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Katherine Thomas, MN, RN  
Executive Director  
Texas State Board of Nursing  
333 Guadalupe #3-460  
Austin Texas 78701

December 20, 2009

Re: 2009 TPAPN Audit

Dear Ms Thomas:

Please find the 2009 TPAPN audit enclosed.

Sincerely,

A handwritten signature in black ink, appearing to be 'PB' with a large loop, positioned above the printed name.

Penny Puryear Burt

# AUDIT OF THE TEXAS PEER ASSISTANCE PROGRAM FOR NURSES

PREPARED FOR

THE TEXAS BOARD OF NURSING

Auditor: Penny Puryear Burt, RN, JD

Audit Period: November 1, 2008 – October 31, 2009

## I. Confidentiality

In compliance with Texas Health and Safety Code, Chapter 467 and 42 Code of Federal Regulations, Part 2, I signed the attached engagement letter prepared by TPAPN.

The audit was conducted November 16- December 18, 2009 in TPAPN's office using the electronic case management system (First Lab Case Notes) as well as the prior system archive (Athena) and scanned paper documents stored in Docuware.

TPAPN provided me with:

1. Access to a secure case management terminal (Staff logged me in and out using their passwords each time I reviewed records in the data base.) and
2. Paper copies of electronic data field summaries for participants in the audit samples.

The paper copies and my notes were kept in TPAPN's office during the audit period and in my office during the preparation of this report. They will be returned to TPAPN when I receive approval from the BON to deliver a copy of this report.

## II. Scope of the Audit

The scope of this audit is set out in paragraphs B-2 through B-7 of the attached engagement letter. Major tasks assigned in the engagement letter are stated prior to the findings below in Section III. Methodology and Findings.

## III. Methodology and Findings

1. Audit all LVNs and RNs active in TPAPN on November 16, 2009 to ascertain that there is no TPAPN monitoring contemporaneous with BON discipline/monitoring without prior, documented BON approval.

TPAPN staff provided me with a list of all 525 RNs and LVNs active in TPAPN on 11/16/2009. The list included the license number and type for each participant. I compared the nurses on TPAPN's list to the BON's online license verification site to check for current disciplinary action. In several cases I read TPAPN's case notes for documentation of communication with BON Enforcement.

I found no instance of contemporaneous monitoring that had not been approved by the BON in one of the following ways:

- Resolution of duplicate reporting to TPAPN and the BON
  - Board Order or referral to TPAPN
  - BON/TPAPN Third Party Referral Review
2. Audit random 15% samples of RNs and LVNs who signed participation agreements between 11/01/2008 and 10/31/2009 to ensure TPAPN is compliant with: a) TPAPN's internal policies and procedures, b) the rules and policies governing the program, and c) applicable state and federal statutes especially governing confidentiality of drug and alcohol abuse patients.

TPAPN staff produced the random sample and provided me with lists of 28 RN and 8 LVN participants and paper copies of their participant summary fields and case notes.

I reviewed the files of participants in the sample and found:

- A. All nurses accepted by TPAPN were licensed by the BON and had no significant disciplinary history in the last five years.
- B. Participants had one or more of the diagnoses accepted by TPAPN.
- C. Participants were not currently using or being prescribed drugs normally associated with chemically dependency or abuse although discontinuation was very recent for some who were in detox, inpatient, assessment and treatment phases. Case manager's notes reflect frequent communication with nurses in the premonitoring stages regarding the need to taper off inappropriate pharmaceuticals and find safer alternative medications.
- D. Two (2) RN participants and one (1) LVN participants had attempted or completed two (2) chemical dependence programs. All three were BON ordered to TPAPN on the third occasion.
- E. None of the participants had felony or sex offender criminal history.
- F. Participant's files reflect timely and thorough collection of relevant information.
- G. Case Manager's notes show active and responsive communication with participants, their health care providers and employers.

- H. Notes by case managers and support staff show a high level of attentiveness to any tardiness of participants in providing information and consents to the release of information by individuals and institutions involved in the nurse's treatment, aftercare and employment. Nevertheless, I found gaps of 2-3 months in the narrative case notes of two participants. In one case entries in other data fields established the nurse's compliance. In both cases TPAPN internal file audits caught missing paperwork. The gaps in narrative notes appeared during case manager turnover and the installation of TPAPN's new electronic database system.
  - I. Participant non-compliance is reported to the BON.
  - J. Paper documents are kept in secure storage or scanned and shredded.
  - K. TPAPN offices are locked and staff uses passwords to access computer records.
3. Audit one meeting report for each of the past 12 months (11/08-10/09) for the regularly scheduled "third-party referral review meetings" between BON-TPAPN to ensure compliance with NPA Section 301.410.

TPAPN arranged for me to observe a "third party referral meeting" and provided 12 weekly reports (one for each of the past 12 months). Each report had a face sheet titled Status of Intake Cases and included lists and summary information on third party referrals and self referrals converting to third party status to be considered at each meeting.

