

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Behavioral Health And Recovery Services

BOARD AGENDA # B-21

Urgent  Routine

AGENDA DATE March 31, 2015

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval to Re-Hire Dr. Dao Tran Prior to the 180 Day Sit Out Period as Required by the Public Employees' Pension Reform Act of 2013

STAFF RECOMMENDATIONS:

1. Authorize the Behavioral Health Director to rehire Dr. Dao Tran following her retirement, as a full time County Psychiatrist on March 21, 2015 prior to the 180 day sit out period as required by the Public Employees' Pension Reform Act of 2013.
2. Certify that the appointment of Dr. Tran as a County Psychiatrist is necessary to fill a critically needed position before 180 days have passed.

FISCAL IMPACT:

Funding for this position is included in the Department's Fiscal Year 2014-2015 Adopted Final Budget. The Department will use the currently budgeted funds while continuing to recruit a replacement Psychiatrist. There is no General Fund impact associated with this request.

BOARD ACTION AS FOLLOWS:

No. 2015-147

On motion of Supervisor Chiesa, Seconded by Supervisor O'Brien  
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, De Martini, and Chairman Withrow

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

- 1) X Approved as recommended
- 2) \_\_\_\_\_ Denied
- 3) \_\_\_\_\_ Approved as amended
- 4) \_\_\_\_\_ Other:

MOTION:

ATTEST: Christine Ferraro  
CHRISTINE FERRARO TALLMAN, Clerk

File No.

**DISCUSSION:**

The ability to recruit and retain qualified Psychiatrists is a very difficult task considering the nationwide shortage of psychiatrists. This is especially acute in the Central Valley. Valley communities are forced to compete with higher salaries and the more preferable lifestyles in the San Francisco Bay Area.

The Department began aggressively recruiting to find a replacement for Dr. Tran since she announced her retirement. In addition to its regular Human Resources recruitment processes, BHRS has used various recruitment firms to find full time psychiatrists, costing the Department approximately \$44,000 in the last 18 months. Additionally, there is an ongoing Psychiatrist recruitment advertisement that has been running in different professional newsletters for many months, with little success.

Dr. Tran was the on-site Psychiatrist at Modesto Recovery Services, the Department's largest treatment clinic. This site serves approximately 318 individuals per month. Dr. Tran's retirement has severely impacted the Department's ability to see patients needing medication management. Without a full time Psychiatrist on site, individuals will be need to be referred to other clinics causing delays in accessing appropriate medication and possible hospitalization. The Department had no identified candidate who is ready to step in immediately upon Dr. Tran's retirement. Dr. Tran has offered to return to the Department until the position is filled, estimated to be 6-12 months. This temporary option will provide the Department with an opportunity to meet this clinical need with as little disruption in service as possible.

**POLICY ISSUE:**

Government Code sections 7522-7522.74 describes the California Public Employees' Pension Reform Act of 2013 (PEPRA). The PEPRA provides that a non-safety retired person shall not be eligible to be employed for a period of 180 days following the date of retirement unless the employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days have passed and the appointment has been approved by the governing body in a public meeting. The appointment may not be placed on the consent calendar. Appointments under this section shall not exceed 960 hours per year.

Approval to rehire Dr. Dao Tran prior to the 180 day sit out period as required by the PEPRA, will enable the Department to continue to provide appropriate care to individuals and supports the Board of Supervisors' priorities of A Safe Community and A Healthy Community.

**STAFFING IMPACT:**

Department staff will continue to aggressive recruit qualified Psychiatrist candidates while utilizing the contracted services of Dr. Tran.

Approval to Re-Hire Dr. Dao Tran Prior to the 180 Day Sit Out Period as Required by  
the Public Employees' Pension Reform Act of 2013  
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**CONTACT PERSON:**

Madelyn Schlaepfer, Ph.D., Behavioral Health Director      (209) 525-6225

PERSONAL SERVICES AGREEMENT  
(For Retired County Personnel)

This PERSONAL SERVICES AGREEMENT is made and entered into by and between the COUNTY OF STANISLAUS ("County") and Dao Tran, MD ("Contractor") on April 6, 2015(the "Agreement").

