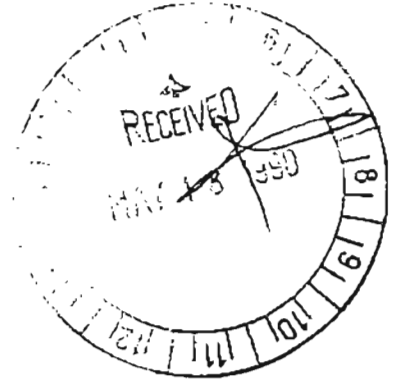




Territory of Guam  
Territorio Guam

OFFICE OF THE GOVERNOR  
FISINAN I MAGA LAHI  
AGANA, GUAM 96910 U.S.A

*Received*  
MAY 18 1990  
*(Handwritten mark)*



The Honorable Joe T. San Agustin  
Speaker, Twentieth Guam Legislature  
155 Herman Cortez Street  
Agana, Guam 96910

Dear Mr. Speaker:

Transmitted herewith is Bill No. 1114, which I have signed into law this date as Public Law No. 20-177.

Sincerely,

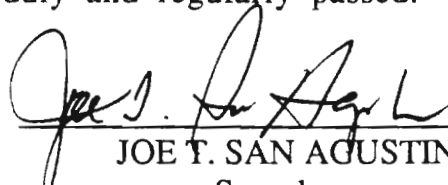
*Joseph F. Ada*  
JOSEPH F. ADA  
Governor  
200933

Attachment

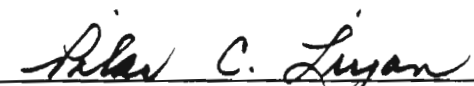
TWENTIETH GUAM LEGISLATURE  
1990 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

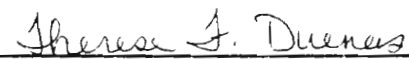
This is to certify that Substitute Bill No. 1114 (COR), "AN ACT TO ADD §412 OF TITLE 6, GUAM CODE ANNOTATED, TO MAKE RECORDS OF HOSPITAL STAFF REVIEW ACTIVITIES PRIVILEGED INFORMATION, TO ADD §3285 TO THE CIVIL CODE OF GUAM GIVING CIVIL IMMUNITY TO PARTICIPANTS IN CERTAIN MEDICAL REVIEW ACTIVITIES, AND TO AMEND §12231 OF TITLE 10, GUAM CODE ANNOTATED, TO GIVE IMMUNITY TO CERTAIN PROFESSIONAL BOARDS," was on the 1st day of May, 1990, duly and regularly passed.

  
JOE T. SAN AGUSTIN  
Speaker

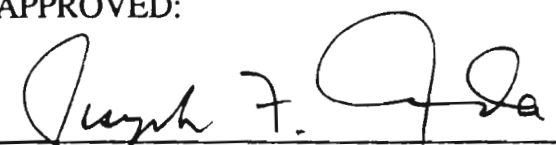
Attested:

  
PILAR C. LUJAN  
Senator and Legislative Secretary

-----  
This Act was received by the Governor this 7<sup>th</sup> day of May,  
1990, at 4:46 o'clock P.m.

  
Assistant Staff Officer  
Governor's Office

APPROVED:

  
JOSEPH F. ADA  
Governor of Guam

Date: MAY 18 1990

Public Law No. 20-177

TWENTIETH GUAM LEGISLATURE  
1989 (FIRST) Regular Session

Bill No. 1114 (COR)  
As substituted by the Committee  
on Health, Welfare and Ecology  
and as further substituted by  
Committee on Rules

Introduced by:

M. Z. Bordallo  
J. T. San Agustin  
M. C. Ruth  
F. R. Santos  
J. P. Aguon  
E. P. Arriola  
H. D. Dierking  
C. T. C. Gutierrez  
P. C. Lujan  
G. Mailloux  
T. S. Nelson  
D. Parkinson  
F. J. A. Quitugua  
E. D. Reyes  
J. G. Bamba  
D. F. Brooks  
E. R. Duenas  
E. M. Espaldon  
M. D. A. Manibusan  
T. V. C. Tanaka  
A. R. Unpingco

AN ACT TO ADD §412 OF TITLE 6, GUAM CODE ANNOTATED, TO MAKE RECORDS OF HOSPITAL STAFF REVIEW ACTIVITIES PRIVILEGED INFORMATION, TO ADD §3285 TO THE CIVIL CODE OF GUAM GIVING CIVIL IMMUNITY TO PARTICIPANTS IN CERTAIN MEDICAL REVIEW ACTIVITIES, AND TO AMEND §12231 OF TITLE 10, GUAM CODE ANNOTATED, TO GIVE IMMUNITY TO CERTAIN PROFESSIONAL BOARDS.

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

2 Section 1. §412 is added to Title 6, Guam Code Annotated, to read:

3 "§412. Records of medical studies of in-hospital staff  
4 committees.

5 (a) In-house medical, nursing or dental staff committees  
6 of a hospital which engage in medical or dental studies to reduce  
7 morbidity or mortality may make findings and recommendations  
8 thereon. Except as provided in subsection (b), the written records  
9 of interviews, reports, statements, or memoranda of such in-  
10 hospital medical, nursing or dental staff committees are subject to  
11 the provisions of this Title 6 and the Guam Rules of Civil  
12 Procedure (relating to discovery proceedings) but, subject to  
13 subsections (c) and (d), shall not be admitted as evidence in any  
14 action or before any administrative body, agency, or person.

15 (b) The disclosure, with or without the consent of the  
16 patient, of information concerning such patient to such in-hospital  
17 medical, nursing or dental staff committees does not make  
18 unprivileged any information that would otherwise be privileged  
19 under said laws or rules, and such information subject to  
20 discovery under subsection (a) except that the identity of any  
21 patient may not be discovered under subsection (a) unless the  
22 patient consents to such disclosure.

23 (c) This section does not affect the admissibility in  
24 evidence of the original medical or dental records of any patient.

25 (d) This section does not exclude evidence which is  
26 relevant evidence in a criminal action."

27 Section 2. A new §3285 is added to the Civil Code of Guam to read:

28 "§3285. (a) Civil immunity for physicians, nurse or  
29 dentist members of certain boards and committees. Any  
30 physician, nurse or dentist who is actively engaged in the practice  
31 of such profession shall be immune from civil liability for any act,  
32 decision, or omission done or made in good faith in performance of

1 duties as a member or agent of committees specified in §412 of  
2 Title 6, Guam Code Annotated, when such committee functions:

3 (i) to investigate any complaint that a physical or  
4 mental impairment, including alcoholism or drug addiction,  
5 had impaired the ability of any physician or dentist to  
6 practice his profession, and to encourage, recommend and  
7 arrange for a course of treatment, if deemed appropriate, or

8 (ii) to review the duration of patient stays in health  
9 facilities or professional services furnished with respect to  
10 the medical or dental necessity for such services, for the  
11 purpose of promoting the most efficient use of available  
12 health facilities and services, the adequacy or quality of  
13 professional services, or the reasonableness of charges made  
14 by or on behalf of physicians or dentists, or

15 (iii) to resolve questions concerning the admission of  
16 any member to, or the taking of disciplinary action against  
17 any member of, any medical society or association affiliated  
18 with the American Medical Association or American Dental  
19 Association; provided, that such entity has been established  
20 and duly constituted by a public hospital, or a medical or  
21 dental society or association affiliated with the American  
22 Medical Association or the American Dental Association or  
23 with a governmental agency and provided that such act,  
24 decision, or omission is not done or made in bad faith or  
25 with malicious intent,. The immunity provided by  
26 subsection (a) of this section shall not extend to any person  
27 with respect to actions, decisions, or omissions, the liability  
28 for which is limited under the provisions of the Federal  
29 Social Security Acts or amendments thereto.

30 (b) Civil immunity of members of, or consultants to,  
31 certain boards or committees. Every member of, or health care  
32 professional consultant to, committees specified in §412 of Title 6,  
33 Guam Code Annotated, shall be immune from civil liability for any  
34 act, decision, omission, or utterance done or made in good faith

1 performance of duties while serving as a member or consultant to  
2 such committee, when such committee functions to review,  
3 evaluate, or make recommendations on:

4 (i) the duration of patient stays in health care  
5 facilities,

6 (ii) professional services furnished with respect to  
7 the medical or dental necessity for such services,

8 (iii) the purpose of promoting the most efficient use  
9 of available health care facilities and services,

10 (iv) the adequacy or quality of professional services,

11 (v) the competency and qualifications for  
12 professional staff privileges, or

13 (vi) the reasonableness or appropriateness of charges  
14 made by or on behalf of health care facilities; provided, that  
15 such entity has been established pursuant to federal or  
16 Guam law or regulation, or pursuant to standards of the  
17 Joint Commission on Accreditation of Health Care  
18 Organizations; and provided further that such act, decision,  
19 omission, or utterance is not done or made in bad faith or  
20 with malicious intent."

21 Section 3. §12231 of Title 10, Guam Code Annotated, is amended to  
22 read:

23 "§12231. Good Faith Immunity.

