

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: Vance-Warren Comprehensive Health Plan, Inc.  
Docket No. A-08-33  
Decision No. 2180

DATE: June 18, 2008

DECISION

Vance-Warren Comprehensive Health Plan, Inc. (Vance-Warren) appeals the determination by the Health Resources and Services Administration (HRSA) to deny Vance-Warren's application for continued funding, for its fiscal year (FY) 2008, of Vance-Warren's federal grant under section 330 of the Public Health Service (PHS) Act (42 U.S.C. § 254b). HRSA denied the continuation award on the basis that Vance-Warren had failed to comply with the statutory and regulatory requirements for maintaining its health center grant program.

The Board is authorized to hear an appeal of a denial of a non-competing continuation award where the denial is for failure to comply with the terms of a previous award. The record demonstrates that over a period of several years, Vance-Warren failed to comply with requirements of its grant that health center grantees must be financially responsible, have sound financial management systems, submit accurate annual audit reports, hire competent management staff, and have governing boards that assure compliance with all applicable laws and regulations. HRSA gave Vance-Warren repeated notice of the deficiencies in its operations and opportunities to remedy those deficiencies before deciding to deny continued refunding. Accordingly, we sustain HRSA's determination to deny continued refunding of Vance-Warren's health center grant.

Applicable laws, regulations, and standard of review

Vance-Warren's Notice of Grant Award (NGA) cites as authorization for the award section 330 of the PHS Act. Section 330, "Health centers," provides for federal grants to health centers that provide health services to populations that are medically underserved. Regulations at 42 C.F.R. Part 51c implement the

health center program. They charge the grantee and its governing board with responsibility for the conduct, management and financial oversight and control of their program, including the submission of audit reports. Nonprofit organizations that receive HHS grants are also subject to 45 C.F.R. Part 74, which establishes uniform administrative requirements governing HHS grants to institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations, and incorporates by reference uniform cost principles for such organizations. 45 C.F.R. § 74.1.<sup>1</sup>

In discretionary grant programs such as this, the Board may review "a denial of a noncompeting continuation award under the project period system of funding where the denial is for failure to comply with the terms of a previous award." 45 C.F.R. Part 16, App. A, ¶ C.(a)(3). Apart from this "narrow exception," the Board has no power to review disputes over pre-award determinations, which generally are matters committed to the federal agency's discretion. Youth Network Council of Chicago, DAB No. 1150, at 1 (1990).

Vance-Warren's NGA for the budget period June 1 through November 30, 2007 states that all discretionary awards issued by HRSA on or after October 1, 2006 are subject to the HHS Grants Policy Statement (GPS) unless otherwise noted, and provides an internet location for the GPS. HRSA Exhibit (Ex.) 1, at 5 (NGA, June 13, 2007). The HHS GPS currently available is dated January 1, 2007, and supersedes the Public Health Service (PHS) Grants Policy Statement, dated April 1, 1994. The HHS GPS states that an HHS Operating Division may decide not to make a non-competing continuation award "within the current competitive segment" for one or more of the following reasons:

- Adequate Federal funds are not available to support the project.

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<sup>1</sup> Section 51c.113 of the health center regulations, which was published in 1976 and has not been amended, applies to health centers parts of a prior version of Part 74, which established uniform requirements for the administration of grants to State or local governments, some of which could be applied to other grantees at the option of the awarding agency. 38 Fed. Reg. 26,275 (Sept. 19, 1973); 41 Fed. Reg. 53,205 (Dec. 3, 1976). The current Part 74 was published in 1994. Vance-Warren does not argue that the requirements of current Part 74 do not apply.

- A recipient failed to show satisfactory progress in achieving the objectives of the project.
- A recipient failed to meet the terms and conditions of a previous award.
- For whatever reason, continued funding would not be in the best interests of the Federal government.

HHS GPS, at II-93. Our review is limited by Part 16 to the third reason, failure to meet the terms of a previous award. The GPS provides that if a non-competing continuation award is denied because the recipient failed to comply with the terms and conditions of a previous award, the recipient may appeal that determination. Id.

### Background

Vance-Warren has operated a federally-funded health center since 1972 to provide medical and dental services in an economically depressed rural area of North Carolina. HRSA Ex. 3, at 3 (site visit report). The most recent project period of its grant was December 1, 2001 through November 30, 2008. HRSA Ex. 1, at 1 (NGA, June 13, 2007). (Vance-Warren's fiscal year apparently runs from December 1 through the following November 30.)

