

TWENTY-FIRST GUAM LEGISLATURE
1991 (FIRST) Regular Session

Bill No. _____

Introduced By: _____

AN ACT TO REPEAL P.L. 13-115 AND ADD A NEW
CHAPTER XV TO TITLE X OF THE GOVERNMENT CODE
OF GUAM TO PROVIDE FOR PROMPT AND EFFECTIVE
RESOLUTION OF MEDICAL MALPRACTICE CLAIMS.

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

2 Section 1. Chapter XV of Title X of the Government Code of
3 Guam, §§ 9900 through 9990.14, enacted by P.L. 13-115 on December
4 23, 1977, is hereby repealed in its entirety.

5 Section 2. A new Chapter XV is hereby added to Title X of the
6 Government Code of Guam to read as follows:

7 "CHAPTER XV

8 Medical Malpractice
9 Mandatory Arbitration Act

10 Section 9990. Title. This Act may be cited as the 'Medical
11 Malpractice Mandatory Arbitration Act.'

12 Section 9990.1. Definitions. As used in this chapter:

13 (a) 'Health professional' means any person licensed or
14 certified to practice the healing arts within the Territory of
15 Guam.

16 (b) 'Health care institution' means any health care
17 facility, health maintenance organization or independent practice
18 association operated primarily to provide medical services.

19 (c) 'Malpractice' means any tort or breach of contract
20 based on health care or professional services rendered or which

1 should have been rendered by a health professional or a health care
2 institution to a patient.

3 (d) 'Petitioner' means the patient, his relatives, his
4 heirs-at-law or personal representative pursuing a claim in
5 arbitration, or any third-party or other party pursuing a claim in
6 arbitration, against a health professional or health care provider.

7 (e) 'Respondent' means the health professional or health
8 care provider defending a claim in arbitration filed by a
9 Petitioner.

10 Section 9990.2. Mandatory Arbitration. Any claim that
11 accrues or is being pursued in the Territory of Guam, whether in
12 tort, contract, or otherwise, shall be submitted to binding
13 arbitration pursuant to the terms of this Act if it is a
14 controversy between the patient, his relatives, his heirs-at-law or
15 personal representative or any third-party or other party, and the
16 health professional or health care institution, or their employees
17 or agents, and is based on malpractice, tort, contract, strict
18 liability, or any other alleged violation of a legal duty incident
19 to the acts of the health professional or health care institution,
20 or incident to services rendered or to be rendered by the health
21 professional or health care institution.

22 Section 9990.3. Initiation Of Arbitration. Arbitration is
23 initiated by a petitioner or petitioners serving a written demand
24 for arbitration upon a respondent or respondents in the same manner
25 provided by law for the service of summons in the Superior Court of
26 Guam; except that the petitioner or his agent may serve the demand
27 without the necessity of it being served by a Marshal of the

1 Superior Court of Guam. The demand for arbitration shall not be
2 filed in the Superior Court of Guam, unless the petitioner or
3 petitioners require the appointment of a Guardian Ad Litem, as
4 provided for in Section 9990.8 of this Act. The demand for
5 arbitration shall state the name and address of the petitioner or
6 petitioners, identify the respondent or respondents, and shall
7 outline the factual basis of the claim and the alleged acts of
8 negligence or wrongdoing of the respondent or respondents.

9 Section 9990.4. Response To Demand. Within twenty (20) days
10 after service of a demand for arbitration, the respondent or
11 respondents shall file a response to the demand for arbitration and
12 serve it upon the petitioner or petitioners, or their attorney.
13 The response shall identify any defenses then known to the
14 respondent or respondents. If a respondent fails to file a
15 response, then the petitioner or petitioners may proceed in default
16 to appoint an arbitration panel pursuant to Section 9990.6 of the
17 this Act.

18 Section 9990.5. Applicability Of Statute Of Limitations. A
19 claim shall be waived and forever barred as against a respondent if
20 on the date the demand is served the applicable statute of
21 limitations would bar the claim or if the claim is not pursued with
22 reasonable diligence.

23 Section 9990.6. Selection Of Arbitrators. Within ten (10) (2)
24 days after the response to the demand is due or served, the
25 petitioner or petitioners shall select one arbitrator, and the
26 respondent or respondents shall select one arbitrator, and notify

1 the opposing party or parties of their choice. If a petitioner or
2 respondent fails to appoint an arbitrator within fifteen (15) days
3 after the response is due or served, the petitioner or respondent
4 that has selected an arbitrator, may select an additional
5 arbitrator on behalf of the party that has failed to select an
6 arbitrator. The two (2) selected arbitrators shall then meet and
7 choose a single neutral arbitrator. If the two (2) selected
8 arbitrators do not select a neutral arbitrator within ten (10)
9 days after being appointed, then any party to the arbitration
10 proceeding shall have the right to petition the Presiding Judge of
11 the Superior Court of Guam to select the neutral arbitrator.

12 Section 9990.7. Multiple Petitioners And Multiple
13 Respondents.

14 (a) When there are multiple petitioners, each petitioner
15 has the right to file a separate demand for arbitration, identify
16 a separate arbitrator and pursue a separate claim for arbitration
17 before a separate arbitration panel. When there are multiple
18 respondents, each respondent has the right to file a separate
19 response to a demand for arbitration, identify a separate
20 arbitrator and require the petitioner or petitioners to resolve
21 their claims before a separate arbitration panel.

22 (b) When multiple petitioners file a single claim for
23 arbitration, then the multiple petitioners shall select a single
24 arbitrator to represent their interests. In the event that the
25 multiple petitioners cannot agree to select a single arbitrator to
26 represent their interests, then each of the multiple petitioners

1 will be required to select separate arbitrators and pursue separate
2 claims for arbitration before separate arbitration panels. When
3 there are multiple respondents, then the multiple respondents shall
4 select a single arbitrator to represent their interests. In the
5 event that the multiple respondents cannot agree to select a single
6 arbitrator to represent their interests, then each of the multiple
7 respondents will be required to select separate arbitrators and
8 defend the demand for arbitration before separate arbitration
9 panels.

10 Section 9990.8. Appointment Of Guardian Ad Litem.

11 (a) When a minor, or an insane or incompetent person is
12 a petitioner, he must appear either by general guardian or a
13 Guardian Ad Litem appointed by the Superior Court of Guam. A
14 Guardian Ad Litem may be appointed in a claim for arbitration under
15 this Act when it is deemed by a judge of the Superior Court of Guam
16 expedient to represent the minor, insane, or incompetent person in
17 the arbitration proceeding, notwithstanding he may have a general
18 guardian and may have appeared by him. The general guardian or
19 Guardian Ad Litem so appearing for an infant, insane or incompetent
20 person in any arbitration proceeding shall have the power to
21 compromise the same and to agree to any settlement or decision of
22 the arbitrators to be entered therein against his ward, subject to
23 the approval of a majority of the arbitrators.

24 (b) All Guardian Ad Litem appointed by the Superior
25 Court of Guam to pursue a claim for arbitration shall be appointed
26 pursuant to § 373 of the Guam Code of Civil Procedure. Any

1 petition to appoint a Guardian Ad Litem to pursue a claim for
2 arbitration shall have a copy of the demand for arbitration
3 attached thereto.

