other graduation requirements were awarded their Associate of Applied Science degrees in Nursing. (St. Ex. H at 6) But that same document attached a policy statement that requires a score of 850 on the HESI test. (St. Ex. H at 51) Lisa Emrich explained that it is acceptable for a program to set its own requirements for graduation, but that once those policies are made, the school should not deviate from those requirements, especially without notice to the students. (Tr. at 85)

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<sup>7</sup> Although Respondent's Exhibit H was purportedly signed by Program Administrator Alice Somich, several parts of this document bear a strong resemblance to Yelena Bykov's manner of speech, including the tendency to omit definite and indefinite articles (the, a, an) from sentences, as well as difficulties with verb conjugations

A memo attached to ATS's response to the Survey Visit report confirms that the test was required even for students who had already passed the ERI exam. On August 4, 2008, students who were expecting to graduate in August were advised "The test next Tuesday is for all students, even if you passed the first ERI. It is mandatory. Please keep in mind that your course syllabus can change without notice" (St. Ex. H at 50)

In response, Ms. Bykov testified that faculty did have input into the decision to change from the ERI exam to the HESI exam. She said that she learned through reading minutes of faculty meetings that faculty members were not satisfied with the ERI exam. (Tr. at 121-122) Those minutes were not produced at the hearing. She referred to a faculty meeting agenda dated July 17, 2008, in support of her claim that faculty members did participate in the decision to change the exam:

- 2 Concerns about Seniors passing NCLEX-RN and PN: new testing plan
  - a. ERI to Elsevier Reach [provider of the HESI test] testing
  - b. Mandatory meeting with John Kocur with Elsevier about the new testing program and all it entails (will be mandatory for all full-time faculty) possibly August 29, 2008.

(St. Ex. H at 8)

Although this item appeared on the agenda, no minutes were provided to show that the faculty actually discussed whether this change should be implemented, and the State argued that this agenda note appears to indicate that the decision to change from one exam to the other had already been made

Ms. Bykov also called attention to Alice Somich's statement in the August 2008 quarterly report that "After all the results [of ERI testing] were in, the faculty decided based on those poor results that it will be mandatory for students to take HESI [sic] Exit exam." (St. Ex. F at 1)

Ms. Bykov testified that ATS's policy on Graduation Requirements is accurately stated in the August 2008 progress report. (St. Ex. F at 17) She emphasized that the policy requires students to "pass a standardized exit examination in order to complete the program," but does not specify a particular exam, such as the ERI or the HESI. She explained that there were some students who passed the ERI but not the HESI, and some students who passed the HESI but not the ERI. (Tr. at 131-132) She said that Student #1 and Student #3 had passed the ERI exam, even though they did not pass the HESI. She did not know whether Student #2 had passed the ERI exam (Tr. at 132) With respect to Student #3, Ms. Bykov testified that she was an excellent student, who had a family health situation that left her with "no capacity" to take the HESI exam. She explained that this student's "awful" result on the HESI was unlike her ERI score, and so she asked the Program Director to give this student personal consideration (Tr. at 133-134)

**Mitigation Evidence: Testimony of Bernita Kavulich, R.N.**

28. ATS presented the testimony of Bernita Kavulich, a registered nurse with a BSN and MSN, as well as a post-master's certificate in nursing education. Ms. Kavulich has been the Program Administrator of ATS since March 4, 2009 (Tr. at 173) Although the Assistant Attorney General objected to the relevancy of Ms. Kavulich's testimony, since she was not employed at ATS at the time of the alleged violations, her testimony was permitted as mitigation evidence.

Ms. Kavulich testified that faculty members have told her they believe they are seeing a "higher quality of student" now that the PSB exam is used as the entrance exam to the program, rather than the NET exam. She also testified that students have given positive feedback regarding the change to the HESI exam as the school's exit exam, because they find it very similar to the NCLEX licensure exam. (Tr. at 175-176)

Ms. Kavulich said that faculty evaluations are now done by her and her assistant program administrator, who is also a nurse. Clinical personnel are evaluated by the assistant program administrator, and then Ms. Kavulich reviews the evaluation with the faculty member who adds comments as necessary and signs the evaluation. General education faculty members are evaluated by the general education coordinator and then reviewed by Ms. Kavulich, who then meets with the faculty member. The faculty member adds comments if any are appropriate, and signs the evaluation at the meeting with Ms. Kavulich, who co-signs the document. In addition, faculty members also complete a self-evaluation. Ms. Kavulich testified that she is in the process of revising the faculty evaluation process so that new faculty members are evaluated more frequently until they have become accustomed to the school. (Tr. at 177-178)

