

MINA' BENTE OCHO NA LIHESLATURAN GUÅHAN
2006 (SECOND) Regular Session

Bill No. 358 (LS)

Introduced by:

Mark Forbes
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AN ACT TO AMEND TITLE 5 G.C.A. § 6105 AND § 6301(b) TO INCREASE THE LIMITATIONS ON GOVERNMENT LIABILITY FOR CLAIMS BASED ON TORT; TO ADD A NEW § 6301.1 AND § 6301.2 TO TITLE 5 G.C.A. TO PROVIDE GOVERNMENT INDEMNIFICATION FOR HEALTH PROFESSIONALS WHO PERFORM CERTAIN SERVICES FOR THE GOVERNMENT; TO ADD NEW §§ 10104, 10105 AND 10106 TO TITLE 7 G.C.A. TO DEFINE MEDICAL MALPRACTICE, IMPOSE LIMITATIONS ON DAMAGES IN MEDICAL MALPRACTICE CASES AND TO CREATE NEW PROCEDURES IN MEDICAL MALPRACTICE CASES; TO ADD A NEW § 50118 TO TITLE 12 G.C.A. TO REQUIRE GEDCA TO CONTRACT WITH AN ACTUARY TO EXAMINE PREMIUMS FOR INSURANCE PREMIUMS FOR MEDICAL MALPRACTICE; TO ENACT A NEW CHAPTER 10A OF TITLE 10 G.C.A. TO PROVIDE FOR PRE-TRIAL SCREENING IN MEDICAL MALPRACTICE CASES WHERE LESS THAN \$500,000 IN DAMAGES ARE SOUGHT; AND TO ENACT THE "MEDICAL MALPRACTICE REFORM ACT OF 2006".

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

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1 **Section One. Title 5 G.C.A. § 6105, Division One, Chapter 6, is amended to**
 2 **read:**

3 **§ 6105. Waiver of Immunity.**

4 Pursuant to Section 3 of the Guam Organic Act, the Government of Guam hereby
 5 waives immunity from suit, but only as hereinafter provided:

6 (a) for all expenses incurred in reliance upon a contract to which the
 7 Government of Guam is a party, but if the contract has been substantially completed,
 8 expectation damages may be awarded;

9 (b) for claims in tort, arising from the negligent acts of its employees acting
 10 for and at the direction of the government of Guam, even though occurring in an activity
 11 to which private persons do not engage. For the purposes of this chapter, any officer or
 12 enlisted person of the Guam National Guard on territorial duty or any nursing student
 13 acting for and at the direction of the University of Guam or of the Guam Community
 14 College shall be deemed an employee of the government.

15 (c) for claims in tort arising from the medical malpractice of a medical doctor,
 16 doctor of osteopathy or podiatrist licensed to practice one of said Healing Arts as defined
 17 by Title 10 G.C.A. Division 1, Chapter 12, Articles 2 and 17, who has met the
 18 requirements of Title 5 G.C.A. § 6301.1.

1 (d) The Government of Guam shall not be liable for claims arising from an
2 exercise of discretion in making policy.

3 **Section Two.** Title 5 G.C.A. § 6301(b), Division One, Chapter 6, is amended to
4 read:

5 (b) The government of Guam, in the case of line agencies, shall be liable in
6 tort for not more than ~~\$100,000~~ \$300,000 in an action for wrongful death, nor for more
7 than ~~\$300,000~~ \$500,000 in any other tort action.

8 **Section Three.** A new § 6301.1 is added to Title 5 G.C.A., Division One,
9 Chapter 6 to read:

10 **§ 6301.1. Malpractice Coverage.** (a) The Government of Guam shall save,
11 indemnify and hold harmless against all claims based on medical malpractice a medical
12 doctor, doctor of osteopathy or podiatrist who is licensed to practice a Healing Art
13 pursuant to Title 10 G.C.A. Division 1, Chapter 12, Articles 2 and 17, for not more than
14 the limitations on liability imposed by Title 5 G.C.A. § 6301(b) if the health professional
15 does one of the following:

16 (1) Executes and complies with an annual written contract substantially in the
17 form prescribed by Subsection (b) hereof with the Director of Public Health and Social
18 Services and the Government of Guam by which the health professional agrees to treat
19 patients who are eligible under the Medicaid program and the Medically Indigent
20 Program; or

21 (2) Executes and complies with an annual written contract with the Director of
22 Labor to perform examinations for Worker's Compensation proceedings as required by
23 Title 22 G.C.A. §§ 9108(b) and 9120(h) or other sections of Title 22 G.C.A. Division 1,
24 Chapter 9; or

25 (3) Undertakes in writing to and does provide treatment for house patients at
26 the Guam Memorial Hospital according to the Guam Memorial Hospital Authority's
27 applicable rules.