4 Section 9990.9. Stay Of Proceedings When Suit Is Filed. If
5 any suit or proceeding is brought in the courts of Guam upon any
6 issue referable to arbitration under the Medical Malpractice
7 Mandatory Arbitration Act, the court in which said suit is pending,
8 upon being satisfied that the issue involved in such suit or
9 proceeding is referable to arbitration under this Act, shall upon
10 application of one of the parties, stay all proceedings in the
11 action until such arbitration has been had in accordance with the
12 terms of this Act.

13 Section 9990.10. Failure To Arbitrate Under This Act. The
14 party aggrieved by the alleged failure, neglect, or refusal of
15 another to arbitrate under this Act, may petition the Superior
16 Court of Guam, for an order directing that such arbitration proceed
17 in the manner provided for in this Act. Five (5) days notice in
18 writing of such application shall be served upon the party in
19 default. Service thereof shall be made in the manner provided by
20 law for the service of summons in the Superior Court of Guam. The
21 court shall hear the parties, and the court shall then make an
22 order directing the parties to proceed to arbitration in accordance
23 with the terms of this Act.

24 Section 9990.11. Service Of Documents Upon Arbitrators; Ex
25 Parte Contact. Once the arbitration panel has been selected, each
26 of the arbitrators shall be provided with a copy of the demand for

1 arbitration and any responses thereto. Each of the arbitrators
2 shall also be provided with the parties' notice to each other
3 identifying experts, witnesses, documents and arbitration briefs as
4 authorized in this Act. Any motions or requests for additional
5 discovery shall also be served upon each of the arbitrators. After
6 the neutral arbitrator has been selected, all ex parte contacts
7 with the arbitrators by the parties shall cease.

8 Section 9990.12. Witnesses Before Arbitrators. The neutral
9 arbitrator shall subpoena in writing any person to attend before
10 the arbitration panel as a witness and to bring with him or them
11 any book, record, document, or paper which may be deemed material
12 as evidence in the claim, when such a subpoena is requested by one
13 of the parties to the arbitration. The fees for such attendance
14 shall be the same as the fees of witnesses subpoenaed before the
15 Superior Court of Guam. Said subpoena shall issue in the name of
16 the neutral arbitrator and shall be directed to the said person and
17 shall be served in the same manner as subpoenas to appear and
18 testify before the Superior Court of Guam; if any person or persons
19 so subpoenaed to testify shall refuse or neglect to obey such
20 subpoena, upon petition by any party to the arbitration proceeding,
21 the Superior Court of Guam may compel the attendance of such person
22 or persons before the arbitration panel, or punish said person or
23 persons for contempt in the same manner provided by law for
24 securing the attendance of witnesses or their punishment for
25 neglect or refusal to attend in the Superior Court of Guam. The
26 Superior Court of Guam shall order a witness to pay the costs of

1 the aggrieved party, to include attorney fees, if it is determined
2 that the witness wrongfully failed to appear before the arbitration
3 panel.

4 Section 9990.13. Recordation Of Arbitration Proceedings. All
5 proceedings before the arbitrators shall be recorded by a licensed
6 stenographer in the Territory of Guam.

7 Section 9990.14. Vacancy. The party or parties making the
8 appointment of an arbitrator are authorized to substitute another
9 arbitrator if a vacancy occurs or if an appointed arbitrator is
10 unable to serve promptly.

11 Section 9990.15. Identification Of Expert Witnesses. Within
12 thirty (30) days after the neutral arbitrator has been selected,
13 any petitioner pursuing a claim against a respondent shall identify
14 the expert witnesses that the petitioner will call at the
15 arbitration hearing. When identifying such experts, the petitioner
16 shall provide the name of the expert, the address of the expert,
17 and shall state the subject matter on which the expert is expected
18 to testify, and state the substance of the facts and opinions to
19 which the expert is to testify and a summary of the grounds for
20 each opinion. Within thirty (30) days after the petitioner has
21 identified his experts, the respondent shall identify the expert
22 witnesses that the respondent will call to testify at the
23 arbitration hearing. The respondent shall provide the name of the
24 expert witness, the address of the expert witness, and state the
25 subject matter on which the expert is expected to testify, and
26 state the substance of the facts and opinions to which the expert

1 is expected to testify and a summary of the grounds for each
2 opinion.

3 Section 9990.16. Identification Of Witnesses And Documents.

4 Within thirty (30) days after the respondent has identified
5 respondent's expert witnesses, the parties shall exchange a list of
6 witnesses that they expect to call to testify at the arbitration
7 hearing along with a summary of each witnesses' proposed testimony.
8 The parties shall also provide each other with copies of all
9 documents and material that they intend to introduce as evidence at
10 the arbitration hearing.

11 Section 9990.17. Additional Discovery. Additional discovery,

12 not otherwise provided for in this Act, such as depositions,
13 interrogatories and requests to produce, shall not be permitted
14 unless:

15 (a) The parties stipulate to allow additional discovery;

16 or,

17 (b) A majority of the arbitrators at the pre-arbitration
18 conference provided for in Section 9990.18 of this Act authorize
19 additional discovery for good cause shown upon the application of
20 a party to the arbitration proceeding. The arbitrators shall
21 liberally authorize additional discovery if it is necessary in
22 order for a petitioner or respondent to more adequately present or
23 defend a claim.

24 Section 9990.18. Time And Place Of Arbitration Hearing.

25 Within thirty (30) days after the parties have exchanged their
26 lists of witnesses and provided each other with the documents that

1 the parties intend to introduce as evidence at the arbitration
2 hearing, the arbitrators shall meet at a place designated by the
3 neutral arbitrator and conduct a pre-arbitration conference for the
4 purpose of deciding upon a date and place for the arbitration
5 hearing, and for the purpose of deciding whether additional
6 discovery should be permitted pursuant to Section 9990.17 of this
7 Act. The arbitrators, or a majority of them, shall agree upon a
8 date and place for the arbitration hearing. The arbitration
9 hearing shall be conducted within ninety (90) days after the pre-
10 arbitration conference between the arbitrators and the parties.
11 Oral notice to the parties at the pre-arbitration conference of the
12 date, time and location of the arbitration hearing shall be deemed
13 sufficient.

14 Section 9990.19. Arbitration Briefs. Any arbitration brief
15 to be filed by a petitioner must be filed at least ten (10) working
16 days before the arbitration hearing. Any arbitration brief to be
17 filed by a respondent must be filed at least five (5) working days
18 before the arbitration hearing. A petitioner may file a reply
19 brief, which shall respond only to matters discussed in the
20 respondent's arbitration brief, no later than two (2) working days
21 before the arbitration hearing. There shall be no post-hearing
22 briefs unless requested or authorized by a majority of the
23 arbitrators at the arbitration hearing.

24 Section 9990.20. Representation By Counsel. Any party may be
25 represented in hearings before the arbitration panel by counsel.

1 Section 9990.21. Attendance At Hearings. Parties to the
2 arbitration and their counsel are entitled to attend all hearings.
3 Non-party witnesses may be excluded by either party upon request.

4 Section 9990.22. Oaths. The arbitrators shall require all
5 witnesses at the arbitration hearing to testify under oath.

6 Section 9990.23. Arbitration In The Absence Of A Party. The
7 arbitration may proceed in the absence of any party who, after due
8 notice, fails to be present. An award shall not be made solely on
9 the default of a party. The arbitrators shall require the
10 attending party to submit evidence.

11 Section 9990.24. Evidence. The arbitrators shall be the sole
12 judge of the relevancy and materiality of the evidence offered.

