

**ORIGINAL**

**MEMORANDUM OF UNDERSTANDING**

*between*

**El Dorado County Public Health Department**

*and*

**El Dorado County Probation Department**

*regarding the*

**Substance Abuse and Crime Prevention Act of 2000**

*and*

**Substance Abuse Treatment and Testing  
Accountability Act**

**THIS Memorandum of Understanding** (MOU) is entered into by and between the El Dorado County Public Health Department (hereinafter referred to as "PUBLIC HEALTH") and the El Dorado County Probation Department (hereinafter referred to as "PROBATION").

**WITNESSETH**

**WHEREAS**, PUBLIC HEALTH and PROBATION are departments of the County of El Dorado and are overseen by the El Dorado County Board of Supervisors; and

**WHEREAS**, PUBLIC HEALTH is the Lead Agency that holds responsibility for El Dorado County's implementation and ongoing oversight of the Substance Abuse and Crime Prevention Act of 2000 (SACPA), which resulted from California voters' passage of Proposition 36 on November 7, 2000, and which operates as the Proposition 36 Program (Program); and

**WHEREAS**, the State Department of Alcohol and Drug Programs, through the Substance Abuse Treatment and Testing Accountability Act (SATTA), provides funds for drug testing clients who participate in the Program; and

**WHEREAS**, PROBATION has agreed to perform supervision, monitoring, and drug testing of probationers who are subject to the Program;

**NOW, THEREFORE**, PUBLIC HEALTH and PROBATION mutually agree as follows:

## **ARTICLE I - SCOPE OF SERVICES**

### **1. PUBLIC HEALTH AGREES TO:**

- A. Provide staff, including a Proposition 36 Coordinator, to carry out Public Health responsibilities related to the Program.
- B. Assure adherence to the SACPA and SATTA funding guidelines.
- C. Perform or contract for the assessment of clients to determine the appropriate level of substance abuse treatment.
- D. Provide staff for the County Referral Team, which is made up of the Proposition 36 Probation Officers and Public Health's Proposition 36 Coordinator.
- E. Coordinate activities of the County Referral Team, which is responsible for performing or reviewing client assessments, performing centralized case management, authorizing services, referring clients to appropriate treatment providers, and reviewing treatment plans and progress reports.
- F. Authorize payment for services recommended by the assessment process, and refer participants to an appropriate provider for treatment.
- G. Contract with qualified substance abuse treatment providers to deliver services to Program participants.
- H. Monitor all contracted substance abuse treatment providers.
- I. Maintain all Program records and complete all Program reports, plans, and evaluations, as required by SACPA and/or SATTA.
- J. Maintain confidentiality of Program participant information, pursuant to applicable law.

### **2. PROBATION AGREES TO:**

- A. Provide three FTE Probation Officers to monitor and supervise participants, county-wide. Officers will be assigned full time to Program activities with the exception of defensible, normal County employee activities such as general administration, routine time keeping, breaks, meetings and trainings.
- B. Assign the Probation Officers to act as members of the County Referral Team, which is made up of the Proposition 36 Probation Officers and Public Health's Proposition 36 Coordinator.
- C. Participate in County Referral Team activities, which include reviewing client assessments, performing centralized case management, authorizing service, referring



clients to appropriate treatment providers, and reviewing treatment plans and progress reports.

- D. Upon receipt of Court orders, complete all documentation and referral paperwork necessary for admission into the Program.
- E. Throughout each client's participation in the Program, provide a level of supervision consistent with Probation and SACPA guidelines.
- F. Address Program violations and other client participation issues with the County Referral Team, and develop appropriate plans of action based on individual client needs.
- G. Attend Court hearings and make presentations to the Court regarding participant compliance with Program requirements.
- H. Collect and report, as requested by PUBLIC HEALTH and as needed to comply with SACPA and SATTA requirements, statistical data related to the Program for use in the preparation of reports. PUBLIC HEALTH will attempt to limit requested data to that which is readily available and/or easily accessed; however, it is agreed that PROBATION is an integral partner with PUBLIC HEALTH in providing data required by the State.
- I. Maintain confidentiality of information pertaining to Program participants, pursuant to applicable law (Title 42, Code of Federal Regulations, Part 2).
- J. Adhere to all requirements detailed in Title 9, California Code of Regulations, regarding the Program.
- K. Perform the following Program operation activities:
  - 1. Attend weekly County Referral Team meetings.
  - 2. Attend relevant training and conferences as requested by PUBLIC HEALTH.
  - 3. Participate in the development, documentation, review, and updating of Program procedures.
  - 4. Make referrals to contracted Treatment Providers for client assessment and/or treatment in accordance with Program guidelines.
  - 5. Notify the Treatment Provider within 7 days that a client has been ordered into treatment.
  - 6. Receive the Provider's treatment plan on behalf of the Court within 30 days of referral.
  - 7. Receive the Provider's quarterly progress reports on behalf of the Court.
  - 8. Notify the Court if the client is unamenable to treatment and process probation violations.
  - 9. Monitor treatment and supervise the client for up to 12 months, and during aftercare for up to 6 months, and enforce conditions of probation.
  - 10. Perform either random or regularly scheduled drug testing on all Program participants (using SATTA funds). **Note:** *Drug testing shall not be used as a basis for imposition of new criminal charges, and a single positive drug test will not be the*