28 (b) The Director of Public Health and Social Services shall prescribe a
29 contract with health professionals substantially similar to that attached hereto as Exhibit

1 A. The Director may modify the terms of said contract provided that no statutory
2 requirements are violated.

3 **Section Four.** A new § 6301.2 is added to Title 5 G.C.A., Division One, Chapter
4 6 to read:

5 **§ 6301.2. Certification of Physicians.** The Director of Public Health and Social
6 Services shall determine and certify in writing on an annual basis whether a medical
7 doctor, osteopath or podiatrist has qualified for coverage pursuant to Title 5 G.C.A. §
8 6301.1. The Director’s certification that the health professional has met the requirements
9 of § 6301.1 shall bind the professional, the government of Guam and potential plaintiffs.
10 The Director shall, for informational purposes, maintain and keep current on the
11 department’s website a list of all such certified health professionals. The omission from
12 or mistaken inclusion of a health professional on said website is not a basis for a cause of
13 action or a defense of any kind against any party.

14 **PART II: MALPRACTICE DEFINED; ALTERNATIVE PROCEDURES**

15 **Section One.** A new § 10104 is added to Title 7 G.C.A. to read:

16 **§ 10104. Medical Malpractice Defined.** “Medical Malpractice” means a failure
17 by a medical professional or health care provider rendering services to exercise that
18 degree of skill and learning commonly applied under all the circumstances on Guam by
19 the average reasonable prudent member of that profession which results in injury, loss or
20 damage to the recipient of those services or to those entitled to rely upon him.

21 **Section Two.** A new § 10105 is added to Title 7 G.C.A. to read.

22 **§ 10105. Limitations on Damages in Malpractice Actions.**

23 In an action for damages against any medical doctor, doctor of osteopathy or
24 podiatrist based on malpractice, the health professional shall not be liable for more than
25 \$300,000.00 in an action for wrongful death, nor more than \$1,000,000.00 in any action
26 regardless of the number of defendants against whom the claim is asserted, the number of
27 allegations upon which the claim is based or whether damages are sought for economic
28 loss, medical bills, pain and suffering or for any other injury. Persons claiming to have

1 sustained damages as the result of the bodily injury or death of another person shall be
2 considered a single plaintiff for purposes of this section.

3 **Section Three.** A new § 10106 is added to Title 7 G.C.A. to read:

4 **§ 10106. Administrative Procedures in Medical Malpractice Actions.** (a) A
5 plaintiff seeking damages of \$500,000 or less for a medical malpractice claim or
6 \$300,000 or less for a wrongful death claim based on medical malpractice arising from
7 the conduct of a health professional certified pursuant to Title 5 G.C.A. § 6301.2 shall
8 proceed pursuant to Title 10 G.C.A., Division 1, Chapter 10A. If said proceeding results
9 in settlement of the claim, the plaintiff shall file a government claim to obtain payment.
10 If said proceeding has been completed and does not resolve the claim, the plaintiff shall
11 file a government claim in accordance with the Government Claims Act and the Attorney
12 General shall proceed in accordance therewith.

13 (1) All provisions of the Government Claims Act shall apply to claims filed
14 pursuant to this subsection provided that a written settlement that results from a
15 proceeding brought pursuant to Title 10 G.C.A. Chapter 10A shall bind the government
16 and shall be paid from the Government Claims Fund.

17 (2) A plaintiff whose claim under this section is denied may file a civil action
18 in Superior Court but shall not seek therein damages greater than \$500,000 for
19 malpractice or \$300,000 for wrongful death based on malpractice. Damages awarded in
20 said action shall be paid from the Government Claims Fund.

