

Agenda Item 7.1.2
July 2008
Prepared by Penny Puryear Burt
Presented by Dusty Johnston and Tony Diggs

**Annual Report on the Audit of the Texas Peer Assistance Program
for Nurses Prepared for the Board of Nurse Examiners**

Attached for Board review is the annual audit of the Texas Peer Assistance Program for Nurses prepared by an independent auditor, Penny Burt, RN, JD.

The annual audit is designed to ensure that TPAPN is compliant with the law and its contract obligations. The audit outlines its purpose, processes and recommendations.

The audit was conducted May 20, 2008 through June 13, 2008 in the office of TPAPN using the electronic case management system and the original paper documents of TPAPN. The results of the audit are summarized in the report attached hereto and dated June 28, 2008.

No action is necessary and this report is for informational purposes and for discussion only.

However, the Board may wish to consider the following action:

Recommendation:

Move to accept the June 28, 2008, audit of TPAPN performed by the Penny Burt, RN, JD, for the Texas Board of Nursing and accept the Audit Recommendations Nos. 1 through 9. Additionally move to instruct Staff to utilize its best efforts to implement recommendations Nos. 1 through 9, unless SSN's are determined to be protected from disclosure as recommended in No. 9 of the report.

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June 28, 2008

Katherine Thomas MN, RN
Executive Director
Texas Board of Nursing
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.

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

Sincerely,


Penny Puryear Burt, RN, JD

Enclosure: 2007-2008 Audit Report (10 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 NURSING**

AUDITOR: Penny Puryear Burt, RN, JD

AUDIT PERIOD: April 16, 2007-April 15, 2008

I. 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.

The audit was conducted May 20, 2008-June 13, 2008 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.

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).

The sample lists were marked to tally audit items and retained by the auditor for sufficient time to compare to BON disciplinary action lists and prepare this report.

The Athena Snapshots were used to record pertinent data from TPAPN's digital and paper records. These and the auditor's notes were retained by TPAPN during the audit, released to the auditor for sufficient time to prepare this

report and thereafter returned to TPAPN as part of the 2007-2008 working papers.

Original paper documents were provided by TPAPN staff at the auditor's request and used only in TPAPN's office.

All lists, Athena Snapshots and working papers were kept under lock and key while in the auditor's possession and returned to TPAPN with a copy of this report.

II. SCOPE OF THE AUDIT

This audit covers:

1. Peer assistance for RNs and LVNs recovering from substance use disorders and mental illness,
2. TPAPN's compliance with its own internal policies, rules and policies of the BON as well as applicable state and federal laws and regulations,
3. BON review of third party referrals,
4. TPAPN Extended Evaluation Program and
5. TPAPN's program materials.

The audit was designed to ensure that:

1. Peer assistance services are not contemporaneously offered to individuals currently receiving significant disciplinary action, particularly disciplinary action involving monitoring, from the BON;
2. TPAPN services are not offered to individuals who received significant disciplinary action within the five (5) years preceding participation in TPAPN;
3. TPAPN services are not offered to individuals other than those licensed by the BON;
4. The peer assistance services offered are only those specifically authorized by Chapter 467, Texas Health and Safety Code;
5. Nurses who sign participation agreements are appropriate to receive peer assistance services;
6. Records of peer assistance services contain sufficient detail to permit evaluation of TPAPN's compliance with applicable law and its agreement with the BON;
7. TPAPN and BON review of third party referrals complies with Nurse Practice Act Sec. 301.401, effective 9/01/2007;
8. EEP services are offered only to nurses who have:

- a single incident of improper drug or alcohol use,
 - absence of substance dependence/abuse history,
 - absence of practice violation history, and
 - BON approval for EEP participation;
9. EEP participants are compliant with program requirements, and
 10. TPAPN program materials comply with applicable laws and regulations.

III. AUDIT PROCEDURE

Audit Period: The period beginning on April 16, 2007 and ending on April 15, 2008.

RNs: Forty-four (44) 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: Thirteen (13) 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 April 15, 2008: The TPAPN Active Case Database for RNs and LVNs who were active in the program on April 15, 2008 was compared to the disciplinary action spreadsheet provided by the BON covering the five (5) years preceding April 15, 2008.

TPAPN policies, procedures, forms, electronic database fields and program records: The specified items were evaluated for compliance with applicable law and TPAPN's agreement with the BON.

TPAPN program materials: The Participant Handbook, Advocate Handbook, and Employer Guide were reviewed for compliance with applicable laws and regulations.

IV. FINDINGS

1. BON REFERRALS AND TPAPN ACCEPTANCE OF INDIVIDUALS OUTSIDE THE USUAL TPAPN PARAMETERS

The random sample of RNs reviewed for the 2007-2008 audit contained no participants referred by the BON on Orders reflecting long periods of alcohol and drug free history. (The 2007 audit sample contained one (1) participant who had been clean and sober for more than four (4) years at the time of referral to TPAPN.)

