



STATE OF NORTH CAROLINA

WAKE COUNTY

IN A MATTER BEFORE
THE NORTH CAROLINA STATE BOARD OF COMMUNITY COLLEGES

IN RE:) **HEARING OFFICER’S RECOMMENDATION**
)
UMANAHEALTHCARE INSTITUTE -)
Charlotte, Monroe, and Gastonia)

THIS MATTER came before Hearing Officer, Q. Shanté Martin (“Hearing Officer”), pursuant to 2B SBCCC 200.6 and 2B SBCCC 100.5, upon a Notice of Hearing dated 12 September 2018.

The State Board of Community Colleges (“SBCC”) initiated denial of Umanah Healthcare Institute’s proprietary school licenses for Charlotte, Monroe, and Gastonia (“Umanah Healthcare”) on 20 July 2018. The SBCC also initiated revocation of Umanah Healthcare Institute’s proprietary school licenses for Charlotte, Monroe, and Gastonia on 17 August 2018. On 24 July 2018, pursuant to 2B SBCCC 200.5, Umanah Healthcare requested an informal hearing on the denial of its proprietary school licenses. On 25 August 2018, pursuant to 2B SBCCC 200.5, Umanah Healthcare requested an informal hearing on the initiation of revocation of its proprietary school licenses. On 26 August 2018, Umanah Healthcare requested that the informal hearings on the denial of licensure and initiation of revocation of licensure be consolidated. The hearing took place on 28 September 2018 before the Hearing Officer. Scott Corl, Executive Director of the State Board of Proprietary Schools (“SBPS”)/Office of Proprietary

Schools (OPS) appeared on behalf of the SBPS. Ms. Patricia Umanah, Mr. U. Wilfred Nwauwa (Ms. Umanah's attorney), and Mr. Michael Umanah appeared on behalf of Umanah Healthcare.

Based upon the parties' Findings of Fact, Conclusions of Law as well as the testimony and evidence presented at the hearing by SBPS and Umanah Healthcare, the Hearing Officer hereby finds as follows:

FINDINGS OF FACT

1. North Carolina proprietary schools are licensed pursuant to Article 8, Chapter 115D of the North Carolina General Statutes.
2. Umanah Healthcare Institute (Umanah Healthcare) has been licensed to operate a location in Charlotte since 2010, in Gastonia since 2002, and in Monroe since 2014. (T p. 53).
3. Ms. Patricia Umanah is the school's Owner/Director.
4. Umanah Healthcare was licensed to offer the Nurse Aide I course at all three campuses with 112 clock hours for all locations. (T pp. 14; OPS, Ex. 7).
5. Umanah Healthcare submitted license renewal applications for all three campuses for the 1 July 2018 – 30 June 2019 license year. (T p. 18).
6. Nurse Aide I programs must be approved by the Department of Health and Human Services (DHHS). 1 N.C.A.C. 36.0405. In a letter dated 5 April 2018, DHHS withdrew its approval of all Nurse Aide training programs at Umanah Healthcare. (T p. 15; OPS, Ex. 2).
7. On May 4, 2018, the State Board of Proprietary Schools (SBPS) refused to recommend licensure of all three Umanah Healthcare locations due to the DHHS' withdrawn approval of the Nurse Aide training programs. On 20 July 2018, the State Board of Community

Colleges (SBCC) initiated the process to refuse licensure renewal to Umanah Healthcare.

Umanah Healthcare does not contest the action to refuse to renew licensure. (T pp. 85, 92, 110, and 115).

8. On 17 April 2018, the OPS submitted to Umanah Healthcare Documentation of Noncompliance and Notice of Investigation.

9. Class records show that students in multiple program starts did not receive the required minimum of 112 total hours of instruction and students did not receive at least 30 hours of clinical instruction. (T pp. 21-23; OPS, Ex. 8). Umanah Healthcare acknowledged that it was an administrative error and poor record-keeping, but that students did indeed receive the required 112 hours of instruction. (T p. 56). Umanah Healthcare asserts that some students took the night version of the same class on certain days of the week, but simply failed to record the students' attendance at the night class. (T pp. 56-58). Umanah Healthcare provided no documentation to substantiate the claim that students took the same classes at night on certain days of the week.