Ms. Kavulich stated that she had not seen the faculty evaluations at State's Exhibit H, but she acknowledged in looking at them that she is planning to change the way evaluations are done. However, she is planning to use the same form. (Tr. at 180-181)

**FINDINGS OF FACT**

1. ATS has not complied with several terms of the Consent Agreement and Addendum that it signed with the Board. ATS agreed in Paragraph 10 of the Consent Agreement that it would submit written quarterly progress reports that identified and explained any changes in the implementation program, with an attestation that the program is complying with the requirements of the Consent Agreement and with Chapter 4723-5 of the OAC. The August 2008 quarterly report from ATS did not meet these requirements because it did not adequately explain the rationale and procedure for implementing changes in the tests given to its students, and because it did not include an attestation by the Program Administrator, whose signature line and date line were left blank.
2. ATS also has not complied with Paragraph 11 of the Consent Agreement, in which ATS agreed that it would not submit or cause to be submitted any false, misleading, or

- deceptive statements, information, or documentation to the Board. The August 2008 progress report that ATS submitted contained false statements concerning who made the decision to change several substantive aspects of the nursing program. The progress report stated that "faculty decided" to use the HESI exit exam for graduating students instead of the ERI exam. However, when a Board agent asked the Program Administrator about this change, the Program Administrator told her that a non-nurse, Yelena Bykov had made this change. That was confirmed when the agent spoke with faculty members, who told her they were not involved in that decision.
3. ATS has also failed to comply with Paragraph 11 of the Consent Agreement by making false statements in its August 2008 progress report concerning a change from clinical preceptorships to an NCLEX review course. While the progress report states that "faculty decided" to make this change, ATS's nursing Program Administrator told the Board's investigator that a non-nurse, Yelena Bykov, had made this change. That was confirmed when the agent spoke with faculty members, who told her they were not involved in that decision.
  4. ATS has also failed to comply with Paragraph 11 of the Consent Agreement by making false statements in its November 2008 response to the Board's Survey Report concerning a change from the NET exam to the PSB exam as an entrance exam for incoming students. The quarterly progress report submitted by ATS in August 2008 identified this change, but failed to explain the rationale for it or how it was implemented. In the response provided by ATS to the Board's Survey Report, ATS explained that the faculty and Program Administrator had suggested "improvements in quality of enrolling students" and that the Program Administrator had approved the exam and changes to the admissions policy. Those were false statements, because when the Board conducted a Survey Review at this school in November 2008, both Yelena Bykov and the Program Administrator, Alice Somich, told the Board's agents that Ms. Bykov had decided to change the entrance exam from the NET exam to the PSB exam. Faculty members confirmed this when they told the Board agents that they were not involved in this decision.
  5. ATS has also failed to comply with Paragraph 11 of the Consent Agreement by submitting inconsistent descriptions of the relationship to the program with its controlling agency, Computer and Communications Center, Inc., one of the owners of which was the school's Education Director, Yelena Bykov. Because the explanations of ATS's organizational structure, and the explanations of Ms. Bykov's role in the school are so varied, they cannot all be true. OAC Rule 4723-5-09(A)(1) requires that a program must have and implement a plan of organization and administration that clearly delineates the relationship of the program to the controlling agency. The evidence taken from ATS's own documents demonstrates that Ms. Bykov has had many titles, ranging from Education Director to Dean to CEO, in a very short period of time, coinciding with a name change of the controlling agency. The organizational chart provided by the school in November 2008 showed that Ms. Bykov was the Educational Director and that the Director of the Nursing Program reported to her. Although a different organizational chart presented at the hearing sets Ms. Bykov apart from the entire nursing program, the evidence demonstrated that Ms. Bykov, who is not a nurse, was involved in decisions concerning

the content of the nursing curriculum in 2008. Although Ms Bykov denied that she took any part in these decisions, she was not found to be credible

6. ATS failed to comply with Paragraph 11 of the Consent Agreement by making false statements concerning faculty evaluations. During the September 2008 Survey Visit, ATS's Program Administrator, Alice Somich, told Board agents that faculty evaluations had been completed. Yet when the agents looked for the evaluations in personnel files, they were not there, and faculty members reported that they had not been evaluated. ATS submitted completed evaluations with its November 2008 response to the Survey Report, but there were inconsistencies, including the fact that they signed by faculty members long after the date on which they were stated to have been completed.

