

REVIEW OF TPAPN CONTRACT

Summary:

Staff requests authority to work with TPAPN to slightly modify provisions of the current contract prior to 2 year renewal cycle to begin September 1, 2007. Staff seeks board approval to modify and return with final amendments to the July 2007 Board meeting.

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.

Article I of the TPAPN contract provides:

The Contract shall be automatically extended for two-year periods beginning in September 1, 2005 and September 1, 2007 respectively unless 90 days prior to the contract's term or any extension, either party gives written notice of its intent to renegotiate or not extend the Contract. The Contract shall be reviewed annually between March and May.

The following modifications to the current contract have been supplied by TPAPN for Board and Staff review:

Page 1, paragraph 2 (RE: Introductory portion):

1. Change "Texas Commission on Alcohol and Drug Abuse" to "Texas Department of State Health Services (or its successor agency)"
2. Change "Commission's" to "Department's"
3. Correct "Purchased" to "Purchaser"

Page 2, Paragraph III. A.

4. (RE: Revision of language concerning acceptance of third-party referrals): The passage of the Sunset Bill (HB2426) will effect how the Board and TPAPN handle third party referrals.

Page 3, Paragraph V.

A. (RE: Payments and annual amounts): Contractor shall be paid in monthly installments equal to \$6.00 for each Nurse who renews his or her license as a Registered Nurse or Licensed Vocational Nurse during each month of this Contract, not to exceed \$625,000 per fiscal year. . . . through this surcharge. Also, add "or Licensed Vocational Nurse" to the end of the second sentence – after Registered Nurse.

B. Delete

P. 5. VIII. TERMINATION

3. If the Texas Department of State Health Services (or its successor agency) withdraws certification granted TPAPN as complying with the Department's rules under Chapter 467, Texas Health and Safety Code.

Additionally, Staff has begun exploring a new type of TPAPN referral when an isolated incident suggests a suspicion of improper drug use, but with no other history. See Agenda Item 7.1.3. For example, a report comes to the Board or a referral is made to TPAPN involving a nurse who tested positive for an unauthorized drug (either pre-employment or "for cause"). Sometimes they show a valid prescription for narcotic pain medicine or sleeping medication, and state that the issues at work where they tested positive is an isolated incident. They are evaluated during TPAPN's screening process and found to not qualify for the program because they are not deemed chemically dependent. It is not uncommon to place the individual under a Board order of Warning with indirect supervision and random drug screens for a year.

Often, the Respondent understands the violation 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.

Staff would like to include within the TPAPN contract, the new type of referral, if the policy is approved and the details can be worked out.

Appended are documents related to this matter:

1. The original contract for services with TPAPN without attachments.

Recommendation:

The Board move to approve modifications to the TPAPN Contract as outlined above and authorize Staff to submit draft of an amended contract back in July for approval of 2 year extension with modifications to begin September 1, 2007.



TEXAS PEER ASSISTANCE PROGRAM FOR NURSES

P.O. Box 9877, Austin, Texas 78766-0877

A Project of Texas Nurses Foundation

Telephone 512/467-7027 ★ 800/288-5528 ★ FAX 512/467-2620 ★ Internet <http://www.tpapn.org>

September 16, 2004

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

Dear Kathy,

Enclosed please find the signed original contract for services with TPAPN located in the front pocket of the binder. Also enclosed and bound is the FY 2004 BNE Purchase Order (Exhibit A) and the FY 2004 BNE Bid (Exhibit B).

Please contact my office if you have any questions regarding this matter.

Sincerely,

Stephanie Hernandez
Program Operations Coordinator
TPAPN

Enclosures

Sponsoring Organizations

Texas Nurses Association Licensed Vocational Nurses Association of Texas Texas Association of Nurse Anesthetists Texas Organization for Nurse Executives Texas League for Nursing

In Cooperation With

Board of Nurse Examiners for the State of Texas

Texas Board of Vocational Nurse Examiners

**CONTRACT FOR SERVICES
TO PROVIDE PEER ASSISTANCE SERVICES TO NURSES**

This Contract entered into between the Board of Nurse Examiners for the State of Texas ("Purchaser") and the Texas Nurses Foundation, a Texas nonprofit corporation ("Contractor").