24 No member of the Commission on Licensure to practice the healing  
25 arts, the Guam Board of Medical Examiners, the Guam Board of Dental  
26 Examiners, the Guam Board of Allied Health Examiners, the Guam Board  
27 of Nurse Examiners, the Guam Board of Examiners for Optometry or the  
28 Guam Board of Examiners for Pharmacy shall be liable in any civil  
29 action for damages for any act done or omitted in good faith in  
30 performing the functions of his office."

TWENTIETH GUAM LEGISLATURE  
1990 (SECOND) Regular Session

ROLL CALL SHEET

Bill No. 1114

Date: 5/1/90 early a.m.  
*2:05 a.m.*

Resolution No. \_\_\_\_\_

QUESTION: \_\_\_\_\_

	AYE	NAY	NOT VOTING	ABSENT
J. P. Aguon				✓
E. P. Arriola	✓			
J. G. Bamba	✓			
M. Z. Bordallo	✓			
D. F. Brooks	✓			
H. D. Dierking	✓			
E. R. Duenas	✓			
E. M. Espaldon	✓			
C. T. C. Gutierrez		✓		
P. C. Lujan	✓			
G. Mailloux	✓			
M. D. A. Manibusan	✓			
T. S. Nelson	✓			
D. Parkinson	✓			
F. J. A. Quitugua	✓			
E. D. Reyes	✓			
M. C. Ruth	✓			
J. T. San Agustin	✓			
F. R. Santos	✓			
T. V. C. Tanaka	✓			
A. R. Unpingco	✓			

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# Senator Madeleine Z. Bordallo

Chairperson, Committee on Health, Welfare & Ecology  
Twentieth Guam Legislature

April 23, 1990

**VICE CHAIRPERSON:**

COMMITTEE ON  
HOUSING & COMMUNITY  
DEVELOPMENT

COMMITTEE ON  
ECONOMIC DEVELOPMENT

**MEMBER:**

Committee on Energy,  
Utilities & Consumer  
Protection

Committee on  
General Governmental  
Operations

Committee on  
Justice, Judiciary &  
Criminal Justice

Committee on  
Youth, Human Resources,  
Senior Citizens &  
Cultural Affairs

Committee on Rules

Legislative Member  
Commission on  
Self-Determination

The Honorable Joe T. San Agustin  
Speaker, Twentieth Guam Legislature  
163 Chalan Santo Papa  
Agana, Guam 96910

Dear Mr. Speaker:

The Committee on Health, Welfare and Ecology, to which was referred Bill No. 1114: "AN ACT TO AUTHORIZE CERTAIN MEDICAL PEER REVIEW ACTIVITIES AND TO ESTABLISH WRITTEN RECORDS OF MEDICAL PEER REVIEW ACTIVITIES AS PRIVILEGED INFORMATION, AND TO ADD A NEW SECTION 3285 TO THE CIVIL CODE OF GUAM RELATIVE TO CIVIL IMMUNITY FOR PARTICIPANTS IN MEDICAL PEER REVIEW ACTIVITIES", does recommend that the Bill, as Substituted, be Passed by the Twentieth Guam Legislature.

Votes of committee members are as follows:

To Pass	<u>7</u>
To Not Pass	<u>0</u>
To Report Out Only	<u>2</u>
To The Inactive File	<u>0</u>
Abstained	<u>0</u>
Off-Island	<u>1</u>
Not Available	<u>2</u>

Respectfully submitted,

MADELEINE Z. BORDALLO

Enclosures



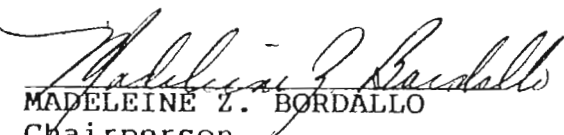

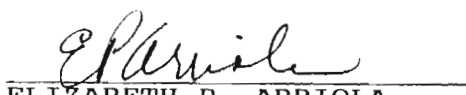
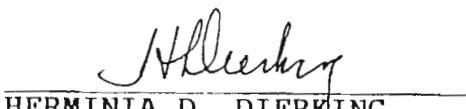
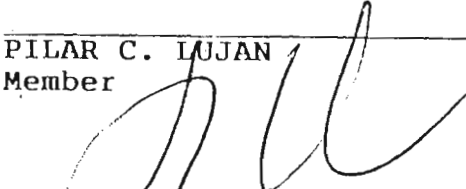
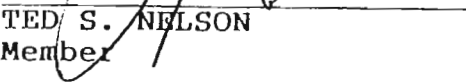

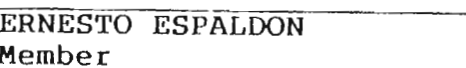


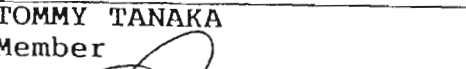
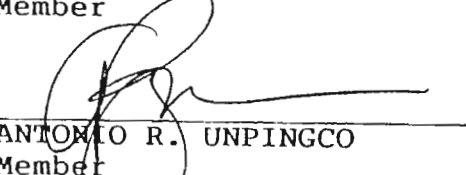
COMMITTEE ON HEALTH, WELFARE AND ECOLOGY

VOTING SHEET

ON

SUBSTITUTE BILL NO. 1114

"AN ACT TO ESTABLISH WRITTEN RECORDS OF CERTAIN MEDICAL STAFF REVIEW ACTIVITIES AS PRIVILEGED INFORMATION, TO ADD A NEW SECTION 3285 TO THE CIVIL CODE OF GUAM RELATIVE TO CIVIL IMMUNITY FOR PARTICIPANTS IN CERTAIN MEDICAL REVIEW ACTIVITIES, AND TO AMEND TITLE 10 GUAM CODE ANNOTATED §12231 RELATIVE TO GOOD FAITH IMMUNITY"

<u>COMMITTEE MEMBER</u>	<u>TO PASS</u>	<u>TO NOT PASS</u>	<u>TO REPORT OUT ONLY</u>	<u>TO PLACE IN INACTIVE FILE</u>
 MADELEINE Z. BORDALLO Chairperson	✓			
 GORDON MAILLOUX Vice-Chairperson	✓			
 ELIZABETH P. ARRIOLA Member	✓			
 HERMINIA D. DIERKING Member	✓			
 PILAR C. LUJAN Member				
 TED S. NELSON Member	✓			
 EDWARD D. REYES Member	✓			
 ERNESTO ESPALDON Member				
 MARILYN D.A. MANIBUSAN Member			✓ 4/19/90 mlm	
 MARTHA C. RUTH Member		✓ 4/19/90		
 TOMMY TANAKA Member				
 ANTONIO R. UNPINGCO Member			✓	

**COMMITTEE ON HEALTH, WELFARE AND ECOLOGY**

**COMMITTEE REPORT ON SUBSTITUTE BILL NO. 1114**

**AN ACT TO ESTABLISH WRITTEN RECORDS OF CERTAIN MEDICAL STAFF REVIEW ACTIVITIES AS PRIVILEGED INFORMATION, TO ADD A NEW SECTION 3285 TO THE CIVIL CODE OF GUAM RELATIVE TO CIVIL IMMUNITY FOR PARTICIPANTS IN CERTAIN MEDICAL REVIEW ACTIVITIES, AND TO AMEND TITLE 10 GUAM CODE ANNOTATED §12231 RELATIVE TO GOOD FAITH IMMUNITY**

**PREFACE**

A Public Hearing on Bill No. 1114 was conducted by the Committee on Health, Welfare and Ecology on February 13, 1990 at 2:00 p.m. in the Legislative Session Hall.

**Members Present:** Chairperson Senator Madeleine Z. Bordallo, Senators Pilar C. Lujan and Martha C. Ruth.

**Witnesses Heard:** GMHA Administrator George B. Palican; Dr. Olivia Cruz, Dr. F.J. Werthmann, Dr. George Guthrie, and Dr. John Steele.

**Written Testimony:** GMHA Board of Trustees Chairperson Rosie R. Tainatongo; Hospital Administrator George B. Palican; The GMHA Medical Staff, via a petition bearing 49 signatures; Dr. K. Sussman, Chairman, Executive Committee; Dr. Joch C. Steele, Medical Staff Physician QA Adviser; Mr. Kenneth R. White, Mercy International Health Services; Dr. James J. Stadler, Chairman, Pediatrics Dept.; Dr. Jose C. Cariaga; Mr. Mark Eaton, Administrator, Seventh-Day Adventist Clinic; Dr. John R. Taitano, President, Commission on Licensure; John N. van der Pyl, DDS, Chairman of Guam Board of Dental Examiners.

**SUMMARY OF TESTIMONY**

GMH has been cited by HCFA in the past for lack of documented peer review activities. Present peer review meets federal HCQIA standards adopted by the Government of Guam by P.L. 19-42, but are subject to discovery, which "suppresses candor".

Protection of written records from subpoena and immunity for participants is ensured by these combined bills. The protections afforded by P.L. 19-42 may be suspended if federal reporting requirements are not met by administrative staff.

No one appeared in opposition to these bills. An amendment was requested by the chairman of the Commission on Licensure and supported by the Chairman of the Guam Board of Dental Examiners, to correct an oversight in Public Law 18-48, relative to Good Faith Immunity.