10. Records show that students performed particular skills in the clinical setting prior to proficiency being documented in the lab setting. (T pp. 21-22, 26-27; OPS Ex. 2, p. 3, ¶ 5). Specifically, DHHS stated that "proficiency must be verified in lab before a student can perform the skill in clinical, per 42 CFR 483.151(a)(4)(i)." The citation listed is not accurate. The correct citation is 42 C.F.R. § 483.152(a)(4)(i), which provides that "For a nurse aide training and competency evaluation program to be approved by the State, it must, at a minimum . . . [e]nsure that . . . [s]tudents do not perform any services for which they have not trained and

been found proficient by the instructor.” DHHS posits that the proficiency must be verified in a lab setting before the student can perform the skill in clinical. (OPS Ex. 2, p. 3, ¶ 5). However, the regulation just specifies that the proficiency be verified prior to performing the services. The federal regulation does not dictate *where* the proficiency must occur and be documented as long as the proficiency is documented prior to the provision of services. Umanah Healthcare asserts that it does not have the capability to do certain skills in the school lab, so the skills are taught in the lab and after an instructor demonstration, the students will demonstrate and be assessed at the clinical site prior to the provision of services. (T p. 59). As long as the instructor documents proficiency prior to the student providing services in a clinical site, it seems to be consistent with the federal regulation in 42 C.F.R. § 483.152(a)(4)(i).

11. Records show and Umanah Healthcare admitted that students were uploaded to Pearson Vue (state testing administrator for Nurse Aide I) prior to those students completing the Nurse Aide I program. (T pp. 22, 26, 62-64; OPS Ex. 6, Umanah Healthcare response, p. 5, ¶ 12)

12. Records from a program in November 2017 showed that the required 10-1 student-teacher ratio was exceeded. (T pp. 26, 31, 65-67).

13. Two student files did not contain the required Appendix A that serves as proof of skills demonstration, student proficiency and clinical performance. (T pp. 28, 36, 37; OPS Ex. 2, p. 3 ¶ 7). Umanah Healthcare did not dispute this point. A class attendance sheet for one program start did not record any clinical hours completed by students. (T p. 28).

14. There were student records showing that instruction was received on days when those same students were recorded as absent. (T pp. 28, 37-38; OPS Ex. 6, p. 15).

15. Umanah Healthcare provided sufficient explanation for how students would be able to perform 14, 15, or 30 clinical skills in one day. (T pp. 60-62)

16. Out of 22 student files, 13 student files did not have the required documentation of prior education levels. (T pp. 36-37).

17. There was a Nurse Aide I program that ran from 7 October 2017 through 25 November 2017. It was divided into two parts – Class A and Class B. For Class A, a form listed the instructor as Kathleen Rivers, and there was a signature listed as Kathleen Rivers. The Class A form indicated that Ms. Rivers supervised students in the lab and in the clinical setting. However, DHHS advised the OPS that Ms. Rivers had been removed from the approved instructor roster prior to the 7 October 2017 through 25 November 2017 Class A. (T pp. 30-31 ; OPS Ex. 9)

18. Ms. Umanah asserted that she was with the 7 October 2017 through 25 November 2017 Class A from the second day of clinicals throughout the program. (T p. 32). However, the students in Class A with whom the OPS spoke stated that they didn't know who Kathleen Rivers was, that Geisha Green was their instructor, and that they only had one instructor. (T pp. 32-33)

19. Records from Class B showed that Ms. Umanah was listed as the instructor and listed as teaching the class, the lab, and the clinical. Students from Class B stated that Ms. Umanah was the instructor for the class and the lab, but not for clinicals. (T pp. 33-34). The OPS

determined that Ms. Rivers was the instructor for the clinicals for Class B, and Ms. Rivers stated that she would only assist Umanah Healthcare with the clinical portion.

20. Since Class A and Class B ran at the same time, it was not possible for Ms. Umanah to be the instructor for class, lab, and clinicals of Class B and assist with the clinicals for Class A. (T p. 33). Ms. Rivers' statement that she only teaches clinicals contradicts records showing that Ms. Rivers was the teacher for class, lab, and clinical for Class A. (T pp. 34-35) Ms. Umanah was not able to provide a clear explanation for the discrepancies in the records. (T pp. 34-36).