WHEREAS, Purchaser desires to contract for services to assist nurses it licenses ("Nurses") whose practice has been impaired by chemical dependency or mental illness; and

WHEREAS, Contractor operates the Texas Peer Assistance Program for Nurses ("TPAPN") that provides services to Nurses whose practice may be impaired by chemical dependency or mental illness; and

WHEREAS TPAPN has been i) certified by the Texas Commission on Alcohol and Drug Abuse as complying with the Commission's rules for peer assistance programs operating under the provisions of Chapter 467, Texas Health and Safety Code, and ii) approved by Purchaser to operate as a board-approved program under the provisions of Chapter 467; and

NOW THEREFORE, Purchaser and Contractor in consideration of their respective agreements and covenants contained herein mutually agree as follows:

I. TERM AND EXTENSIONS

The term of this Contract shall be from September 1, 2003 through August 31, 2005. The Contract shall be automatically extended for two two-year periods beginning September 1, 2005 and September 1, 2007 respectively unless 90 days prior to the end of the contract's term or any extension, either party gives written notice of its intent to renegotiate or not extend the Contract. The Contract shall be reviewed annually between March and May.

II. SCOPE OF SERVICES AND RESPONSIBILITIES

Except as otherwise provided in this Contract, the parties agree to the scope of services and responsibilities as outlined in Purchaser's Invitation for Bid, Requisition No. 507-4-1-P and Contractor's Response to the Invitation for Bid which are attached as Exhibits A and B.

III. RESPONSIBILITIES OF CONTRACTOR

Contractor specially agrees to provide the services outlined below. It is understood and agreed that these services will be accomplished through TPAPN and in accordance with TPAPN's policies and procedures as approved by Purchaser.

A. Services to Participants

1. Provide services to assist, support, and monitor Nurses whose practice is impaired by chemical dependency or mental illness in their recovery and return to practice. Mental illness services will be provided only to participants diagnosed by a psychiatrist as having one of the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual (DSM) IV and any subsequent revisions thereof; major depression, bi-polar disorder, schizophrenia anxiety disorders, or schizoaffective disorder.

2. Maintain a toll free telephone number (or regular number that accepts collect calls) seven days a week, 24 hours a day to permit Nurses needing assistance to contact TPAPN and to permit individuals to contact TPAPN concerning Nurses whose practice is impaired.
3. Maintain a permanent, publicized address within the State of Texas, which shall be open for business between 8:00 a.m. and 5:00 p.m., Monday through Friday except Federal Holidays.
4. Accept self-referrals from Nurses whose practice may be impaired and third-party referrals from i) colleagues, employers, or facilities who suspect a Nurse's practice of being impaired, ii) family or friends who suspect a Nurse's practice of being impaired, and iii) Purchaser. Third parties may be required to identify themselves and to provide reasons for the referral.
5. Maintain a statewide network of advocates to provide support to program participants.
6. Assist recovering Nurses to locate appropriate support systems.
7. Maintain regular contact with participants through advocates and case managers. TPAPN will have goal of having each participant be contacted by a case manager at least once every 90 days in accordance with TPAPN policies.

B. Educational Services

Provide educational programs for Nurses, employers of Nurses, and other pertinent groups about TPAPN, chemical dependency and mental illness as follows:

1. Provide initial and ongoing training for advocates as necessary to meet the needs of the program.
2. Provide appropriate orientation for individuals employed as case managers.
3. Provide workshops for employers.
4. Respond to speaking invitations consistent with available staff and appropriate fit within the mission and goals of TPAPN.
5. Produce and distribute informational brochures to employers of nurses and schools of nursing.

C. Operational Documents

Contractor agrees to submit to Purchaser:

1. TPAPN's yearly operating budget for review and comment, and
2. Revisions in TPAPN's policy and organizational manuals for approval.