### CONCLUSIONS OF LAW

1. The Board has met its burden of proving, by a preponderance of the evidence, that ATS has committed the violations alleged in the January 2009 Notice, and therefore, is in violation of the Consent Agreement and Addendum that it signed with the Board
2. The Addendum, in its "Failure to Comply" provision, authorized the Board to place ATS's pre-licensure nurse education programs on provisional approval if it found sufficient evidence that a violation or breach had occurred. The July 2008 Addendum provides that violations of the March 2008 Consent Agreement or the July 2008 Addendum would result in further Board action. Because of the evidence that further violations did occur, the Board is authorized to take further action against ATS's program, including placing the program on provisional approval status for two years from the date of the Notice of Opportunity for Hearing that was issued in January 2009

### Discussion

Much of the evidence presented by the Board was directly controverted by Yelena Bykov, the former Educational Director, now CEO, of ATS Institute of Technology. As the trier of fact, it was my role to determine the credibility of witnesses, and I found that Ms. Bykov was not credible. Information in the documents that ATS provided to the Board demonstrated Ms Bykov's involvement in several decisions relevant to the substantive aspects of the nursing programs at ATS, even though she is not a nurse. This information was confirmed through interviews conducted by Board agents during the September 2008 Survey Visit. In the case of the decision to change from the NET exam to the PSB exam, a Board witness testified that Ms Bykov had admitted to her that she herself made this change; yet at the hearing, Ms. Bykov denied that it was her decision.

Instead, at the hearing Ms. Bykov testified that faculty members made these decisions, and that she learned about the faculty's desire to change certain tests used by the program, through reading the minutes of faculty meetings. She was not credible. The minutes that she allegedly relied upon were not provided, and not a single faculty member or administrator testified that he or she took part in any of the decisions at issue. Nor did ATS present any testimony from Virginia Cooley,

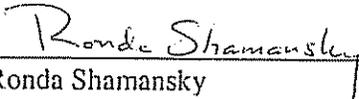
the Educational Consultant who was said to be involved in some of those decisions. Moreover, Ms. Bykov's testimony that the previous program administrator simply "didn't know" or "didn't realize" that things had been done incorrectly is not credible given that Alice Somich was the person who was, at least theoretically, in charge of the entire nursing program at ATS. The explanation that the previous administrator did not know what was required of her, and is therefore to blame for the various deficiencies, is unacceptable and only further supports the Board's contention that an attesting signature on ATS's reports was crucial, so that the Board would be able to hold someone responsible for the administration of this program.

Additionally, as a minor consideration, the letter from ATS to its affiliates advising them of the existence of the Consent Agreement reflects poorly on Ms. Bykov's credibility. The fact that the program was granted full approval so long as it complied with the terms of a Consent Agreement is clearly not a "remarkable success," nor "the best result possible for the college." The best result possible would have been full approval *without* a Consent Agreement that provided for Board monitoring of the program.

A review of all of the evidence in this case demonstrates that ATS's program, which has been operating only since May 2006, has had a history of problems concerning compliance with the laws and rules governing pre-licensure nurse education programs. The Board has given ATS several chances to correct those problems, in the form of the March 2008 Consent Agreement and the July 2008 Addendum to the Consent Agreement. Even now, when violations of the Agreements have been demonstrated, the Board is not asking to close or discontinue ATS's program by revoking its approval. It is merely asking to place ATS on a provisional status that will allow for additional Board monitoring, as it remedies its deficiencies and attempts to come into compliance with the laws and rules governing such programs, and with its own Agreements with the Board of Nursing. I find that the Board's proposal to place ATS on provisional status for two years from the date of its January 2009 Notice is reasonable and consistent with the mission granted to it by the General Assembly to monitor and approve nurse education programs, assuring that nurses who graduate from Board-approved programs are well-trained and competent.

### RECOMMENDATION

I recommend that the Board continue to maintain the program operated by ATS Institute of Technology on provisional approval until January 2011, at which time the program should be re-evaluated.

  
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Ronda Shamansky  
Hearing Examiner