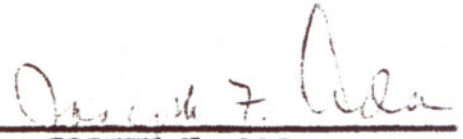


THIRTEENTH GUAM LEGISLATURE
1975 (FIRST) Regular Session

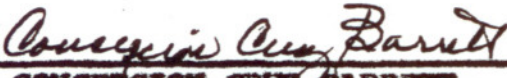
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 442, "An Act to add a new Chapter XVI to Title X of the Government Code of Guam to provide for a Medical Malpractice Reform Act for Guam and for other purposes", was on the 26th day of November, 1975, duly and regularly passed.



JOSEPH F. ADA
Speaker

ATTESTED:



CONCEPCION CRUZ BARRETT
Legislative Secretary

This Act was received by the Governor this _____ day of
_____, 1975 at _____ o'clock _____ .M.

RUTH F. WONG PAT
Assistant Staff Officer
Governor's Office

APPROVED:

RICARDO J. BORDALLO
Governor of Guam

DATED: _____

P.L. 13-116

THIRTEENTH GUAM LEGISLATURE
1975 (FIRST) Regular Session

Bill No. 442
As Substituted by the
Committee on Health,
Welfare & Ecology

Introduced by E. M. Espaldon

AN ACT TO ADD A NEW CHAPTER XVI TO TITLE X OF
THE GOVERNMENT CODE OF GUAM TO PROVIDE FOR A
MEDICAL MALPRACTICE REFORM ACT FOR GUAM AND
FOR OTHER PURPOSES.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. A new Chapter XVI is hereby added to Title X
3 of the Government Code of Guam to read as follows:

4 "CHAPTER XVI

5 Medical Malpractice Reform Act of 1975

6 Section 9995. Title. This Act may be cited as the
7 'Medical Malpractice Reform Act of 1975'.

8 Section 9995.1. Definitions. As used in this Chapter:

9 (a) 'Health Professional' means any person
10 licensed or certified to practice the healing of arts
11 within the Territory of Guam, to include podiatry,
12 pharmacy, nursing, as defined in Section 27000
13 of the Government Code of Guam.

14 (b) 'Health Care Institution' means any health
15 care facility or health maintenance organization
16 operated primarily to provide the service of health
17 professionals.

18 (c) 'Malpractice' means any tort or breach of
19 contract based on health care or professional
20 services rendered or which should have been rendered,
21 by a health professional or health care institution
22 to a patient.

1 Section 9995.2. Report and Recommendation. Within
2 thirty (30) days after the effective date of this Act,
3 the Governor of Guam, in cooperation and consultation
4 with appropriate local, state and federal agencies
5 and representatives of the general public, shall prepare
6 and submit to the Legislature a report of his recommenda-
7 tions along the following goals:

8 (a) A medical liability insurance which can
9 be operated at reasonable cost for the purpose of
10 providing prompt, equitable compensation to those
11 sustaining injuries from improper medical care.

12 (b) Primary consideration shall be given, but not
13 limited to establish an insurance system which can be
14 underwritten by private insurers on a self-supporting
15 basis using actuarially sound rates.

16 (c) If the Governor finds that no insurance system
17 bearing the goal of the plan can be underwritten by
18 private insurers on a self-supporting basis using
19 actuarially sound rates, he shall specify the needed
20 changes in the statutes to create a viable market for
21 medical liability insurance, or self-insurance.