**COMMITTEE FINDINGS/RECOMMENDATIONS**

The Committee finds that passage of Substitute Bill No. 1114 will allow our hospital to carry out necessary in-house research on morbidity and mortality, shield the records of peer review and quality assurance committees from use as evidence, and protect participants from civil lawsuits. It does not shield criminal acts or evidence of criminal acts, or protect against antitrust or other bad faith actions on the part of participants. It also does not compromise or restrict the normal use of patient records.

The Committee recommends that Bill No. 1114, as Substituted, be Passed by the Twentieth Guam Legislature.

## ATTACHMENTS

1. Voting Sheet on Substitute Bill No. 1114.
2. Substitute Bill No. 1114.
3. Bill No. 1114, as introduced.
4. Bill No. 1115.
5. 6 GCA Division 1, "Rules of Evidence" (§401 to §411).
6. Civil Code of Guam Division Fourth, Title II on Compensatory Relief, where §3285 is added.
7. Public Law 18-48, Section 19, on "Good Faith Immunity".
8. Title 42 U.S. Code Annotated §1320c-6, on "Limitation on Liability" under HCQIA.
9. Testimony of GMHA Board of Trustees Chairperson Rosie R. Tainatongo.
10. Testimony by Mr. George Palican, GMHA Administrator.
11. Testimony by GMHA Medical Staff, with a petition bearing 49 signatures.
12. Memorandum clarifying oral testimony re: item #11 above.
13. Memorandum from Chairman, Executive Committee.
14. Testimony from Dr. John C. Steele.
15. Testimony by Kenneth R. White, MPH, Mercy International Health Services.
15. Testimony by Dr. James Stadler, Chairman, GMH Pediatrics Dept.
16. Testimony by Dr. Jose Cariaga.
17. Testimony by Mark Eaton, Administrator, Guam Seventh Day Adventist Clinic.
18. Testimony by Dr. John Taitano, Chairman of Commission on Licensure.
19. Testimony of John N. van der Pyl, DDS, Chairman of the Guam Board of Dental Examiners.
20. Letter from Gary Hull to GMHA Administrator regarding Bill No. 1114 and No. 1115, dated February 9, 1990.
21. Letter from Chairperson Bordallo to GMHA Administrator 1/10/90.
22. Letter from GMHA legal counsel to Chairperson Bordallo 1/12/89.
23. Fiscal Note on Bill No. 1114.
24. Fiscal Note on Bill No. 1115.
25. Witness Attendance Sheet on Bill No. 1114.
26. Witness Attendance Sheet on Bill No. 1115.
27. Committee Member Attendance Sheet on Bill No. 1114.
28. Committee Member Attendance Sheet on Bill No. 1115.

TWENTIETH GUAM LEGISLATURE  
1989 (First) Regular Session

Substitute Bill No. 1114  
by the Committee on Health,  
Welfare and Ecology

Introduced By:

M. Z. BORDALLO



---

AN ACT TO ESTABLISH WRITTEN RECORDS OF CERTAIN MEDICAL STAFF REVIEW  
ACTIVITIES AS PRIVILEGED INFORMATION, TO ADD A NEW SECTION 3285  
TO THE CIVIL CODE OF GUAM RELATIVE TO CIVIL IMMUNITY FOR PARTICIPANTS  
IN CERTAIN MEDICAL REVIEW ACTIVITIES, AND TO AMEND  
TITLE 10 GUAM CODE ANNOTATED §12231 RELATIVE TO GOOD FAITH IMMUNITY

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

2 Section 1. A new §412 is added to Title 6 Guam Code  
3 Annotated to read:

4 "§412. Records of Medical Study of In-hospital Staff  
5 Committees.

6 (a) In-hospital medical, nursing or dental staff  
7 committees of a licensed hospital which engage in medical or  
8 dental study for the purpose of reducing morbidity or mortality  
9 may make findings and recommendations relating to such  
10 purpose. Except as provided in subsection (b), the written  
11 records of interviews, reports, statements, or memoranda of  
12 such in-hospital medical, nursing or dental staff committees  
13 are subject to the provisions of Title 6 of the Guam Code  
14 Annotated and the Guam Rules of Civil Procedure (relating to  
15 discovery proceedings) but, subject to subsections (c) and (d),  
16 shall not be admitted as evidence in any action or before any  
17 administrative body, agency, or person.

18 (b) The disclosure, with or without the consent of the  
19 patient, of information concerning him to such in-hospital  
20 medical, nursing or dental staff committees does not make

1 unprivileged any information that would otherwise be privileged  
2 under said laws or rules, such information is subject to  
3 discovery under subsection (a) except that the identity of any  
4 patient may not be discovered under subsection (a) unless the  
5 patient consents to such disclosure.

6 (c) This section does not affect the admissibility in  
7 evidence of the original medical or dental records of any  
8 patient.

9 (d) This section does not exclude evidence which is  
10 relevant evidence in a criminal action."

11 Section 2. A new §413 is added to Title 6 Guam Code  
12 Annotated to read:

13 "§413. Proceedings and Records of Medical, Nursing or  
14 Dental Quality Assurance/Assessment Committees.

15 (a) Neither the proceedings nor the records of  
16 organized committees of medical, nursing or dental staff in  
17 hospitals having the responsibility of evaluation and  
18 improvement of the quality of care rendered in the hospital  
19 shall be subject to discovery.

20 (b) Except as hereinafter provided, no person in  
21 attendance at a meeting of any of those committees shall be  
22 required to testify as to what transpired at the meeting.

23 (c) The prohibition relating to discovery or testimony  
24 does not apply to the statements made by any person in  
25 attendance at a meeting of any of those committees who is party  
26 to an action or proceeding the subject matter of which was  
27 reviewed at that meeting, or to any person requesting hospital  
28 staff privileges, or in any action against an insurance carrier  
29 alleging bad faith by the carrier in refusing to accept a  
30 settlement offer within policy limits.

1           (d) The prohibitions in this section do not apply to  
2 medical, nursing or dental committees if any person serves upon  
3 the committee when his own conduct or practice is being  
4 reviewed.

5           (e) The provisions of this section do not exclude the  
6 discovery or use of relevant evidence in a criminal action."

7           Section 3. A new §414 is added to Title 6 Guam Code  
8 Annotated to read:

9           "§414. Proceedings and Records of In-Hospital Peer or  
10 Utilization Review Committees.

11           (a) The proceedings, minutes, deliberations, findings  
12 and reports of in-hospital peer or utilization review  
13 committees concerning the health care provided to any patient  
14 shall be considered privileged and not subject to discovery,  
15 subpoena, or other means of legal compulsion for their release  
16 to any person or entity or be admissible as evidence in any  
17 judicial or administrative action for failure to provide  
18 appropriate care.

19           (b) Except as hereinafter provided, no person who was  
20 in attendance of any such committee proceeding shall be  
21 required to disclose any information acquired in connection  
22 with or in the course of such proceedings or to disclose any  
23 opinion, recommendation or evaluation of the committees formed  
24 at any such meeting.

25           (c) The prohibition relating to discovery or testimony  
26 does not apply to the statements made by any person in  
27 attendance at such committee meeting who is party to any action  
28 or proceeding, the subject matter of which was reviewed at the  
29 meeting; or to any judicial or administrative action brought by  
30 a peer review committee or other legal entity formed to deny,

1 restrict, or revoke hospital staff privileges or license to  
2 practice as a physician or other health care professional; or  
3 to such times when the committee may be sued for actions taken  
4 to deny, restrict, or revoke staff privileges or license to  
5 practice as a physician or other health care provider.

6 (d) The prohibitions in this Section do not exclude  
7 the discovery or use of relevant evidence in any criminal  
8 action; and shall not limit the authority to obtain such  
9 information by subpoena or other authorized process from the  
10 committees for uses relating to matter and investigations  
11 within the jurisdiction of boards created pursuant to Title 10  
12 Guam Code Annotated Chapter 12 to regulate the practice of  
13 healing arts."

14 **Section 4.** A new Section 3285 is added to the Civil Code  
15 of Guam to read:

16 **"Section 3285. (a) Civil Immunity for Physician, Nurse or**  
17 **Dentist Members of Certain Boards and Committees.** Any  
18 physician, nurse or dentist who is actively engaged in the  
19 practice of his profession shall be immune from civil liability  
20 for any act, decision, or omission done or made in performance  
21 of his duties as a member or agent of committees specified in  
22 Title 6 Guam Code Annotated §412, §413 and §414, when such  
23 committee functions:

24 (i) to investigate any complaint that a physical or  
25 mental impairment, including alcoholism or drug addiction, had  
26 impaired the ability of any physician or dentist to practice  
27 his profession, and to encourage, recommend and arrange for a  
28 course of treatment, if deemed appropriate, or

29 (ii) to review the duration of patient stays in  
30 health facilities or professional services furnished with

1 respect to the medical or dental necessity for such services,  
2 for the purpose of promoting the most efficient use of  
3 available health facilities and services, the adequacy or  
4 quality of professional services, or the reasonableness of  
5 charges made by or on behalf of physicians or dentists, or

6 (iii) to resolve questions concerning the admission  
7 of any member to, or the taking of disciplinary action against  
8 any member of, any medical society or association affiliated  
9 with the American Medical Association or American Dental  
10 Association; provided that such entity has been established and  
11 duly constituted by a public hospital, or a medical or dental  
12 society or association affiliated with the American Medical  
13 Association or the American Dental Association or with a  
14 governmental agency and provided that such act, decision, or  
15 omission is not done or made in bad faith or with malicious  
16 intent. The immunity provided by §§3285(a) shall not extend to  
17 any person with respect to actions, decisions, or omissions,  
18 the liability for which is limited under the provisions of the  
19 federal Social Security Act or amendments thereto.

