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September 5, 2006

Katherine Thomas MN, RN
Executive Director
Texas Board of Nurse Examiners
333 Guadalupe, Suite 3-460
Austin, Texas 78701-3944

Re: Annual Audit of the Texas Peer Assistance Program for Nurses
Prepared for the Texas Board of Nurse Examiners

Dear Ms. Thomas:

Please find enclosed the Annual TPAPN Audit. If it will assist you staff, I can e-mail the report as a Word attachment. Please advise.

Transmission of this report has been delayed due to difficulties in verifying some information provided by the case management software (Athena) provider.

If you have questions about the audit, do not hesitate to contact me.

Sincerely,



Penny Puryear Burt, RN, JD

Enclosure: Audit Report (5 pages)

cc: Michael Van Doren, MSN, RN, CARN, TPAPN Program Director

PPB/ae

ANNUAL AUDIT OF THE TEXAS PEER ASSISTANCE PROGRAM FOR NURSES

PREPARED FOR

THE TEXAS BOARD OF NURSE EXAMINERS

AUDITOR: Penny Puryear Burt, RN JD

AUDIT PERIOD: May 14, 2005 - May 8, 2006

CONFIDENTIALITY

Records of drug and alcohol services and certain mental health services are confidential under state law, Chapter 467 of the Health and Safety Code, and under the federal confidentiality regulations in 42 Code of Federal Regulations Part 2.

In compliance therewith, the auditor executed a Qualified Service Organization Agreement.

1. The audit was conducted May 12, 2006 - June 28, 2006 in the office of the Texas Peer Assistance Program for Nurses (TPAPN) in Austin, Travis County, Texas using the electronic case management system (Athena) and original paper documents.
2. At the auditor's request and pursuant to its contract with the Athena Software Provider, TPAPN obtained random samples of RN and LVN participants. TPAPN Staff prepared hard copies of (1) the sample lists and (2) the electronic data summary field for each participant (Athena Participant Snapshot).
3. The sample lists were marked to tally audit items and retained by the auditor for sufficient time to compare to BNE disciplinary action lists and prepare this report.
4. The Athena Snapshots were used only in TPAPN's office. The Snapshots and the auditor's notes were retained by TPAPN during the audit and thereafter as part of the 2005-2006 working papers.
5. Original paper documents were provided by TPAPN staff at the auditor's request and used only in TPAPN's office. No source documents were removed from the office.
6. All lists were kept under lock and key while in the auditor's possession. RN and LVN Participant Lists, the Active Case List and related working papers were returned to TPAPN by hand on June 28, 2006. Follow-up Active Case Lists were returned to TPAPN by hand on August 15, 2006.

SCOPE OF THE AUDIT

This audit includes RN and LVN participants licensed by Texas Board of Nurse Examiners (BNE).

RN and LVN TPAPN participants were sampled and are reported in separate sections.

The audit was designed to ensure:

1. That peer assistance services were not being contemporaneously offered to individuals currently receiving significant disciplinary action, particularly disciplinary action involving monitoring, from the BNE.
2. That TPAPN services were not being offered to individuals who had received significant disciplinary action within the five (5) years preceding participation in TPAPN.
3. That TPAPN services were not being offered to individuals other than those licensed by the BNE.
4. That the peer assistance services offered were only those specifically authorized by Chapter 467, Texas Health and Safety Code.
5. That nurses who signed participation agreements were appropriate to receive peer assistance services.
6. That records of peer assistance services contained sufficient detail to permit evaluation of TPAPN's compliance with applicable law and its agreement with the BNE.

AUDIT PROCEDURE

Audit Period: The period beginning on May 14, 2005 and ending on May 8, 2006.

RNs: Forty three (43) RNs in the TPAPN Participant Database who signed Participation Agreements during the audit period were returned by the software provider in response to the auditor's request for a fifteen percent (15%) random sample. Each file in the sample was reviewed.

LVNs: Eighteen (18) LVNs in the TPAPN Participant Database who signed Participation Agreements during the audit period were returned by the software provider in response to the auditor's request for a fifteen percent (15%) random sample. Each file in the sample was reviewed.

RN AND LVN Active Cases on May 8, 2006: A query of the TPAPN Active Case Database for RNs and LVNs who were active in the program on May 8, 2006 produced a list of five hundred eighty (580) individuals. Of these, four hundred twenty six (426) individuals had signed participation agreements and were crosschecked for disciplinary action in the five (5) years preceding May 8, 2006.

TPAPN policies, procedures, forms, electronic database fields and program records for the RN and LVN samples were evaluated for compliance with applicable law and TPAPN's agreement with the BNE.

ANOMALOUS FINDINGS IN COMPARISON OF TPAPN ACTIVE CASE DATABASE TO BNE DISCIPLINARY ACTION LIST

Two (2) TPAPN participants in the audit samples appeared on the BNE Action List with stipulations (BNE Key "TS"—Petitioner's Stipulations). In both cases, a crosscheck with

the Current Discipline section of the BNE license verification database showed no stipulations.

The BNE action list contained one hundred thirty seven (137) individuals with a BNE Key Code indicating stipulations. Ten (10) of these individuals, in addition to the audit sample, were crosschecked with the Current Discipline section of the BNE license verification database. None showed current discipline or stipulations.

