

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF
INVESTIGATION



AGENCY: OHIO BOARD OF NURSING
FILE ID NO.: 2015-CA00007
DATE OF REPORT: OCTOBER 14, 2015

The Office of the Ohio Inspector General ... The State Watchdog

“Safeguarding integrity in state government”

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Randall J. Meyer
Ohio Inspector General



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REPORT OF INVESTIGATION

FILE ID NUMBER: 2015-CA00007

SUBJECT NAME: Betsy J. Houchen
Lisa G. Emrich

POSITION: Executive Director
Program Manager

AGENCY: Ohio Board of Nursing

BASIS FOR INVESTIGATION: Agency Referral

ALLEGATIONS: Failure to Comply with State Law and/or
Regulations.

INITIATED: March 5, 2015

DATE OF REPORT: October 14, 2015

INITIAL ALLEGATION AND COMPLAINT SUMMARY

On March 3, 2015, the Office of the Ohio Inspector General received a referral from the Office of the Ohio Governor alleging the Ohio Board of Nursing failed to comply with Ohio Revised Code (ORC) §124.134, which regulates vacation leave for employees exempt from collective bargaining. Specifically, the referral alleged that Ohio Board of Nursing Executive Director Betsy Houchen and Program Manager Lisa Emrich received denied vacation leave payments in excess of the 80-hour fiscal year limit allowed by law.

BACKGROUND

The Ohio Board of Nursing was established in 1956. Originally responsible for licensing nurses, the board's responsibility expanded over the years to include certifying dialysis technicians, community health workers, and medication aides. The board sets standards of practice, investigates complaints, administers discipline for licensees and certificate holders, and approves pre-licensure and continuing nurse education programs.

The board's governing authority consists of 13 members appointed by the governor, including eight registered nurses with at least five years' experience, four licensed practical nurses with at least five years' experience, and one consumer representative. Members are appointed for four-year terms and may be reappointed once. The board meets seven times each year. In FY 2014, the average annual compensation for board members was approximately \$3,500.

The board's daily operations are the responsibility of an executive director appointed by the 13-member governing authority. The executive director must be a registered nurse with at least five years' experience. Including the executive director, the board has 66 full-time employees divided among three program areas: licensure, certification, and continuing education (15); compliance (37); and education, practice, and administration (14). The board has a budget of \$8.6 million for FY 2015 and receives no general revenue fund dollars; it is entirely supported by fees.¹

¹ Legislative Service Commission (February 2015). *Analysis of the Executive Budget Proposal, Board of Nursing*. Retrieved from <http://www.lsc.ohio.gov/fiscal/redbooks131/nur.pdf>

Applicable Laws and Policies

Ohio Revised Code §124.134 (C) states:

Except as provided in division (D) of this section, beginning in fiscal year 2012, an employee may be paid for up to eighty hours of vacation leave each fiscal year if the employee requested and was denied the use of vacation leave during that fiscal year. No employee shall receive payment for more than eighty hours of denied vacation leave in a single fiscal year. An employee is only eligible to receive payment for vacation leave when the employee's vacation leave credit is at, or will reach in the immediately following pay period, the maximum of the accrual for three years and the employee has been denied the use of vacation leave. An employee is not entitled to receive payment for vacation leave denied in any pay period in which the employee's vacation leave credit is not at, or will not reach in the immediately following pay period, the maximum of accrual for three years. Any vacation leave for which an employee receives payment shall be deducted from the employee's vacation leave balance. No employee is eligible to receive payment for denied vacation leave in either fiscal year 2010 or fiscal year 2011.

INVESTIGATIVE SUMMARY

The Office of the Ohio Inspector General requested, received, and reviewed timesheets, requests for leave, emails, policies and procedures, as well as other documents to further the investigation of allegations that Ohio Board of Nursing Executive Director Betsy Houchen and Program Manager Lisa Emrich received denied vacation leave payments in excess of the 80-hour fiscal year limit allowed by law. In addition, the Office of the Ohio Inspector General also conducted interviews of board members and employees to address the allegations.

Allegation 1: Executive Director Betsy Houchen received denied vacation leave payments in excess of the 80-hour fiscal year limit allowed by law.

The Office of the Ohio Inspector General obtained and reviewed time reporting records for Executive Director Houchen through the Ohio Administrative Knowledge System (OAKS)² for

² The Ohio Administrative Knowledge System (OAKS) is the official state accounting system.

the period from June 1, 2011, through March 3, 2015. Investigators determined that Houchen received denied vacation leave payments in excess of the 80-hour limit allowed by law for fiscal years 2012 through 2015 (see table below). As a result, Houchen received a total of \$31,524.80 in excess payments.