20 (b) **Civil Immunity of Members of or Consultants to certain**  
21 **Boards or Committees.** Every member of, or health care  
22 professional consultant to, committees specified in Title 6  
23 Guam Code Annotated §412, §413 and §414 shall be immune from  
24 civil liability for any act, decision, omission, or utterance  
25 done or made in performance of his duties while serving as a  
26 member or consultant to such committee, when such committee  
27 functions to review, evaluate, or make recommendations on:

28 (i) the duration of patient stays in health care  
29 facilities,

30 (ii) professional services furnished with respect to



1 the medical or dental necessity for such services,  
2 (iii) the purpose of promoting the most efficient use  
3 of available health care facilities and services,  
4 (iv) the adequacy or quality of professional  
5 services,  
6 (v) the competency and qualifications for professional  
7 staff privileges, or  
8 (vi) the reasonableness or appropriateness of charges  
9 made by or on behalf of health care facilities; provided that  
10 such entity has been established pursuant to federal or  
11 Territorial law or regulation, or pursuant to standards of the  
12 Joint Commission on Accreditation of Healthcare Organizations;  
13 and provided further that such act, decision, omission, or  
14 utterance is not done or made in bad faith or with malicious  
15 intent."

16 Section 5. Title 10 Guam Code Annotated §12231, as added  
17 by Section 19 of Public Law 18-48, is amended to read:

18 **"§12231. Good Faith Immunity.**

19 No member of the Commission on Licensure to practice the  
20 healing arts, the Guam Board of Medical Examiners, the Guam  
21 Board of Dental Examiners, the Guam Board of Allied Health  
22 Examiners, the Guam Board of Nurse Examiners, the Guam Board of  
23 Examiners for Optometry or the Guam Board of Examiners for  
24 Pharmacy shall be liable in any civil action for damages for  
25 any act done or omitted in good faith in performing the  
26 functions of his office."

27 //

28 //

29 //

30 //

12/27/89  
8:44 am

Introduced

DEC 28 '89

TWENTIETH GUAM LEGISLATURE  
1989 (First) Regular Session

Bill No. 1114(COR)

Introduced By:

M. Z. BORDALLO *MZB*

AN ACT TO AUTHORIZE CERTAIN MEDICAL PEER REVIEW  
ACTIVITIES AND TO ESTABLISH WRITTEN RECORDS  
OF MEDICAL PEER REVIEW ACTIVITIES AS PRIVILEGED INFORMATION

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

2 Section 1. A new §412 is added to Article 4 of Title 6  
3 of the Guam Code Annotated to read:

4 "§412. Records of Medical Study of In-hospital Staff  
5 Committees.

6 (a) In-hospital medical or medical-dental staff  
7 committees of a licensed hospital may engage in research  
8 and medical or dental study for the purpose of reducing the  
9 morbidity or mortality, and may make findings and  
10 recommendations relating to such purpose. Except as  
11 provided in subsection (b), the written records of  
12 interviews, reports, statements, or memoranda or such  
13 in-hospital medical or medical dental staff committees are  
14 subject to the provisions of title 6 of the Guam Code  
15 Annotated and the Guam Rules of Civil Procedure (relating  
16 to discovery proceedings) but, subject to subsections (c)  
17 and (d), shall not be admitted as evidence in any action or  
18 before any administrative body, agency, or person.

19 (b) The disclosure, with or without the consent of  
20 the patient, of information concerning him to such  
21 in-hospital medical or medical dental staff committees does

1 not make unprivileged any information that would otherwise  
2 be privileged under said laws or rules, such information is  
3 subject to discovery under subsection (a) except that the  
4 identity of any patient may not be discovered under  
5 subsection (a) unless the patient consents to such  
6 disclosure.

7 (c) This section does not affect the admissibility  
8 in evidence of the original medical or dental records of  
9 any patient.

10 (d) This section does not exclude evidence which  
11 is relevant evidence in a criminal action."

12 Section 2. A new §413 is added to Article 4 of Title 6  
13 of the Guam Code Annotated to read:

14 "§413. Proceedings and Records of Medical and  
15 Medical-Dental Staff Review Committees.

16 (a) Neither the proceedings nor the records of  
17 organized committees of medical, or medical-dental staff in  
18 hospitals having the responsibility of evaluation and  
19 improvement of the quality of care rendered in the hospital  
20 or medical or dental review committees shall be subject to  
21 discovery.

22 (b) Except as hereinafter provided, no person in  
23 attendance at a meeting of any of those committees shall be  
24 required to testify as to what transpired at the meeting.

25 (c) The prohibition relating to discovery or  
26 testimony does not apply to the statements made by any  
27 person in attendance at a meeting of any of those  
28 committees who is party to an action or proceeding the  
29 subject matter of which was reviewed at that meeting, or to  
30 any person requesting hospital staff privileges, or in any

1 action against an insurance carrier alleging bad faith by  
2 the carrier in refusing to accept a settlement offer within  
3 policy limits.

4 (d) The prohibitions in this section do not apply  
5 to medical or dental committees that exceed twenty-five  
6 percent (25%) of the membership of the staff, nor to any of  
7 those committees, if any person serves upon the committee  
8 when his or her own conduct or practice is being reviewed.

9 (e) The provisions of this section do not exclude  
10 the discovery or use of relevant evidence in a criminal  
11 action."

12 Section 3. A new §414 is added to Article 4 of Title 6  
13 of the Guam Code Annotated to read:

14 "§414. Proceedings and Records of Peer and Utilization  
15 Review Committees.

16 (a) The proceedings, findings, deliberations,  
17 reports, and minutes or peer review and utilization review  
18 committees concerning the health care provided to any  
19 patient shall be considered privileged and not subject to  
20 discovery, subpoena, or other means of legal compulsion for  
21 their release to any person or entity or be admissible as  
22 evidence in any Judicial or Administrative action for  
23 failure to provide appropriate care.

24 (b) Except as hereinafter provided, no person who  
25 was in attendance of any such committee proceeding shall be  
26 required to disclose any information acquired in connection  
27 with or in the course of such proceedings or to disclose  
28 any opinion, recommendation or evaluation of the committees  
29 formed at any such meeting.

30 (c) The prohibition relating to discovery or

1 testimony does not apply to the statements made by any  
2 person in attendance at such committee meeting, who is  
3 party to any action or proceeding, the subject matters of  
4 which was reviewed at the meeting; or to any judicial or  
5 administrative action brought by a peer review committee or  
6 other legal entity formed to deny, restrict, or revoke  
7 hospital staff privileges, or licenses to practice as a  
8 physician or other health care professional; or such times  
9 when the committee may be sued for actions taken to deny,  
10 restrict, or revoke the staff privileges, or license to  
11 practice of a physician or other health care provider.

12 (d) The prohibitions in this Section do not  
13 exclude the discovery or use of relevant evidence in any  
14 criminal action; and shall not limit the authority to  
15 obtain such information by subpoena or other authorized  
16 process from the committees for uses relating to matter and  
17 investigations within the jurisdiction of health care  
18 licensing boards."

12/27/89  
8:44 a.m.

**Introduced**

TWENTIETH GUAM LEGISLATURE  
1989 (First) Regular Session

DEC 28 '89

Bill No. 1115 (COR)

Introduced By:

M. Z. BORDALLO *MZB*

AN ACT TO ADD A NEW SECTION 3285 TO ARTICLE 1,  
CHAPTER 1, PART 1, OF THE CIVIL CODE OF GUAM  
RELATIVE TO CIVIL IMMUNITY FOR PARTICIPANTS  
IN MEDICAL PEER REVIEW ACTIVITIES

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

2 Section 1. A new Section 3285 is added to Article 1,  
3 Chapter 1, Part 1 of the Civil Code of Guam to read as  
4 follows:

5 "Section 3285. (a) Civil Immunity for Physician or  
6 Dentist Members of Certain Boards and Committees. Any  
7 physician or dentist who is actively engaged in the  
8 practice of his profession shall be immune from civil  
9 liability for any act, decision, or omission done or made  
10 in performance of his duties as a member or agent of any  
11 committee, board, group, commission, or other entity,  
12 including the Guam Memorial Hospital Authority and the  
13 organized medical staff thereof, when said committee,  
14 board, group, commission or entity functions primarily:

15 (i) to investigate any complaint that a physical  
16 or mental impairment, including alcoholism or drug  
17 addiction, had impaired the ability of any physician or  
18 dentist to practice his profession, and to encourage,  
19 recommend and arrange for a course of treatment, if deemed  
20 appropriate, or

21 (ii) to review the duration of patient stays in

1 health facilities or professional services furnished with  
2 respect to the medical or dental necessity for such  
3 services, for the purpose of promoting the most efficient  
4 use of available health facilities and services, the  
5 adequacy or quality of professional services, or the  
6 reasonableness of charges made by or on behalf of physicians  
7 or dentists, or

8 (iii) to resolve questions concerning the  
9 admission of any member to, or the taking of disciplinary  
10 action against any member of, any medical society or  
11 association affiliated with the American Medical Association  
12 or American Dental Association; provided that such entity  
13 has been established and duly constituted by a public  
14 hospital, or a medical or dental society or association  
15 affiliated with the American Medical Association or the  
16 American Dental Association or with a governmental agency  
17 and provided that such act, decision, or omission is not  
18 done or made in bad faith or with malicious intent. The  
19 immunity provided hereunder shall not extend to any person  
20 with respect to actions, decisions, or omissions, the  
21 liability for which is limited under the provisions of the  
22 federal Social Security Act or amendments thereto.