RECITALS

WHEREAS, the County has the need for services involving clinical mental health services in its Behavioral Health Recovery Services;

WHEREAS, the Contractor is specially trained, experienced, and competent to perform such services and has agreed to provide those services; and,

Now, THEREFORE, in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, the parties hereby agree as follows :

TERMS AND CONDITIONS

1. SCOPE OF WORK

1.1 The Contractor shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in Exhibit A, attached hereto and, by this reference, made a part hereof.

1.2 Services and work provided by the Contractor at the County's request under this Agreement will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state, and county laws, ordinances, regulations, and resolutions.

2. CONSIDERATION

2.1 County shall pay Contractor as set forth in Exhibit A.

2.2 Except as expressly provided in Exhibit A of this Agreement , Contractor shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefit, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

2.3 County shall withhold federal, state, and Medicare taxes and the legally acceptable alternative to Social Security from any payments made by County to Contractor under the terms and conditions of this agreement. Contractor is a retiree and as a result does not contribute to P.A.R.S. nor does the County contribute on Contractor's behalf. County has no responsibility or liability for payment of Contractor's taxes or assessments. The contractor is solely responsible for the payment of all other taxes and other assessments.

3. CONDITION PRECEDENT

This Agreement is conditioned upon the prior successful completion by the Contractor of a pre-placement drug screening test in accordance with the County's Pre-Placement Drug Testing Policy (the "Test") which, by this reference, is made a part hereof. This Agreement shall not become effective unless and until the Contractor has successfully completed the Test. The initial Test shall be paid for by the County. The Test shall be scheduled by the County and must be taken by the Contractor within 48 hours of the execution of this Agreement.

4. TERM

4.1 The term of this Agreement shall be from the date of approval of this Agreement until completion of the agreed upon services unless sooner terminated as provided below, or unless some other method or time of termination is listed in Exhibit A.

4.2 Either party may terminate this Agreement for convenience and without cause upon providing fourteen (14) calendar days prior written notice.

4.3 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

4.4 This Agreement shall terminate automatically upon the occurrence of (a) death of the contractor, (b) bankruptcy or insolvency of either party; (c) sale of Contractor's business, or (d) Contractor's refusal to consent to a pre-placement drug screening Test, as set forth in Paragraph 3 herein, or Contractor's failure to successfully complete such Test in accordance with the County's Pre-Placement Drug Testing Policy.

4.5 Upon termination of this Agreement, the County will pay to Contractor all amounts owing to Contractor for services and work satisfactorily performed.

4.6 Pursuant to Government Code section 31680.6 and through Board resolution, Contractor shall not work for a period to exceed 120 working days or 960 hours, whichever is greater, during each calendar year. If Contractor exceeds 960 hours, Contractor will be deemed to be a full-time employee of the County and the Contractor's Stanislaus County Employees' Retirement Association benefits may be terminated or suspended.

5. WORK SCHEDULE

Contractor's obligation is to perform in a timely manner those services and work identified in **Exhibit A**. It is understood by Contractor that the performance of these services and work may require a varied schedule with the hours and times for completion of said services to be set by County.

6. REQUIRED LICENSES, CERTIFICATES, AND PERMITS

Any licenses, certificates, or permits required by the federal, state, county, or municipal governments for Contractor to provide the services and work described in **Exhibit A** must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include but are not limited to driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Contractor at no expense to the County.

7. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.

Unless otherwise stated in **Exhibit A**, County shall provide such office space, supplies, equipment, vehicles, reference materials, and telephone service as is necessary for Contractor to provide the services identified in **Exhibit A** to this Agreement.