22 (d) The comprehensive report shall include
23 recommendations to the Legislature for:

24 (1) Reducing the incidents of medical injuries,
25 including establishing standards of care and
26 procedures for peer review;

27 (2) Reducing the cost of prosecuting and
28 defending claims and administering the insurance
29 mechanism;

1 (3) Changes in existing law governing the
2 eligibility of injured persons for compensation
3 and the amount of compensation, including
4 limitations on the time within which compensation
5 may be recovered, and redefinition of the doctrine
6 of 'informed consent';

7 (4) Possible changes in existing law to
8 establish a procedure for deferring payment of
9 malpractice claims in case of permanent
10 disability;

11 (5) Possible changes in existing law to create
12 a physician's privilege to comment on the work
13 of other physicians in nonjudicial proceedings to
14 assist in excluding inadequate practitioners from
15 hospital staffs; and

16 (6) Any other matters or procedures which the
17 Governor considers relevant to the problem of medical
18 malpractice reform in the Territory of Guam.

19 (e) The Governor is authorized and encouraged
20 to make interim reports to the Speaker of the Legislature
21 concerning specific legislative proposals which need
22 immediate consideration.

23 (f) There is hereby authorized to be appropriated
24 such sums as are necessary to carry out the purposes of
25 the foregoing Section.

26 Section 9995.3. Consent to Surgical or medical
27 procedures. The written consent to a surgical or
28 medical procedure, where the conditions set out in
29 Subsections (a), (b) and (c) below are met, on a course

1 of procedures, shall be presumed to be valid and
2 effective, in the absence of proof by a preponderance
3 of the evidence that the person who sought such consent
4 was not acting in good faith, or that the execution of
5 the consent was induced by fraudulent misrepresentations
6 of material facts, or that the person executing said
7 consent was unable to communicate effectively in the
8 English language or any other language in which the
9 consent is written.

10 (a) The consent sets forth in general terms the
11 nature and purpose of the procedures, together with the
12 known risks, if any, of death, brain damage, quadriplegia,
13 paraplegia, the loss of function of any organ or limb, or
14 disfiguring scars associated with such procedure or
15 procedures, with the probability of each such risk if
16 reasonably determinable.

17 (b) The person making the consent acknowledges that
18 such disclosure of information has been made and that all
19 questions asked about the procedure or procedures have
20 been answered in a satisfactory manner.

21 (c) The consent is signed by the patient for whom
22 the procedure is to be performed, or, if the patient for
23 any reason including, but not limited to, competence,
24 infancy, or the fact that, at the latest time that the
25 consent is needed, the patient is under the influence
26 of alcohol, hallucinogens, or drugs, lacks legal capacity
27 to consent, by a person who has legal authority to consent
28 on behalf of such patient in such circumstances.

29 Except as herein provided, no evidence shall be

1 admissible to impeach, modify, or limit the authorization
2 for performance of the procedure or procedures set forth
3 in such written consent. This Section shall not effect
4 a physician's right to obtain the oral or implied consent
5 of a patient to a medical procedure.

6 Section 9995.4. Persons who may consent to surgical
7 or medical treatment. In addition to such other persons
8 as may be authorized and empowered, any one of the
9 following persons is authorized and empowered to consent,
10 either orally or otherwise, to any surgical or medical
11 treatment or procedures including autopsy not prohibited
12 by law which may be suggested, recommended, prescribed or
13 directed by a duly licensed physician:

14 (a) Any adult, for himself;

15 (b) Any parent, whether an adult or a minor, for his
16 minor child;

17 (c) Any married person, whether an adult or a minor,
18 for himself, and for his spouse;

19 (d) Any person temporarily standing in loco parentis
20 whether formally serving or not, for the minor under his
21 care and any guardian, for his ward;

22 (e) Any female regardless of age or marital status,
23 for herself when given in connection with pregnancy or
24 childbirth;

25 (f) In the absence of a parent, any adult, for his
26 minor brother or sister; or

27 (g) In the absence of a parent, any grandparent
28 for his minor grandchild.

29 Section 9995.5. Emergencies. In addition to any

1 other instance in which a consent is excused or implied
2 at law, a consent to surgical or medical treatment or
3 procedures, suggested, recommended, prescribed or
4 directed by a duly licensed physician, will be implied
5 where an emergency exists. For the purposes hereof,
6 an emergency is defined as a situation wherein, (a) in
7 competent medical judgment, the proposed surgical or
8 medical treatment or procedures are reasonably necessary,
9 and (b) a person authorized to consent under this Section
10 is not readily available, and any delay in treatment could
11 reasonably be expected to jeopardize the life or health
12 of the person affected, or could reasonably result in
13 disfigurement or impair faculties.

