

**Comments on the
JCICS Proposed Standards of Practice
for Vietnam Adoptions
December 10, 2007**

PEAR would like to thank the JCICS for this opportunity to comment on the proposed Standards of Practice for Vietnam. While we appreciate the effort and commitment that JCICS has put into the creation of these standards, we have real concerns about the content of the Standards of Practice as it is currently worded.

We recognize that JCICS and adoption agencies working in Vietnam are creating a Standards of Practice outside of the legislative process. It is the opinion of PEAR that real, meaningful adoption reform will come only when federally mandated and enforceable by law. However, we are willing to work with JCICS and signatory Adoption Service Providers (ASPs) to help ensure that any voluntary Standard of Practice is carried out ethically, legally, and in the best interests of the children.

PREAMBLE:

The preamble to the proposed Standards of Practice state that they represent the collective will of the international adoption community. PEAR recommends that this statement be removed from the Standards. The recent JCICS Summit on Vietnam Adoption which lead to the creation of the Standards of Practice was closed to nonmember adoption triad groups. Only two JCICS member organizations were present, Ethica and Equality for Adopted Children. There was no one present at the conference specifically representing the families of origin, Vietnam adoptive families, and adult adoptees*. PEAR believes that, at a minimum, consultation with Ethica, Equality for Children, Families with Children Adopted from Viet Nam (FCVN), and PEAR should have taken place before or during the Summit and that each of these organizations should have been consulted during the drafting of the proposed Standards.

It is PEAR's recommendation that this sentence be removed from the final draft unless all members of the adoption triad have been consulted and are in agreement with the final Standards of Practice.

*footnote: We recognize that Ethica represents the interests of entire triad, however, PEAR believes the specific members of the triad should also have been individually included.

HOW CHILDREN COME INTO CARE:

PEAR believes that the provisions contained within this section of the proposed Standards are a good start. However, we recommend that the provisions be amended to include the following:

1. A clear statement addressing that the child was relinquished without the use of coercive, threatening or criminal behavior.
2. Preservation of the child's initial records includes the child's medical history in addition to the familial and social history.
5. Preservation of the child's true identity, including preservation of birthdate, location, identities of family of origin, and circumstances surrounding their relinquishment or abandonment.
6. Complete disclosure to prospective adoptive parents concerning the child's familial, medical and social history *at the time of referral*, not just at the time of relinquishment or abandonment.
7. Clarification of the ASPs responsibility for determining and ensuring orphan status *as defined under US immigration law (and according to Vietnamese law)* is to be made *prior to referral of the child*.

CHILD CARING AGENCIES FINANCIAL ACCOUNTABILITY:

With all of the money flowing into Vietnam by virtue of international adoption (including undisclosed cash donations to orphanage directors required or highly suggested by agencies of adopting parents), the orphanages should be providing high quality care in pristine institutions. This not being the case at many care centers, it is PEAR's recommendation that this section be amended to include a system for reporting and disclosing improvements to child care centers including improvements to the physical structure, training and education of child care center staff, provision of medical care, educational programs and resources for children. The reporting and disclosure should include physical evidence (such as photographs and videos) as well as written reports containing the reasons for improvements, the steps taken and the outcome. These reports should also be made available to the public upon request.

In addition, PEAR maintains that the Standards should include strict controls on "mandatory" donations by prospective adoptive parents. This should include a ban upon outright cash donations from signatory ASP clients. All "mandatory" donations should be payable through an NGO or the signatory ASP with full accountability for the disbursement of these funds. There needs to be some manner of proof that Vietnam country fees are being properly disbursed to the named individuals and/or organizations. PEAR highly recommends that the Standards mandate a paper trail of itemized receipts accounting for the money received and spent on improvements to ensure a transparent accounting of donated funds.

ACCOUNTABILITY OF IN-COUNTRY STAFF:

PEAR recommends that the Standard's provisions concerning responsibility of the

ASPs for incountry staff be clearly stated in the signatory ASPs' contracts for services with prospective adoptive parents.