Reports of technical assistance and diagnostic site visits by HRSA contractors from 2003 through September 2007 detail numerous problems in Vance-Warren's management of its health center program. See HRSA Exs. 3-7, 12. Vance-Warren was repeatedly unable to produce accurate financial information needed to assess its financial condition; it submitted untimely audit reports for FYs 2003 through 2005, some of which declined to express unqualified opinions on Vance-Warren's financial status, and failed to submit its overdue audit report for FY 2006. Vance-Warren also failed to fund its pension plan, leading to a substantial unresolved liability, and had other indicia of poor management and oversight, such as expenses exceeding revenues, premature draw downs of grant funds, vendors declining credit, delays in paying employees, and thefts of a computer and accounting records that were not backed up. Vance-Warren's governing board was often unaware of the full extent of Vance-Warren's problems and its precarious financial condition.

Based on these reports of Vance-Warren's ongoing problems, HRSA, beginning in 2003, imposed restrictions on Vance-Warren's ability to draw down funds and required Vance-Warren to submit a financial recovery plan and subsequent updates. HRSA Ex. 1, at

2-3 (NGA). Following the budget period and fiscal year ending November 30, 2006 (FY 2006), HRSA twice deferred a decision on HRSA's application for renewal of funding and issued two successive three-month budget period extensions with special conditions to address HRSA's concerns over Vance-Warren's then-overdue audit report for FY 2005 and Vance-Warren's financial viability in light of its excess of expenses over revenues. Id. Although HRSA found that Vance-Warren resolved or made progress toward resolving some of its concerns, HRSA on June 13, 2007 issued an NGA for the remainder of FY 2007 that afforded Vance-Warren a "final opportunity to demonstrate a commitment to carrying out a program that is consistent with law, regulations and expectations," and imposed six conditions. These conditions, briefly summarized, required Vance-Warren to submit the following: a revised, updated financial recovery plan to eliminate its operating deficit; a corrective action plan addressing the unfunded pension liability and showing resolution of the findings of the November 2006 site visit; monthly financial statements with data including the productivity of its health care providers, cash flow, and lines of credit; and a letter from an auditing firm stating when the audit for FY 2006 would be completed and submitted. Vance-Warren was also required to document that its governing board was functioning appropriately in accordance with law, regulations and program expectations, and to obtain monthly prior approval from HRSA for all draw downs of grant funds. Id.

The NGA informed Vance-Warren that HRSA expected to conduct a site visit before making a decision on continuing funding for FY 2008, and warned that HRSA would "only approve an application for continued funding for FY 2008 if all concerns were resolved on a timely basis" and would disapprove an application if Vance-Warren "does not take action to remedy these areas of noncompliance." Id. at 3.

A HRSA consultant conducted a technical assistance site visit during September 24-26, 2007, to "assess all areas of the health center's operations" prior to HRSA making a decision on Vance-Warren's application for continued funding for FY 2008. Notice of denial, November 29, 2007, at 2. As a result of that visit and Vance-Warren's responses to the conditions on the June 13, 2007 NGA, HRSA determined that Vance-Warren had made insufficient progress toward resolving its noncompliance, did not resolve past debt or restore a balanced budget, and had continued noncompliance in the areas of management/finance and governance, resulting in Vance-Warren's inability to fulfill the scope of its grant project. Id. HRSA denied Vance-Warren's application for continued funding for FY 2008 on November 29, 2007. An

attachment to the notice summarizes HRSA's findings; HRSA expanded on those findings in its brief before the Board and cited site visit reports, audit reports and other materials in its appeal file. In its reply brief, Vance-Warren responded to HRSA's arguments on appeal and submitted additional materials.

### Discussion

As we explain below, the record confirms the existence of the problems referenced above, which demonstrate that Vance-Warren failed to meet requirements that it have appropriate financial management and control systems and submit timely audit reports, that its governing board adequately execute its required functions and responsibilities, and that it appoint qualified management staff. Vance-Warren for the most part does not deny these problems or that it was aware of them, but attributes them to the failures of former management staff and argues that denial of refunding is unwarranted because its program has improved under its new management and because it complied with special grant conditions to submit financial recovery and corrective action plans. Vance-Warren also alleges that a HRSA project officer failed to take action to address Vance-Warren's problems earlier because of a possible social relationship with Vance-Warren's former Chief Executive Officer (CEO), whom it blames for its problems. These arguments provide no basis for reversing HRSA's decision to deny continued refunding because, among other reasons, Vance-Warren and its governing board were responsible for its compliance and for the failures of its staff; Vance-Warren's submission of certain required documents does not excuse its noncompliance with applicable laws and regulations; and, the improvements Vance-Warren alleges relate primarily to the time period after the decision to deny refunding and are thus irrelevant.

#### Vance-Warren failed to comply with requirements for financial management and control systems and oversight of its financial operations.