14 Section 9995.6. Construction of part. The provisions
15 of this Section shall be liberally construed, and all
16 relationships set forth herein shall include the marital,
17 adoptive, foster and step-relations as well as the natural
18 whole blood. A consent by one person so authorized
19 and empowered shall be sufficient. Any person acting
20 in good faith shall be justified in relying on the
21 representations of any person purporting to give such a
22 consent, including, but not limited to, his identity, his
23 age, his marital status, his emancipation, and his
24 relationship to any other person from whom the consent
25 is purportedly given.

26 Section 9995.7. Right of adult to refuse treatment
27 as to his own person not abridged. Nothing contained
28 herein shall be construed to abridge any right of a
29 person eighteen (18) years of age or over to refuse to

1 consent to medical or surgical treatment as to his own
2 person.

3 Section 9995.8. Act not applicable to care and
4 treatment of mentally ill. The provisions of this Act
5 shall not apply to the care and treatment of the
6 mentally ill, which subject shall continue to be
7 governed by existing law independently of the terms and
8 provisions of this Act.

9 Section 9995.9. Disciplinary Proceedings:

10 (a) Investigations. The Commission on
11 Licensure to Practice the Healing Art in Guam,
12 hereinafter referred to as the Licensure Commission,
13 shall employ such qualified investigators and
14 attorneys as are necessary to fully implement their
15 authority to revoke, suspend, limit or otherwise
16 regulate the licenses of physicians; issue reprimands,
17 fines, require refresher educational courses, or
18 require licensees to submit to medical treatment.

19 (b) Hearings. (1) The Licensure Commission
20 shall appoint, with the approval of the Governor,
21 such hearing examiners as shall be necessary to
22 conduct hearings in accordance with Section 9995.9
23 part (a) of this Act.

24 (2) The Licensure Commission shall have
25 the power to adopt and promulgate rules and
26 regulations setting forth the functions, powers,
27 standards and duties to be followed by any
28 hearing examiners appointed under the provisions
29 of this Section.

1 (3) Such hearing examiners shall have the
2 power to conduct hearings in accordance with
3 the regulations of the Licensure Commission and
4 its Boards of Examiners, and to issue subpoenas
5 requiring the attendance and testimony of
6 individuals or the production of pertinent books,
7 records, documents and papers by persons whom
8 they believe to have information relevant to
9 any matter pending before the examiner. Such
10 examiner shall also have the power to administer
11 oaths.

12 (c) Hearing Examiners' Decisions. The hearing
13 examiner shall hear evidence submitted and arguments
14 of counsel, if any, with reasonable dispatch, and
15 shall promptly record his decision, supported by
16 findings of fact, and a copy thereof shall immediately
17 be sent to the Licensure Commission and to counsel
18 of record, or the parties, if not represented.

19 (d) Evidence. In all hearings proof may be
20 made by oral testimony or by deposition or inter-
21 rogatories. Such depositions shall be taken in the
22 manner and upon the notice required by the rules for
23 taking depositions in civil cases and may be
24 introduced into evidence without regard to the
25 availability of the witness to testify at the time
26 of trial. Any witness, however, may be subpoenaed
27 by any party to the controversy to testify pursuant
28 to the rules appropriate to civil actions and shall
29 be considered to be witness of the party who

1 offered the deposition.

2 (e) Review of the Licensure Commission.

3 (1) If application for review is made
4 to the Licensure Commission within 20 days
5 from the date of any decision made as a result
6 of a hearing held by a hearing examiner,
7 the Licensure Commission shall review the
8 evidence, and if deemed advisable by the
9 board, hear argument and additional
10 evidence.