PEAR also recommends that the term "proper" in reference to financial transactions be clearly defined by including a list of proper/approved and/or improper/unapproved transactions in intercountry adoption. Again, PEAR highly recommends that the Standards mandate a paper trail of itemized receipts accounting for the money received and spent on improvements to ensure a transparent accounting of donated funds.

COLLABORATION:

It is PEAR's recommendation that the following amendments be made to the proposed standards in this section:

1. The following provision "When an ASP desire(sic) to expand its services into a province or child care center, the ASP will: Determine if a need exists for such services" should be amended to read: "Determine if a need *in the province* exists for such services". In addition, a method for determining "need" and a definition of what "need" means should be included in the Standards so that the methodology and definition of need are consistent within all provinces and care centers.

2. This section of the Standards needs to contain a clear statement and guidelines concerning appropriate behavior among ASPs working in the same province and/or care centers so that bidding wars or other means of obtaining preferential treatment in the referral process are not occurring. PEAR recommends that the use of a numbered, first in first out system of granting referrals within the province/care center be put into place.

TRANSPARENCY:

There are numerous rumors as well as direct evidence of the fact that some ASPs are enlisting the assistance of persons who have previously been found to be engaging in unethical or illegal practices in Vietnam. While the proposed Standards appear to address this situation, PEAR believes that the following amendments will tighten up some existing loopholes for the use of these persons in the Vietnam adoption programs:

1. The definition of "staff" should include volunteers (ie facilitators, contractors and/or consultants even if "unpaid") who work in any capacity on behalf of signatory ASPs.

- 2 Disclosure of staff (paid or unpaid) needs to include their current and all other previous known names as well as any known direct relationships/affiliations with persons who have been banned, deported, or convicted due to unethical illegal acts involving intercountry adoptions.

CONFLICT RESOLUTION:

The current proposed Standards contain no concrete statement or provisions for enforceability. There are no stated consequences for breach or failure to comply with the standards. As such, the current document is weak and holds little incentive for ASPs to alter the status quo in their Vietnam practice.

It is PEAR's recommendation that the Standards of Practice be amended to include:

1. A clear, step by step process for reporting allegations of an ASP's breach or failure to comply .
2. A provision protecting prospective and adoptive parents from retaliation for reporting suspected breaches and/or failures to comply.
3. A provision placing a duty upon signatory ASPs to report incidents of suspected breach or failure to comply with the Standards.
4. Clear, enforceable consequences for breaching or failing to comply. It is PEAR's recommendation that this include a substantial monetary fine and a public disclosure of all founded occasions of breach or failure to comply.

ADDITIONAL PROVISIONS:

Umbrellaing/Partnering:

It is PEARs belief that the laws of sending countries must be honored in all adoption practices. Where sending countries have an established procedure and process for the approval, licensing or accrediting of foreign ASPs for the purpose of International Adoption, these processes and procedures should not be circumvented through the practice of umbrellaing or partnering. The practice of umbrellaing/partnering diminishes the control and protection of the sending country and its laws and regulations. It also places additional unnecessary risks on prospective and adoptive families when issues of agency liability and responsibility arise.

It is PEAR's recommendation that the Standards be amended to include a clear and specific statement against the practice of umbrellaing/partnering by signatory licensed ASPs with unlicensed ASPs. Exceptions to this rule would be for cases limited to the use of unlicensed ASPs to provide pre-adoption education, homestudies, and post placement services to clients outside of the signatory licensed ASPs service area. In such cases, the Standards should clearly contain a provision for agreement between the ASPs and the adoptive/prospective adoptive families concerning the provision of these services, agreed to fees, and the recognition that the licensed signatory ASP is responsible for the quality and completeness of these services.

Advertising:

The proposed Standards of Practice do not address the issue of advertising and recruitment of prospective adoptive parents. It is PEAR's recommendation that the Standards be amended to include provisions clearly stating that advertising of Vietnam programs provide a truthful disclosure of the adoption process, the need for international adoption, and the current availability of children of all ages and medical conditions in Vietnam.

Again, PEAR wishes to thank the JCICS for this opportunity to comment.

Respectfully Submitted,

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