	<u>FY12</u>	<u>FY13</u>	<u>FY14</u>	<u>FY15</u>	<u>Total</u>
Hours Paid	232	232	240	160	864
Allowable	<u>80</u>	<u>80</u>	<u>80</u>	<u>80</u>	<u>320</u>
Variance	152	152	160	80	544
Earnings	\$8,808.40	\$8,808.40	\$9,272.00	\$4,636.00	\$31,524.80

Allegation 2: Program Manager Lisa Emrich received denied vacation leave payments in excess of the 80-hour fiscal year limit allowed by law.

The Office of the Ohio Inspector General obtained and reviewed time reporting records for Program Manager Emrich through OAKS for the period from June 1, 2011, through March 5, 2015. Investigators determined that Emrich received denied vacation leave payments in excess of the 80-hour limit allowed by law for fiscal years 2012 and 2014 (see table below). As a result, Emrich received a total of \$7,534.40 in excess payments.

	<u>FY12</u>	<u>FY13</u>	<u>FY14</u>	<u>FY15</u>	<u>Total</u>
Hours Paid	160	80	160	80	480
Allowable	<u>80</u>	<u>80</u>	<u>80</u>	<u>80</u>	<u>320</u>
Variance	80	0	80	0	160
Earnings	\$3,753.60	\$0.00	\$3,780.80	\$0.00	\$7,534.40

On March 23, 2015, following a records request by the Office of the Ohio Inspector General, Beth Hogon, human resources officer and chief hearing examiner for the Ohio Board of Nursing, emailed the following statement to the board's general counsel:

As we discussed, I would like to speak to the investigator about this material as I believe I am totally responsible for this issue. Betsy and Lisa relied on my representation that it was appropriate for them to be paid out for their vacation. They were not aware that they should have only been paid out one time per fiscal year. I was not aware of this change

until after reading the email you sent me on Friday March 20, 2015 requesting records (which I read Friday evening), I looked up the law and discovered that it now states that beginning fiscal year 2012, exempt employees can only be paid one time per fiscal year for denied vacation. This is entirely my fault; Betsy and Lisa are not to blame.

***Interview:** Beth Hogon, human resources officer and chief hearing examiner, Ohio Board of Nursing*

On April 7, 2015, the Office of the Ohio Inspector General interviewed Beth Hogon, human resources officer and chief hearing examiner for the Ohio Board of Nursing. Hogon stated that as the human resources officer she oversees all of the human resources functions at the board and also supervises a human capital management analyst who handles many of the day-to-day human resources activities. When questioned about her understanding of ORC §124.134, Hogon produced a copy of the 2007-2008 Ohio Civil Service & Collective Bargaining Laws & Rules Annotated. ([Exhibit 1](#)) Hogon stated that she used this version of ORC §124.134 as a reference for all denied vacation leave payment transactions. Hogon's version stated the following:

... If an employee's vacation leave credit is at, or will reach in the immediate following pay period, the maximum of the accrual for three years and the employee has been denied the use of vacation leave during the immediately preceding twelve months, the employee, at the employee's request, shall be paid in a pay period for the vacation leave the employee was denied, up to the maximum amount the employee would be entitled to be paid for in any pay period. An employee is not entitled to receive payment for vacation leave denied in any pay period in which the employee's vacation leave credit is not at, or will not reach in the immediately following pay period, the maximum accrual for three years

The above version of ORC §124.134, which Hogon relied on when providing guidance for vacation denials, does not mention the 80-hour fiscal year limit for denied vacation leave payments. Hogon stated during her interview that she was not aware of any limits, and thought that an individual had to have both vacation refused in the previous 12 months as well as be at maximum accrual to qualify for a payout. Hogon also stated, "I know Betsy always has approvals from the Board President. I make sure the documentation is there every time I submit

it. I make sure she's at max accrual every time it's entered." When asked if the executive director was aware of the 80-hour fiscal year limit, Hogon replied,

She [Executive Director Houchen] is not aware that she could only cash in leave one time in a fiscal year. She never would have done that. Neither would Lisa [Emrich]. Neither one of them would have --- I would not have allowed them to do it if I had known. And ... these two people [Houchen and Emrich] have very high character and integrity. And for me to put them in a position that that could be called into question is pretty difficult. I'm sorry.

Hogan again reiterated that "... she [the executive director] always had the documentation of the vacation denied from the Board President; so I thought I was doing it correctly."

***Interview:** Judith Church, board member and former board president, Ohio Board of Nursing*

On April 14, 2015, the Office of the Ohio Inspector General conducted a telephone interview with Judith Church, current board member and former board president for the Ohio Board of Nursing. Church stated that she served as board president for calendar years 2013 and 2014. According to Board Member Policy B-04 ([Exhibit 2](#)), "... the Board President serves as the Executive Director's supervisor for the purposes of accounting for the Executive Director's time, e.g. requests for leave, requests to work overtime, and the approval of the Executive Director's bi-weekly timesheets." Church acknowledged that she was responsible for approving the executive director's bi-weekly timesheets and request for leave forms. Church explained that she typically received the executive director's timesheet and request for leave forms by email from a board employee and would review and approve the attached paperwork.