13 Section 9990.25. Evidence By Affidavit And Filing Of
14 Documents. The arbitrators may receive and consider evidence in
15 the form of an affidavit, but shall give appropriate weight to any
16 objections made. All documents to be considered by the arbitrators
17 shall be filed at the hearing. There shall be no post-hearing
18 briefs unless requested or authorized by the neutral arbitrator.

19 Section 9990.26. Adjournments. Hearings may be adjourned by
20 a majority of the arbitrators only for good cause, and an
21 appropriate fee will be charged if the arbitrators determine that
22 a party has wrongfully caused an adjournment to take place.

23 Section 9990.27. Waiver Of Statutory Rights. Any party who
24 proceeds with arbitration after knowledge that any provision of
25 this Act has not been complied with and fails to state his

1 objections thereto in writing shall be deemed to have waived his
2 right to object.

3 Section 9990.28. Cost Of Arbitration. Each party shall bear
4 its own attorney fees in the arbitration proceeding. Each party
5 shall also bear the cost of his own selected arbitrator. During
6 the course of the arbitration proceeding, the cost of the neutral
7 arbitrator shall be divided equally the parties. After the
8 arbitrators have rendered a decision, the arbitrators shall have
9 the discretion if they deem it appropriate to award the prevailing
10 party the cost that he has incurred in paying his selected
11 arbitrator and the cost incurred by the prevailing party in paying
12 the neutral arbitrator. The arbitrators shall not award to the
13 prevailing party his attorney fees.

14 Section 9990.29. Timely Award. The award of the arbitrators
15 shall be rendered promptly by the arbitrators and, unless otherwise
16 agreed by the parties, not later than fifteen (15) business days
17 from the date of the close of the hearing. However, if the
18 arbitrators fail to render an award within fifteen (15) business
19 days from the date of the close of the hearing, the arbitrators'
20 award shall not be vacated on this ground unless it can be proven
21 that a party has been seriously prejudiced due to the fact that the
22 arbitrators have not rendered an award within fifteen (15) business
23 days.

24 Section 9990.30. Form Of Award. The award shall be in
25 writing and shall be signed by the arbitrators or a majority of the

1 arbitrators. An award cannot be rendered unless it is signed by a
2 majority of the arbitrators.

3 Section 9990.31. Delivery Of Award To Parties. The parties
4 shall accept as legal delivery of the award the placing of the
5 award or a true copy thereof in the mail by the arbitrators
6 addressed to such party at its last known address or to the party's
7 attorney, or personal service of the award on the party or the
8 party's attorney.

9 Section 9990.32. Confirmation Of Award. At any time within
10 one (1) year after an award is made, any party to the arbitration
11 may apply to the Superior Court of Guam for an order confirming the
12 award, and thereupon the court must grant such an order unless the
13 award is vacated, modified, or corrected as prescribed in Sections
14 9990.33 and 9990.34 of this Act. Notice of the application shall
15 be served upon the adverse party, and thereupon the court shall
16 have jurisdiction of such party as though he had appeared generally
17 in the proceeding. If the adverse party is a resident of Guam,
18 service shall be made upon the adverse party as prescribed by law
19 for the service of a civil action in the Superior Court of Guam.
20 If the adverse party shall be a non-resident, then the notice of
21 the application shall be served in like manner as other process of
22 the Superior Court of Guam served upon non-residents.

23 Section 9990.33. Vacation Of Arbitration Award. In any of
24 the following cases, the Superior Court of Guam may make an order
25 vacating the award upon the application of any party to the
26 arbitration:

1 (a) Where the award was procured by corruption, fraud,
2 or undue means.

3 (b) Where there was evident partiality or corruption in
4 the arbitrators, or a majority of them.

5 (c) Where the arbitrators were guilty of misconduct in
6 refusing to postpone the hearing, upon sufficient cause shown, or
7 in refusing to hear evidence pertinent and material to the
8 controversy; or of any other misbehavior by which the rights of any
9 party have been prejudiced.

10 (d) Where the arbitrators exceeded their powers, or so
11 imperfectly executed them so that a mutual, final, and definite
12 award upon the subject matter submitted was not made.

13 Where an award is vacated the court shall direct a rehearing
14 by the arbitrators, or if the court deems its appropriate, shall
15 direct the parties to select new arbitrators for another
16 arbitration proceeding.

17 Section 9990.34. Modification Of Award. In any of the
18 following cases, the Superior Court of Guam may make an order
19 modifying or correcting the award upon the application of any party
20 to the arbitration:

21 (a) Where there was an evident material miscalculation
22 of figures or an evident material mistake in the description of any
23 person, thing, or property referred to in the award.

24 (b) Where the arbitrators have awarded upon a matter not
25 submitted to them, unless it is a matter not effecting the merits
26 of the decision upon the matter submitted.

1 (c) Where the award is imperfect in matter or form not
2 effecting the merits of the controversy.

3 The court may modify and correct the award so as to effect the
4 intent thereof and promote justice between the parties.

5 Section 9990.35. Notice Of Motions To Vacate Or Modify.
6 Notice of a motion to vacate, modify, or correct an award must be
7 served upon the adverse party or his attorney within three (3)
8 months after the award is served upon the party seeking to vacate,
9 modify or correct the award.

10 Section 9990.36. Right To Negotiate Private Contract For
11 Arbitration. Any petitioner or respondent has the right to
12 negotiate a private contract for arbitration, either before or
13 after the claim accrues, and in such circumstances, the terms of
14 the private contract for arbitration shall control, rather than the
15 terms of this Act.

16 Section 9990.37. Applicability To Government Of Guam And Its
17 Agencies. Claims against the Government of Guam and its agencies
18 are governed by the Government Claims Act. Thus, this Act does not
19 apply to claims against the Guam Memorial Hospital Authority or
20 other health care institutions established by the Government of
21 Guam.

22 Section 9990.38. Effective Date Of Statute. This Act shall
23 not apply to any claim that accrues before the date that the Act
24 becomes law.

25 Section 9990.39. Severability Clause. If any section or
26 sentence of this Act is deemed unconstitutional, then that section

1 or sentence shall be severed from the Act and the remainder of the
2 Act shall remain and be of full force and effect."

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GUAM MEMORIAL HOSPITAL AUTHORITY

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TESTIMONY BEFORE THE COMMITTEE ON HEALTH, WELFARE & ECOLOGY

May 20, 1991

Relative to Bill No. 256(COR) & 325
To Provide for Prompt Resolution
of Medical Malpractice Claims

Good morning Mr. Chairman and members of the Committee:

The Guam Memorial Hospital Authority supports the legislative intent of Bill No. 256(COR) and Bill No. 325 in that both bills recognize the need for the timely resolution of malpractice claims and both bills provide viable alternatives to litigation. The successful implementation of these types of legislation will have a tremendous effect on the delivery of health care and thereby warrant careful consideration before implementation. We present the Authority's comments then in an effort to provide suggestions that we feel may strengthen the malpractice claims program.

Bill No 256(COR) designates the Department of Public Health and Social Services as the entity responsible for administering the Health Claims Arbitration Office. Since the nature of this responsibility is medical and legal, it is essential that the office be staffed accordingly. Moreover, the Health Claims Arbitration Office will require funding, administrative support and office space that will allow for the effective coordination of this program and facilitate the prompt processing and resolution of malpractice claims. We therefore recommend that the funding and resources for the Health Claims Arbitration Office be clearly identified at the point that legislation is finalized and submitted for ratification.