23 (b) Civil Immunity of Members of or Consultants to  
24 certain Boards or Committees. Every member of, or health  
25 care professional consultant to, any committee, board,  
26 group, commission, or other entity, including the Guam  
27 Memorial Hospital Authority and the organized Medical Staff  
28 thereof shall be immune from civil liability for any act,  
29 decision, omission, or utterance done or made in performance  
30 of his duties while serving as a member or consultant to

1 such committee, board, group, commission, or other entity,  
2 including the Guam Memorial Hospital Authority and the  
3 Medical Staff thereof, when said committee, board, group,  
4 commission or other entity functions primarily to review,  
5 evaluate, or make recommendations on

6 (i) the duration of patient stays in health care  
7 facilities,

8 (ii) the professional services furnished with  
9 respect to the medical or dental necessity for such  
10 services,

11 (iii) the purpose of promoting the most efficient  
12 use of available health care facilities and services,

13 (iv) the adequacy or quality of professional  
14 services,

15 (v) the competency and qualifications for  
16 professional staff privileges, or

17 (vi) the reasonableness or appropriateness of  
18 charges made by or on behalf of health care facilities;  
19 provided that such entity has been established pursuant to  
20 federal or Territorial law or regulation, or pursuant to the  
21 Joint Commission on Accreditation of Healthcare  
22 Organizations, or established and duly constituted by a  
23 hospital, or with a governmental agency and provided further  
24 that such act, decision, omission, or utterance is not done  
25 or made in bad faith or with malicious intent."



Article 4 Relevancy and its Limits

§401. Definition of "Relevant Evidence".

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

SOURCE: Rule 401, FRE.

§402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible.

All relevant evidence is admissible except as otherwise provided by the Constitution of the United States, by Act of the Guam Legislature, or by these Rules. Evidence which is not relevant is not admissible.

SOURCE: Rule 402, FRE.

COMMENT: The Guam Rules omit reference to "other Rules prescribed by the Supreme Court pursuant to statutory authority." The reason for this omission is clear, because the Supreme Court has no statutory authority to prescribe Rules for the Guam courts other than the District Court, over which the Legislature of Guam has no control.

§403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

SOURCE: Rule 403, FRE.

§404. Character Evidence Admissible to Prove Conduct; Exceptions; Other Crimes.

(a) Character evidence generally. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(1) Character of accused. Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;

(2) Character of victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Character of witness. Evidence of the character of a witness, as provided in §§607, 608 and 609.

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

SOURCE: Rule 404, FRE.

COMMENT: This Section is modified by new §2080 of the Civil Procedure Code [§8207 of Division 2 of this Title] relative to reputation or opinion evidence of a person's past sexual behavior. With respect to this Section, the Legislature provided, in Section 6 of P.L. 15-60:

"Notwithstanding the provisions of §66 of the Civil Procedure Code, the Judicial Council shall not have the power to prescribe any Rule of Evidence abolishing or abridging the requirements set forth in §2080 of the Code of Civil Procedure. The Editor shall note the provision of this Section in a footnote to §2080 of the Civil Procedure Code."

§405. Methods of Proving Character.

(a) Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.

SOURCE: Rule 405, FRE.

6 GCA - Division 1 - Rules of Evidence

§406. Habit; Routine Practice.

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

SOURCE: Rule 406, FRE.

§407. Subsequent Remedial Measures.

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This Rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

SOURCE: Rule 407, FRE.

§408. Compromise and Offers to Compromise.

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This Rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This Rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

SOURCE: Rule 408, FRE.

§409. Payment of Medical and Similar Expenses.

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

SOURCE: Rule 409, FRE.

6 GCA - Division 1 - Rules of Evidence

§410. Offer to Plead Guilty; Nolo Contendere; Withdrawn

Plea of Guilty.

Except as otherwise provided by Act of the Guam Legislature, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with any of the foregoing plea or offers, is not admissible in any civil or criminal action, case, or proceeding against the person who made the plea or offer. This Rule shall not apply to the introduction of voluntary and reliable statements made in court on the record in connection with any of the foregoing pleas or offers where offered for impeachment purposes or in a subsequent prosecution of the declarant for perjury or false statement.

This Rule shall be superseded by any amendment to the Criminal Procedure Code of Guam which is inconsistent with this Rule, and which takes effect after the date this Division become effective.

SOURCE: Rule 410, FRE.

COMMENT: Two changes to this Section. The first reflects a change to refer to the Guam Legislature instead of Congress. The second change refers to the fact that this Rule may be superseded by any amendment to the Criminal Procedure Code of Guam, not to the Federal Rules of Criminal Procedure, which amendment takes effect after the effective date of these Rules.

§411. Liability Insurance.

Evidence that a person was or was not insured against liability is not admissible upon the issue whether he acted negligently or otherwise wrongfully. This Rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

SOURCE: Rule 411, FRE.

§ 3268

CIVIL CODE

TITLE XVI

General Provisions

§ 3268 Parties may waive code provisions.

§ 3268. Parties may waive code provisions. Except where it is otherwise declared, the provisions of the foregoing Titles of this Part, in respect to the rights and obligations of parties to contracts, are subordinate to the intention of the parties, when ascertained in the manner prescribed by the Chapter on the interpretation of contracts; and the benefit thereof may be waived by any party entitled thereto, unless such waiver would be against public policy. [Enacted 1953.]

#### DIVISION FOURTH

- Part I. Relief.
- II. Special Relations of Debtor and Creditor
- III. Nuisance.
- IV. Maxims of Jurisprudence.

PART I

Relief

- Title I. Relief in General.
- II. Compensatory Relief.
- III. Specific and Preventive Relief.

TITLE I

Relief in General

- § 3274 Species of relief
- § 3275 Relief in case of forfeiture.

§ 3274. Species of relief. As a general rule, compensation is a relief or remedy provided by the law of this territory for the violation of private rights, and the means of securing their observance; and specific and preventive relief may be given in no other cases than those specified in this part of the Civil Code or in the Code of Civil Procedure. [Enacted 1953.]

§ 3275. Relief in case of forfeiture. Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, wilful, or fraudulent breach of duty. [Enacted 1953.]

TITLE II

Compensatory Relief

- Chapter I. Damages in General.
- II. Measure of Damages.

CHAPTER I

Damages in General

- Article I. General Principles.
- II. Interest as Damages.
- III. Exemplary Damages.

ARTICLE I  
General Principles

- § 3281. Person suffering detriment may recover damages.
- § 3282. Detriment, what.
- § 3283. Injuries resulting after suit
- § 3284. Persons rendering emergency assistance exempt from civil liability.

§ 3281. Person suffering detriment may recover damages. Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages. [Enacted 1953.]

§ 3282. Detriment, what. "Detriment" is a loss or harm suffered in person or property. [Enacted 1953.]

§ 3283. Injuries resulting after suit. Damages may be awarded, in a judicial proceeding, for detriment resulting after the commencement thereof, or certain to result in the future. [Enacted 1953.]

§ 3284. Persons rendering emergency assistance exempt from civil liability. Any person licensed to practice the healing art under the laws of Guam, or any other person, who in good faith renders emergency care or assistance without compensation at the place of an emergency or accident, shall not be liable for any civil damages for acts or omissions in good faith. [Added by P.L. 7-80, effective January 31, 1964.]

ARTICLE II  
Interest as Damages

- § 3287. Persons entitled, damages, also interest thereon.
- § 3288. In actions, noncontract
- § 3289. Limit rate by contract.
- § 3290. Acceptance of principal waives interest.

§ 3287. Persons entitled, damages, also interest thereon. Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him, upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the

creditor, from paying the debt. [Enacted 1953.] [Capital Ins. Co. v. Globe Indemnity (1967), 382 F.2d. 623.]

§ 3288. In actions, noncontract. In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given [Enacted 1953.]

§ 3289. Limit rate by contract. Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a judgment or other new obligation. [Enacted 1953.]

§ 3290. Acceptance of principal waives interest. Accepting payment of the whole principal, as such, waives all claim to interest. [Enacted 1953.]

ARTICLE III  
Exemplary Damages

§ 3294. Exemplary damages, when allowed.

§ 3294. Exemplary damages, when allowed. In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, express or implied, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant. [Enacted 1953.]

CHAPTER II  
Measure of Damages

- Article I. Damages for Breach of Contract.
- II. Damages for Wrongs.
- III. Penal Damages.
- IV. General Provisions.

Section 17. The sum of Ten Thousand Dollars (\$10,000) is appropriated from the General Fund to the Guam Youth Football League.