21. In reviewing the instructors approved by DHHS to teach in the Nurse Aide I program, Umanah Healthcare provided the OPS with a listing of approved instructors dated 12/21/2017. (T p. 39; OPS Ex. 9). In reviewing the 12/21/2017 document, the OPS discovered that Ms. Rivers was not listed as an approved instructor even though Umanah Healthcare documents listed her as teaching class, lab, and clinicals for Class A, and Ms. Rivers admits to teaching clinicals for Class B. (T pp. 39-40). Mr. Corl from the OPS asked Ms. Umanah whether Ms. Rivers continued to be an approved instructor for Nurse Aide I. (T p. 40; OPS Ex. 9, 2nd page). In response to Mr. Corl, Ms. Umanah sent back a document purportedly from DHHS listing Kathleen Rivers as an instructor. (T p. 40)

22. The document Ms. Umanah sent to Mr. Corl via email on 5 April 2018 is markedly distinct from the document Ms. Umanah had previously provided to Mr. Corl on 27 March 2018 and is markedly distinct from the document the DHHS says it provided to Ms. Umanah showing the approved instructors. (T p. 40-41; OPS Ex. 9, 5th page)

- (a) On Ms. Umanah's 5 April 2018 emailed document, the third line of the heading has "CENTER FOR AIDE REGULATION AND EDUCATION," but the document DHHS sent on 5 April 2018 has "HEALTH CARE PERSONNEL EDUCATION AND CREDENTIALING SECTION."
 - (b) On Ms. Umanah's 5 April 2018 emailed document, there is no space between the last line of the heading and the first line of the column headings, whereas there is a distinct spacing in this same place on the document DHHS sent on 5 April 2018.
 - (c) On Ms. Umanah's 5 April 2018 emailed document, there is no space between the end of the instructor list and the phrase, "End of Report," whereas there is a distinct spacing in this same place of the document DHHS sent on 5 April 2018.
 - (d) On Ms. Umanah's 5 April 2018 emailed document, there is no date in the top left corner, but there is the date of "12/21/2017" in the top left corner of the document DHHS sent on 5 April 2018.
 - (e) On Ms. Umanah's 5 April 2018 emailed document, Elizabeth Addo, Andrea Johnson, and Kathleen Rivers are listed, but these individuals are not listed as approved instructors on the document DHHS sent on 5 April 2018.
 - (f) On Ms. Umanah's 5 April 2018 emailed document, Shelbi Crowder and Juliana Ejim are not listed, but they are listed on the document DHHS sent on 5 April 2018.
23. In response to a question about the rationale for the discrepancies, Ms. Umanah said that in the plethora of emails between her and Ms. Middleton, Ms. Umanah just printed an instructor list that had Ms. Rivers' name on it and faxed it. She said that she suspects that in the fax machine, the date was possibly cut off. (T p. 97). However, the date on the document was not close enough to the edge of the paper that it would be reasonable that the date would have gotten removed so cleanly through fax. Also, there are other instructor lists with the dates listed that were faxed from Umanah Healthcare with the dates clearly displayed in the left corner. (OPS Ex. 9, 13th and 14th pages). Ms. Umanah was not able to give a clear

explanation for the multiple discrepancies between the document she sent to the OPS on 5 April 2018 and the document Ms. Middleton sent to OPS on 5 April 2018.

24. Documents DHHS provided to the OPS on 11 April 2018 show that Umanah Healthcare removed Ms. Rivers from the approved instructor list for the 11 September 2017 reapproval. (T pp. 42-43; OPS Ex. 9, 13th and 14th page).

25. Ms. Umanah claimed that Ms. Middleton crossed instructor names off of Ms. Umanah's lists and if she gave Ms. Middleton Ms. Rivers' name to cross off the list then the removal of Ms. Rivers' name was a mistake. (T pp. 73-74). When asked to respond to Ms. Middleton's assertion that she did not cross instructor names off of a list, Ms. Umanah claimed that Ms. Middleton crossed names out in 2014 or 2015, but was not clear about whether Ms. Middleton crossed names out in 2017 when Ms. Rivers' name was crossed out. Ms. Umanah also went back and forth as to whether she mistakenly crossed Ms. Rivers' name out. (T pp. 75-76).