21 (3) In a claim or civil action brought pursuant to this subsection, the plaintiff
22 shall name the Government of Guam but not the health professional as a defendant.

23 (b) A plaintiff seeking damages of \$1,000,000 or less but more than \$500,000
24 for a malpractice claim or more than \$300,000 for a wrongful death claim based on
25 malpractice against a health professional certified pursuant to Title 5 G.C.A. § 6301.2
26 shall proceed pursuant to the Medical Malpractice Mandatory Arbitration Act, Chapter 10
27 of Division 1, Title 10 G.C.A. The plaintiff shall name the government of Guam and the
28 physician as defendants in every such arbitration proceeding and subsequent civil case.
29 The Attorney General shall represent the government therein. The Arbitration panel and

1 the court may award less than the minimum amounts of damages imposed by this
2 subsection.

3 (c) This section applies only to claims based on alleged malpractice
4 committed by the health professional arising from medical treatment of patients. This
5 section shall not apply to claims based on intentional tort, medical battery, assault, lack of
6 informed consent, inappropriate sexual conduct or to any cause of action not arising from
7 medical treatment of patients.

8 **PART III: GEDCA TO CONTRACT WITH ACTUARY**

9 **Section Four.** A new §50118 is added to Article 1, Chapter 50, Division 2 of
10 Title 12 G.C.A. to read:

11 **§ 50118. Contract with Actuary Regarding Malpractice Insurance.** (a) The
12 Guam Economic Development and Commerce Authority shall, pursuant to the Guam
13 Procurement Law, contract with an insurance actuary who shall create and file with I
14 Maga'lahen Guahan and the Speaker of I Liheslaturan Guahan a written report regarding
15 various sectors of licensed physicians on Guam and the likely cost to a physician in each
16 sector of obtaining malpractice insurance coverage for claims of no more than \$1,000,000
17 but greater than \$500,000.

18 (b) GEDCA shall enter into the first such contract with an actuary during fiscal
19 year 2007 and shall enter into a subsequent such contract every three fiscal years
20 thereafter.

21 **PART IV: SCREENING PANEL**

22 A new Chapter 10A is added to Division 1, Title 10 G.C.A. to read:

23 **Section One.** A new § 10101 is added to Division 1, Title 10 G.C.A., Chapter
24 10A to read:

25 **§ 10101. Definitions.**

26 For purposes of this Chapter the following terms are defined as follows:

27 (a) "Standard of care" shall have the same meaning as that provided in Title
28 10 G.C.A. § 10106.

1 (b) "Health care professional" means any person licensed or certified pursuant
2 to Title 10 G.C.A. Chapter 12, Articles 2 and 17, to practice medicine, osteopathy or
3 podiatry who has met the requirements of Title 5 G.C.A. § 6301.1.

4 (c) "Claim of professional negligence" is limited to any written notice of
5 claim served pursuant to § 10104 against health professionals.

6 **Section Two.** A new § 10102 is added to Division One, Title 10 G.C.A. Chapter
7 10A to read:

8 **§ 10102. Mandatory Pretrial Screening Panels: Formation and Procedure.**

9 (a) **Creation of panel lists.** The Presiding Judge of the Superior Court shall
10 provide to the Clerk of the Superior Court the names of retired justices and judges,
11 persons with judicial experience and other qualified persons to serve on screening panels
12 under this chapter. The Guam Medical Licensing Board shall provide to the Clerk of the
13 Superior Court a list of names of physicians, osteopaths and podiatrists licensed and
14 actively practicing on Guam. The Clerk shall place these names on a list from which the
15 Presiding Judge of the Superior Court will choose panel members pursuant to this
16 Chapter.

17 (b) **Selection of panel members.** Upon receipt of a notice of claim under §
18 10104, the Presiding Judge shall choose at random a retired justice or judge or attorney or
19 other qualified person from the list maintained by the Clerk to serve as chair of the
20 screening panel. If at any time a chair chosen under this paragraph is disqualified or
21 unable or unwilling to serve, the Presiding Judge shall appoint at random a replacement
22 from said list. Persons other than retired justices and judges or those with judicial
23 experience may be appointed as chair based on appropriate trial experience if they are
24 familiar with and experienced in personal injury litigation. Each side is entitled to
25 exercise one challenge for cause to the appointment of a chair by the Presiding Judge,
26 who shall rule on the challenge.