The site visits from 2003, 2006, and 2007 describe ongoing and serious deficiencies in Vance-Warren's financial management systems. The consultants noted lax accounting practices and the apparent inability of Vance-Warren's staff to operate its financial management systems and provide information needed to ascertain the financial status of Vance-Warren's health center program.

A diagnostic site visit in April 2003 found that the financial reports Vance-Warren presented to its governing board showed

little attention to important indices of performance, and that Vance-Warren's financial statements showed only the aggregate performance of the entire operation but not information from Vance-Warren's different locations and services (e.g., medical, dental, pharmacy, laboratory and X-ray) that the reviewers stated was needed to show those services' net revenue and cost-effectiveness of those services. HRSA Ex. 3, at 5. The reviewers noted that there had been indications of inadequate management and controls, lack of oversight and insufficient accountability within Vance-Warren since 1999, and that numerous problems were found in Vance-Warren's past financial management practices. Id. at 2. The reviewers also noted that specific recommended corrective actions were "either ignored, or were not implemented at a sustained level sufficient to address organizational needs." Id. Interviews with staff disclosed past practices "designed to conceal the true operating performance of the organization," such as not recording costs incurred at the end of a fiscal year until the next fiscal year, causing Vance-Warren's audit reports to understate the size of its operating deficit for the years 1998 through 2000 and concealing a large deficit in unrestricted revenue for 2001. Id. at 5-6. The 2003 review also noted the theft in December 2002 of a computer containing the health centers' general ledger system and supporting data, as well as the tape back up system and hard copy report. Id. at 8. There were suggestions that the materials were removed by a current or former employee, and the CFO (Chief Financial Officer) reported that other documents, such as copies of memoranda written by the former CFO concerning Vance-Warren's financial practices, had continued to be removed from her locked office; the reviewers noted that the locks had not been changed, despite the past theft and the change of key personnel. The reviewers felt that the lack of monetary value of the removed materials suggested that they were stolen in an ongoing effort to conceal other criminal activity. Id. at 8-9.

A diagnostic site visit in September 2006 found that Vance-Warren lacked the ability to provide proper, reliable, accurate and detailed reporting of its financial activity and position. HRSA Ex. 5, at 5. Vance-Warren could not report financial activity by revenue and cost centers, and the true amount of accounts receivable was impossible to determine due to Vance-Warren's accounting practices. Id. at 4-5. Staff using Vance-Warren's patient information system software, called "Medical Manager," were unable to produce many standard reports that the reviewers said were typically used for monitoring operations and were needed for the governing board's decision making, such as reports on productivity. Id. at 3. Vance-Warren's accounting system software, called "Peachtree," although technologically adequate

to capture and report Vance-Warren's financial activity, had many errors, according to Vance-Warren's financial staff. Accounting did not perform "month end closing for the accounting activity." Id. at 4. The "chart of accounts" that Vance-Warren used limited the ability of its financial software to capture and report vital financial information, limiting Vance-Warren's ability to report on revenue and cost centers. Id. As a result, financial statements were prepared "on the corporation only." Id. HRSA provided Vance-Warren with a summary of the site visit findings and the actions required to address them in a "quality improvement letter" dated November 9, 2006. HRSA Ex. 6.

A September 2007 technical assistance site visit report found Vance-Warren's financial data "highly questionable," hindering efforts to assess Vance-Warren's financial situation, and stated that Vance-Warren's current financial status was thus "UNKNOWN." HRSA Ex. 7, at 4<sup>th</sup>, 5<sup>th</sup> unnumbered pages. The reviewers found "large numbers" missing from a balance sheet and concluded that they had "no idea where the truth lies, as there as no solid starting point with which to begin." Id. The reviewers doubted the accuracy of monthly financial statements that Vance-Warren submitted for April through June 2007 (as required by a term in the June 13, 2007 NGA that was continued from the previous budget period – see HRSA Ex. 1, at 3) and found that Vance-Warren's current financial statements were unreliable. Id. at 2<sup>nd</sup>, 7<sup>th</sup> unnumbered pages. The reviewers felt it was critical that Vance-Warren get an accurate picture of its financial status and recommended "a full scale analysis" as soon as possible by either an outside consultant or a new auditor consisting of a detailed analysis of all income and expenses going back at least until the last audit and perhaps earlier. Id. at 6<sup>th</sup> unnumbered page. The reviewers felt that this task would be time consuming, expensive and highly analytic and would require a skilled practitioner. They noted that Vance-Warren had tentatively secured the services of an auditor who had worked for them in the "distant past," but that Vance-Warren's many problems and "bad track record" in paying the last auditor had made securing an auditor difficult. Id. at 7<sup>th</sup> unnumbered page.