26. Ms. Umanah stated in the response to the OPS Documentation of Noncompliance that "Jan Middleton . . . had been overseeing and auditing our school/student's records for a period of more than (5) years There had never been any citation as to any violation within these periods." (T p. 44; Ex. 6, Umanah Response). However, Ms. Middleton provided the OPS with two separate notices detailing various examples of violations of state guidelines and federal regulations from 2015 and from 2017. (T pp. 44-45). Ms. Umanah posits that she was surprised at Ms. Middleton's detailing of issues from 2015 because she fixed most of the issues in Ms. Middleton's presence. (T pp. 68-70). Even if the

issues were corrected immediately, the fact remains that the issues were present and that there were indeed findings against Umanah Healthcare. (T pp. 68-73).

27. Instructions for the annual report that proprietary schools submit during relicensing mandates in bold that schools shall “ONLY report information that [schools] can validate through proper documentation.” (T pp. 46-47; OPS Ex. 11). In the annual report submitted as part of the relicensing process, Umanah Healthcare submitted information that it had a 100% graduate placement rate for the Gastonia location. (OPS Ex. 11). However, contrary to the explicit instructions, Umanah Healthcare did not provide any documentation to substantiate that claim. While Ms. Umanah gave a verbal explanation for how she arrived at that number, she acknowledged that she did not have any documentation to substantiate her claim as required. (T pp. 81-83; p. 83, ll. 1-5).

28. Umanah Healthcare has enjoyed a good reputation in the community, and has produced hundreds of healthcare professionals. (OPS Ex. 6, p. 23). Students from Umanah Healthcare have had “great success passing the state Nurse Aide I exam (with pass rates exceeding 90%).” (T pp. 54, 105; OPS Ex. 6, p. 23).

29. As of the date of the hearing, to the knowledge of OPS and per Ms. Umanah’s statement, Umanah Healthcare has provided a refund to all students impacted by the withdrawal of the program’s approval. (T pp. 17, 95-96; OPS Ex. 6, p. 12 of Umanah Healthcare’s Response to Documentation of Noncompliance).

30. Ms. Umanah has been very responsive and cooperative with the OPS throughout the investigatory process. (T pp. 96, 104; OPS Ex. 6, p. 23).

31. Ms. Umanah seems sincere in her desire to make necessary adjustments and correct the multitude of errors she admits to making. (T pp. 113-114; 115-116). She has persevered and remained steadfast in trying to save her schools.

CONCLUSIONS OF LAW

32. Pursuant to G.S. 115D-93(c), the SBCC, acting by and through the SBPS, “shall have the power to refuse to issue or renew any such license and to suspend or revoke any such license theretofore issued in case it finds one or more of the following”:

G.S. 115D-93(c)(1) - That the applicant for or holder of such a license has violated any of the provisions of this Article or any of the rules promulgated thereunder.

G.S. 115D-93(c)(2) - That the applicant for or holder of such a license has knowingly presented to the State Board of Community Colleges false and misleading information relating to approval or license.

G.S. 115D-93(c)(9) - That the licensee has failed to provide and maintain adequate standards of instruction or an adequate and qualified administrative, supervisory or teaching staff.

33. OPS presented sufficient evidence to establish that Umanah Healthcare violated G.S. 115D-93(c)(1), by failing to maintain the criteria set forth in the requirements for a school to secure an original license. G.S. 115D-91(b)(3) provides that proprietary school licenses shall be renewable if “the school and its courses facilities, faculty and all other operations are found to meet the criteria set forth in the requirements for a school to secure an original license.” Nurse Aide I programs are required to be approved by DHHS, however, DHHS withdrew its approval of the Nurse Aide training programs at all three Umanah Healthcare locations. (Findings of Fact #6). Since DHHS approval was originally required for licensure, and Umanah Healthcare doesn’t currently have DHHS approval, Umanah Healthcare hasn’t met the

requirements that were necessary for their original license. As such, there is sufficient evidence to refuse license renewal. It should also be noted that Umanah Healthcare does not object to the refusal of license renewal. (Finding of Fact #7).