27 (1) The Presiding Judge shall choose at random from the list created under
28 subsection (a) hereof two health care practitioners licensed and actively practicing on
29 Guam to serve as panel members pursuant to this Chapter. If possible, the Presiding

1 Judge shall choose practitioners of the specialty or profession of the person accused of
2 professional negligence. The practitioners chosen need not have met the requirements of
3 Title 5 G.C.A. § 6301.1.

4 (c) **Challenges; replacements.** If any panel member other than the chair is
5 disqualified or unable or unwilling to serve, the Presiding Judge shall choose the new
6 panel member at random from the lists maintained under subsection (a) hereof. A party
7 may make only two challenges for cause. The chair shall inquire as to bias or prejudice
8 on the part of a panel by any party.

9 **Section Three.** A new § 10103 is added to Division 1, Title 10 G.C.A., Chapter
10 10A to read:

11 **§ 10103. Fees.** The Presiding Judge of the Superior Court shall direct payment of
12 the fees and other expenses incurred in the proceeding from funds available to the
13 Superior Court and provide clerical and other assistance to the panel. Every panel
14 member shall receive a \$500.00 fee for every case he hears.

15 **Section Four. § 10104. Submission of Claims.** A new § 10104 is added to
16 Division 1, Title 10 G.C.A., Chapter 10A to read:

17 (a) **Notice of Claim.** A person may commence an action based on medical
18 malpractice by filing with the Superior Court a verified notice of claim setting forth the
19 nature and circumstances of the malpractice and resulting injuries alleged. The claimant
20 must serve the notice of claim on the person accused of malpractice and the Attorney
21 General of Guam in accordance with Guam Rule of Civil Procedure 4. The return of
22 service must be filed with the court within 90 days after filing the notice of claim.
23 Submission of a claim is a prerequisite to filing a government claim or civil action based
24 on medical malpractice in any court.

25 (b) **Fee.** The claimant shall pay the Clerk of Superior Court a filing fee of
26 \$500.00 when he files the Notice of Claim.

27 (c) **Appearance; filing fee.** Within 20 days of receipt of notice of service
28 upon the clerk, the Attorney General shall file an appearance before the panel and serve
29 the claimant therewith. The Attorney General shall not pay a filing fee. The person

1 accused of malpractice may enter an appearance provided that he pays a filing fee of
2 \$500.00.

3 (d) **Waiver.** Any party may, at the time of filing, apply to the chair of the
4 panel for a waiver of all or part of the filing fee. The chair shall grant the waiver if:

5 (1) The party is indigent; or

6 (2) The party is or was an employee of another party and that other party
7 certifies that the employee at the time of the alleged malpractice was acting within the
8 scope of his employment; or

9 (3) The waiver is necessary to avoid requiring an individual who is a party to
10 the case from paying two (2) or more filing fees because a professional association or
11 other business entity of which the individual is a member is also named as a party and has
12 substantially the same interests as the individual in the case.

13 **Section Five.** A new § 10105 is added to Division 1, Title 10 G.C.A., Chapter
14 10A to read:

15 **§ 10105. Filing of records; course of proceedings; time for hearing;**
16 **extensions.** (a) Within twenty (20) days of their entry of appearance, the Attorney
17 General and the party accused, if he has entered an appearance, and the claimant's counsel
18 shall agree upon by a timetable for filing all the relevant medical and provider records
19 necessary to a determination and for completing discovery. If the parties are unable to
20 agree on a timetable within sixty (60) days of the last entry of appearance, the claimant
21 shall so notify the chair who shall then establish a timetable for the filing of all relevant
22 records and reasonable discovery. All records and discovery must be filed at least thirty
23 (30) days before the hearing date. The hearing shall not be later than six (6) months from
24 the filing of the notice of claim with the Clerk, unless the panel chair grants an extension.

25 (b) **Extensions of time.** All requests for extension of time must be made to
26 the panel chair. The chair may extend any time period for good cause, except that the
27 chair may not extend any time period that would result in the hearing being held more
28 than one year after the filing of Notice of Claim with the Clerk.