IV. RESPONSIBILITIES OF PURCHASER

Purchaser agrees to appoint a representative to serve on Contractor's TPAPN Advisory Committee. In addition to his or her responsibilities as a member of this committee, this representative will be responsible for:

1. Representing and articulating Purchaser's position on questions of program design and policies addressed by the Advisory Committee;
2. Keeping Purchaser informed of decisions made and actions taken by the Advisory Committee; and
3. Serving as a liaison between Purchaser and Contractor on TPAPN activities.

V. CONTRACT PRICING AND BILLING

- A. Contractor shall be paid in monthly installments equal to \$5.00 for each Nurse who renews his or her license as a Registered Nurse during each month of this Contract, not to exceed \$323,750.00 per fiscal year. It is understood that Purchaser will pay this amount from a surcharge it collects pursuant to Section 467.004, Health and Safety Code, from each Nurse who renews his or her license as a Registered Nurse. In no event shall Purchaser be obligated to pay Contractor more than the total amount collected by Purchaser through this surcharge.
- B. Beginning February 1, 2004, Purchaser will license Licensed Vocational Nurses. Upon request of Purchaser, contractor agrees to extend services to those Nurses for \$5.00 per Nurse not to exceed \$180,000.00 per Purchaser's fiscal year. It is understood that Purchaser will pay this amount from a surcharge it collects pursuant to Section 467.004, Health and Safety Code, from each Licensed Vocational Nurse that renews his or her license. In no event shall Purchaser be obligated to pay Contractor more than the total amount collected by Purchaser through this surcharge. If services are extended to Licensed Vocational Nurses, any calculations of subsequent changes in the number of Nurse participants under Paragraph A of this Article shall be based on the number of Registered Nurses and Licensed Vocational Nurses participating in the TPAPN program.
- C. Purchaser warrants and represents that it has complied with all known procedures necessary in order to retain Contractor for the services described herein and to pay Contractor for the services to be rendered pursuant to this Contract.
- D. Funding for TPAPN under this contract will depend on the amount of peer assistance fees collected by the Purchaser, but will not exceed the line-item appropriation for peer assistance in the Purchaser's appropriation. Notwithstanding this limitation, the Contractor may charge Nurses additional fees to participate in the TPAPN program, provided those fees have been approved by Purchaser.

VI. CHANGE IN SCOPE OF SERVICES OR FEES

It is expressly understood by the parties that the terms of this Contract are subject to modification if either i) the income realized by Purchaser from the surcharge on license renewal fees or funds appropriated by the Texas Legislature are insufficient to pay Contractor the monthly fee set out in Article V or ii) the number of Nurse participants varies from the number anticipated. In the event of a significant change in the funds available to pay Contractor or in the number of Nurse participants in the TPAPN program, Purchaser and Contractor shall negotiate in good faith an appropriate adjustment in the fee paid or in the services provided. As used herein, significant shall mean a reduction in the fees paid that averages 15% or more for any two-month period or a 15% or more change in the number of Nurse participants in TPAPN as of September 1, 2003. A Nurse participant is a Nurse who has signed a participation agreement with the TPAPN program.

VII. REPORTS

- A. Contractor shall submit financial statements to Purchaser at such intervals as requested by Purchaser, which shall not be more frequently than monthly. These statements shall be prepared in accordance with generally accepted accounting principles and provided no later than the 15th of the following month.
- B. Contactor shall submit to Purchaser reports covering each quarter of Purchaser's fiscal year. Reports shall be due on the 15th day of the month immediately following the last day of that quarter and shall include:
 1. Progress/status of major projects.
 2. Progress on meeting short range and long range objectives.
 3. Minutes of TPAPN Advisory Committee.
 4. Statistical information about TPAPN activities relating to Nurses using the categories listed below. The data for each the items listed below should be quarterly totals. For comparison, the report shall also contain cumulative data.
 - Number and source of referrals and type of referral, i.e., chemical dependency, dual diagnosis, mental illness;
 - Number signing participation agreements;
 - Type of participation agreement signed, i.e., chemical dependency, dual diagnosis, mental illness;
 - Number referred to Purchaser including demographic information and referral source (board, self, other);
 - Number of self-referral cases closed, no action (breakdown by reason);
 - Number of active cases;
 - Number of participants employed in nursing;
 - Number of participants completing program;
 - Monitoring activities, including number of drug screens requested, conducted and results of these tests;
 - All applicable performance measures required by the Legislative Budget Board;
 - Any other pertinent information requested by the State Auditor or the Legislative Budget Board as mutually agreed to by Purchaser and Contractor.