TPAPN staff confirmed that the BON is sending fewer nurses with histories that raise questions of current impairment.

2. BON REFERRALS AND TPAPN ACCEPTANCE OF PARTICIPANTS WITH CRIMINAL CONVICTIONS

Individuals in the audit samples included BON referrals to TPAPN who had significant criminal history. TPAPN accepted these individuals. Most were seeking Orders of Conditional Eligibility. The BON's CE Orders requiring TPAPN participation usually contained Finding of Fact showing:

- A logical relation between the crime and chemical dependency,
- Significant passage of time between commission of the offense and the application resulting in referral to TPAPN
- Evidence regarding duration of abstinence and
- Recent forensic psychological evaluation.

Some individuals with BON Orders requiring TPAPN participation had criminal history unrelated or tenuously related to alcohol, drugs or mental illness.

Peer assistance funds are available under Chapter 467, Texas Health and Safety Code for nurses with impairment due to chemical dependence or mental illness. The qualifying mental illness diagnoses are limited to major depression, bipolar disorder, schizophrenia, anxiety disorders, or schizoaffective disorder.

Evidence that conditional eligibility participants met the criteria required by Chapter 467 for TPAPN participation was sometimes questionable based on the limited summary of facts contained in the BON Order.

Evidence in disciplinary referrals of licensed participants arising from controlled substance offenses sometimes failed to establish impairment as the nurse's primary problem. In two (2) of these cases the nurses had forged employer's pharmacy orders and department prescriptions for large

amounts of opiates. The number of doses involved raised an issue of personal use versus delivery to others. The issue was not resolved by the information provided by the BON or put to rest by the assessment required for TPAPN participation. TPAPN staff is neither prepared nor equipped to handle criminal justice rehabilitation for felony offenders.

3. RN PARTICIPANTS

- Except for the participants described in the preceding paragraph, the TPAPN files reviewed met all criteria of the audit.
- All individuals referred to as RNs who signed Participation Agreements during the audit period were shown as RNs in the BON's database.
- There were no indications that any individuals other than those with current licenses were receiving TPAPN services.
- 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 BON.
- There was no evidence that any individual received contemporaneous peer assistance services from TPAPN while being monitored by the BON.
- There was no evidence that any individual receiving TPAPN services had received significant disciplinary action in the last five (5) years.

4. LVN PARTICIPANTS

- All individuals referred to as LVNs who signed TPAPN Participation Agreements during the audit period were shown as LVNs in the BON's database.
- There were no indications that any individuals other than those with current licenses were receiving TPAPN services.
- 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 BON.
- There was no evidence that any individual received contemporaneous peer assistance from TPAPN while being monitored by the BON.

- There was no evidence that any individual receiving TPAPN services had received significant disciplinary action in the last five (5) years.

5. ALL PARTICIPANTS IN TPAPN ON APRIL 15, 2008

The BON provides disciplinary information to TPAPN in a form that must be re-entered manually by TPAPN staff. In addition to consulting this database as part of the intake process, TPAPN staff checks with the BON for disciplinary action before any participant is accepted into TPAPN.

As a part of the audit a list of all participants active in TPAPN on April 15, 2008 was compared to the BON's disciplinary database.

There was no evidence that any individual who was receiving TPAPN services on April 15, 2008 had received significant disciplinary action in the last five (5) years.

6. TPAPN POLICIES, PROCEDURES, FORMS, ELECTRONIC DATABASE AND PROGRAM RECORDS

- TPAPN's policies and procedures conform to the requirements of applicable state and federal laws and regulations as well as the agreement with the BON.
- TPAPN's forms and electronic database fields are designed to collect and protect the data as required by applicable law and the agreement with the BON.
- TPAPN's electronic and paper case files reviewed in this audit reflected timely and thorough collection of relevant information and regular case review.
- Case Manager's notes in the audit samples reflect active and responsive communication with participants and others involved in their assessment, compliance and employment.
- Participants' consent to release of information was adequately documented in each file reviewed.
- Case files reflected timely reporting of participant non-compliance to the BON.
- Paper files not available via Docuware were kept in secure storage.
- TPAPN staff used secure passwords to control access to electronic files.

7. BON AND TPAPN THIRD PARTY REVIEW AND EXTENDED EVALUATION PROGRAM

2007 Sunset Review and Legislation

2007 Sunset Commission recommendations for the BON were adopted by the legislature in HB 2426, effective September 1, 2007. The bill expanded mandatory reporting of nurses impaired or suspected of being impaired due to chemical dependency, mental illness or diminished mental capacity. See Nurse Practice Act Sections 301.410(b), 301.4105 and 301.4106.

On September 1, 2007, the BON, in cooperation with TPAPN, established:

- A joint TPAPN-BON weekly third-party case review process to expedite third party referrals and
- An Extended Evaluation Program (EEP) to provide non-punitive monitoring of nurses reported for a single, positive screen whose assessments do not reveal a substance abuse/dependency disorder and whose practice history is free of violations. The program is one (1) year in duration and requires twelve (12) months of negative alcohol and abusable substance screens and six (6) months of documented nursing practice.