1 (c) **Combining hearings.** Except as otherwise provided herein, there shall be
2 one combined hearing for all claims arising from the same set of facts. If more than one
3 party is accused of malpractice based on the same facts, the parties may, upon agreement
4 of all parties, require that the hearings be severed. The chair may, for good cause, order
5 separate hearings.

6 (d) **Dismissal.**

7 (1) An action pending before the panel shall not be dismissed on the
8 plaintiff's motion except by order of the chair and on terms and conditions the chair
9 deems proper.

10 (2) On failure of the plaintiff to prosecute, or on the failure of any party to
11 comply with the rules or any order of the chair, and on motion by the chair or any party,
12 after notice to all parties has been given and the party against whom sanctions are
13 proposed has had the opportunity to be heard, the chair may order appropriate sanctions,
14 which may include dismissal of the case or entry of the defendant's default. The chair
15 shall state the sanctions and grounds for sanctions in writing.

16 (3) Unless the chair or the panel in an order for dismissal specifies otherwise,
17 a dismissal under this paragraph is with prejudice and bars pursuit of a government claim
18 or civil action based on the same facts.

19 (4) Unless the chair in its order for default specifies otherwise, a default under
20 this subsection is deemed to be a finding against the defendant on all issues before the
21 panel.

22 (5) At any time after the parties have entered their appearances, they may
23 stipulate in writing to dismiss the proceedings and proceed to a court action.

24 **Section Six.** A new § 10106 is added to Division 1, Title 10 G.C.A., Chapter
25 10A to read:

26 **§ 10106. Discovery.** The Guam Rules of Civil Procedure shall apply to
27 discovery but the chair may issue subpoenas in the same manner as the Superior Court.

28 **Section Seven.** A new § 10107 is added to Division 1, Title 10 G.C.A.,
29 Chapter 10A to read:

1 **§ 10107. Hearing.**

2 (a) **Procedure.** At the hearing on the merits, the claimant shall present his case
3 before the panel. The Attorney General and the person accused of professional
4 negligence, if he has entered an appearance, shall make a responding presentation. The
5 chair shall give great discretion to the parties in the conduct of the hearing including, but
6 not limited to, the right of examination and cross-examination by attorneys. The chair
7 shall make all procedural rulings and those rulings are final.

8 (b) Depositions are admissible regardless of whether the deponent is available..
9 The Guam Rules of Evidence do not apply. Evidence must be admitted if it is the kind of
10 evidence which reasonable persons are accustomed to rely on in the conduct of serious
11 affairs.

12 (c) The panel shall make its findings upon such evidence as is presented at the
13 hearing, the records, and any expert opinions provided by the panel or the parties.

14 (d) The chair of the panel shall mediate and attempt to resolve the parties'
15 differences before proceeding to findings. The Attorney General may settle a claim with
16 the consent of I Maga'lahi Guahan, at any stage of the proceeding, without the consent of
17 the party accused of malpractice.

18 **Section Eight.** A new § 10108 is added to Division 1, Title 10 G.C.A., Chapter
19 10A to read:

20 **§10108. Findings by the Panel.**

21 (a) **Negligence and causation.** The panel shall make its findings within 30
22 days after the presentations conclude by answering the following questions in writing:

23 (1) Whether the acts or omissions complained of constitute a deviation from the
24 applicable standard of care by the health care practitioner; and

25 (2) Whether the acts or omissions complained of proximately caused the injuries
26 complained of; and

27 (3) If negligence on the part of the health care practitioner or health care provider
28 is found, whether any negligence on the part of the patient contributed to the patient's
29 injury.

1 (b) **Standard of proof.** All issues must be proved by a preponderance of the
2 evidence.

3 **Section Nine. §10109.** A new § 10101 is added to Division 1, Title 10 G.C.A.,
4 Chapter 10A to read:

5 **Notification and Effect of Findings.** The panel's findings, signed by the
6 panel members and indicating their vote, shall be served on the parties within 7 days of
7 the date of the findings. All records of the proceeding shall be preserved until the case is
8 finally resolved in court or otherwise, after which time they shall be destroyed.

9 **Section Ten.** A new § 10110 is added to Division 1, Title 10 G.C.A., Chapter
10 10A to read:

11 **§10110. Confidentiality and Admissibility.**

12 (a) **Proceedings before panel confidential.** Except as provided in this
13 section, all records of and proceedings before the panel, including its final determinations,
14 must be treated in every respect as private and confidential by the panel and the parties to
15 the claim.