Section 18. (a) The Governor of Guam is authorized to negotiate for fair market value for the acquisition by the government of Guam of that parcel of land in the municipality of Agana Heights identified on the Department of Land Management Record as Document No. 35063 consisting of one thousand five hundred fifty-three and sixty-eight hundredths (1,553.68) square meters for community and recreational facilities.

(b) The Governor of Guam is authorized to negotiate for fair market value for the acquisition by the government of Guam of that parcel of land in the municipality of Agana Heights identified on the Department of Land Management Record as Document No. 323478 consisting of two thousand eighty-three and seventeen hundredths (2,083.17) square meters for community and recreational facilities.

(c) The acquisition of the lands identified in Subsections (a) and (b) of this Section shall not be final until approved by legislation other than that contained in this Section.

(d) The parcel of lands identified in Subsections (a) and (b) of this Section shall, following acquisition, be placed under the administration of the Commissioner of Agana Heights.

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Section 19. A new 10 GCA §12231 is added to read:

"§12231. Good Faith Immunity.

No member of the Commission on Licensure to practice the healing arts, the Guam Board of Medical Examiners, the Guam Board of Nurse Examiners, the Guam Board of Examiners for Optometry or the Guam Board of Examiners for Pharmacy shall be liable in any civil action for damages for any act done or omitted in good faith in performing the functions of his office."

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Section 20. The Governor of Guam is authorized to convey: Lot No. 2417-1-5, Mangilao, Municipality of Barrigada, Guam, containing an area of 7,687 Square Feet to George Q. Acfalle and Jeonalina Acfalle for fair market value.

Section 21. (a) The sum of Thirteen Million One Hundred Twenty-four Thousand Three Hundred Forty-two Dollars (\$13,124,342) is appropriated from the General Fund to the Guam Power Authority for the purpose of liquidating metered billings and penalties incurred by government of Guam line agencies and autonomous agencies, for the periods ending up through September 30, 1986.

for the development of norms of health care services by Professional Standards Review Organizations, was omitted in the general revision of this part by section 143 of Pub.L. 97-248.

**Effective Date.** Section effective with respect to contracts entered into or renewed on

or after Sept. 3, 1982, see section 149 of Pub.L. 97-248, set out as an Effective Date note under section 1320c of this title.

**Legislative History.** For legislative history and purpose of Pub.L. 97-248, see 1982 U.S. Code Cong. and Adm. News, p. 781.

#### West's Federal Forms

Sentence and fine, see § 7531 et seq.

#### Code of Federal Regulations

Imposition of sanctions on health care practitioners and providers of health care services, see 42 CFR 474.0 et seq.

Professional Standards Review Organization area designations, see 42 CFR 460.1 et seq.  
Program integrity, see 42 CFR 455.1 et seq.

#### Notes of Decisions

Constitutionality 1  
Medical necessity 3  
Procedural due process 2

##### 1. Constitutionality

Former section 1320c-9(a) of this title which set forth conditions for having been compensated by federal funds for medicare and medicaid programs, did not bar physicians from practicing their profession and was not so patently arbitrary and totally lacking in rational justification as to be violative of the due process clause of U.S.C.A. Const. Amend. 5. *Association of Am. Physicians and Surgeons v. Weinberger*, D.C.Ill.1975, 395 F.Supp. 125, affirmed 96 S.Ct. 388, 423 U.S. 975, 46 L.Ed.2d 299.

Former section 1320c-9(a) of this title merely required practitioners to furnish evidence of their services in order to be compensated and did not violate U.S.C.A. Const. Amend. 5, by having created presumptions inconsistent with presumptions of competence, good moral character and regularity of motive and conduct inherent in medical licensure. *Id.*

Test of whether former provisions of this part was unconstitutionally vague, and repugnant to U.S.C.A. Const. Amend. 5, was whether members of medical profession would necessarily have to guess at meaning of

phrases set forth in such former provisions of this part, such as "medically necessary," "professionally recognized health care standards," and "proper care", and while such phrases were not highly specific, language of legislation was not impermissibly vague or uncertain. *Id.*

##### 2. Procedural due process

Former section 1320c-9 of this title satisfied the demands of procedural due process by apprising practitioner or provider of any adverse determination and by affording him opportunity to be heard either by Secretary or by avenue of judicial review. *Association of Am. Physicians and Surgeons v. Weinberger*, D.C.Ill.1975, 395 F.Supp. 125, affirmed 96 S.Ct. 388, 423 U.S. 975, 46 L.Ed.2d 299.

##### 3. Medical necessity

Former section 1320c-9 of this title did not prohibit physician from performing any surgical operations he deemed necessary in exercise of his professional skill and judgment but merely provided that if physician wished to be compensated by federal government for his services he must comply with certain guidelines and procedures enumerated in such former provisions of this title. *Association of Am. Physicians and Surgeons v. Weinberger*, D.C.Ill.1975, 395 F.Supp. 125, affirmed 96 S.Ct. 388, 423 U.S. 975, 46 L.Ed.2d 299.

## § 1320c-6. Limitation on liability

### (a) Providers of information to organizations having contract with Secretary

Notwithstanding any other provision of law, no person providing information to any organization having a contract with the Secretary under this

shall be held, by reason of having provided such information, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) unless—

- (1) such information is unrelated to the performance of the contract of such organization; or
- (2) such information is false and the person providing it knew, or had reason to believe, that such information was false.

**(b) Employees and fiduciaries of organizations having contracts with Secretary**

No person who is employed by, or who has a fiduciary relationship with, such organization or who furnishes professional services to such organization shall be held by reason of the performance by him of any duty, function, or activity required or authorized pursuant to this part or to a valid contract entered into under this part, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) provided he has exercised due care.

**(c) Physicians and providers**

No doctor of medicine or osteopathy and no provider (including directors, trustees, employees, or officials thereof) of health care services shall be civilly liable to any person under any law of the United States or of any State (or political subdivision thereof) on account of any action taken by him in compliance with or reliance upon professionally developed norms of care and treatment applied by an organization under contract pursuant to section 1320c-2 of this title operating in the area where such doctor of medicine or osteopathy or provider took such action; but only if—

- (1) he takes such action in the exercise of his profession as a doctor of medicine or osteopathy or in the exercise of his functions as a provider of health care services; and
- (2) he exercised due care in all professional conduct taken or directed by him and reasonably related to, and resulting from, the actions taken in compliance with or reliance upon such professionally accepted norms of care and treatment.

**(d) Reimbursement by Secretary for expenses incurred in defense of legal proceedings**

The Secretary shall make payment to an organization under contract with him pursuant to this part, or to any member or employee thereof, or to any person who furnishes legal counsel or services to such organization, in an amount equal to the reasonable amount of the expenses incurred, as determined by the Secretary, in connection with the defense of any suit, action, or proceeding brought against such organization, member, or employee related to the performance of any duty or function under such contract by such organization, member, or employee.

(Pub. L. 97-248, § 143, 96 Stat. 389.)

Given Terrorism Law Lib-97  
 FBI Operations Unit  
 11/11/97



**Historical Note**

**Prior Provisions.** A prior section 1320c-6, Act Aug. 14, 1935, c. 531, Title XI, § 1157, as added Oct. 30, 1972, Pub.L. 92-603, Title II, § 249F(b), 36 Stat. 1437, and amended Oct. 25, 1977, Pub.L. 95-142, § 13(b)(4), 91 Stat. 1198, which related to the submission of reports by Professional Standards Review Organizations, was omitted in the general revision of this part by section 143 of Pub.L. 97-248.

**Effective Date.** Section effective with respect to contracts entered into or renewed or after Sept. 3, 1982, see section 149 of Pub.L. 97-248, set out as an Effective Date note under section 1320c of this title.

**Legislative History.** For legislative history and purpose of Pub.L. 97-248, see 1982 U.S. Code Cong. and Adm. News, p. 781.

**Notes of Decisions****Compliance with norms of care 1  
Persons entitled to maintain action 2**

civil liability. *Association of Am. Physicians and Surgeons v. Weinberger*, D.C. Ill. 1975, 395 F.Supp. 125, affirmed 96 S.Ct. 388, 42 U.S. 975, 46 L.Ed.2d 299.

**1. Compliance with norms of care**

Where norms which were to have been established and which plaintiffs would have had to comply with were, by definition, typical medical practices, risk of civil liability would have arisen from common law standards of negligence, not from former section 1320c-16 of this title and, in any event, possibility of exposure to civil liabilities sometime in futuro as result of complying with norms would not have amounted to that type of real and immediate threat of injury giving rise to actual case or controversy and, accordingly, court did not reach issue as to whether this part would unconstitutionally have exposed plaintiffs to

**2. Persons entitled to maintain action**

Proper parties to raise constitutional objections to limitations of liability contained in former section 1320c-16 of this title would have been beneficiaries or recipients under medicare and medicaid programs, and physician lacked requisite standing to challenge constitutionality of such limitations on ground that Congress lacked authority to grant legal immunity against common law tort liability. *Association of Am. Physicians and Surgeons v. Weinberger*, D.C. Ill. 1975, 395 F.Supp. 125, affirmed 96 S.Ct. 388, 42 U.S. 975, 46 L.Ed.2d 299.

**§ 1320c-7. Application of this part to certain State programs receiving Federal financial assistance****(a) State plan provision that functions of peer review organizations may be performed by contract with such organization**

A State plan approved under subchapter XIX of this chapter may provide that the functions specified in section 1320c-3 of this title may be performed in an area by contract with a utilization and quality control peer review organization that has entered into a contract with the Secretary in accordance with the provisions of section 1395y(g) of this title.