ATTACHMENT VII - PETER J.D. Camacho testimony



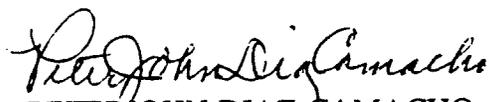
Commonwealth Now

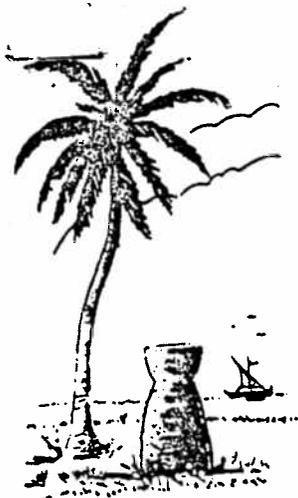
In addition, we suggest that the legislation determine the timeframe for establishing the office and developing the governing rules and regulations. A large part of the success for this program will depend on the timeliness of its operations and therefore should be fostered through the enabling legislation as well as the operating rules and regulations.

With regards to Bill NO. 325, Section 9990.0 Definitions refers to "the American Arbitration Association or other entity organized to arbitrate disputes". Again, it is important that any new legislation clearly identify the responsibility and resources for administering the arbitration of medical malpractice claims. Therefore, the Authority recommends that a local office be established and that the funding, facilities and responsibilities be delineated.

We have seen from past experience, that the failure of previous malpractice legislation was attributed to two things. One, the unconstitutional limits of the petitioner's right to due process; and two, the inability to establish the administrative program to oversee and facilitate the processing of claims. Bill No. 256(COR) and Bill No. 325 protect all parties' right to due process despite the differences in approach. Neither, bill, however adequately addresses the administration of the claims program. The Guam Memorial Hospital Authority finds that establishing the government's ability to efficiently and effectively administer a malpractice claims program will play a large part in the island's attempt to successfully manage medical malpractice claims on Guam.

Thank you.


PETERJOHN DIAZ-CAMACHO
Hospital Administrator
Acting



Medical • Dental • Optical

Guam

SEVENTH-DAY ADVENTIST

388 Ypao Road • Tamuning, Guam 96911
Phone 646-8881/5 • Dental: 646-5301

Clinic

May 7, 1991

Senator David L.G. Shimizu, M.D.
21st Guam Legislature
153 Hesler Street
Agana, Guam 96910

Dear Senator Shimizu:

As you are aware, Guam is faced with a crisis in delivery of medical care, particularly care to obstetrical patients. I am an obstetrician and I would like to express my concerns on this issue.

Up until recently, there were eleven (11) obstetricians on Guam (Drs. Teiche, Bomer, Peterson, Dunlop, Freeman, Griefy, Boonprakong, Sirilan, Sagisi, Batoyan and myself) who deliver 75% of the 245 obstetrical patients on Guam each month. The remaining patients are delivered by nine (9) family practitioners and nurse-midwives (Drs. Dysinger, Guthrie, Erickson, Perez, Macaraeg, Silan, Nozaki and Ms. Berger and McDonough).

Drs. Teiche and Peterson have left their practices. Drs. Griefy and Boonprakong will limit their practices to gynecology this spring (they will no longer practice obstetrics). Dr. Bomer is leaving island in June and FHP has no replacement for her or Dr. Peterson. So this summer, there will be only six (6) obstetricians practicing on Guam. Dr. Sirilan plans to retire in approximately 1 year. Drs. Dunlop, Sagisi and Batoyan have expressed desires to leave Guam in 2-1/2 years. As Dr. Freeman and I cannot handle the whole load by ourselves, there is a chance that he and I will be forced to leave Guam within three years because of our exhaustion, leaving Guam with no obstetrical coverage.

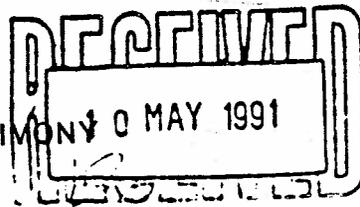
I have discussed the possibility of practicing in Guam with several obstetrician. They categorically say there is no way they would come here without medical liability coverage (obstetricians, orthopedists and anesthesiologists are the specialists most likely to be sued in the U.S.)

Two bills introduced into the 21st Guam Legislature (#256 and #325) begin to address this problem by mandating arbitration in malpractice claims.

I cannot support Bill #256. It would enact arbitration but according to Sect. 9990.7, a judgement can be rejected for any reason. It is not binding. Also, the arbitration process would be administered by the Department of Public Health. I can see no reason whatever for so using this Department.

I would prefer Bill #325. This addresses the issue and is administered by the American Arbitration Association whose specialty is to administer such acts.

ATTACHMENT VIII - DR. PLETCSH'S TESTIMONY



I said these bills "begin" to address the problem because neither bill mentions how such a system would be funded. This issue must be dealt with as well before Guam will become an attractive place to practice for my colleagues.

It is absolutely imperative that this problem be addressed now. If any group successfully opposes this approach without coming up with a satisfactory alternative, they will be responsible for relegating obstetrical care on Guam to that of a third world area.

Very truly yours,



T. DANIEL PLETSCH, M.D.
Obstetric and Gynecology

TDP:mcr

Written Testimony of the Guam Medical Society (GMS)
Ad-Hoc Committee on Malpractice Legislation

Dear Senators,

Thank you for the opportunity to submit testimony on the important topic of malpractice claims arbitration and related legislation. The GMS has recently surveyed all interested physicians on Guam regarding this issue, and discussed the results of the survey and related issues at their May 16, 1991 meeting. The following statements and recommendations summarize that survey and subsequent discussion:

1) The majority of respondents and GMS members favor mandatory binding arbitration for all medical malpractice claims, but with certain necessary conditions as follows:

a) Arbitration should be a binding alternative to jury trial. Both bills No. 256 and No. 325 allow ready access to jury trial at the request of either party. Bill No. 325 provides for certain "Sanctions for Failing to Prevail in the Trial," but these sanctions are unlikely to discourage a plaintiff from requesting a trial if he is dissatisfied with the arbitration decision, since the sanctions are discretionary by the court and, if imposed, can only be deducted from any award rendered to the plaintiff. Thus, if a plaintiff loses an arbitration hearing, he can proceed to trial with a "second chance" to win. If he loses again, he would not be required to pay sanctions. The physician, on the other hand, is subjected to a form of "double jeopardy" under these proposed laws.

Mandatory binding arbitration in lieu of jury trial has been

ATTACHMENT IX - DR. STATLER'S TESTIMONY

upheld in certain states, according to information provided to the GMS at a recent symposium, and is the system favored by the GMS.

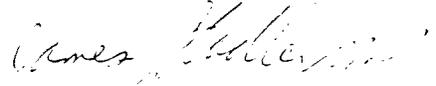
b) The arbitration panel should not be chaired by a practicing attorney. The nature of an attorney's profession in our legal system requires a strong bias toward large financial settlements and suits rather than a quest for truth and fairness, and that strong bias is likely to carry over into a presumed "neutral" role as an arbitrator. Alternatively, a judge could be an ideal sole arbitrator. The Government of Guam Claims Act provides a good example of the value of a Superior Court judge in a role similar to that of a sole arbitrator. Finally, but less ideally, both sides could select a partial arbitrator with a third selected by these two.