5. Delays or problems encountered; critical observations.
6. Activities and accomplishments.
7. Changes in key personnel.
8. Changes in program design; improvements or new methods introduced.

VIII. TERMINATION

- A. This Contract may be terminated upon 30 days written notice upon occurrence of any of the following conditions.
1. By mutual agreement of Contractor and Purchaser.
 2. If Purchaser withdraws recognition of TPAPN as an approved peer assistance program under Chapter 467, Texas Health and Safety Code.
 3. If the Texas Commission on Alcohol and Drug Abuse (or its successor agency) withdraws certification granted TPAPN as complying with the Commission's rules under Chapter 467, Health and Safety Code.
 4. If Contractor voluntarily ceases to operate TPAPN as an approved peer assistance program under Chapter 467, Texas Health and Safety Code.
 5. By Purchaser, if the Texas Legislature does not appropriate the funds necessary for it to meet its obligations under this Contract unless a new fee has been negotiated under Article VI.
 6. By satisfactory completion of all services and obligations required under this Contract.
- B. Should this Contract be terminated under Paragraph A of this Article, no fees other than fees due and payable at the time of termination shall be paid to Contractor. Payment shall be based on work completed at the time of termination. Purchaser shall be the sole judge of the value of the work performed by Contractor prior to termination. The termination of this Contract and payment of an amount in settlement as described above shall extinguish all rights, duties, obligations and liabilities of Purchaser and Contractor under this Contract. The decision of Purchaser with respect to the amount due Contractor shall be final and conclusive unless within thirty (30) days from the date of a written copy of the decision, Contractor notifies Purchaser of its dissent from its decision. If Contractor's dissent cannot be resolved, the matter shall be submitted to mediation before a mediator mutually agreed to.
- C. Purchaser and Contractor may provide for a wind down period as part of the termination of this Contract. The date of termination of this Contract shall be the last day of such wind down period. Contractor shall not be obligated to provide any wind down period under this contract unless funds are available under this contract to pay for the costs of services provided during the wind down period.

IX. OFFICIALS NOT TO BENEFIT

No member or employee of Purchaser and no other public official or employee who exercises any discretion or judgment in the review or approval of the undertaking or carrying out of this Contract or in recognizing TPAPN as an approved peer assistance program shall participate in any benefit relating to this Contract or the proceeds thereof.

X. EQUAL OPPORTUNITY EMPLOYMENT

During the performance of this Contract, Contractor agrees it will not discriminate against any employee or applicant for employment or any participant in the TPAPN program because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeships.

XI. SUBCONTRACTS WITH HISTORICALLY UNDERUTILIZED BUSINESSES

As required by General Services Commission (GSC) Rule 1 TAC §111.14, Contractor agrees to make a good faith effort to award necessary subcontracts to Historically Underutilized Businesses in accordance with the goals set forth in 1 TAC §111.13 (b). Purchaser will notify Contractor of the goals set forth in 1 TAC §111.13(b), and forward a list of certified HUBs for the service being contracted to Contractor. Contractor will report HUB usage in its quarterly report to the Purchaser. If the HUB goal is not being met, Contractor will provide reasons for not meeting the goal in the quarterly report to Purchaser.

Contractor represents to Purchaser that it has reviewed the criteria for certification as a HUB and believes it would qualify for certification as a HUB on the basis of being a female owned and controlled business except for the fact that Contractor is not formed for the purpose of making a profit but rather organized as a Texas non-profit corporation and tax exempt under IRC 501(c) (3) as a charitable, scientific and educational foundation.