Vance-Warren's audit reports reflect the deficiencies of its financial management systems. The FY 2003 audit found that Vance-Warren was unable to reconcile supporting sub-ledgers to accounts receivable and revenue as stated in Vance-Warren's financial statements. HRSA Ex. 9, at 2. The auditors were unable to make determinations about Vance-Warren's internal controls or its compliance with the regulations of its federal grant because of inadequate accounting records. Id. The FY 2004 audit reported material weaknesses in the areas of general ledger

reconciliation and monitoring of grants and reportable conditions in expense reimbursement, bank account reconciliation, journal entries, supporting documentation, and accounts payable. HRSA Ex. 10, at 1-3. The FY 2005 audit could not ascertain the existence, accuracy and proper allocation of non-payroll related expenses and the appropriate designation of net assets because Vance-Warren was unable to provide needed documentation. HRSA Ex. 11, at 2.

Vance-Warren does not dispute the specific, material findings in the site visit and audit reports. By failing, on an ongoing basis, to be able to accurately determine the financial status of its operations, Vance-Warren was not in compliance with the following requirements applicable to its grant:

- The health center "will demonstrate its financial responsibility by the use of such accounting procedures and other requirements as may be prescribed by the Secretary" of HHS. 42 U.S.C. § 254b(k)(3).
- Health center grantees must "[d]evelop management and control systems which are in accordance with sound financial management procedures, including the provision for an audit on an annual basis . . . to determine . . . the fiscal integrity of grant financial transactions and reports, and compliance with the regulations of this part and the terms and conditions of the grant." 42 C.F.R. § 51c.303(d).
- A grantee's auditor must determine whether the grantee's financial statements are presented fairly in all material respects in conformity with generally accepted accounting principles. 31 U.S.C. § 7502(e) (Single Audit Act, made applicable to recipients of HHS grants by 45 C.F.R. § 74.26(a)).
- Grantee financial management systems shall provide for the "[a]ccurate, current and complete disclosure of the financial results of each HHS-sponsored project or program," "[r]ecords that identify adequately the source and application of funds for HHS-sponsored activities," "[e]ffective control over and accountability for all funds, property and other assets" and "comparison of outlays with budget amounts for each award." 45 C.F.R. § 74.21(b).



- Recipients "shall adequately safeguard all such assets and assure they are used solely for authorized purposes." 45 C.F.R. § 74.21(b)(3).

Vance-Warren argues nevertheless that denial of the continuation award was not justified. Vance-Warren asserts specifically that it currently has compliant financial management and accounting systems in place because it uses appropriate software, "Medical Manager" for patient management, and "Peachtree" for accounting. Vance-Warren provides examples of the reports the software generates and describes the process of posting receipts relating to patient services to its ledgers and other account records. See Vance-Warren Attachments (Atts.) 3-8. Vance-Warren takes exception to HRSA's response that the examples are merely "standard reports," that some are "copied from the Medical Manager software system manual for 1997," and that the submissions fail to show that Vance-Warren can reconcile patient revenues (from Medical Manager) with general ledger accounts that are based on financial class. HRSA Br. at 6-7.

Vance-Warren's assertions about the capabilities of its software miss the point, as the site visit reports do not attribute Vance-Warren's inability to provide accurate, necessary financial information to inadequate software. The September 2007 site visit report, for example, made no particular findings about the adequacy of the financial management software. A primary care effectiveness review site visit in June 2003 noted, among other things, that Medical Manager software had capabilities that were not being used and recommended that Vance-Warren employees be trained "as to the functionality of the software systems." HRSA Ex. 4, at 11. Thus, Vance-Warren's failures in this area appear due to the limitations of its staff in using the software and not limitations of the software itself. Vance-Warren concedes as much, asserting that the failure to reconcile information between systems "is ultimately the failure of personnel, not of the systems" and was due to "entries entered to the accounting software." Vance-Warren Br. at 7; Reply Br. at 10. It similarly blames "the inability of the former staff to manage the use of Medical Manager and its reconciliation to the accounting system" for "inadequate accounting systems and unreconciled information" and the lack of supporting documentation noted in the available audit reports. Vance-Warren Br. at 8. These shortcomings of its staff cannot excuse Vance-Warren's failure to comply with regulations incorporated in Vance-Warren's grant award. Health center grantees are required to "[p]rovide sufficient staff, qualified by training and experience, to carry out the activities of the center." 42 C.F.R. § 51c.303(p). Vance-Warren's failure to comply with this requirement is, in fact, one of the specific

bases cited by HRSA in its determination to deny continued funding of the health center grant. Vance-Warren's failure to comply with financial management requirements and to employ qualified staff also demonstrate the failure of its governing board to fulfill the responsibilities imposed on it by the health center regulations, a matter we discuss below.