2) President Bush has just announced his intent to send a malpractice reform plan to Congress. The proposed plan includes mandatory arbitration and other malpractice tort reform measures, and includes a decrease in Medicare and Medicaid funds for the states (and presumably Guam) that fail to enact such legislation.

The GMS would like to review that legislation and also review additional "model" legislation which will be available to our GMS representative at the American Medical Association (AMA) annual meeting in June, 1991. We will then be prepared to submit additional recommendations to be included, we hope, in a comprehensive malpractice reform bill. We respectfully request the opportunity to do so, in writing, to this legislative committee

within three months. Thank you very much.

Sincerely,



James Stadler MD
Chairman, GMS Ad-Hoc
Committee on Malpractice
Legislation

Marianas Chiropractic Clinic

DR. GREGORY J. MILLER
1015 NORTH MARINE DRIVE
UPPER TUMON, GUAM 96911
TELEPHONE: 646-7926 / 646-6883

MAY 30, 1991

Dr. David L.G. Shimizu
Chairman Committee on
Health, Ecology & Welfare
324 W. Soledad Ave #202
Agana, Guam 96910

RE: Bills # 325 & 256
Concerning Medical Practice & Arbitration

Dear Dr. Shimizu,

I am in favor of the intent of both these bills however, I have one major concern, these bills do not call for binding arbitration. We must have binding arbitration in order to attract more health care professionals to Guam. Nonbinding arbitration can easily be followed by a lawsuit since the plaintiffs attorney would have an abundance of information to look for in his preparation for trial. Essentially, nonbinding arbitration will make matters worse by exposing providers to the probability of having to defend themselves in both arbitration and then again in the suit. This alone can lead to a defense bill of \$100,000 over a period of years. Please add language to the bills that call for binding arbitration.

If you have any questions please feel free to call or write me.

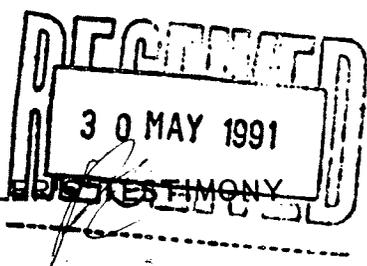
Sincerely,



Gregory J. Miller, D.C.

GJM/sms

ATTACHMENT X - DR. MILLER'S TESTIMONY





GUAM MEMORIAL HEALTH PLAN
142 West Seaton Blvd.
Agana, Guam 96910
Tel.: 472-GMHP
Fax: (671) 477-1784

JUNE 4, 1991

Hon. Dr. David L.G. Shimizu
Chairman Committee on Health
Ecology and Welfare
Twenty First Guam Legislature
1991 (FIRST) Regular Session

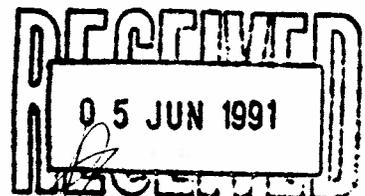
Dear Chairman Shimizu:

Please allow me to present my comments on Bill 325 which seeks to provide for prompt and effective resolution of Medical Malpractice Claims.

As we are all aware the threat of large dollar settlements for Medical Malpractice has had a profound effect on the practice of medicine on Guam. It becomes even more horrific when we realize that our private physicians cannot obtain malpractice claims insurance. Many attempts have been made in the past to secure malpractice insurance but insurance companies are not interested in writing coverage for such a small pool of physicians. The effect of this is that for the most part, physicians on Guam are forced to practice what we all now term defensive medicine. Generally, more tests, drugs and other medical procedures are ordered than is the norm so that the physician can demonstrate for the record that everything that could have been done was done. Obviously, this affects the cost of care, and from a Health Carrier's viewpoint is passed on in higher premiums. However, even if malpractice insurance were available, there would be no reduction in the costs of care since physicians would have to pass on the large insurance premium costs in their charges.

The problem confronting the medical community on Guam as I see it is how they can be protected from loosing all their assets if a malpractice claim should be successfully pursued. This Bill does not really address that issue but rather ~~takes~~ ~~the~~ malpractice claims out of the Court system and the adversarial posturing of attorneys who in pursuit of their client's interests can cause malpractice claims in the current legal system to run for years.

ATTACHMENT XI - MR. JAMES GILLIAM'S TESTIMONY



PAGE 2
JUNE 4, 1991

Requiring binding and mandatory arbitration should speed up the process of claims settlement. We support this bill because it does require timely settlement of claims and may also help to make the costs of claims adjudication lower. However, because there is no cap on the amount of dollar awards and because Attorneys, trained Arbitrators will now have to be paid, the costs of claims settlement may go up.

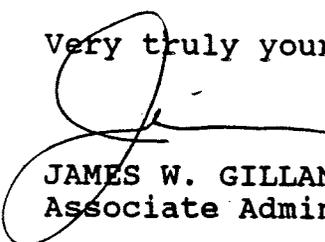
We do agree however with the concept of taking the malpractice claims business out of the current legal system. Mandatory arbitration should at least be given a chance to demonstrate if this could be the long term solution to malpractice claims adjudication.

What we all must address now along with requiring arbitration is how physicians on Guam are going to pay for malpractice claims. No Insurance Company is willing to write malpractice coverage so a possible solution would be the establishment of a Malpractice Claims Fund preferably administered by a neutral fiduciary. The fund could be capitalized by assessing each physician, by Specialty, a fee that would be equal to current malpractice insurance premiums for that specialty. However, because the risk pool is so small on Guam, that is, there will not be enough premium generated to cover the enormous possible awards, the fund may have to set a limit on the maximum amount of an award. We are all familiar with the so called 'deep pockets' syndrome. When an attorney 'goes after' a claim he/she pursues the party in the action who has the most money available. Limiting the maximum liability while not popular is the only immediate solution to the current problem. We cannot allow a physician who has spent years building a practice and taking care of our people to lose all his/her personal assets in one staggering malpractice award.

We support the passage of this Bill subject to the comments of those who attended the Hearing and urge you to work with us, the Medical Community, and the Legal Community to solve the real malpractice issue: the funding for malpractice claims.

Should you have any questions, do not hesitate to call on me.

Very truly yours



JAMES W. GILLAN
Associate Administrator, GMHP

JWG/jms

TWENTY-FIRST GUAM LEGISLATURE
1991 (FIRST) Regular Session

Bill No. 325

Introduced By:
As substituted by the
Committee on Health,
Ecology and Welfare

D.L.G. Shimizu 
E. Espaldon
J. T. San Agustin
M. Z. Bordallo
J.P. Aguon
C.T.C. Gutierrez

AN ACT TO REPEAL P.L. 13-115 AND ADD A NEW
CHAPTER XV TO TITLE X OF THE GOVERNMENT CODE
OF GUAM TO PROVIDE FOR PROMPT AND EFFECTIVE
RESOLUTION OF MEDICAL MALPRACTICE CLAIMS.

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

2 Section 1. Chapter XV of Title X of the Government Code of
3 Guam, §§9900 through 9990.14, enacted by P.L. 13-115 on
4 December 23, 1977, is hereby repealed in its entirety.