34. To violate G.S. 115D-93(c)(2), OPS has to show “[t]hat the applicant for or holder of such a license has knowingly presented to the State Board of Community Colleges false and misleading information relating to approval or license.” The Hearing Officer finds that there are instances where Ms. Umanah was unable to provide reasonable explanations in response to information supporting “knowingly presenting false information.” The following incidents support OPS’ assertion that Ms. Umanah knowingly produced false or misleading information.

- (a) Ms. Umanah did not provide an explanation for how it was possible for her to be teaching clinicals for Class A while simultaneously teaching class, lab, and clinicals for Class B. (Finding of Fact #20).
- (b) Ms. Umanah was not able to provide a reasonable explanation for all of the glaring discrepancies between the instructor list she provided to OPS on 5 April 2018 and the instructor list DHHS provided to OPS on 5 April 2018. (Findings of Fact #s 21-23).
- (c) Ms. Umanah also failed to provide clear information to dispute Ms. Middleton’s claim that Ms. Middleton never crossed out instructor names on the list. Ms. Umanah referred to Ms. Middleton crossing names out in 2014 or 2015, but the dates in question took place in 2017. Ms. Umanah also wavered on whether she

or Ms. Middleton crossed Ms. Rivers name off the instructor list. (Finding of Fact #25).

For incidents not listed in paragraph 34 herein where the OPS alleged that Ms. Umanah knowingly provided false information, the Hearing Officer was unable to determine conclusively that Ms. Umanah “*knowingly*” provided false information.

35. G.S. 115D-93(c)(9) provides that suspension or revocation is warranted if “the licensee has failed to provide and maintain adequate standards of instruction or an adequate and qualified administrative, supervisory or teaching staff.” OPS presented sufficient evidence to establish that Umanah Healthcare did not provide and maintain adequate standards of instruction. (Findings of Fact #s 9, 11-14, 16).

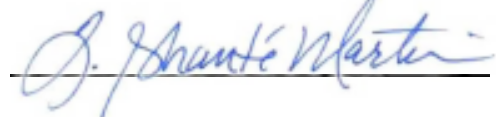
RECOMMENDATION

Based on the foregoing Findings of Fact, Analysis and Conclusions, testimony, and evidence, the Hearing Officer’s final recommendation to the SBCC is to **refuse to renew licensure** and to **suspend** Umanah Healthcare Institute’s proprietary school license for the Charlotte, Gastonia, and Monroe pursuant to G.S. 115D-93(c)(1), (c)(2) and (c)(3) and G.S. 115D-91(c). In sum, it appears that the plethora of issues identified by OPS and admitted to in many cases by Ms. Umanah stem from a level of confusion, mismanagement, and disorganization on Umanah Healthcare’s part. However, given the positive economic impact Umanah Healthcare has had in the community; given Ms. Umanah’s responsiveness and engagement; and given Ms. Umanah’s diligence in pursuing her case, it is the opinion of the Hearing Officer that it is reasonable to permit Umanah Healthcare the opportunity to correct issues and demonstrate

good faith rather than permanently precluding the Umanah Healthcare schools from operating. It is noteworthy for a school to have such high passing rates.

With a suspension in place, Umanah Healthcare would not be able to operate until the suspension is lifted. It is also important to note that Umanah Healthcare would still have to obtain approval from DHHS before the school would be eligible to seek licensure from the SBCC again. It is reasonable to suspect that Umanah Healthcare would have to resolve all of the outstanding issues noted by DHHS before they would approve the programs. If Umanah Healthcare never gets approval from DHHS again, then the issue would be moot for the SBCC. However, if there is any possibility that DHHS would approve the programs, it is the Hearing Officer's opinion that the SBCC should give Umanah Healthcare the opportunity to make its case at some point in the future with the expected outcome of positively impacting the healthcare industry and the community as a whole.

This the 19th day of October, 2018.

A handwritten signature in blue ink, reading "Q. Shanté Martin", is written over a horizontal line.

Q. Shanté Martin
Hearing Officer