Vance-Warren failed to comply with requirements for submission of annual audit reports.

Health center grantees must "provide for an independent annual financial audit of any books, accounts, financial records, files, and other papers and property which relate to the disposition or use of the funds received under [its] grant and such other funds received by or allocated to the project for which such grant was made." 42 U.S.C. § 254b(q)(1). In addition, the Single Audit Act requires grantees to submit annual audit reports within nine months after the end of the period audited. 31 U.S.C. § 7502(h).<sup>2</sup> Vance-Warren "does and did acknowledge the late and qualified audits," which it describes as "significantly late" and "containing numerous material weaknesses and reportable conditions . . ." Vance-Warren Reply Br. at 16-17. Vance-Warren specifically does not contest that it submitted its audit reports for FYs 2003, 2004 and 2005 ten, six and five months late respectively, based on due dates of August 31, nine months after the end of Vance-Warren's fiscal year. HRSA Exs. 9-11; HRSA Br. at 12. Vance-Warren also had not, as of the date of its last submission in this appeal, submitted its audit report for FY 2006, which was due August 31, 2007. Vance-Warren reported in its notice of appeal that the audit would be forthcoming by the end of December 2007 or the first of January 2008. It later projected that the audit would be completed "on or before" February 11, 2008 and later asserted, in its reply brief filed March 11, 2008, that it "is in receipt of the audit for fiscal year 2006-2007." Vance-Warren Br. at 8; Reply Br. at 8. Vance-Warren did not assert that it had submitted the FY 2006 audit report to HRSA, which reported that the FY 2006 audit report had not been submitted as of February 20, 2008. HRSA Ex. 2 (timeline).

Vance-Warren attributes these failures to timely submit its audit reports to "ineffective leadership" of its former CEO and CFO.

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<sup>2</sup> This requirement is applicable to entities that expend "a total amount of Federal awards equal to or in excess of \$300,000" in a fiscal year, and thus applies to Vance-Warren. See, e.g., HRSA Exs. 1, 13 (NGAs); 8-11 (audit reports).

Reply Br. at 16. As we discussed above, shortcomings of former staff do not excuse Vance-Warren's failure to comply with the requirement to submit its audit reports timely. Vance-Warren cites correspondence from HRSA indicating that certain findings from audit reports for FYs 2004, 2003, 2001 and 1999 had been resolved. Vance-Warren Att. 28, Vance-Warren Reply Br. at 75-78. That does not excuse Vance-Warren's failure to have submitted the FY 2003 through 2006 audit reports timely. Neither does removal of certain audit findings excuse the fact that they existed. Vance-Warren's assertion that its audit reports for FYs 1997 though 2001 were timely and unqualified, Vance-Warren Brief at 9, is not responsive to HRSA's findings, as those reports predate the events that HRSA discussed in the notice of its decision to deny continued refunding. Furthermore, the excerpt of the FY 1999 audit report that Vance-Warren submitted actually expressed a qualified opinion on Vance-Warren's compliance with its "major federal award program," found a reportable condition that was a material weakness in internal control, and cited an auditor's report on Vance-Warren's compliance with the requirements of its major programs that disclosed three reportable conditions of which two were material weaknesses. Vance-Warren Att. 10, Vance-Warren Br. at 44. HRSA also noted that the FY 2000 audit found that Vance-Warren did not qualify as a low-risk grantee. HRSA Br. at 9, citing Vance-Warren Att. 10. In essence, the record shows that Vance-Warren's statements about the absence of qualifications in these earlier reports are not correct.

In Recovery Resource Center, Inc., this Board discussed how required reports (in that case, financial status reports on the use of grant funds due 90 days after the budget period) are not mere formalities or technicalities, and their omission is significant. DAB No. 2063, at 11-12. Timely, accurate financial information in the form of audit reports that have been certified under generally accepted accounting principles help the awarding agency determine whether the grantee is managing its program responsibly and providing proper stewardship for federal funds. The failure to submit timely audit reports is particularly significant here, where the shortcomings of the grantee's financial management systems made the need for accurate financial information more pressing.

The above deficiencies and other problems demonstrate that Vance-Warren's governing board failed to adequately execute its functions and responsibilities and failed to employ qualified management staff.