5 Section 2. A new Chapter XV is hereby added to Title X of the
6 Government Code of Guam to read as follows:

7 "CHAPTER XV

8 **Medical Malpractice**
9 **Mandatory Arbitration Act**
10

11 Section 9990. Title. This Act may be cited as the 'Medical
12 Malpractice Mandatory Arbitration Act.'

13 Section 9990.1. Definitions. As used in this chapter:

14 (a) 'Association' means the American Arbitration Association or
15 other entity organized to arbitrate disputes pursuant to this
16 Chapter.

17 (b) 'Health professional' means any person licensed or
18 certified to practice the healing arts within the Territory of
19 Guam.

20 (c) 'Health care institution' means any health care facility,
21 health maintenance organization or independent practice
22 association operated primarily to provide medical services.

23 (d) 'Malpractice' means any tort or breach of contract based on
24 health care or professional services rendered or which should
25 have been rendered by a health professional or a health care
26 institution to a patient.

27 (e) 'Petitioner' means the patient, his relatives, his heirs-
28 at-law or personal representative pursuing a claim in
29 arbitration, or any third-party or other party pursuing a claim
30 in arbitration, against a health professional or health care
31 provider.

32 (f) 'Respondent' means the health professional or health care
33 provider defending a claim in arbitration filed by a

1 Petitioner.

2 Section 9990.2. Mandatory Arbitration. Any claim that accrues
3 or is being pursued in the Territory of Guam, whether in tort,
4 contract, or otherwise, shall be submitted to mandatory
5 arbitration pursuant to the terms of this Act if it is a
6 controversy between the patient, his relatives, his heirs-at-
7 law or personal representative or any third-party or other
8 party, and the health professional or health care institution,
9 or their employees or agents, and is based on malpractice,
10 tort, contract, strict liability, or any other alleged
11 violation of a legal duty incident to the acts of the health
12 professional or health care institution, or incident to
13 services rendered or to be rendered by the health professional
14 or health care institution.

15 Section 9990.3. Initiation Of Arbitration. Arbitration is
16 initiated by a petitioner or petitioners serving a written
17 demand for arbitration upon a respondent or respondents in the
18 same manner provided by law for the service of summons in the
19 Superior Court of Guam; except that the petitioner or his agent
20 may serve the demand without the necessity of it being served
21 by a Marshal of the Superior Court of Guam. The demand for
22 arbitration shall not be filed in the Superior Court of Guam,
23 unless the petitioner or petitioners require the appointment of
24 a Guardian Ad Litem, as provided for in Section 9990.8 of this
25 Act. The demand for arbitration shall be filed with the
26 Association. The demand for arbitration shall state the name
27 and address of the petitioner or petitioners, identify the
28 respondent or respondents, and shall outline the factual basis
29 of the claim and the alleged acts of negligence or wrongdoing
30 of the respondent or respondents.

31 Section 9990.4. Response To Demand. Within twenty (20) days
32 after service of a demand for arbitration, the respondent or
33 respondents shall file a response to the demand for arbitration
34 and serve it upon the petitioner or petitioners, or their
35 attorney. The response shall identify any defenses then known
36 to the respondent or respondents. If a respondent fails to file
37 a response, then the petitioner or petitioners may proceed in
38 default to appoint an arbitration panel pursuant to Section
39 9990.6 of the this Act.

40 Section 9990.5. Applicability of Statute of Limitations. A
41 claim shall be waived and forever barred as against a
42 respondent if on the date the demand is served the applicable
43 statute of limitations would bar the claim.

1 Section 9990.6. Standard of Care. The prevailing standard of
2 duty, practice, or care by a reasonable physician in the same
3 field practicing medicine in the community at the time of the
4 alleged malpractice shall be the standard applied in the
5 arbitration.

6 Section 9990.7. Administration of Arbitration. The Association
7 shall administer a proceeding filed under this Chapter. The
8 administrative expense shall be as may be agreed to by the
9 parties and the Association, or as may be provided by the
10 Association. The administrative costs shall be equally shared
11 by the parties subject to an award of costs by the panel as
12 provided in Section 9990.30 herein.

13 Section 9990.8. Selection of Arbitrators. An arbitration under
14 this Chapter shall be heard by a panel of three (3)
15 arbitrators. The chairperson shall be decided by the three (3)
16 panel members and shall have jurisdiction over pre-hearing
17 procedures. The three (3) panel members shall include an
18 attorney, a physician, preferably but not necessarily from the
19 respondent's medical specialty, and the third shall be a person
20 who is neither a doctor, lawyer, or representative of a health
21 care institution or insurance company. A minimum of two (2) of
22 the three (3) panel members shall be residents of Guam.

23 (a) Except as otherwise provided in Subsection (d), arbitrator
24 candidates shall be selected pursuant to the rules and
25 procedures of the Association from a pool of candidates
26 generated by the Association. The rules and procedures of the
27 Association pertaining to a selection of arbitrators under this
28 Chapter shall require that the Association send simultaneously
29 to each party an identical list of five arbitrator candidates
30 in each of the three categories together with a brief
31 biographical statement on each candidate. A party may strike
32 from the list any name which is unacceptable and shall number
33 the remaining names in order of preference. When the lists are
34 returned to the Association they shall be compared and the
35 first mutually agreeable candidate in each category shall be
36 invited to serve.

37 (b) Where no mutually agreed upon arbitrator is selected for
38 any category, a second list of that category shall be sent
39 pursuant to Subsection (a).

40 (c) If a complete panel is not selected by mutual agreement of
41 the parties pursuant to Subsections (a) and (b) then under the
42 applicable rules and procedures of the Association, the
43 Association shall appoint the remainder of the panel on whom
44 agreement has not been reached by the parties. The appointment

1 by the Association shall be subject to challenge by any party
2 for cause which challenge may allege facts to establish that
3 unusual community or professional pressures will unreasonably
4 influence the objectivity of the panelists. A request to strike
5 an arbitrator for cause shall be determined by the regional
6 director or comparable officer of the Association.
7 (d) The parties shall not be restricted to the arbitrator
8 candidates submitted for consideration. If all parties mutually
9 agree upon a panelist within a designated category, the
10 panelist shall be invited to serve.

11 Section 9990.9. Challenge for Bias. The Association shall make
12 an initial screening for bias as may be appropriate and shall
13 require a candidate for a particular case to complete a current
14 personal disclosure statement under oath. In addition to other
15 relevant information this statement shall disclose any personal
16 acquaintance with any of the parties or their counsel and the
17 nature of such acquaintance. If this statement reveals facts
18 which suggest the possibility of partiality, the Association
19 shall communicate those facts to the parties if the panelist is
20 proposed by the arbitration association.

21 (a) Any party may propound reasonable questions to an
22 arbitrator candidate if such questions are propounded within
23 ten (10) days of the receipt of the candidate's name. Such
24 questions shall be propounded through the Association and the
25 candidate shall respond to the Association promptly.
26 (b) A party shall not communicate with a candidate directly or
27 indirectly except through the Association at any time after the
28 filing of the demand for arbitration. Any candidate who is
29 aware of such communication shall immediately notify the
30 Association.

31 Section 9990.10. Rules of Arbitration. The arbitration
32 proceeding shall be subject to rules promulgated by the
33 Association in conformance with this Act.

34 Section 9990.11. Multiple Petitioners and Multiple Respondents.
35 In cases involving a common question of law or fact, when there
36 are multiple petitioners and/or multiple respondents, the
37 disputes, controversies, and issues shall be consolidated into
38 a single arbitration proceeding.