XII. FISCAL RESPONSIBILITIES and AUDIT

- A. Contractor shall provide for a separate accounting of funds to be provided under this Contract. In no case shall funds be used for purposes other than those stated in this Contract.
- B. Purchaser, the state Auditor, or any of its duly authorized representatives, shall have access (for purposes of making audit, examination, excerpts, and transcriptions) to any books, documents, papers, and records of Contractor that are directly pertinent to the TPAPN Program. Contractor agrees to retain all financial records pertaining to this Contract for a period of Three (3) years.
- C. Contractor agrees that the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under contract or indirectly through a subcontract under contract; and that acceptance of funds directly under the contract or indirectly through a subcontract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds.

XIII. COMPLIANCE WITH APPLICABLE STATUTES AND SEVERANCE

All provisions and conditions of this Contract are made subject to the statutes of the United States and the State of Texas and the rules and regulations of the Purchaser. If any portion of this Contract is in violation of any statute dealing with contracting or procurement of services, that portion of the Contract shall be severed and will be invalid and of no force and effect. All remaining provisions shall remain in full force and effect. Further, if it is necessary to make an addition to comply with a contracting or procurement statutes, such addition will be presumed to be part of this Contract.

XIV. SUCCESSORS AND ASSIGNS

Purchaser and Contractor each bind itself, its successors, executors, administrators and assigns to the other party to the Contract and to the successors, executors, administrators, and assigns of such other party in respect to all covenants of this Contract. Neither Purchaser nor Contractor shall assign or transfer its interest in this Contract without the written consent of the other.

XV. INDEMNIFICATION AND HOLD HARMLESS

Contractor does hereby agree to indemnify and hold Purchaser harmless from any claim, assessment, judgment, cause of action, or any other liability arising as a result of Contractor's performance of any act, duty, or obligation under this Contract.

XVI. NOTICE

All notices and other communications relating to this Contract shall be in writing and shall be deemed to have been given, made and received only upon personal delivery, to the addresses shown below or upon actual receipt of registered or certified mail, postage prepaid, addressed as follows:

If to Purchaser:

Board of Nurse Examiners for the State of Texas
333 Guadalupe St., #3-460
Austin, Texas 78701-0430

If to Contractor:

Texas Nurses Foundation
7600 Burnet Rd., Ste. 440
Austin, Texas 78757-1292

Either party may change the address to which notice must be delivered by giving notice of the change to the other party in conformity with this paragraph.

XVII. SIGNATORY WARRANTY

The undersigned signatory or signatories for Contractor hereby represent and warrant that they are executing this Contract in the capacity indicated and that have full and complete authority to enter into this Contract on behalf of Contractor. The above state representation and warrants are made for the purposed of inducing Purchaser to enter into this Contract.

XVIII. TERMINATION OF PRIOR CONTRACTS

All prior contracts executed between the parties relating to Purchaser obtaining services for Nurses whose practice has been impaired from Contractor are hereby terminated and the duties and obligations of the parties shall be governed by this Contract.

IN TESTIMONY WHEREOF, the parties hereto have caused this Contract to be executed in duplicate originals on the 15th day of September, 2004.

BOARD OF NURSE EXAMINERS FOR THE STATE OF TEXAS

By: 
Katherine A. Thomas, MSN, RN
Executive Director

TEXAS NURSES FOUNDATION

By: 
Clair B. Jordan, MSN, RN
Executive Director

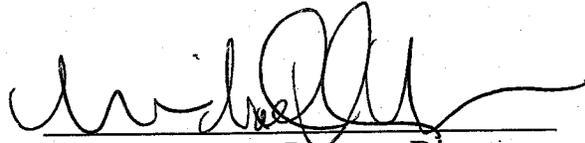
Addendum #1

In addition to the funds designated in Sections V.A. and V.B., effective September 1, 2005, Contractor (TPAPN) shall be paid additional funds not to exceed \$121,250.00 per fiscal year, for each year remaining in this contract.

Agreed to and approved by:



Katherine Thomas, Executive Director
on behalf of the Board of Nurse Examiners
for the State of Texas



Mike VanDoren, Program Director
Texas Peer Assistance Program
For Nurses (TPAPN)

On this date, July 21, 2005.