The site visit reports disclose other ongoing deficiencies in Vance-Warren's grant program, not disputed by Vance-Warren, which

further demonstrate that it failed to comply with the terms of its award and that its governing board failed to discharge its responsibilities. These include:

- Vance-Warren has failed to fully fund its pension plan since 2001 and did not make its scheduled pension plan contribution from 2002 through 2004. HRSA Exs. 3, at 6; 5, at 6; 7, at 4<sup>th</sup>-5<sup>th</sup> unnumbered pages (site visit reports from April 2003, September 2006, September 2007). Vance-Warren was "dropped" by the pension plan administrator and the plan was suspended or terminated in 2004. HRSA Exs. 7, at 4<sup>th</sup>-5<sup>th</sup> unnumbered pages; 9, at 11 (FY 2003 audit report). The September 2007 site visit report states that Vance-Warren's failure to fund the plan was a violation of ERISA (the Employee Retirement Income Security Act of 1974), that Vance-Warren could be subject to lawsuits by the U.S. Department of Labor and former employees and subject to an Internal Revenue Service penalty for late filings related to the pension. HRSA Exs. 7, at 4<sup>th</sup>-5<sup>th</sup> unnumbered pages. Vance-Warren reports that in December 2007 it paid its remaining liability for 2001 and that it intended to pay its 2002 liability by December 31, 2008. Vance-Warren Br. at 11-12. While Vance-Warren asserts that there is "a plan in place to satisfy the contributions owed for 2002, 2003 through July 17, 2004," it makes no statement about when it will pay the liabilities for that period, and neither does the exhibit it cites as evidence of its plan for FY 2002-2004. Vance-Warren Br. at 19; Att. 33.

Vance-Warren complains that repayment of the pension liability "would take substantially longer for an organization whose generated revenue is initially restricted to operating expenses associated with a Federal grant" (Vance-Warren apparently refers to restrictions on its ability to draw down funds HRSA imposed beginning in 2003). Vance-Warren Br. at 11. However, this does not excuse Vance-Warren's failure to timely make the contribution in the first place. Moreover, it is not clear that Vance-Warren would be permitted to draw down federal funds to pay the pension debt, as pension plan costs assigned to a given fiscal year must be funded for all plan participants within six months after the end of that year. Office of Management and Budget Circular A-122, "Cost Principles for Non-Profit Organizations," Att. B, ¶ 8.i(d), codified at 2 C.F.R. Part 230, App. B, and made applicable to HHS grants by 45 C.F.R. § 74.27(a).

- Vance-Warren had significant cash flow problems. The April 2003 site visit report noted billings for services that were less than expenditures and that Vance-Warren was underbilling for services and engaged in wasteful purchasing. HRSA Ex. 3, at 6-8. The same report noted "multiple financial management issues" and "a number of significant financial problems." Id. at 4, 5. Vance-Warren had drawn down 60% of its annual award by the end of the first three months of the budget period, and maintained too narrow a margin of cash reserves (three to five days versus a recommended goal of 30 days and a long-term goal of 90 days). Id. Vance-Warren had also paid its employees late on two occasions in April 2003, resulting in a complaint to the State, which had warned of enforcement measures. Vendors of supplies and materials had difficulty collecting payment from Vance-Warren, and some had refused to extend credit to Vance-Warren and others had refused further service until paid for past due shipments. Id. at 4, 6. These problems followed upon a prior history of premature grant draw downs and chronic liquidity problems suggested by three audits from 1999 - 2001. Id. at 4. The site visit in June 2003 found that Vance-Warren had no cash reserves, had overdrawn its FY 2003 grant and had taken an advance draw-down on its grant for FY 2004 in the amount of \$300,000. HRSA Ex. 4, at 9.
- The audit reports show an \$80,724 loss in operating income for FY 2003 (not counting \$297,746 in "forfeiture of grant income previously recognized"), and \$44,171 and \$148,227 losses of net assets for FYs 2004 and 2005, respectively. HRSA Exs. 9, at 4; 10, at 5; 11, at 5. The June 2003 site visit report states that Vance-Warren's governing board and management had to take "swift action" to increase revenues and reduce expenses. HRSA Ex. 4, at 10. The site visit in September 2006 found that Vance-Warren was unable to bring its expenses in line with revenues to gain financial stability, despite having been under a financial recovery plan since 2003. HRSA Ex. 5, at 2. The 2007 reviewers were unable to determine if Vance-Warren's program was operating "in the black." HRSA Ex. 7, at 7<sup>th</sup> unnumbered page.
- There also were problems in Vance-Warren's delivery of health care services. Low productivity of Vance-Warren's health care providers was an ongoing problem. HRSA Ex. 3, at 10-11; Ex. 5, at 6-7; Ex. 7, at 9<sup>th</sup> unnumbered page. There was diminishing demand for services (despite Vance-Warren being funded to provide health care in an "underserved area") with decreases in users from 6,045 in

2003 to 4,400 in 2005 and a corresponding decline in total encounters, from 19,040 in 2003 to 15,106 in 2005. HRSA Ex. 5, at 3. FY 2007 site visit reviewers felt that Vance-Warren's level of patient encounters did not appear to be sufficient to generate "sustainable operational revenue necessary for fiscal stability." HRSA Ex. 7, at 1<sup>st</sup> unnumbered page.