39 (a) A person who is not a party to the arbitration may join in
40 the arbitration at the request of any party with all the rights
41 and obligations of the original parties. Each party to an
42 arbitration under this Chapter is deemed to be bound by the
43 joinder of a new party.

1 Section 9990.12. Offer of Reparation. Prior to the institution
2 of a proceeding or claim by a patient, any offer of reparations
3 and all communications incidental thereto made in writing to a
4 patient by a health professional or health care institution is
5 privileged and may not be used by any party to establish the
6 liability or measure of damages attributable to the offeror.

7 (a) Such an offer shall provide that a patient has thirty (30)
8 days to accept or reject the offer, or such lesser period of
9 time as may be necessitated by the condition or health of the
10 patient.

11 (b) After any rejection or the lapse of the applicable time,
12 any party may demand arbitration.

13 (c) Any such offer to a patient shall include a statement that
14 the patient may consult legal counsel before rejecting or
15 accepting the offer.

16 (d) In a case where a potential claim is identified by a health
17 professional or health care institution where reparations, in
18 its judgment, are not appropriate, the professional or
19 institution may, at its option, file a demand for arbitration
20 which demand shall identify the potential claim and deny
21 liability.

22 Section 9990.13. Appointment of Guardian Ad Litem.

23 (a) When a minor, or an insane or incompetent person is a
24 petitioner, he must appear either by general guardian or a
25 Guardian Ad Litem appointed by the Superior Court of Guam. A
26 Guardian Ad Litem may be appointed in a claim for arbitration
27 under this Act when it is deemed by a judge of the Superior
28 Court of Guam expedient to represent the minor, insane, or
29 incompetent person in the arbitration proceeding,
30 notwithstanding he may have a general guardian and may have
31 appeared by him. The general guardian or Guardian Ad Litem so
32 appearing for an infant, insane or incompetent person in any
33 arbitration proceeding shall have the power to compromise the
34 same and to agree to any settlement or decision of the
35 arbitrators to be entered therein against his ward, subject to
36 the approval of a majority of the arbitrators.

37 (b) All Guardian Ad Litem appointed by the Superior Court of
38 Guam to pursue a claim for arbitration shall be appointed
39 pursuant to §373 of the Guam Code of Civil Procedure. Any
40 petition to appoint a Guardian Ad Litem to pursue a claim for
41 arbitration shall have a copy of the demand for arbitration
42 attached thereto.

43 Section 9990.14. Stay of Proceedings When Suit is Filed. If any
44 suit or proceeding is brought in the courts of Guam upon any

1 issue referable to arbitration under the Medical Malpractice
2 Mandatory Arbitration Act, the court in which said suit is
3 pending, upon being satisfied that the issue involved in such
4 suit or proceeding is referable to arbitration under this Act,
5 shall upon application of one of the parties, stay all
6 proceedings in the action until such arbitration has been had
7 in accordance with the terms of this Act.

8 Section 9990.15. Failure to Arbitrate Under This Act. The party
9 aggrieved by the alleged failure, neglect, or refusal of
10 another to arbitrate under this Act, may petition the Superior
11 Court of Guam, for an order directing that such arbitration
12 proceed in the manner provided for in this Act. Five (5) days
13 notice in writing of such application shall be served upon the
14 party in default. Service thereof shall be made in the manner
15 provided by law for the service of summons in the Superior
16 Court of Guam. The court shall hear the parties, and the court
17 shall then make an order directing the parties to proceed to
18 arbitration in accordance with the terms of this Act.

19 Section 9990.16. Service of Documents Upon Arbitrators; Ex
20 Parte Contact. Once the arbitration panel has been selected,
21 each of the arbitrators shall be provided with a copy of the
22 demand for arbitration and any responses thereto by the
23 Association. Each of the arbitrators shall also be provided by
24 the Association with the parties' notice to each other
25 identifying experts, witnesses, documents and arbitration
26 briefs as authorized in this Act. Any motions or requests for
27 additional discovery shall also be served upon each of the
28 arbitrators through the Association.

29 Section 9990.17. Witnesses Before Arbitrators. The panel or its
30 chairperson in the arbitration proceeding shall, upon
31 application by a party to the proceeding, and may upon its own
32 determination, issue a subpoena requiring a person to appear
33 and be examined with reference to a matter within the scope of
34 the proceeding, and to produce books, records, or papers
35 pertinent to the proceeding. In case of disobedience to the
36 subpoena, the chairperson or a majority of the arbitration
37 panel in the arbitration proceeding may petition the Superior
38 Court of Guam to require the attendance and testimony of the
39 witness and the production of books, papers, and documents. The
40 Superior Court of Guam, in case of contumacy or refusal to obey
41 a subpoena, may issue an order requiring that person to appear
42 and to produce books, records, and papers and give evidence
43 touching the matter in question. Failure to obey the order of
44 the Court may be punished by the Court as contempt. The fees

1 for the attendance of any person to attend before the
2 arbitration panel as a witness shall be the same as the fees
3 for witnesses subpoenaed before the Superior Court of Guam. The
4 Superior Court of Guam shall order a witness to pay the cost of
5 the aggrieved party, to include attorney's fees, if it is
6 determined that the witness wrongfully failed to appear before
7 the arbitration panel.

8 Section 9990.18. Evidence and Testimony. A hearing shall be
9 informal and the arbitrators shall be the sole judge of the
10 relevancy and materiality of the evidence offered.

11 (a) The arbitrators may receive and consider evidence in the
12 form of an affidavit, but shall give appropriate weight to any
13 objections made. All documents to be considered by the
14 arbitrators shall be filed at the hearing.

15 (b) Testimony shall be taken under oath and a record of the
16 proceedings shall be made by a tape recording. Any party, at
17 that party's expense, may have transcriptions or copies of the
18 recording made or may provide for a written transcript of the
19 proceedings. The costs of any transcription ordered by the
20 panel for its own use shall be deemed part of the costs of the
21 proceedings.

22 (c) Expert testimony shall not be required but where expert
23 testimony is used, it shall be admitted under the same
24 circumstances as in a civil trial and be subject to cross-
25 examination.

26 (d) The party with the burden of establishing a standard of
27 care and breach thereof shall establish such standards whether
28 by the introduction of expert testimony, or by other competent
29 proof of the standard and the breach thereof, which may include
30 the use of works as provided in Subsection (e).

31 (e) Authoritative, published works on the general and specific
32 subjects in issue may be admitted and argued from, upon prior
33 notice to all other parties.

34 (f) The panel shall accord such weight and probative worth to
35 expert evidence as it deems appropriate. The panel may call a
36 neutral expert on its own motion, which expert witness shall be
37 subject to cross-examination by the parties. The costs of the
38 expert will be deemed a cost of the proceeding.

39 Section 9990.19. Identification of Expert Witnesses. Within
40 thirty (30) days after the arbitrators have been selected, any
41 petitioner pursuing a claim against a respondent shall identify
42 the expert witnesses that the petitioner will call at the
43 arbitration hearing. When identifying such experts, the
44 petitioner shall provide the name of the expert, the address of

1 the expert, and shall state the subject matter on which the
2 expert is expected to testify, and state the substance of the
3 facts and opinions to which the expert is to testify and a
4 summary of the grounds for each opinion. Within thirty (30)
5 days after the petitioner has identified his experts, the
6 respondent shall identify the expert witnesses that the
7 respondent will call to testify at the arbitration hearing. The
8 respondent shall provide the name of the expert witness, the
9 address of the expert witness, and state the subject matter on
10 which the expert is expected to testify, and state the
11 substance of the facts and opinions to which the expert is
12 expected to testify and a summary of the grounds for each
13 opinion.