11 (2) As soon as practicable, the Licensure
12 Commission shall make a decision and shall
13 file the same with its finding of the facts
14 on which it is based and send a copy thereof
15 to each of the parties in dispute.

16 (f) Appeals. Decision by the Licensure Commission
17 shall be conclusive and binding as to all questions of
18 fact, but any medical practitioner may, within 30 days
19 from the date of such decision appeal to the Superior
20 Court of Guam alleging certain error of law under the
21 same terms and conditions as cover appeals in actions
22 involving licensing agencies.

23 Section 9995.10. General Provisions. (a) There
24 shall be no liability on the part of and no cause of
25 action for libel or slander shall arise against any
26 member of the Licensure Commission, its administrator or
27 any commissioners' representatives for any action taken
28 by any of them in the performance of their respective
29 powers and duties under this Act."

30 Section 2. Section 1021 of the Code of Civil Procedure
31 is hereby repealed and reenacted to read as follows:

32 "Section 1021. Compensation of Attorneys. Cost to

1 parties.

2 (a) In any action for damages for personal
3 injury or death, whether based on tort or contract
4 law, or otherwise, no attorney representing any party
5 to such action shall contract for, charge or collect
6 on a contingent fee basis any fee for his services
7 to such party in excess of the following limits:

8 (1) Fifty percent (50%) on the first
9 One Thousand Dollars (\$1,000.00) recovered;

10 (2) Forty percent (40%) on the next Two
11 Thousand Dollars (\$2,000.00) recovered;

12 (3) Thirty-three and one-third percent
13 (33 1/3%) on the next Forty-Seven Thousand
14 Dollars (\$47,000.00) recovered;

15 (4) Twenty percent (20%) on the next Fifty
16 Thousand Dollars (\$50,000.00) recovered;

17 (5) Ten percent (10%) on any amount re-
18 covered over One Hundred Thousand Dollars
19 (\$100,000.00); and

20 (6) Where the amount recovered is for the
21 benefit of an infant or incompetent and the action
22 is settled without trial the foregoing limits
23 shall apply, except that the fee on any amount
24 recovered up to Fifty Thousand Dollars (\$50,000.00)
25 shall not exceed twenty-five percent (25%).

26 (b) No attorney shall enter into such contingent
27 fee arrangement with his client without first ad-
28 vising the client of his right and affording the
29 client an opportunity to retain the attorney under an
30 arrangement whereby the attorney would be compensated
31 on the basis of the reasonable value of his services.

32 (c) Such contingent legal fee shall be computed
33 on the net sum recovered by the client after deducting

1 disbursements made in connection with the institution
2 and prosecution of the client's claim and litigation.

3 (d) The contingent legal fee within the per-
4 missible maximum limits shall include legal services
5 rendered on any appeal or review or on any retrial,
6 but this shall not be deemed to require an attorney
7 to take an appeal.

8 (e) If, at the conclusion of any such action
9 for damages, an attorney considers that the contingent
10 fee within such maximum limits to be insufficient he
11 may apply to the court, with written notice to the
12 client, for an increase in the fee, which the court
13 after a hearing may grant in such amount, if any, as
14 is deemed reasonable in all of the circumstances.

15 (f) In all cases not included within the scope
16 of Subsection (a) of this Section alone, the measure
17 and mode of compensation of attorneys and counselors
18 at law is left to the agreement, express or implied,
19 of the parties.

20 (g) Parties to actions or proceedings are en-
21 titled to costs and disbursements, as hereinafter
22 provided."

23 Section 3. Subsection (3) of Section 340 of the Code of
24 Civil Procedure is hereby amended to read as follows:

25 "(3). An action for libel, slander, assault,
26 battery, false imprisonment, seduction, or for injury to,
27 or for the death of, one caused by the wrongful act or
28 neglect of another, except as specifically provided for
29 in Section 349, or by a depositor against a bank for the

1 payment of a forged or raised check, or a check that bears
2 a forged or unauthorized endorsement."