8. Joint Review

The audit included observation of a weekly meeting of BON and TPAPN staff for the review of twenty-one (21) third party referrals. For each of these nurses, the participants reviewed: (1) the source of the referral, (2) the conduct reported and (3) available information relevant to each nurse's impairment or lack of impairment and (4) ability or inability to practice safely.

The process moved swiftly to an appropriate action plan for each nurse: (1) BON investigation, (2) TPAPN monitoring under the full participation agreement or (3) EEP monitoring.

Several benefits of this approach were immediately apparent:

- The action plan for the weekly accumulation of cases is documented while BON and TPAPN staff are together. The

participants leave the meeting having communicated face to face rather than by phone tag on a piecemeal basis.

- Nurses who have a single positive result for ETG/ETS/alcohol or abusable substance as a result of contact with sanitizing products or unwitting ingestion of foods, beverages or medicines can be promptly evaluated and monitored for a sufficient period to confirm that the nurse is not substance dependent.
- Nurses who have been evaluated and found substance dependent are routed, as their facts and circumstances indicate, to BON investigation or TPAPN participation instead of EEP.

9. Extended Evaluation Program

At the time of this audit EEP had forty-four (44) participants who signed agreements between September 1, 2007 and April 15, 2008. Ten percent (10%) of active EEP files were reviewed: two (2) RNs and two (2) LVNs.

EEP Findings

All files met the criteria for RN and LVN TPAPN participants recited on pages 5 and 6 of this report.

All nurses in the sample met the criteria for EEP participation: (1) single, identified incident of improper drug or alcohol use without other substance history or practice violation, (2) drug/alcohol assessment by a qualified mental health care provider, (3) assessment showing no substance abuse/dependence diagnosis (4) payment of enrollment fee, assessment fees and costs of testing, (4) BON approval.

Since EEP is a new program a brief review of the cases in the audit sample is included.

RN#1

Employer, following a random workplace screen positive for an abusable substance, reported RN #1 to the BON. The nurse refused TPAPN participation and gave a plausible explanation for the positive screen. Following joint review the BON approved RN #1 for EEP participation. RN#1 accepted this alternative but failed to enroll in the time specified by TPAPN staff who, in usual fashion, promptly reported RN#1 back to the employer and the BNE.

Ultimately RN#1 decided to participate, submitted to assessment that ruled out substance dependence/abuse, paid

the appropriate fees and submitted the required paperwork. RN#1 produced one (1) dilute specimen and drew the Case Manager's immediate attention. Thereafter RN#1's compliance improved and subsequent screens have been negative.

RN#2

RN#2 was reported to the BON by employer for a positive screen, entered TPAPN, was assessed and found to have no abusable substance history or diagnosis.

After joint review, the BON approved EEP and RN#2 agreed. RN#2 was slow to register and complete EEP's preliminary requirements. The Case Manager contacted RN#2 and explained that failing to complete the process in fourteen (14) days would result in notice to the employer and the BON. RN#2 complied and produced a negative screen.

LVN#1

LVN#1 was referred to TPAPN by the BON for a positive random screen. LVN#1 met EEP criteria but reported a physical condition requiring prescriptions for abusable medications. The Case Manager explained that participation would not be possible unless alternative strategies could be found. LVN#1 discontinued the medication, and produced negative screens while continuing to practice.

LVN#2

LVN#2 was referred to TPAPN by the BON for a positive screen. Joint evaluation resulted in an offer of EEP that was accepted. LVN#2 has complied with EEP requirements and produced negative screens.

V. AUDIT RECOMMENDATIONS

1. That the TPAPN, Joint Review and EEP audits be performed annually.
2. That the BON and TPAPN continue to review and discuss Chapter 467, Health and Safety Code criteria for TPAPN participation.
3. That the BON and TPAPN continue to review and discuss the propriety of Chapter 467 Peer Assistance for individuals with criminal convictions that are unrelated or tenuously related to chemical dependence or the short list of approved mental illness diagnoses.

4. That the BON and TPAPN continue to review and discuss the propriety of diverting to peer assistance those individuals with criminal convictions that would be appropriate for denial or restriction of a license pursuant to Chapter 301, Texas Occupations Code, the NPA, BON Rules and Disciplinary Guidelines.
5. That the BON 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.
6. That TPAPN staff continue to query the BON's electronic licensure and disciplinary database as nurses are referred to the program and sign Participation Agreements.
7. That the BON provide TPAPN with comprehensive electronic lists of Board Actions for RNs and LVNs and update said lists each time the BON updates its own lists.
8. That the BON provide the electronic Board Action Lists in a form that is fully sortable by TPAPN.
9. That the BON 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) and
 - h. Sanction(s) imposed.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Penny Puryear Burt". The signature is written in black ink and is positioned above the typed name.

Penny Puryear Burt, RN, JD