**(b) Federal share of expenditures**

In the event a State enters into a contract in accordance with subsection (a) of this section, the Federal share of the expenditures made to the contracting organization for its costs in the performance of its functions under the State plan shall be 75 percent (as provided in section 1396b(a)(3)(C) of this title).

(Aug. 14, 1935, c. 531, Title XI, § 1158, as added Sept. 3, 1982, Pub.L. 97-248, Title I, § 143, 96 Stat. 390.)

# UNITED STATES CODE ANNOTATED

Title 42  
**The Public Health and Welfare**  
§§ 1001 to 1399

1989  
Supplementary Pamphlet  
*Covering Years 1984 to 1988*  
Replacing 1988 Supplementary Pamphlet

Includes the Laws of the  
100th CONGRESS, SECOND SESSION (1988)

For close of Notes of Decisions  
See page III

For Later Laws and Cases  
Consult  
USCA  
Interim Pamphlet Service

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lines for peer-review organizations were not followed, so that case, which resulted in doctor's suspension from receiving reimbursement for services rendered to Medicare patients should be remanded for administrative proceedings that complied with new rules, new rules or regulations did not apply retroactively to case, in which all of presuspension proceedings took place more than a year previously. *Varandani v. Bowen*, C.A.4 (Va.) 1987, 824 F.2d 307, certiorari dismissed 108 S.Ct. 1000, 98 L.Ed.2d 968

#### 4. Photocopy costs

Action of Department of Health and Human Services in promulgating regulation requiring Medicare providers to incur without reimbursement certain administrative costs of peer review, including photocopying, of their treatment of Medicare patients, was not based on consideration

of all relevant factors, so that Secretary would be enjoined from enforcing provisions of regulation which require hospitals to photocopy and deliver to peer review organization, without charge, all information required for peer review activities. *Burlington Memorial Hosp. v. Bowen*, W.D.Wis. 1986, 644 F.Supp. 1020

#### 5. Suspension

Substantial evidence supported five-year suspension of physician from participation in Medicare and Medicaid programs where body of relevant evidence supported finding that physician performed unnecessary surgery, prescribed inappropriate or inadequate medication, and poorly documented necessity of admission or procedure. *Hall v. Bowen*, W.D.Ark. 1986, 648 F.Supp. 166, affirmed 830 F.2d 906

### § 1320c-6. Limitation on liability

#### Law Review Commentaries

Rethinking medical malpractice law in light of Medicare cost-cutting. 98 *Harvard L.Rev.* 1004 (1985).

### § 1320c-9. Prohibition against disclosure of information

[See main volume for text of (a)]

#### (b) Disclosure of information permitted

An organization having a contract with the Secretary under this part shall provide in accordance with procedures and safeguards established by the Secretary, data and information—

- (1) which may identify specific providers or practitioners as may be necessary—

[See main volume for text of (A) and (B)]

(C) to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners or to assist national accreditation bodies acting pursuant to section 1395bb of this title in accrediting providers for purposes of meeting the conditions described in subchapter XVIII of this chapter, which data and information shall be provided by the peer review organization to any such agency or body at the request of such agency or body relating to a specific case or to a possible pattern of substandard care, but only to the extent that such data and information are required by the agency or body to carry out its respective function which is within the jurisdiction of the agency or body under State law or under section 1395bb of this title;

[See main volume for text of (2); (c) and (d)]

#### (e) Organizations with contracts

For purposes of this section and section 1320c-6 of this title, the term "organization with a contract with the Secretary under this part" includes an entity with a contract with the Secretary under section 1320c-3(a)(4)(C) of this title.

(As amended Oct. 21, 1986, Pub.L. 99-509, Title IX, § 9353(d), 100 Stat. 2047; Dec. 22, 1987, Pub.L. 100-208, Title IV, § 4039(h)(6), as added July 1, 1988, Pub.L. 100-380, Title IV, § 411(e)(3), 102 Stat. 776.)

1988 Amendment. Subsec. (e). Pub.L. 100-360, § 411(e)(3), added section 4039(h)(6) of Pub.L. 100-203 which added subsec. (e).

1986 Amendment. Subsec. (b)(1)(C). Pub.L. 99-509, § 9353(d)(1), added "or to assist national accreditation bodies acting pursuant to section

1395bb of this title in accrediting providers for purposes of meeting the conditions described in subchapter XVIII of this chapter" added "or body" following "agency" wherever appearing, added "or to a possible pattern of substandard care" following "specific case", substituted "are



# GUAM MEMORIAL HOSPITAL AUTHORITY

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## TESTIMONY BEFORE THE COMMITTEE ON HEALTH, WELFARE & ECOLOGY ON BILLS 1114 & 1115

February 13, 1990

Good afternoon, Madame Chair and members of the Committee on Health, Welfare and Ecology:

The hospital's efforts to gain accreditation from the Joint Commission on Accreditation of Healthcare Organizations later this year are in full swing. Our Capital Improvement Projects to upgrade our plant facilities and services are ahead of schedule, and our quality assurance monitoring mechanisms are in place.

During the last several years, the major emphasis for accreditation has been on QA activities. Bill Nos. 1114 Peer Review and 1115 Civil Immunity are certainly mechanisms which address concerns shared by many of the physicians as they review the delivery of patient care and services. Indeed, physicians are a critical part of quality assurance activities; and in some instances, accreditation has been denied because an institution's medical staff does not participate in these important activities.

The Bills, however, do not include other health professionals who participate in the Peer Review Process, and we would like to recommend that the Committee consider protection to these individuals as well.

The issue of peer review and immunity has been before this Committee, and we appreciate another opportunity to present our position on this issue. We need this legislation in order to encourage our Medical Staff and professionals to implement an effective review process which will assure quality patient care and services, and appreciate your favorable consideration.

  
ROSIE R. TAINATONGO  
Chairperson, Board of Trustees





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## TESTIMONY ON BILL 1114 & 1115 BEFORE THE COMMITTEE ON HEALTH, WELFARE & ECOLOGY

February 13, 1990

Good afternoon, Madame Chair and Members of the committee on Health, Welfare and Ecology:

Thank you for the opportunity to provide testimony to Bills 1114 and 1115 which are critically needed and important pieces of legislation, related to Peer Review and Civil Immunity for medical review activities. These bills are timely because of the hospital's intensive efforts to gaining accreditation from national regulatory agencies. These bills will provide a mechanism for the hospital to protect the information contained in patient's medical records, keeping in mind the hospital's foremost responsibility for and obligation to is the patient.

There is a concern that should be addressed that may have been overlooked and this is related to the exclusion of other health professionals such as allied health professionals in these landmark pieces of legislation. These other professionals need to have mechanisms to protect the review of the quality of care they provide.

The hospital encourages this committee to recommend passage by the legislature of these pieces of legislation with appropriate modifications.

  
GEORGE B. PALICAN  
Hospital Administrator



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Honorable Madeleine Z. Bordallo  
Chairperson, Committee on Health,  
Welfare & Ecology  
Twentieth Guam Legislature  
Agana, Guam 96910

Dear Senator Bordallo:

We, the members of the GMHA Medical Staff, gratefully acknowledge your efforts in establishing physician peer review activities as privileged information. As physicians interested in improving healthcare for the people of Guam, we believe the following bills are urgently needed:

**BILL NO. 1114** - "An Act to Authorize Certain Medical Peer Review Activities and to Establish Written Records of Peer Review Activities as Privileged Information."

**BILL NO. 1115** - "An Act to Add a new Section 3285 to Article 1, Chapter 1, Part 1, of the Civil Code of Guam Relative to Civil Immunity for Participants in Medical Review Activities."

In order for GMHA to achieve accreditation by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), physician peer review activities must be documented with follow-up action geared to improving patient care. The above-referenced bills, with necessary modifications will do much to assure confidentiality of records pertaining to peer review activities and credentialing of physicians.

We offer our assistance in securing passage of these important pieces of legislation.

Thank you for your attention to this important matter.

Si Yuus Maase.

The GMHA Medical Staff

cc: Governor Joseph F. Ada  
Speaker, Twentieth Guam Legislature  
All Senators of the Twentieth Guam Legislature  
Chairperson, Board of Trustees, GMHA

We, the undersigned (members of the Guam Memorial Hospital Authority Medical Staff) support the passage of Bill No. 1114 and 1115 and concur with the attached letter addressed to the Chairperson, Committee on Health, Welfare and Ecology, Twentieth Guam Legislature.