3 Section 4. A new Section 349 is hereby added to the Code
4 of Civil Procedure to read as follows:

5 "Section 349. Action to recover damages for injuries.
6 An action to recover damages for injuries to the person
7 arising from any medical, surgical or dental treatment,
8 omission or operation shall be commenced within one (1)
9 year from the date when the injury is first discovered;
10 provided, that such action shall be commenced within four
11 (4) years from the date of treatment, omission or operation
12 upon which the action is based."

13 Section 5. A new Section 390 is hereby added to the Code
14 of Civil Procedure to read as follows:

15 "Section 390. Exemplary damages in malpractice
16 cases. Any damages awarded to a client in a tort suit
17 based on health care or professional services rendered
18 or which should have been rendered by a health professional
19 or health care institution to a patient shall be placed
20 in a special fund that may be expanded at the discretion
21 of the Administrator, Guam Memorial Hospital, for the
22 improvement of medical services within the Territory of
23 Guam."

24 Section 6. Section 6500.10 of the Government Code of
25 Guam is hereby repealed and reenacted to read as follows:

26 "Section 6500.10. Exclusive Remedy. The remedies
27 provided by this Chapter shall be exclusive as against
28 the Government of Guam, its officers, agents and employees
29 who are acting within the scope of their authority. No

1 further or additional proceedings against the employee
2 or employees, officer or officers, agent or agents, whose
3 acts or omissions gave rise to the claim may be heard by
4 any court once a claim has been filed pursuant to this
5 Chapter. No claimant may collect a judgment against an
6 employee, agent or officer of the government and, because
7 of the same act or acts, omission or omissions, a judgment
8 against the government. Satisfaction of a settlement with
9 judgment against an employee, agent, or officer of the
10 government shall constitute a forfeiture by the claimant
11 of all rights against the government by reason of the
12 same subject matter."

13 Section 7. A new Subsection (7) is hereby added to
14 Section 1973 of the Code of Civil Procedure to read as follows:

15 "(7) An agreement, promise, contract or warranty
16 of cure relating to medical treatment, or the results of
17 a service to be rendered by a person licensed by the
18 Territory of Guam to practice a 'Healing Art'."

19 Section 8. Section 6500.13 of the Government Code of
20 Guam is hereby repealed and reenacted to read as follows:

21 "Section 6500.13. Limitation on Tort Liability;

22 (a) Government Health Professional means any
23 person who is licensed or certified to practice a
24 'healing art' in Guam and is practicing that art within
25 a Government of Guam facility as an agent of the Govern-
26 ment of Guam.

27 (b) The Government of Guam shall be liable in tort
28 for damages arising from the negligent acts of Government
29 Health Professionals performed within Government of Guam

1 facilities as an agent of the Government of Guam at the
2 request of the government. Government Health Profes-
3 sionals shall be considered as an agent of the Government
4 of Guam within the meaning of Section 6500.20 of the
5 Government Code.

6 (c) For all claims, the Government of Guam shall
7 not be liable for more than Thirty-Five Thousand Dollars
8 (\$35,000) in an action for wrongful death, nor for more
9 than One Hundred Thousand Dollars (\$100,000) in any other
10 tort action.

11 (d) The Government of Guam shall not be liable for
12 interest prior to the date of judgment, nor for punitive
13 damages."

14 Section 9. The provisions of Section 8 shall expire one
15 (1) year after the effective date of this Act.

16 Section 10. Repealer. All Acts and parts of Acts are
17 repealed insofar as they are inconsistent with this Act.

18 Section 11. Severability. If any provision of this Act
19 or the application thereof to any person or circumstances is
20 held to be invalid, the remainder of the Act and the application
21 of the provision to other persons of similarly situated or to
22 different circumstances, shall not be affected thereby.

23 Section 12. Effective Date. This Act shall take effect
24 immediately upon enactment.