8. INSURANCE

If Contractor utilizes a motor vehicle in performing any of the work or services identified in **Exhibit A**, Contractor shall procure and maintain in force throughout the duration of this Agreement a business auto liability insurance policy with minimum coverage levels of \$300,000.00 per occurrence combined single limit for bodily injury liability and property damage liability. The coverage shall include all Contractor-owned vehicles and all hired and non-owned vehicles used in performing under this Agreement. A certificate of insurance shall be provided to the County at least ten (10) days prior to the start of services to be performed by the Contractor. The policy shall contain a provision prohibiting the cancellation or modification of said policy except upon thirty (30) days prior written notice to the County.

9. STATUS OF CONTRACTOR

9.1 It is understood by the parties that the Contractor is a contract employee and not an independent contractor. For purposes of performing those services listed in **Exhibit A**, the County shall have direct supervision over the Contractor and shall direct Contractor as to when and where Contractor's services shall be performed and shall treat Contractor as an employee except as to those items contained in Paragraph 2.2.

9.2 Contractor agrees to be bound and abide by all County policies, rules, and regulations.

10. RECORDS AND AUDITS

10.1 Contractor shall prepare and maintain all writings, documents, and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing, and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds, or symbols or any combination thereof.

10.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by Contractor. Further, County has the right, at all reasonable, times to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

11. NONDISCRIMINATION

During the performance of this Agreement, the parties shall not unlawfully discriminate in violation of any federal, state, or local law, rule, or regulation against any employee, applicant for employment, or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition, marital status, age, political affiliation, or sex. The parties shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900, et seq.) and the applicable regulations promulgated thereunder in the California Code of Regulations. Contractor shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto and all administrative rules and regulations issued pursuant to said Act. Contractor further agrees to abide by County's nondiscrimination policy.

12. ASSIGNMENT

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience, and training of Contractor, the Contractor's firm, associates, and employees of said Contractor as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent to County.

13. WAIVER OF DEFAULT

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. CONFLICTS

Contractor agrees that he/she has no interest and shall not acquire any interest direct or indirect, which would conflict, in any manner or degree with the performance of the work and services under this Agreement.

15. SEVERABILITY

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state, or county statute, ordinance, or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

16. NOTICE

Any notice, communication, amendments, additions, or deletions to this Agreement including change of address of either party during the term of this Agreement which Contractor or County shall be required or may desire to make shall be in writing and may be personally served or sent by prepaid first class mail to the respective parties as follows:

To County: County of Stanislaus  
Behavioral Health Recovery Services  
Attn: Human Resource Manager  
800 Scenic Drive  
Modesto CA 95350-6195

To Contractor: Dao Tran, M.D.  
1909 Cobblestone Manor  
Modesto, CA 95355

17. AMENDMENT

This Agreement may be modified, amended, changed, added to, or subtracted from the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein by reference shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated unless the same be in writing executed by the parties hereto.




IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on the day and year first herein above written.

COUNTY OF STANISLAUS  
CHIEF EXECUTIVE OFFICE

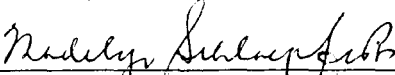
CONTRACTOR

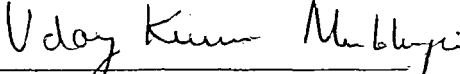
By:   
Cynthia Thomlison  
Deputy Executive Director

By:   
DAO TRAN, M.D.

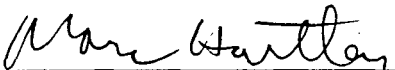
Contractor's Taxpayer Identification Number:  
\_\_\_\_\_

APPROVED AS TO CONTENT:  
BEHAVIORAL HEALTH AND RECOVERY  
SERVICES

By:   
Madelyn Schlaepfer, Ph.D., CEAP  
Behavioral Health Director

By:   
Uday Mukherjee, M.D.  
Medical Director

APPROVED AS TO FORM:  
COUNTY COUNSEL  
JOHN P. DOERING

By:   
Marc Hartley  
Deputy County Counsel

BOS Item: #2015-B21 Date: March 31, 2015

PROPOSAL AND SCOPE OF WORK

April 6, 2015 – June 30, 2015

Dao Tran, M.D., (“Contractor”) agrees to provide the following clinical consultation and clinical mental health services to County. Services will be subject to the following criteria.