16 (1) The findings of the panel and any evidence presented by a party, if the
17 evidence is admissible under the Guam Rules of Evidence, are admissible for any purpose
18 in a subsequent court action based on the same facts, but shall otherwise not be publicly
19 disclosed by the court, the panel or any party.

20 (2) The confidentiality provisions of this section do not apply if the findings were
21 influenced by fraud.

22 (b) **Deliberations, discussions and testimony privileged and confidential.**
23 The deliberations and discussions of the panel shall be privileged and confidential. No
24 person may be asked or compelled to testify at a later court proceeding concerning the
25 deliberations, discussions or findings except as may be required to prove an allegation of
26 fraud.

27 **Section Eleven.** A new § 10111 is added to Division 1, Title 10 G.C.A.,
28 Chapter 10A to read:

29 **§10111. Effect of Findings by Panel.**

1 EXHIBIT A

2
3
4 INDEPENDENT CONTRACTOR AGREEMENT

5
6 This independent contractor agreement is made _____, 200____,
7 between _____, a physician licensed under the laws of Guam
8 (Contractor), with his principal office located at _____ and the
9 government of Guam (Government), whose address for purposes of
10 this contract is: Department of Public Health and Social Services, 123
11 Chalan Kareta, Rt 10-Mangilao, Guam 96913 – P.O. Box 2816,
12 Hagatna, Guam 96932.

13 RECITALS

14 A. Government desires to engage Contractor to provide
15 services to patients from the Medicaid and Medically Indigent
16 Program.

17 B. Contractor wishes to avail himself of the malpractice
18 protection afforded him by Government pursuant to Guam law.

19 C. Now, therefore, in consideration of the matters described
20 above, and of the mutual benefits and obligations set forth in this
21 agreement, the parties agree as follows:

22 1. **Engagement.** Contractor hereby agrees to provide the
23 services and perform all obligations describes in Section 2 of this
24 Agreement;

1 2. **Scope of Engagement.** During the term of this
2 Agreement, Contractor's responsibilities shall include, but shall not
3 be limited to, the following.

4 (A) Comply with and carry out all duties in conformance
5 with the policies and procedures from the Medicaid Program and
6 MIP. The Contractor hereby acknowledges that he is familiar with,
7 but not limited to, those policies applicable to scheduling, shipping,
8 payment, time sheets, attire, clinic reports, general clinic and other
9 procedures. The terms of said programs are incorporated herein by
10 this reference.

11 (B) Be sufficiently familiar with, so as to properly use,
12 Government paperwork including, but not limited to, education
13 handouts, consent forms, clinic reports, sign-in sheets, time sheets
14 and aggregate forms.

15 (C) Maintain at all times, at Contractor's sole cost and
16 expense, the necessary and applicable licenses and certifications of
17 Contractor's profession or as otherwise necessary to perform under
18 this Agreement.

19 (D) Comply at all times, at Contractor's sole cost and
20 expense, with any and all ethical requirements of the Contractor's
21 profession and all federal, state and local laws, ordinances,
22 regulations and rules relating to, governing or regulating the practice
23 of Contractor's profession.

1 (E) Administer services as appropriate, based on Contractor's
2 professional experience, education, certifications and licenses, during
3 the term of this Agreement.

4 (F) Obtain the appropriate informed consent from each
5 individual receiving services.

6 (G) Report any incidents in providing services to
7 Government patients on clinic report forms, including any clinic
8 issues such as client or customer problems or disagreements,
9 scheduling and staff problems, equipment problems, etc.

10 (H) Truthfully and accurately maintain and preserve such
11 records and make, on a timely basis, such reports as Government
12 may from time to time require.

13 (I) Maintain in strict confidence all client and customer
14 information, including but not limited to, client and customer names,
15 locations, numbers of shots administered and individual
16 participants' results.

17 (J) Perform all services in a highly professional manner.

18 (K) Comply with all other policies and procedures applicable
19 to the Medicaid Program and MIP.

