

## **CONSIDERATION OF APPROVAL OF EXTENDED EVALUATION REFERRALS TO TPAPN**

### **Summary:**

Staff is requesting that the Board a referral procedure to TPAPN. The "Extended Evaluation Program" (EEP) is a special, limited participation status that involves an extended evaluation monitoring period of up to one year for nurses reported for a one time inappropriate or suspicious drug use or misuse but that are initially evaluated as having a low probability of chemical dependency.

TPAPN and Board Staff have developed a description of the EEP and have approved the details of the participation agreement for appropriate candidates.

They are attached hereto for Board review and approval.

### **Background:**

The Texas Peer Assistance Program for Nurses provides services to Nurses whose practice may be impaired by chemical dependency, chemical abuse, or mental illness. The Board of Nurse Examiners contracts with the TPAPN through a biannual contract to provide an alternative to discipline.

Staff has begun exploring a new type of TPAPN referral when an isolated incident suggests a suspicion of improper drug use, or impairment but with no other history. Under the current procedures, a report comes to the Board or third party referrals are made to TPAPN involving a nurse who tested positive for an unauthorized drug (either pre-employment or for cause) for participation. Sometimes Respondents show a valid prescription for narcotic pain medicine or sleeping aid, yet they have a "for cause" screen at work that tests positive. They are evaluated during TPAPN's screening process and found for whatever reason to not qualify for the program because they are not deemed chemically dependent based on SASSI. When TPAPN sends the nurse back to the Board, it is not uncommon to place the individual under a Board order of Warning with indirect supervision and random drug screens for a year.

Frequently, the Respondent understands the violation alleged by Staff and the basis for the Board's concerns. The Respondents even are willing to do random drug screens to show that they are not a risk or at risk. However, the fact that a disciplinary order is recommended is disagreeable. The violation of drug use and work is something the Board will not let go of and we have gone to expensive hearings repeatedly to establish the violation.

Drug violations which raise suspicions cannot go unaddressed nor can such cases be justifiably closed as minor incidents. However, Staff believes that public policy should not support a more serious disciplinary order for a less serious drug violation than a diagnosis of chemical dependency which indisputably puts patients at risk.

The only non disciplinary alternative to drug violations is referral to TPAPN. TPAPN, however, is a specialized program that has never accepted a participant that was not deemed chemically dependant.

**Recommendation:**

- 1) The Board move to approve TPAPN's EEP referral program as outlined in Attachment A.

## **MODIFICATION OF TPAPN TO HAVE SPECIAL CATEGORY OF EXTENDED EVALUATION PARTICIPANTS**

### **Background**

Nurses may be involved in an isolated incident of improper drug use with no other history or other practice violation. (examples: pre-employment screens for marijuana or cocaine, positive screen at work with valid prescription and unanticipated reaction, criminal misdemeanor drug offense with positive work history) and may be reported to the Board or to TPAPN. They are evaluated during TPAPN's screening process and found not to have a diagnosis of chemical dependency or abuse. It is not uncommon for the Board to place the individual under a Board order of Warning with indirect supervision and random drug screens for at least a year. Because these nurses lack a diagnosis TPAPN must report them to the BNE.

Frequently, these nurses understand the basis for the Board's concerns and are willing to submit to random drug screens to show that they are not a risk or at risk. The fact that a disciplinary order must be entered is difficult for them to accept. However, if the nurse had received an assessment of chemical dependency, they would be eligible to participate in TPAPN and if successfully complete, have no disciplinary action on their record. The Board's established policy is that it cannot justify ignoring drug violations that raise suspicions of potential chemical dependency nor can such cases be justifiably closed as minor incidents. However, it seems to be better public policy that such nurses receive a similar benefit as those nurses assessed with chemical dependency and who are eligible to participate in TPAPN. Rather than have these nurses enter into a disciplinary order it is proposed that they be able to enter a new program under TPAPN that would provide for an extended evaluation period to rule out possible abuse or dependency.

### **Proposed Modification to TPAPN**

TPAPN would modify its policies to create a new category of participants who would be enrolled for a one year period for evaluation and monitoring to determine extent if any of a problem with chemical dependency. The Extended Evaluation Program or "EEP" would be available to nurses involved in an isolated incident that suggests a potential for improper drug use or impairment but with no other history.

The key elements of participation would be the following:

1. Assessment of low potential for chemical dependency exists
2. One year monitoring with minimum of 18 random drug screens
3. For cause drug screens may also be required

In order for TPAPN to intervene prudently with nurses who demonstrate behaviors indicative of substance abuse during their extended evaluation period, TPAPN needs the ability to request for-cause drug testing. This need to perform

for-cause drug tests may cause some enrollees to have more than 18 urine drug screens performed during the evaluation period.

4. No work restrictions would be imposed on nurse
5. Would be referred to the Board if:
  - a) 2 no shows (for-cause drug screen may be required)
  - b) 2 adulterated specimens
  - c) combination of 1 no show and 1 adulterated specimen
  - d) positive drug screen
6. Employer would be informed of nurses' participation in TPAPN as an Extended Evaluation Program participant if nurse violates agreement or is reported to the BON.
7. Extended Evaluation Participants would pay a fee.

There would be an up-front, non-refundable \$250 enrollment fee. Extended Evaluation Participants, like other participants, will pay all fees associated with drug testing currently \$55/test. The 18 minimum screens would cost \$990. If for cause screens were requested that would be an additional cost.
8. If an Extended Evaluation Participant was converted to a regular participant, no further up-front fees would be charged.
9. Extended Evaluation Participants would have to sign an Extended Evaluation Participant's Agreement similar to the agreement attached.