*sole basis for declaring a client to be unamenable to treatment or revoking probation pursuant to Penal Code 1210.1(e)(3)(c).*

11. Assist the client in petitioning the Court for dismissal of charges upon successful completion of the Program.

## **ARTICLE II - TERM**

This MOU is effective July 1, 2006 through June 30, 2007. This MOU may be amended upon written agreement by both parties.

## **ARTICLE III - FISCAL PROVISIONS**

- A. Payment to PROBATION includes, but is not limited to, the following:

**SACPA Proposition 36 Funds:**

Salary and Benefits for 3 Probation Officers	<u>\$ 170,000.00</u>
Total SACPA Funds:	\$ 170,000.00

**SATTA Drug Testing Funds:**

FY 05/06 Funds	\$ 1,000.00
FY 06/07 Funds (available October 1, 2006)	<u>\$ 2,989.00</u>
Total SATTA Funds:	\$ 3,989.00

**Total Maximum Compensation of This Agreement Not to Exceed:** \$ 173,989.00

- B. Requests for reimbursement of personnel costs shall be submitted quarterly via Journal Entry. Claims shall be submitted to PUBLIC HEALTH by the 15<sup>th</sup> of the month after each quarter, accompanied by detailed expenditure information and standard time studies similar to those used for Title 4E or TANF. Requests for personnel cost reimbursement will be reconciled with the actual time studies submitted. In the event personnel activities are performed that are not in support the Program, payments may be adjusted accordingly. PUBLIC HEALTH will discuss any such reductions with PROBATION before implementing them.
- C. Requests for payment of other expenses shall be accompanied by documentation substantiating the amount spent, and verifying/confirming that expenses were in support of staff assigned to the Program.
- D. All claims submitted to PUBLIC HEALTH shall reference this MOU and shall be sent to the Public Health Department, Alcohol and Drug Programs Division, 415 Placerville Drive, Suite R, Placerville, CA 95667.

## **ARTICLE IV - OTHER PROVISIONS**

- A. PROBATION shall assist PUBLIC HEALTH in meeting all the requirements of SACPA and SATTA, and shall agree to adjustments in the Scope of Work of this MOU as



necessary to meet the requirements of the Acts and/or the Program.

- B. Three Probation Officers shall be dedicated full time to meeting requirements and performing activities of the Program.
- C. This MOU may be amended to reflect any reduction in State funding for the Program. Notice to PROBATION regarding a reduction in funding will be given within 10 days of PUBLIC HEALTH'S receipt of notice from the Department of Alcohol and Drug Programs regarding a reduction.
- D. Either party may terminate this MOU upon ninety (90) days written notice to the other.
- E. It is agreed that the parties shall be subject to examination and audit of any records associated with the provision of services, claims to obtain funding, and payment records documenting use of funds for a period of five (5) years after final payment under this MOU. The examination and audit shall be confined to matters connected with the performance of the MOU, and may be preformed by any County, State, or federal agency having oversight responsibility for the Program.

#### **ARTICLE V – HIPAA**

Under this Agreement, PROBATION will provide services to PUBLIC HEALTH, and in conjunction with the provision of such services, certain Protected Health Information ("PHI") may be made available to PROBATION for the purposes of carrying out its obligations. PROBATION agrees to comply with all the terms and conditions of Exhibit A, HIPAA Business Associate Agreement, attached hereto and made by reference a part hereof, regarding the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations promulgated thereunder.

#### **ARTICLE VI - NOTICES**

Any notice required or permitted under this MOU shall be in writing and shall be served by United States Postal Service, hand delivery, or via the County mail system upon the other party.