These findings, and the deficiencies in Vance-Warren's financial management systems discussed above, support HRSA's determination that Vance-Warren failed to comply with requirements that health center grantees "[d]evelop management and control systems which are in accordance with sound financial management procedures" and maintain "[e]ffective control over and accountability" for all funds, property and other assets. 42 C.F.R. § 51c.303(d); 45 C.F.R. § 74.21(b). They also support HRSA's determination that Vance-Warren's governing body failed to discharge the responsibilities assigned it by the health center regulations and that Vance-Warren failed to appoint qualified management staff. A grantee's governing board "shall have the specific responsibility" for, among other things, "[a]ssuring that the center is operated in compliance with applicable Federal, State, and local laws and regulations;" for approving the selection of the CEO, and for adopting policies for financial management practices, "including a system to assure the accountability of center resources . . . ." 42 C.F.R. § 51c.304(d)(2)(i), (iii), (v). This finding is consistent with the site visit reports, which describe governing board members' "passivity and lack of interest" and ignorance of Vance-Warren's financial plight, and refers to the board's "track record" of not exercising fiduciary responsibility. HRSA Exs. 3, at 7; 7, at 2<sup>nd</sup>, 3<sup>rd</sup> unnumbered pages.

Vance-Warren's other arguments provide no basis to reverse HRSA's decision.

As noted above, Vance-Warren does not dispute the findings of the review reports. Instead, Vance-Warren argues that "ineffective leadership" by its former CEO and former CFO was the "root cause of many of the issues cited by HRSA." Vance-Warren Br. at 13. It attributes the pension problems to its former CEO and CFO who, Vance-Warren says, did not carry out governing board directives to set aside funds to pay the 2002 contribution and failed to recommend that the plan be terminated earlier. Vance-Warren Reply Br. at 19-20, citing Att. 35. Vance-Warren also argues that denial of refunding is not warranted because it has begun to improve its program under the new CFO (who previously served in that position prior to October 2002) and its new CEO, who

apparently began working for Vance-Warren sometime in January 2008. It asserts that it has been implementing its recovery plan and that its cash flow has improved. Vance-Warren also argues that it complied with conditions in the June 2007 NGA requiring Vance-Warren to submit financial recovery and corrective action plans outlining the steps it would take to address its deficiencies. Vance-Warren points out that in February 2008, HRSA removed three conditions from the June 13, 2007 NGA requiring Vance-Warren to submit financial recovery and corrective action plans and to document that its governing board was functioning appropriately in accordance with law, regulations and program expectations. Vance-Warren Att. 20, Vance-Warren Reply Br. at 54-55.

As we discussed above, Vance-Warren and its governing board were responsible for its operations. This Board has held that ultimate responsibility for corporate governance and conduct rests with the board of directors, not the employees, and any role that former employees may have played in a grantee's problems cannot absolve the board of directors of that responsibility. Renaissance III, DAB No. 2034, at 10-11 (2006). The responsibility for the quality of the staff rests squarely on the grantee, which does not cease to be responsible for the actions of its staff or their consequences simply by asserting that the staff involved have been fired. Rural Day Care Association of Northeastern North Carolina, DAB No. 1489, at 27, 55 (1994), aff'd Rural Day Care Ass'n of Northeastern N.C. v. Shalala, No. 2:94-CV-40-BO (E.D. N.C. Dec. 20, 1995).<sup>3</sup> By accepting the terms and conditions of its health center grants, Vance-Warren's governing board became a fiduciary of federal funds and was responsible for ensuring that those funds were properly spent and accounted for, which encompassed the supervision of employees, including the Executive Director and accounting personnel. Renaissance III at 11, citing Rio Bravo Assoc., DAB No. 1161, at 31 (1990) (agreeing with the agency that the grantee was a public fiduciary of federal funds and that its management was responsible for supervising its employees); Action for Youth Christian Council, Inc., DAB No. 1651, at 14-15 (1998) (despite

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<sup>3</sup> Rural Day Care cited a grantee's obligation under the Head Start Act to adopt rules that "assure that only persons capable of discharging their duties with competence and integrity are employed." 42 U.S.C. § 9839(a)(2). The Rural Day Care holding is appropriately applied here given the requirement that health centers "[p]rovide sufficient staff, qualified by training and experience, to carry out the activities of the center." 42 C.F.R. § 51c.303(p).

employee misconduct, the grantee was responsible for accounting for the use of grant funds); and Metro Community Health Centers, Inc., DAB No. 1098, at 9-10 (1989) (noting that the grantee's governing board was ultimately responsible for complying with an explicit grant condition even if the Executive Director was at fault). Vance-Warren's admissions to the failures of its previous management staff also support HRSA's determination that Vance-Warren failed to comply with the requirement to provide sufficient staff, qualified by training and experience, to carry out the activities of the center. 42 C.F.R. § 51c.303(p).