PRINT PHYSICIAN NAME	SIGNATURE	DATE
Don Preston MD	Don Preston	1/31/90
NIGEL L. KENT M.D.	Nigel Kent	1/21/90
Perry A. Peterson MD	Perry A. Peterson MD	2/1/90
Jose C. CARACIA	Jose C. Caracia	2/1/90
ERNESTO C. HAVILL	Ernesto C. Havill	2/1/90
James Studler MD	James Studler MD	2/1/90
Stanley C. Chen, DDS	Stanley C. Chen DDS	2/1/90
Edmund F. Schroeder MD	Edmund F. Schroeder MD	2-1-90
<del>FANIA KAEHELE</del>	<del>Fania Kaehale</del>	<del>2/1/90</del>
Thomas Rozycski MD	T. Rozycski	2/1/90
R. Wade Covill MD	R. Wade Covill MD	2/1/90
JON DALLMAN DDS	Jon Dallman DDS	2/1/90
J. A. J. M.D.	J. A. J. M.D.	2/1/90
Tiecke	T. Tiecke, MD	1 Feb 90
Nixt	James Nixt MD	2-1-90
S. V. SIRILAN	S. V. Sirilan MD	2/1/90
S. BRADLEY	S. Bradley	2-1-90
R. D. BASILIO, MD	R. D. Basilio MD	2/1/90
<del>John G. GALEY</del>	<del>John G. Galey</del>	<del>2/1/90</del>
R. Platt	R. Platt	2/1/90
JOHN DUNN	John Dunn	2/1/90
ANIS G. ARGUELES	Anis G. Argueles MD	2/1/90
V. PATOFON	V. Patofon	2/1/90

MEDSTAFF

We, the undersigned (members of the Guam Memorial Hospital Authority Medical Staff) support the passage of Bill No. 1114 and 1115 and concur with the attached letter addressed to the Chairperson, Committee on Health Welfare and Ecology, Twentieth Guam Legislature.

PRINT PHYSICIAN NAME	SIGNATURE	DATE
W. CHRIS PEREZ	<i>[Signature]</i>	2/1/90
JOHN C STEELE	<i>[Signature]</i>	2/1/90
THE CLIVIA CRUZ	<i>[Signature]</i>	2/1/90
RONALD TABLANIT	<i>[Signature]</i>	2/6/90
A.L. SALCEDO	<i>[Signature]</i>	2/13/90
CONSOLACION @ TRUIDAD	<i>[Signature]</i>	2/13/90
H. B. HERRIN	<i>[Signature]</i>	2/13/90
SORIANO	<i>[Signature]</i>	2/13/90
S. TOLENTINO	<i>[Signature]</i>	2/13/90
JOSEPH N. NOZAKI	<i>[Signature]</i>	2/13/90
JAN A. BOLLINGER	<i>[Signature]</i>	2/13/90
ROBERT A. WEINSTEIN	<i>[Signature]</i>	2-13-90
N. B. LOWE-ROACHE	<i>[Signature]</i>	
L. BASILIO	<i>[Signature]</i>	2-13-90
S. KALLINGAL	<i>[Signature]</i>	2/13/90
P.S. GUZMAN	<i>[Signature]</i>	2/13/90
A. MATHEW	<i>[Signature]</i>	2/13/90
STEVEN W. HILDEBRAND MD	<i>[Signature]</i>	2/13/90
F. LIZAMA	<i>[Signature]</i>	2/13/90
VINCENT LOZAMA	<i>[Signature]</i>	2/13/90
Kim Chen	<i>[Signature]</i>	2/13/90
R. P. C. U. N. O.	<i>[Signature]</i>	2/13/90
George Guthrie M.D.	<i>[Signature]</i>	2/13/90

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April 4, 1990

## MEMORANDUM

TO: Associate Hospital Administrator  
FROM: Medical Staff Office  
SUBJECT: Petition: Bill 1114 & 1115

The information provided by one of the physicians during the 2/13/90 Public Hearing before the Committee on Health, Welfare and Ecology of the Twentieth Guam Legislature was a mistake. It was stated that there were 75 signatures on the petition of support for the passage of the above bills. There were only 49 signatures obtained. The attendance roster during the Medical Staff meeting on 1/25/90 may have been mistaken as the petition.

Thank you.

MARY ELLEN CRUZ, RN, CPQA  
Supervisor

cc: Chairman, Executive Committee



COMMITTEE ON HEALTH, WELFARE AND ECOLOGY

DATE: Feb. 13, 1990

Bill No. 1114

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NAME PRINT:	SIGN:	TESTIMONY		AGENCY / INTEREST GROUP	COMMENT	
		WRITTEN:	ORAL:		FAVOR:	AGAINST:
F.J. WERTHMAN MD.	<i>Werthmann</i>	✓	✓			
O. CRUZ, MD	<i>Olivia Cruz</i>		✓	GAMA	✓	

DEC 28 '89

TWENTIETH GUAM LEGISLATURE  
1989 (First) Regular Session

Bill No. 1114(COR)

Introduced By:

M. Z. BORDALLO *MZB*

---

AN ACT TO AUTHORIZE CERTAIN MEDICAL PEER REVIEW  
ACTIVITIES AND TO ESTABLISH WRITTEN RECORDS  
OF MEDICAL PEER REVIEW ACTIVITIES AS PRIVILEGED INFORMATION

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

2 Section 1. A new §412 is added to Article 4 of Title 6  
3 of the Guam Code Annotated to read:

4 "§412. Records of Medical Study of In-hospital Staff  
5 Committees.

6 (a) In-hospital medical or medical-dental staff  
7 committees of a licensed hospital may engage in research  
8 and medical or dental study for the purpose of reducing the  
9 morbidity or mortality, and may make findings and  
10 recommendations relating to such purpose. Except as  
11 provided in subsection (b), the written records of  
12 interviews, reports, statements, or memoranda or such  
13 in-hospital medical or medical dental staff committees are  
14 subject to the provisions of title 6 of the Guam Code  
15 Annotated and the Guam Rules of Civil Procedure (relating  
16 to discovery proceedings) but, subject to subsections (c)  
17 and (d), shall not be admitted as evidence in any action or  
18 before any administrative body, agency, or person.

19 (b) The disclosure, with or without the consent of  
20 the patient, of information concerning him to such  
21 in-hospital medical or medical dental staff committees does

1 not make unprivileged any information that would otherwise  
2 be privileged under said laws or rules, such information is  
3 subject to discovery under subsection (a) except that the  
4 identity of any patient may not be discovered under  
5 subsection (a) unless the patient consents to such  
6 disclosure.

7 (c) This section does not affect the admissibility  
8 in evidence of the original medical or dental records of  
9 any patient.

10 (d) This section does not exclude evidence which  
11 is relevant evidence in a criminal action."

12 Section 2. A new §413 is added to Article 4 of Title 6  
13 of the Guam Code Annotated to read:

14 "§413. Proceedings and Records of Medical and  
15 Medical-Dental Staff Review Committees.

16 (a) Neither the proceedings nor the records of  
17 organized committees of medical, or medical-dental staff in  
18 hospitals having the responsibility of evaluation and  
19 improvement of the quality of care rendered in the hospital  
20 or medical or dental review committees shall be subject to  
21 discovery.

22 (b) Except as hereinafter provided, no person in  
23 attendance at a meeting of any of those committees shall be  
24 required to testify as to what transpired at the meeting.

25 (c) The prohibition relating to discovery or  
26 testimony does not apply to the statements made by any  
27 person in attendance at a meeting of any of those  
28 committees who is party to an action or proceeding the  
29 subject matter of which was reviewed at that meeting, or to  
30 any person requesting hospital staff privileges, or in any

1 action against an insurance carrier alleging bad faith by  
2 the carrier in refusing to accept a settlement offer within  
3 policy limits.

4 (d) The prohibitions in this section do not apply  
5 to medical or dental committees that exceed twenty-five  
6 percent (25%) of the membership of the staff, nor to any of  
7 those committees, if any person serves upon the committee  
8 when his or her own conduct or practice is being reviewed.

9 (e) The provisions of this section do not exclude  
10 the discovery or use of relevant evidence in a criminal  
11 action."

12 Section 3. A new §414 is added to Article 4 of Title 6  
13 of the Guam Code Annotated to read:

14 "§414. Proceedings and Records of Peer and Utilization  
15 Review Committees.

16 (a) The proceedings, findings, deliberations,  
17 reports, and minutes of peer review and utilization review  
18 committees concerning the health care provided to any  
19 patient shall be considered privileged and not subject to  
20 discovery, subpoena, or other means of legal compulsion for  
21 their release to any person or entity or be admissible as  
22 evidence in any Judicial or Administrative action for  
23 failure to provide appropriate care.

24 (b) Except as hereinafter provided, no person who  
25 was in attendance of any such committee proceeding shall be  
26 required to disclose any information acquired in connection  
27 with or in the course of such proceedings or to disclose  
28 any opinion, recommendation or evaluation of the committees  
29 formed at any such meeting.

30 (c) The prohibition relating to discovery or

---

1 testimony does not apply to the statements made by any  
2 person in attendance at such committee meeting, who is  
3 party to any action or proceeding, the subject matters of  
4 which was reviewed at the meeting; or to any judicial or  
5 administrative action brought by a peer review committee or  
6 other legal entity formed to deny, restrict, or revoke  
7 hospital staff privileges, or licenses to practice as a  
8 physician or other health care professional; or such times  
9 when the committee may be sued for actions taken to deny,  
10 restrict, or revoke the staff privileges, or license to  
11 practice of a physician or other health care provider.

12 (d) The prohibitions in this Section do not  
13 exclude the discovery or use of relevant evidence in any  
14 criminal action; and shall not limit the authority to  
15 obtain such information by subpoena or other authorized  
16 process from the committees for uses relating to matter and  
17 investigations within the jurisdiction of health care  
18 licensing boards."

---