Notice to PUBLIC HEALTH shall be addressed as follows:

Gayle Erbe-Hamlin, Director  
El Dorado Public Health Department  
931 Spring Street  
Placerville, CA 95667

Notice to PROBATION shall be addressed as follows:

Joseph S. Warchol, II, Chief Probation Officer


El Dorado County Probation Department  
471 Pierroz Road  
Placerville, CA 95667

**ARTICLE VII - ADMINISTRATION**

The El Dorado County Officer or employee with responsibility for administering this Memorandum of Understanding is Gayle Erbe-Hamlin, Director of Public Health, or successor.


IN WITNESS WHEREOF, this MOU has been executed as of the date herein below appearing:

**PROBATION DEPARTMENT**

  
\_\_\_\_\_  
**Joseph S. Warchol, II**  
Chief Probation Officer

Date 7-14-06

**PUBLIC HEALTH DEPARTMENT**

  
\_\_\_\_\_  
**Gayle Erbe-Hamlin**  
Director of Public Health

Date 7/6/06

# EXHIBIT A

## HIPAA Business Associate Agreement

This HIPAA Business Associate Agreement is made part of the base contract (“Underlying Agreement”) to which it is attached, as of the date of commencement of the term of the Underlying Agreement (the “Effective Date”).

### RECITALS

WHEREAS, Public Health and Probation entered into the Underlying Agreement pursuant to which Probation provides services to Public Health, and in conjunction with the provision of such services, certain Protected Health Information (“PHI”) and Electronic Protected Health Information (“E PHI”) may be made available to Probation for the purposes of carrying out its obligations under the Underlying Agreement; and

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act, Pub. L. No. 104-161 of 1996 (“HIPAA”), more specifically the regulations found at Title 45, CFR, Parts 160 - 164 (the “Privacy and Security Rule”), as may be amended from time to time, which are applicable to the protection of any disclosure of PHI pursuant to the Underlying Agreement; and

WHEREAS, Public Health is a Covered Entity, as defined in the Privacy Rule; and

WHEREAS, Probation, when a recipient of PHI from Public Health, is a Business Associate as defined in the Privacy Rule; and

WHEREAS, “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.202(g); and

WHEREAS, the parties agree that any disclosure or use of PHI or E PHI be in compliance with the Privacy and Security Rule or other applicable law;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definitions. Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.
2. Scope of Use and Disclosure by Probation of Public Health Disclosed PHI
  - A. Probation shall be permitted to use PHI disclosed to it by Public Health:
    - (1) on behalf of Public Health, or to provide services to Public Health for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule if done by Public Health, or the minimum necessary policies and procedures of Public Health.
    - (2) as necessary to perform any and all of its obligations under the Underlying Agreement.
  - B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or Required by Law, Probation may:
    - (1) use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
    - (2) disclose the PHI in its possession to a third party for the purpose of



Probation's proper management and administration or to fulfill any legal responsibilities of Probation. Probation may disclose PHI as necessary for Probation's operations only if:

- (a) The disclosure is Required by Law; or
  - (b) Probation obtains written assurances from any person or organization to which Probation will disclose such PHI that the person or organization will:
    - (i) hold such PHI in confidence and use or further disclose it only for the purpose of which Probation disclosed it to the third party, or as Required by Law; and,
    - (ii) the third party will notify Probation of any instances of which it becomes aware in which the confidentiality of the information has been breached.
  - (3) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing Public Health with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by Public Health.
  - (4) not disclose PHI disclosed to Probation by Public Health not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by Public Health.
  - (5) de-identify any and all PHI of Public Health received by Probation under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.
- C. Probation agrees that it will neither use nor disclose PHI it receives from Public Health, or from another business associate of Public Health, except as permitted or required by this Business Associate Agreement, or as Required by Law, or as otherwise permitted by law.

3. Obligations of Probation. In connection with its use of PHI disclosed by Public Health to Probation, Probation agrees to:
- A. Use or disclose PHI only as permitted or required by this Business Associate Agreement or as Required by Law.
  - B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement.
  - C. To the extent practicable, mitigate any harmful effect that is known to Probation of a use or disclosure of PHI by Probation in violation of this Business Associate Agreement.
  - D. Report to Public Health any use or disclosure of PHI not provided for by this Business Associate Agreement of which Probation becomes aware.
  - E. Require sub-contractors or agents to whom Probation provides PHI to agree to the same restrictions and conditions that apply to Probation pursuant to this Business Associate Agreement.