The meeting is essentially a review of available evidence to clarify the referral source, the presence or absence of a practice violation (either nursing standards or unprofessional conduct), and the nurse's appropriateness for the program under Rule 213.17.

The BON and TPAPN discuss each case and determine the next step for each nurse considered. The discussion I observed was focused and brief. TPAPN and BON were well prepared, cooperative and frank. They moved through the evidence and quickly settled on a disposition. For example, a nurse with a positive pre-employment drug screen and no practice violation was offered participation in the Extended Evaluation Program (EEP). Ineligible EEP referrals were sent to the BON.

- A. I found TPAPN's record keeping to be a difficult challenge because the nurses considered for participation may have self-referred or been referred by multiple sources at different times for different reasons. They are in a state of flux regarding employment, MRO reviews, assessment, diagnosis, treatment, and aftercare. To the record keeper, they represent moving targets on a progression that is often "back and forth" between the BON and TPAPN.

- B. After review of meeting reports representing the past 12 months, I found the process as evolving. It addresses the requirements of NPA Section 301.410 and Board Rule 217.13 and appears to have potential to expedite the process for TPAPN and BON if access to or delivery of BON disciplinary history can be worked out.
  - C. As noted in the past several audits, TPAPN and BON are forced to waste many hours on the phone determining whether a nurse has had significant BON discipline. It is absurd for TPAPN staff to spend time building a database by hand or clicking through five yearly lists on the BON verification site to determine eligibility. This impediment occurs in every context where eligibility must be determined. The BON should immediately find a way to provide comprehensive, current board disciplinary action lists to TPAPN. In the alternative, a routine should be established for TPAPN to e-mail names and as many other identifiers as it has to the BON and receive an e-mail response by the next business day.
4. Audit random 10% sample of nurses actively participating in the Extended Evaluation Program on 11/16/2009 for correct placement and management per EEP requirements.

TPAPN staff prepared the random sample and provided me with paper copies of the participant data summary and case notes for five files.

Interestingly one of the nurses in the sample was referred to EEP as part of an agreement involving the State Office of Administrative Hearings (SOAH) to resolve BON formal charges based on history of arrest for DWI in 2006. The nurse was assessed, found not to have a chemical dependency diagnosis and successfully completed EEP.

I read the files and found that EEP placement was appropriate. Management efforts met the EEP requirements in all five cases with one exception. On a routine chart audit, TPAPN identified a nurse who had not provided consent for release of information from the employer. TPAPN immediately informed the nurse and the employer.

5. Review TPAPN Program Materials for compliance with applicable rules and regulations.

TPAPN provided current copies of its Administrative Policy and Organizational Manual, Internal Policies and Procedures Book, Participant Handbook and Advocate Handbook.

I read these with attention to updates, additions and revisions since the last audit.

I found the program materials to be in harmony with applicable state and federal statutes and rules.

6. Audit referrals received by TPAPN between June 1, 2009 and November 1, 2009 to be sure that program data from that time is intact and nurses can be accounted for before, during and post-migration of TPAPN data between Digital Systems Support (Athena) and First Lab (Case Notes) on August 28, 2009 and subsequently loaded into TPAPN's new database by First Lab.

TPAPN staff provided a list of all referrals (230) received by TPAPN between 6/01/2008 and 11/01/2009.

I checked each name on this list against the First Lab (Case Notes) participant electronic data summary fields and case notes and found all 230 nurses referred to TPAPN during the specified date range.

#### IV. Audit Recommendations

1. Extend the period between full audits to two or three years. The NCBN's Chemical Dependency Regulatory Committee recommends three years as a best practice. In the event significant concerns arise about some aspect of the program, a focused audit could address those issues quickly.
2. Although no nurses in this year's samples had non-alcohol or drug related criminal histories, BON and TPAPN should be attentive to convictions tenuously related to TPAPN diagnoses and avoid using TPAPN as an alternative to denying licensure in proper cases.
3. The BON should streamline and expedite the current method of providing disciplinary history and "allowed" nurse identifiers to TPAPN for eligibility needs via digital technology as discussed above in 3 C.
4. The BON should provide TPAPN with complete copies of all evaluations (substance use/dependence, psychiatric and forensic) used by the BON in referring a student or licensee to TPAPN or EEP.