During the interview, Church was asked if there was ever a situation where she refused vacation leave for the executive director, and Church replied that she could not recall refusing any vacation leave. While Church could not specifically recall refusing any vacation leave for the executive director, she indicated that it potentially could have happened. Investigators produced and reviewed a number of request for leave forms showing the executive director asked to use vacation time accrued, and a box was marked indicating the request for leave was "not

recommended.” ([Exhibit 3](#)) Church acknowledged that she had signed the documents in question but could not recall any specifics regarding the requests. Church indicated that when she received the request for leave forms, the documents would be complete and the executive director would explain them to her. Church indicated that she would not edit or amend the requests, but would simply sign and date the requests. Church also stated she was unaware of the 80-hour fiscal year limit for denied vacation leave payments and had never discussed the issue with any other board members.

While Church could not recall the specifics of any discussions with the executive director or any other board employee regarding the vacation denial requests, she provided the following:

... I’ve had no reason to ever believe from Betsy Houchens [sic] that anything she told me wasn’t valid. Um I just... believe with everything in me that Betsy, in my experience, has always epitomized professionalism and accountability ... I just wish I could recall the, the one time I’m trying to ... (inaudible) she did explain, I know she did um why she needed to um do this, but obviously it didn’t stick with me, but --- but I know she did. And, you know, Betsy just was never one to shove papers underneath your, your face and say, ‘Oh, here, sign these; I need these.’... She never, ever did. She was --- she always sat down with you and she --- when I would start to sign them she would be explaining --- she voluntarily explained every time um what I was signing and um ... I just --- my recall isn’t any clearer than, than that on, on this um instance here ... So I apologize.

Interview: *Betsy Houchen, executive director,
Ohio Board of Nursing*

On April 21, 2015, the Office of the Ohio Inspector General interviewed Betsy Houchen, executive director of the Ohio Board of Nursing. Houchen explained that she follows the same policies and procedures as all board staff and completed bi-weekly timesheets, leave and comp time forms, and tracks her time daily by signing in and out of the office. Houchen acknowledged that the board president was responsible for approving her bi-weekly timesheet and request for leave forms and also indicated that she (Houchen) always explained the purpose of denied vacation leave form requests to the board president.

Houchen did not recall personally reviewing ORC §124.134 and stated that she worked through Beth Hogon who Houchen believed had reviewed the code. Houchen stated that her understanding of ORC §124.134 was that when she reached a point where she could not accrue anymore vacation time and would lose it, then she could submit a leave form for a denial of vacation and have the vacation time paid out. Houchen said she was unaware of any payout limits. Houchen stated that she never had any conversations with Hogon regarding fiscal year limits; however, Houchen indicated that she had discussed vacation denials with Hogon, and Hogon informed her that she (Houchen) was submitting the denials appropriately. Again, Houchen indicated that she relied on Hogon's representation when submitting her denied vacation leave forms.

Houchen also acknowledged that she was responsible for approving timesheets and leave requests for all board managers. Houchen stated that she had denied Program Manager Lisa Emrich's vacation leave requests when Emrich was in a similar maximum vacation accrual situation. [\(Exhibit 4\)](#) Houchen stated that she denied Emrich's vacation leave requests based on the same understanding of ORC §124.134 that she used when submitting her own denied vacation leave forms, which again was based on guidance provided by Beth Hogon, human resources officer for the Ohio Board of Nursing.

Interview: *Amada Eisert, human capital management analyst, Ohio Board of Nursing*

On April 29, 2015, the Office of the Ohio Inspector General interviewed Amanda Eisert, human capital management analyst for the Ohio Board of Nursing. Eisert stated that she assists the human resources officer (Hogon) with much of the day-to-day human resources functions at the board, including, but not limited to, payroll and benefits management. Eisert was hired, trained, and supervised by Beth Hogon. Eisert stated that her understanding of ORC §124.134 was that once an employee reached the maximum accrual of vacation time, then the vacation time could be refused and converted for a cash payment for up to 80 hours at a time. She added that the denial would result in a payout and the individual could continue accruing vacation time. Eisert said she was unaware of any payout limits; she thought it was only limited to 80 hours at a time

and not once per fiscal year. Eisert stated that she relied on Hogon for guidance when it came to vacation refusals.