- F. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use or disclosure of PHI created or received for or from Public Health.
  - G. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Public Health and to follow generally accepted system security principles as required in final rule 45 CFR Parts 160-164.
  - H. Probation will report any security incident of which it becomes aware to Public Health. Security incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. This does not include trivial incidents that occur on a daily basis, such as scans or “pings”.
  - I. Obtain and maintain knowledge of the applicable laws and regulations related to HIPAA, as may be amended from time to time.
  - J. May use PHI to report violations of law to appropriate Federal and State Authorities, consistent with § 164.502(j) (1).
4. PHI Access, Amendment and Disclosure Accounting. Probation agrees to:
- A. Provide access, at the request of Public Health, within five (5) days, to PHI in a Designated Record Set, to Public Health, or to an Individual as directed by Public Health.
  - B. To make any amendment(s) to PHI in a Designated Record Set that Public Health directs or agrees to at the request of Public Health or an Individual within sixty (60) days of the request of Public Health.
  - C. To assist Public Health in meeting its disclosure accounting under HIPAA:
    - (1) Probation agrees to document such disclosures of PHI and information related to such disclosures as would be required for Public Health to respond to a request by an Individual for an accounting of disclosures of PHI.
    - (2) Probation agrees to provide to Public Health or an Individual, within sixty (60) days, information collected in accordance with this section to permit Public Health to respond to a request by an Individual for an accounting of disclosures of PHI.
    - (3) Probation shall have available for Public Health the information required by this section for the six (6) years preceding Public Health’s request for information (except Probation need have no information for disclosures occurring before April 14, 2003).
  - D. Make available to Public Health, or to the Secretary of Health and Human Services, Probation’s internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining Probation’s compliance with the Privacy Rule, subject to any applicable legal restrictions.
  - E. Within thirty (30) days of receiving a written request from Public Health, make available any and all information necessary for Public Health to make an accounting of disclosures of Public Health PHI by Probation.
  - F. Within sixty (60) days of receiving a written request from Public Health,



incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in Probation's possession constitutes a Designated Record Set.

- G. Not make any disclosure of PHI that Public Health would be prohibited from making.

5. Obligations of Public Health .

- A. Public Health agrees that it will make its best efforts to promptly notify Probation in writing of any restrictions on the use and disclosure of PHI agreed to by Public Health that may affect Probation's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- B. Public Health agrees that it will make its best efforts to promptly notify Probation in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect Probation's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
- C. Public Health agrees that it make it's best efforts to promptly notify Probation in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Probation's use of disclosure of PHI.
- D. Public Health shall not request Probation to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Public Health , except as may be expressly permitted by the Privacy Rule.
- E. Public Health will obtain any authorizations necessary for the use or disclosure of PHI, so that Probation can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.

6. Term and Termination.

- A. Term – this Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by Public Health to Probation, or created or received by Probation on behalf of Public Health, is destroyed or returned to the Public Health, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause. Upon Public Health's knowledge of a material breach by Probation, Public Health shall either:
  - (1) Provide an opportunity for Probation to cure the breach or end the violation and terminate this Agreement if Probation does not cure the breach or end the violation within the time specified by the Public Health.
  - (2) Immediately terminate this Agreement if Probation has breached a material term of this Agreement and cure is not possible; or
  - (3) If neither termination nor cures are feasible, Public Health shall report the violation to the Secretary.
- C. Effect of Termination.



- (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Probation shall return or destroy all PHI received from Public Health, created or received by Probation on behalf of Public Health. This provision shall apply to PHI that is in the possession of subcontractors or agents of Probation. Probation shall retain no copies of the PHI.
- (2) In the event that the Probation determines that returning or destroying the PHI is infeasible, Probation shall provide to Public Health notification of the conditions that make return or destruction infeasible. Upon {negotiated terms} that return or destruction of PHI is infeasible, Probation shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Probation maintains such PHI.

7. HIPAA Business Associate Indemnity

Probation shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Probation, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever arising from the performance of Probation, its officers, agents, employees, subcontractors, agents or representatives from this Business Associate Agreement. Probation shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Probation, Probation shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of Public Health, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of Public Health; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Probation's indemnification to Public Health as set forth herein. Probation's obligation to defend, indemnify and hold harmless Public Health shall be subject to Public Health having given Probation written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Probation's expense, for the defense or settlement thereof. Probation's obligation hereunder shall be satisfied when Probation has provided to Public Health the appropriate form of dismissal relieving Public Health from any liability for the

action or claim involved.

The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe Probation's obligations to indemnify and hold harmless Public Health herein from third party claims arising from the issues of this Business Associate Agreement.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve Probation from indemnifying the Public Health to the fullest extent allowed by law.

In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.

8. Amendment – the parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for Public Health to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
9. Survival – the respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
10. Regulatory References – a reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
11. Conflicts – any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit Public Health to comply with the Privacy Rule, 45 CFR, and HIPAA generally.