Respectfully submitted,



Penny Puryear Burt, RN/JD

Attachment: TPAPN Engagement Letter

November 16, 2009



Penny Burt  
ATTORNEY AT LAW  
PO Box 587  
Georgetown, Texas 78627-0587

Dear Ms. Burt:

The Texas Peer Assistance Program for Nurses (TPAPN) appreciates your willingness to provide expert consultation once more for the purpose of fulfilling TPAPN's FY 2009, annual performance and legal audit. This engagement letter sets forth the terms upon which you will provide audit services for the Texas Board of Nursing (BON) and any additional audit report for TPAPN pertaining to its internal operations. As previously agreed to, TPAPN will pay you a minimum of \$3,000 upon our receipt of a copy of your completed audit report for the BON. As discussed yesterday the on-site audit is to begin the week November 16, 2009. The final, written audit report for the BON is to be completed by December, 20, 2009. Leah Lambracht, Program Operations Coordinator will be your primary contact at TPAPN, ph: 467-7027 ext 105; email: [llambracht@texasnurses.org](mailto:llambracht@texasnurses.org).

A. The TPAPN (Program) TPAPN will provide the following (1 – 6) to Penny Burt (Auditor):

- 1) Office and computer security access;
- 2) Dedicated work space with computer monitor/terminal;
- 3) The necessary number of randomly selected individuals to meet the percentages of individuals needed for each data report including necessary identifiers for each of the participants;
- 4) Electronic and hard copies of participant data, forms, and data reports as needed or needed (RE: #3 above);
- 5) Any and all program forms specified herein or requested by Auditor; and
- 6) Staff assistance, e.g., needed to ensure navigation within, and interpretation of "CaseNotes," the Program's case management software system provided by FirstLab, Inc.

B. The following (1 – 8) are the major tasks to be fulfilled for the audit by Penny Burt ("Auditor") with the assistance of TPAPN (Program) for the BON. Auditor is to:

- 1) Sign a TPAPN Acknowledgement of Confidentiality form governing the prohibition on re-disclosure of identifying information per 42 Code of Federal Regulations Part 2 prior to start of audit.
- 2) Audit all LVNs and RNs active in TPAPN as of November 16, 2009 in order to ascertain proper monitoring by the Program, i.e., that there is no contemporaneous monitoring of nurse participants (by TPAPN) and investigation/discipline by the Texas Board of Nursing (BON) without proper documentation by TPAPN of approval by the BON for TPAPN to do so.
- 3) Audit 15% of RNs and 15% of LVNs who signed participation over the past 12 months, 11/1/08 – 10/31/09 for internal quality assurance purposes to ensure that the Program is compliant with: a)

**SPONSORING ORGANIZATIONS**

its internal policies and procedures; b) the rules and policies governing the program; and c) applicable state and federal statutes, especially governing confidentiality of drug and alcohol abuse patients.

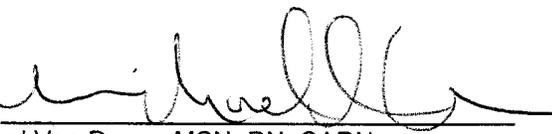
- 4) Audit at least one meeting report for each month of the past twelve months 11/08 – 10/09 (12 documents total) generated and referenced specifically for the regularly scheduled "third-party referral review meetings" between the BON with TPAPN, to ensure compliance with BON rule, Texas Nurse Practice Act, Sec. 301.410.
- 5) Audit approximately 10% of the nurses actively participating in the Extended Evaluation Program (EEP) as of November 16, 2009 for correct placement and management per EEP requirements.
- 6) Review TPAPN Program materials for appropriateness and compliance with applicable rules and regulations: a) administrative policy and organizational manual, b) internal policies and procedures manual, c) participant handbook, d) Program agreements, and e) Program consents, that nurses must normally sign and complete during the course of their participation.
- 7) Per special request by the BON, perform a focused audit of referrals received by TPAPN between June 1, 2009 and November 1, 2009 to assure the BON that the Program's data from that time period is intact and all nurses can be accounted for immediately before, during and post-migration of TPAPN data that occurred between Digital Systems Support, Inc. and FirstLab, Inc. on August 28, 2009 and was subsequently loaded into TPAPN's database by FirstLab.
- 8) As appropriate, provide the BON any additional, significant findings, including exceptions, as well as conclusions and recommendations pertaining to the Program's operations and communications with the BON.
- 9) Provide the BON with a written audit report (including the specific methodologies/processes used) regarding your findings (1 – 8 above).
- 10) Provide TPAPN a copy of the audit report after the BON signifies its approval for you to do so.

Both parties agree to notify the other immediately of any significant delays expected, e.g., more than one week beyond the start date for the Program to generate the data required by the Auditor in order to perform the audit or more than one week beyond due date for the Auditor to complete the audit or provide the final audit report to the BON. TPAPN understands that the audit is limited to the above tasks and that Auditor is not being requested to provide legal services or opinions to the Program.

If Auditor finds these terms acceptable, please sign and date each of the duplicate letters of engagement and return one to the TPAPN office and retain the second for your records. If there any questions or concerns Auditor is to contact the Program Director immediately.

Accepted by:   
Penny Burt, RN, JD

Date: 11/18/09

Accepted by:   
Michael Van Doren, MSN, RN, CARN  
TPAPN Program Director

Date: 11/18/09