TPAPN and BNE staff provided the following information:

- BNE Key Codes "TS" and "XTS" indicate "Petitioner's Stipulations".
- Some BNE stipulations require TPAPN participation.
- Some BNE stipulations requiring TPAPN participation arise from criminal background checks revealing drug or alcohol related offenses.
- The absence of any notation of these stipulations from the BNE's license verification section is tied to the confidential nature of the TPAPN Program.
- Some referrals have acceptable rehabilitation history and assessments documenting sobriety, clean drug screens or remission of mental illness symptoms of more than two years.
- TPAPN is a two-year program for RNs and LVNs. Effective 9/01/05 the minimum length of participation for Advance Practice Nurses was increased to three (3) years.
- Some BNE referrals are evaluated by TPAPN and found to be outside the established parameters for participation. These individuals are handled on a case-by-case basis in consultation with the BNE.

It appears that an undetermined number of individuals are presently referred to TPAPN by the BNE as a result of their criminal histories. The scope of this audit includes evaluation of (1) services authorized by statute and (2) appropriateness of participants for peer assistance services. TPAPN participation by individuals with positive criminal histories may or may not be appropriate depending on their "impairment" as defined by the controlling statute. Chapter 467 of the Texas Health and Safety Code defines:

1. An "Impaired professional" as one "...whose ability to perform a professional service is impaired..." and
2. An "Impaired student" as one "...whose ability...would be, or would reasonably be expected to be impaired..."

It appears that an undetermined number of individuals referred to TPAPN on the basis of their criminal histories may not fit the statutory definition of "impaired professional" or "impaired student".

Chapter 53 of the Texas Occupations Code contains permissible and mandatory provisions relating to the effect of criminal convictions on professional licensure. Pursuant to Chapter 53 the BNE has published Guidelines for Disciplinary Sanctions for Nurses with Chemical Dependency.

Disposition of individuals with convictions related to alcohol or drugs in a manner that protects the public and complies with applicable law is a subject of ongoing discussion between TPAPN and the BNE. TPAPN and the BNE may wish to consider requesting an

Attorney General's Opinion on this matter. Therefore no finding other than the foregoing observation will be made as a part of this audit.

AUDIT RESULTS

SUMMARY

Subject to the observations in the previous section, the TPAPN files reviewed met all criteria enumerated in the scope of the audit.

Results for RN Participants

1. All individuals referred to as RNs who signed Participation Agreements during the audit period were shown as RNs in the BNE's database.
2. There were no indications that any individuals other than those with current licenses were receiving TPAPN services.
3. There was no evidence that services other than those specifically authorized by Chapter 467 of the Health and Safety Code were being provided to the licensees of the BNE.
4. There was no evidence that any individual received contemporaneous peer assistance services from TPAPN while being monitored by the BNE.
5. There was no evidence that any individual receiving TPAPN services had received significant disciplinary action in the last five (5) years.

Results for LVN Participants

1. All individuals referred to as LVNs who signed TPAPN Participation Agreements during the audit period were shown as LVNs in the BNE's database.
2. There were no indications that any individuals other than those with current licenses were receiving TPAPN services.
3. There was no evidence that services other than those specifically authorized by Chapter 467 of the Health and Safety Code were being provided to licensees of the BNE.
4. There was no evidence that any individual received contemporaneous peer assistance from TPAPN while being monitored by the BNE.
5. There was no evidence that any individual receiving TPAPN services had received significant disciplinary action in the last five (5) years.

Results for all cases (RN and LVN) active in TPAPN on May 8, 2006

There was no evidence that any individual who was receiving TPAPN services on May 8, 2006 had received significant disciplinary action in the last five (5) years.

Results for TPAPN Policies, Procedures, Forms and Electronic Database Fields and Program Records

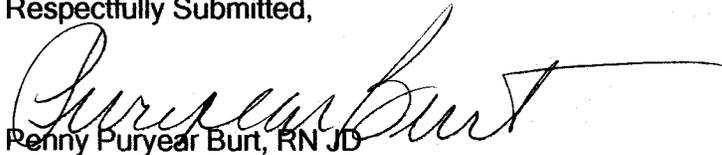
1. TPAPN's policies and procedures conform to the requirements of applicable law and the agreement with the BNE.
2. TPAPN's forms and electronic database fields are designed to collect and protect the data required by applicable law and the agreement with the BNE.

3. TPAPN's electronic and paper case files reviewed in this audit reflected timely and thorough collection of relevant information and regular case review.
4. Case Manager's notes reflect active and responsive communication with participants and others involved in their assessment, compliance and employment.
5. The participant's consent to release of information was adequately documented in each file reviewed.
6. Case files reviewed reflected timely reporting of participant non-compliance to the BNE.
7. Paper files were kept in secure storage.
8. TPAPN staff used secure passwords to control access to electronic files.

AUDIT RECOMMENDATIONS

1. That the TPAPN audit be performed annually.
2. That TPAPN staff continue to query the BNE's electronic licensure and disciplinary database as nurses are referred to the program and sign Participation Agreements.
3. That the BNE continue to provide TPAPN with comprehensive electronic lists of Board Actions for RNs and LVNs and update said lists each time the BNE updates its own lists.
4. That the BNE include at least the following information fields in the Board Action Lists it provides to TPAPN:
 - a. Licensee name
 - b. Social Security Number
 - c. Type of license (RN or LVN)
 - d. License number
 - e. Date of licensure
 - f. Board Action(s)
 - g. Date of Board Action(s)
 - h. Sanction(s) imposed
5. That the BNE provide the electronic Board Action Lists in a form that is fully sortable by TPAPN.
6. That TPAPN and the BNE continue their discussion of referrals based on positive criminal histories and address the anomalous issues and auditor's observations on pages 2-4 of this report.

Respectfully Submitted,



Penny Puryear Burt, RN JD

BY
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