Eisert acknowledged that the board president was responsible for approving the executive director's bi-weekly timesheet and request for leave forms. Eisert explained that she would forward all of the executive director's payroll paperwork (timesheet, leave requests, etc.) to the board president by email to secure approval. Eisert also stated that on occasion when the board president was at the board's main office or attending a board meeting, then the payroll paperwork would be hand-delivered to the board president by the executive director for signature and approval. Eisert also acknowledged that Executive Director Houchen was responsible for approving Program Manager Lisa Emrich's timesheet and request for leave forms.

On April 29, 2015, following her interview with the Office of the Ohio Inspector General, Eisert forwarded an additional email she located between herself and incoming Board President Maryam Lyon regarding a question Lyon had about a vacation denial. Lyon requested clarification on two vacation requests, both signed by outgoing Board President Church, one that had been approved and another that had been rejected. Eisert provided the following clarification in her email response to Lyon based on her understanding of ORC §124.134:

... The request that was rejected for 80 hours was due to Betsy reaching the maximum accrual of vacation leave that is allowed. Once vacation leave balances reach the maximum amount, accruals will stop. If an employee requests vacation and it is rejected, it is then paid out at 100% of the employee's rate of pay and subtracted from the leave balance

Eisert stated that the email correspondence took place late December 2014 during the transition period between the terms of outgoing Board President Judith Church and incoming Board President Maryam Lyon.

*Interview: Lisa Emrich, program manager,
Ohio Board of Nursing*

On May 5, 2015, the Office of the Ohio Inspector General interviewed Lisa Emrich, program manager for the Ohio Board of Nursing. Emrich stated that she reported directly to the executive director and that the executive director was responsible for approving her bi-weekly timesheet and request for leave forms. Emrich indicated that she had not reviewed the specific section of the Ohio Revised Code that defined denied vacation leave payments. Emrich acknowledged that she had discussions with both Executive Director Houchen and Human Resources Officer Hogon regarding denied vacation leave forms and indicated that she was informed that the denied vacation leave forms were allowed.

When questioned about her knowledge of the 80-hour fiscal year limit, Emrich stated that she thought there might have been some type of limit but after being informed by Hogon that there was no limit, she proceeded to submit the denied vacation leave forms. Emrich again reiterated that she did not remember reviewing the code and had no reason to review it. She stated that her goal has always been to comply with whatever regulations were required of her.

CONCLUSION

The Office of the Ohio Inspector General determined that over several fiscal years both Ohio Board of Nursing Executive Director Betsy Houchen and Program Manager Lisa Emrich received denied vacation leave payments in excess of allowable limits. In these instances, the Ohio Board of Nursing failed to comply with ORC §124.134 (C), which states that “... no employee shall receive payment for more than eighty-hours of denied vacation leave in a single fiscal year.”

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe wrongful acts or omissions occurred in these instances.

On April 23, 2015, the Office of the Ohio Inspector General received notification from the Ohio Board of Nursing that Executive Director Houchen submitted a repayment plan to the Ohio Department of Administrative Services (ODAS) requesting that 544 hours be deducted from

Executive Director Houchen's current vacation leave balance to repay the amount overpaid. [\(Exhibit 5\)](#) On May 27, 2015, the Office of the Ohio Inspector General received notification from the Ohio Board of Nursing that the repayment plan was approved by ODAS.

On May 7, 2015, the Office of the Ohio Inspector General received notification from the Ohio Board of Nursing that Program Manager Lisa Emrich submitted a repayment plan to the Ohio Department of Administrative Services requesting that 160 hours be deducted from Program Manager Emrich's current vacation leave balance to repay the amount overpaid. [\(Exhibit 6\)](#) On May 27, 2015, the Office of the Ohio Inspector General received notification from the Ohio Board of Nursing that the repayment plan was approved by ODAS.

On May 8, 2015, the Office of the Ohio Inspector General received notification from the Ohio Board of Nursing that the board took corrective action and updated their policies and procedures to comply with Ohio Revised Code §124.134. [\(Exhibit 7\)](#)

RECOMMENDATION(S)

The Office of the Ohio Inspector General makes the following recommendation and asks that the president of the Ohio Board of Nursing respond within 60 days with a plan detailing how this recommendation will be implemented. The Ohio Board of Nursing should:

1. Review the actions of the employees named in this report and consider whether further administrative action is in order.

REFERRAL(S)

The Office of the Ohio Inspector General has determined that no referrals are warranted for this report of investigation.



STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

NAME OF REPORT: Ohio Board of Nursing

FILE ID #: 2015-CA00007

KEEPER OF RECORDS CERTIFICATION

This is a true and correct copy of the report which is required to be prepared by the Office of the Ohio Inspector General pursuant to Section 121.42 of the Ohio Revised Code.

Jill Jones
KEEPER OF RECORDS

CERTIFIED
October 14, 2015

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