Actions that Vance-Warren took to improve its program after HRSA's determination are not relevant. Our inquiry is limited to determining whether Vance-Warren failed to comply with the terms of a previous award. See 45 C.F.R. Part 16, App. A, ¶ C.(a)(3); HHS GPS, at II-93. And even in the context of grant terminations, the Board has held that the grantor agency is not required to provide an opportunity to correct before terminating. See, e.g., Renaissance III (discussing termination of a cooperative agreement for material failure to comply with its terms and conditions and holding that although the awarding agency may, as a matter of policy or prudence, give an award recipient the opportunity to correct noncompliance before imposing termination, nothing in the applicable regulations requires it to do so). Vance-Warren has not shown that the actions it cites, such as improving its cash flow and repairing its relationship with a vendor who had denied it credit, were effective prior to HRSA's decision on November 29, 2007 or the end of the grant period on November 30, 2007. For example, the income statements Vance-Warren cites merely show an increase in assets in January 2008 (but also a decrease in assets in December 2007), after the denial of continued funding. Vance-Warren Att. 26, Vance-Warren Reply Br. at 72.

Vance-Warren also cites an income statement for the eight-month period ending July 31, 2007, showing net income for that period. The 2007 site visit reviewers, however, stated that they doubted the accuracy of financial statements that Vance-Warren submitted for April through June 2007. Vance-Warren has not shown that its FY 2007 financial statements have been subject to audit and, as noted, has not submitted the audit report for FY 2006. HRSA Br. at 10, 12; HRSA Ex. 2. The admitted problems with Vance-Warren's financial systems during that time and Vance-Warren's concessions about the limitations of its staff justify the reviewers' skepticism. As a federal grantee, Vance-Warren "always bears the burden to demonstrate that it has operated its federally funded program in compliance with the terms and conditions of its grant



and the applicable regulations." Away From Home, Inc., DAB No. 2162, at 17-18 (2008) (citations omitted).

HRSA's removal of grant conditions in February 2008 does not nullify its determination in November 2007 to deny continued refunding. We find that denial supported by the record. HRSA in its discretion could continue to work with Vance-Warren, and HRSA's notice of the denial of continued refunding stated that it would provide "prorated support for the phase-out period." Additionally, the essence of Vance-Warren's noncompliance was not its failure to submit financial recovery or corrective action plans, but its failure to implement corrective measures and demonstrate that it was in compliance with program requirements. In this respect, the 2007 site visit noted that Vance-Warren had "been operating under a financial recovery plan for years, without much success." HRSA Ex. 7, at 2<sup>nd</sup> page. In any event, the February 2008 action did not remove conditions requiring monthly financial reports and the requirement that Vance-Warren state when the audit for FY 2006 would be completed.

Finally, Vance-Warren has failed to support its allegation that a HRSA project officer contributed to the continuation of Vance-Warren's problems. Vance-Warren alleges that the project officer was a "fraternity brother" of Vance-Warren's former CEO, who had "bragged" that the project officer would "look out for him." Reply Br. at 3-4. Vance-Warren however submitted no evidence in support of that allegation. Furthermore, its suggestion that the project officer showed favoritism to the former CEO and thus allowed Vance-Warren's problems to go uncorrected is effectively an admission that those problems existed.

The record demonstrates that Vance-Warren's failures to comply with the laws and regulations applicable to its grant persisted over a period of years and that Vance-Warren was given repeated notice of them through site visits and the conditions imposed on its grant. These problems were serious and fully justified HRSA's decision not to refund HRSA's grant after FY 2007.

Conclusion

For the reasons discussed above, we sustain HRSA's decision to deny continued refunding of Vance-Warren's health center grant.

\_\_\_\_\_/s/\_\_\_\_\_  
Judith A. Ballard

\_\_\_\_\_/s/\_\_\_\_\_  
Leslie A. Sussan

\_\_\_\_\_/s/\_\_\_\_\_  
Sheila Ann Hegy  
Presiding Board Member