A. SCOPE OF WORK

1. Contractor shall provide clinical consultation and clinical mental health services to County. Services will be subject to the following performance criteria:
  - a. Workload including contacts and documentation, shall be managed efficiently and performed in a timely manner;
  - b. Consultation and collaboration with program staff shall be provided from the perspective of an interdisciplinary team approach;
  - c. Participation on Quality Assurance Committees as assigned, if available;
  - d. Practice shall be within BHRS Quality Assurance policies and procedures including policies on medication monitoring, utilization review, and treatment plan updates;
  - e. BHRS charting requirements shall be followed according to established time frames;
  - f. Appointments with patients shall be kept in a timely manner;
  - g. A review of treatment plans and medical input shall be provided for all patients in programs to which assigned.
  - h. Contacts with patients, their families and staff shall be cooperative, collaborative, and professional;
  - i. Accessibility shall be provided to patients and/or staff from a program to which assigned while working in another program;
  - j. Assignment to any County Mental Health Program may be made, at the discretion of the BHRS Medical Director, or his designee, on a temporary or permanent basis, without advance notice;
  - k. Licensure requirements for the California State Board of Medical Quality Assurance shall be met annually.
2. In performance of the above services, Contractor shall adhere to the terms of the BHRS Code of Ethics, a copy of which was provided to Contractor on January 5, 2015, and Organizational Compliance Plan, a copy of which was provided to Contractor on January 5, 2015.
3. Contractor agrees to ensure confidentiality and integrity of Protected Health Information (PHI) of clients served by County to comply with all Health Insurance Portability and Accountability (HIPAA) regulations. PHI consists of any identifiable health information that is transmitted by electronic media or maintained in any medium or form which may be made available to Contractor. Contractor shall attend County sponsored HIPAA trainings as required.
4. Contractor shall attend County sponsored cultural competency and Stanislaus County BHRS compliance trainings as required.

**C. COMPENSATION**

1. County shall reimburse Contractor through the following funding sources: Medi-Cal and Realignment.
2. Contractor shall be compensated for the services provided under this Agreement at the rate of \$145.00 per hour, not to exceed a total of 624 hours or \$90,480. It is expected that Contractor shall provide approximately twenty four (24) hours of service per week during the term of this Agreement.
3. Contractor shall present a signed time sheet on a weekly basis to County indicating number of hours worked, amounts claimed for mileage and other costs.
4. In the event an overpayment is made to Contractor, Contractor agrees that such overpayment may be corrected by withholding the overpayment amount from the check covering the next payment period following the discovery. If there are no further payments to be made to Contractor, then Contractor agrees to remit payment in the sum of the overpayment within thirty (30) days of written notification by County to Contractor of such overpayment.
5. County shall reimburse Contractor for approved training and travel costs, meals, and lodging at the same rate paid to County employees. Receipts for all reimbursable expenses shall be provided to County prior to payment. Contractor shall follow all applicable County travel policies and procedures prior to incurring reimbursable expenses.

**D. BENEFITS**

County shall provide professional malpractice liability protection for Contractor covering the services to be provided by Contractor pursuant to this Agreement. Contractor, however, shall be solely liable for his wrongful acts or negligence in operating his private vehicle and shall maintain his own vehicle insurance coverage. Contractor must provide professional malpractice protection for any and all services or care provided outside the course or scope of this Agreement and in Contractor's private practice. This Agreement shall be terminated in the event County is unable to provide professional liability protection to Contractor through County's professional liability program.

**E. FUNDING**

If, during the time which this Agreement is in effect, funds are not allocated to County or Behavioral Health and Recovery Services, sufficient to allow for a continuation of this Agreement, then County may, at its sole discretion, terminate this Agreement, without penalty from or further obligation to Contractor. Contractor shall have no further obligation to County.

**F. TERM**

These services shall commence on April 6, 2015, and continue through June 30, 2015.

**G. DUPLICATE COUNTERPARTS**

This Agreement may be executed in duplicate counterparts, each of which shall be deemed a duplicate original.