20 3. **Indemnity.** In consideration for Contractor's providing
21 the services enumerated in Section 2 hereof, Government shall, in
22 accordance with Title 5 G.C.A. § 6301.1, save, hold harmless and
23 defend Contractor against all civil claims based on medical
24 malpractice brought against Contractor for acts or omissions of the
25 Contractor that occur on Guam during the term of this Agreement,

1 regardless of whether the claimant is a Medicaid or MIP patient. The
2 limitations on said indemnification shall be Five Hundred Thousand
3 Dollars (\$500,000.00) for Malpractice and Three Hundred Thousand
4 Dollars (\$300,000.00) for Wrongful Death.

5 4. **Minimum Work.** At a minimum, Contractor shall
6 maintain two percent (2%) of this entire client population as
7 Medicaid and MIP patients per month. Contractor shall, by the tenth
8 day of each month, provide Government documentation in a form to
9 be prescribed by Government establishing that he has met these
10 requirements.

11 5. **Term of Engagement.** The initial term of this Agreement
12 shall be one year, commencing on _____. Upon the
13 expiration of the initial term, this Agreement shall be automatically
14 renewed for successive one-year terms unless otherwise terminated
15 by Government or Contractor as provided for herein.

16 6. **Fees and Expenses.** In consideration of this
17 engagement, Government shall pay Contractor the fees established
18 by the Medicaid and MIP and indemnify Contractor as stated in
19 paragraph 3 hereof.

20 7. **Insurance and Benefits.** Because Contractor will be
21 providing independent professional healthcare services to patients as
22 an independent contractor and not as an employee, he shall not be
23 entitled to participate in any benefit programs (i.e., health insurance,
24 sick days, vacation days, etc.) which Government may, from time to
25 time, establish and maintain for the benefit of its employees.

1 8. **Employment Taxes.** Government shall have no
2 responsibility for the collection or payment of any federal, state or
3 local payroll tax in connection with any fees paid to Contractor
4 pursuant to this Agreement.

5 9. **Independent Contractor.** The parties acknowledge and
6 agree that Contractor shall be at all times hereunder an independent
7 contractor and not an employee, recognizing that Contractor is and
8 shall be engaged in an independent healthcare profession, which
9 may be subject to licensing requirements. Government shall have no
10 direct control over the methods or means by which Contractor shall
11 perform the services hereunder, and at all times during this
12 engagement, Contractor shall exercise his own independent
13 professional judgment in connection with his performance under this
14 Agreement.

15 10. **Termination.** Either party may terminate this
16 Agreement without cause upon thirty days prior written notice to the
17 other party. Government shall have the right to terminate this
18 engagement at any time, upon written notice of Contractor within ten
19 (10) days after written notice of such breach is sent to it. This
20 Agreement shall terminate automatically and without notice upon:
21 (a) the death of Contractor; (b) any loss of Contractor's necessary and
22 applicable licenses and certifications; or (c) a determination by
23 Government, in its sole opinion, that Contractor poses a threat to
24 Government personnel, professional contractors, patients or others
25 presenting themselves for healthcare services.

1 11. **Miscellaneous Provisions.**

2 (a) This Agreement contains the entire understanding
3 and agreement of the parties hereto with respect to the matters set
4 forth herein. This Agreement supersedes all prior or
5 contemporaneous understandings, representations or agreements,
6 whether written or oral.

7 (b) This Agreement not may be assigned to another
8 party.

9 (c) This Agreement may not be modified, altered or
10 amended except by a subsequent written instrument executed by the
11 party against whom such modification, alteration or amendment is
12 sought to be enforced, which instrument shall specifically refer to
13 this section of the Agreement.

14 (d) This Agreement shall be governed by and
15 construed in accordance with the laws of Guam.

16 In witness whereof, the parties have executed this Agreement
17 to be effective as of the date and year first set forth above.

18
19
20
21 _____
22 **GOVERNOR**

_____ **PHYSICIAN (CONTRACTOR)**

23
24
25 _____
26 **DIRECTOR**
27 **DEPARTMENT OF PUBLIC**

**HEALTH AND SOCIAL
SERVICES**

APPROVED AS TO FORM:

ATTORNEY GENERAL

**CERTIFIED AS TO FUNDS
AVAILABLE:**

**DIRECTOR
BUREAU OF BUDGET AND
MANAGEMENT RESEARCH**

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