## **Implementation**

1. The modification would be implemented upon approval of the TPAPN Advisory Committee, Texas Nurses Foundation Board of Directors and the Board of Nursing.
2. The Contract for Services that TPAPN executes with the Board would be amended to include these services and authorizing TPAPN to charge Extended Evaluation Participants a participation fee.

## ATTACHMENT A

### TPAPN EXTENDED EVALUATION PARTICIPATION AGREEMENT

I, \_\_\_\_\_, the undersigned nurse, have voluntarily chosen to participate as an Extended Evaluation Participant in the Texas Peer Assistance Program for Nurses (TPAPN), a board approved program operating under Chapter 467 of the Texas Health and Safety Code.

I understand and agree to the terms of participation for Extended Evaluation Participant in TPAPN as set out below and that any exceptions or modifications to these terms of participation are addressed on an individual basis and must be approved in writing by TPAPN .

1. The length of the program for Extended Evaluation Participants is one (1) year.
2. Extended Evaluation Participants are responsible for timely payment of any fees required for participating in TPAPN. Failure to pay a required fee is grounds for dismissal from the program and referral of Extended Evaluation Participants to the Board of Nursing ("BON"), the Texas nursing licensing board.
3. Extended Evaluation Participants must at their own expense be assessed by a qualified mental health provider approved by TPAPN for potential problems with chemical dependency and that assessment must indicate a low probability of such a problem.
4. Extended Evaluation Participants must abstain completely from the use of all illicit substances, controlled medications, or other abuseable medications and alcohol. TPAPN expects Extended Evaluation Participants to try non-narcotic approaches before mood-altering medications are prescribed unless medically indicated by their primary physician. However, Extended Evaluation Participants with conditions necessitating mood-altering medications may not be appropriate for TPAPN. *[Need clarification from BON if want to require total abstinence including alcohol Same issue with respect to #7 below.]*
5. Random drug screens are required for all Extended Evaluation Participants and they must enroll in TPAPN's drug test program within 15 days of signing this agreement. Extended Evaluation Participants must also submit to for cause drug testing upon request of TPAPN. . Extended Evaluation Participants are responsible for the cost of drug screens.
6. Extended Evaluation Participants must provide TPAPN documentation of all medications for which they have prescriptions
7. Any unauthorized use of abuseable medications or substances is considered inconsistent with participating in TPAPN as an Extended Evaluation Participant and Extended Evaluation Participants must immediately switch to regular TPAPN participant status. TPAPN will notify the BON of the change in participation status. Extended Evaluation Participants who do not agree to a change in participation status will be referred to the BON.

8. Extended Evaluation Participants with a positive drug screen must refrain from practicing nursing pending the change of their status to regular TPAPN participant and approval to return to work. TPAPN considers a confirmed positive drug screen of any abuseable substance as conclusive evidence of the use of that substance and Extended Evaluation Participants acknowledges and agrees to that TPAPN policy.

9. Extended Evaluation Participants may be requested to switch to regular TPAPN participant status whenever, TPAPN in its sole discretion, determines that more appropriate for an Extended Evaluation Participant to participate as a regular participant. If requested to change participation status, Extended Evaluation Participants must immediately execute an agreement for regular participation. TPAPN will notify the BON of the change in participation status. Extended Evaluation Participants who do not timely execute the agreement for regular participation shall be referred to the BON. Reasons for being Extended Evaluation Participants being requested to change to regular participation status include but are not limited to having 2 or more no shows for requested drug screens, having 2 or more adulterated specimens, a combination of a one no show and one adulterated specimen, a positive drug screen, or behaviors indicative of chemical dependency.

10. Extended Evaluation Participants must have primary physicians who are knowledgeable about their participation in TPAPN.

11. Extended Evaluation Participants are required to demonstrate safe nursing practice for at least 6 months of the designated monitoring period, a minimum of 64 hours per month.

12. Extended Evaluation Participants must notify Extended Evaluation Program/TPAPN before accepting any employment and must verify employment with pay stub(s) to be provided at the program's request.

13. Extended Evaluation Participants must sign consent forms authorizing TPAPN to exchange information with health care providers (including primary physician), treatment facilities, nursing employers or potential employers, emergency contacts and the BON. Nurses not wishing to sign such consents are not eligible for TPAPN.

14. Extended Evaluation Participants must submit all required or requested documentation in a timely manner.

15. TPAPN is a Texas-based program. Extended Evaluation Participants leaving Texas may not be able to continue in the program and may be referred to the BON.

16. Extended Evaluation Participants are responsible for maintaining communication with TPAPN and healthcare provider. Extended Evaluation Participants are responsible for timely submission of all required forms to TPAPN.

17. If TPAPN ceases to operate for any reason, including lack of adequate funding, Extended Evaluation Participants enrolled in the program may be referred to the BNE unless the board directs TPAPN to refer the nurse to some alternative entity. What action, if any, is taken by the BNE will be the sole decision of the BNE.

18. An Extended Evaluation Participant may voluntarily withdraw from the program at any time by notifying TPAPN. TPAPN will refer the nurse to the BON and notify the nurse's employer of the nurse's withdrawal.

**ATTACHMENT A**

19. TPAPN may refer Extended Participation Participants to the BON if TPAPN, in its sole discretion, determines the Nurse is not complying with TPAPN requirements or that referral to the BON is in the best interest of the public.

20. No changes in the terms of participation or any TPAPN agreement or form may be made without written consent from TPAPN.

<b><u>TO BE COMPLETED BY TPAPN OFFICE</u></b>
Case Number: _____

Participant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ RN/LVN/License # \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: (H) \_\_\_\_\_ (W) \_\_\_\_\_ (Cell) \_\_\_\_\_

**MAIL COMPLETED ORIGINAL TO TPAPN AT ADDRESS BELOW**