14 Section 9990.20. Identification of Witnesses and Documents.
15 Within thirty (30) days after the respondent has identified
16 respondent's expert witnesses, the parties shall exchange a
17 list of witnesses that they expect to call to testify at the
18 arbitration hearing along with a summary of each witnesses'
19 proposed testimony. The parties shall also provide each other
20 with copies of all documents and material that they intend to
21 introduce as evidence at the arbitration hearing.

22 Section 9990.21. Additional Discovery. Additional discovery,
23 not otherwise provided for in this Act, such as depositions,
24 interrogatories and requests to produce, shall not be permitted
25 unless:

26 (a) The parties stipulate to allow additional discovery; or,
27 (b) A majority of the arbitrators at the pre-arbitration
28 conference provided for in Section 9990.22 of this Act
29 authorize additional discovery for good cause shown upon the
30 application of a party to the arbitration proceeding. The
31 arbitrators shall liberally authorize additional discovery if
32 it is necessary in order for a petitioner or respondent to more
33 adequately present or defend a claim.

34 Section 9990.22. Time And Place Of Arbitration Hearing. Within
35 thirty (30) days after the parties have exchanged their lists
36 of witnesses and provided each other with the documents that
37 the parties intend to introduce as evidence at the arbitration
38 hearing, the arbitrators shall meet at a place designated by
39 the chairperson and conduct a pre-arbitration conference for
40 the purpose of deciding upon a date and place for the
41 arbitration hearing, and for the purpose of deciding whether
42 additional discovery should be permitted pursuant to Section
43 9990.21 of this Act. The arbitrators, or a majority of them,
44 shall agree upon a date and place for the arbitration hearing.

1 The arbitration hearing shall be conducted within ninety (90)
2 days after the pre-arbitration conference between the
3 arbitrators and the parties unless agreed otherwise by the
4 parties. Oral notice to the parties at the pre-arbitration
5 conference of the date, time and location of the arbitration
6 hearing shall be deemed sufficient.

7 Section 9990.23. Arbitration Briefs. Any arbitration brief to
8 be filed by a petitioner must be filed at least ten (10)
9 working days before the arbitration hearing. Any arbitration
10 brief to be filed by a respondent must be filed at least five
11 (5) working days before the arbitration hearing. A petitioner
12 may file a reply brief, which shall respond only to matters
13 discussed in the respondent's arbitration brief, no later than
14 two (2) working days before the arbitration hearing.

15 (a) The panel may order submission of post-hearing briefs
16 within ten (10) calendar days after the close of hearings. In
17 written briefs, each party may summarize the evidence in
18 testimony and may propose a comprehensive award of remedial or
19 compensatory elements.

20 Section 9990.24. Representation By Counsel. Any party may be
21 represented in hearings before the arbitration panel by
22 counsel.

23 A party may appear without counsel, and shall be advised of
24 such right and the right to retain counsel in a manner
25 calculated to inform the person of the nature and complexity of
26 a proceeding by a simple concise form to be distributed by the
27 Association administering the arbitration.

28 Section 9990.25. Attendance At Hearings. Parties to the
29 arbitration and their counsel are entitled to attend all
30 hearings. Non-party witnesses may be excluded by either party
31 upon request.

32 Section 9990.26. Oaths. The arbitrators shall require all
33 witnesses at the arbitration hearing to testify under oath.

34 Section 9990.27. Arbitration In The Absence Of A Party. The
35 arbitration may proceed in the absence of any party who, after
36 due notice, fails to be present. An award shall not be made
37 solely on the default of a party. The arbitrators shall require
38 the attending party to submit evidence.

39 Section 9990.28. Adjournments. Hearings may be adjourned by a
40 majority of the arbitrators only for good cause, and an
41 appropriate fee will be charged if the arbitrators determine

1 that a party has wrongfully caused an adjournment to take
2 place.

3 Section 9990.29. Waiver of Statutory Rights. Any party who
4 proceeds with arbitration after knowledge that any provision of
5 this Act has not been complied with and fails to state his
6 objections thereto in writing shall be deemed to have waived
7 his right to object.

8 Section 9990.30. Fees and Costs of Arbitration. Except for the
9 parties to the arbitration and their agents, officers, and
10 employees, all witnesses appearing pursuant to subpoena are
11 entitled to receive fees and mileage in the same amount and
12 under the same circumstances as prescribed by law for witnesses
13 in civil actions in the Superior Court of Guam. The fee and
14 mileage of a witness subpoenaed upon the application of a party
15 to the arbitration shall be paid by that party. The fee and
16 mileage of a witness subpoenaed solely upon the determination
17 of the arbitrator or the majority of a panel of arbitrators
18 shall be paid in the manner provided for the payment of the
19 arbitrators' expenses.

20 (a) The costs of each arbitrator's fees and expenses, together
21 with any administrative fee may be assessed against any party
22 in the award or may be assessed among parties in such
23 proportions as may be determined in the arbitration award. Each
24 party shall bear its own attorney's fees in the arbitration
25 proceeding.

26 Section 9990.31. Damages. Damages shall be monetary only and
27 shall be without limitation as to nature or amount unless
28 otherwise provided by law.

29 Section 9990.32. Timely Award. The award of the arbitrators
30 shall be rendered promptly by the arbitrators and, unless
31 otherwise agreed by the parties, not later than twenty (20)
32 business days from the date of the close of the hearing.
33 However, if the arbitrators fail to render an award within
34 twenty (20) business days from the date of the close of the
35 hearing, the arbitrators' award shall not be vacated on this
36 ground unless it can be proven that a party has been seriously
37 prejudiced due to the fact that the arbitrators have not
38 rendered an award within twenty (20) business days.

39 Section 9990.33. Award of Arbitrators. A majority of the panel
40 of arbitrators may grant monetary damages only deemed equitable
41 and just.

42 (a) The award in the arbitration proceeding shall be in writing

1 and shall be signed by the arbitrators or a majority of the
2 panel of arbitrators. An award cannot be rendered unless it is
3 signed by a majority of the arbitrators. The award shall
4 include a determination of all the questions submitted to
5 arbitration by each party, the resolution of which is necessary
6 to determine the dispute, controversy, or issue.

7 (b) The panel shall determine the degree to which each
8 respondent party, if more than one, was at fault for the total
9 damages accruing to any other party to the arbitration,
10 considering all sources of damage involving parties to the
11 arbitration, but excluding the damages attributable to persons
12 not parties to the arbitration.

13 (c) The panel shall prepare a schedule of contributions
14 according to the relative fault of each party which schedule
15 shall be binding on those parties, but such determination shall
16 not affect a claimant's right to recover jointly and severally
17 from all parties where such right otherwise exists in the law.

18 Section 9990.34. Delivery of Award to Parties. The parties
19 shall accept as legal delivery of the award the placing of the
20 award or a true copy thereof in the mail by the arbitrators
21 addressed to such party at its last known address or to the
22 party's attorney, or personal service of the award on the party
23 or the party's attorney.

24 Section 9990.35. Confirmation of Award. At any time within one
25 (1) year after an award is made, any party to the arbitration
26 may apply to the Superior Court of Guam for an order confirming
27 the award and thereupon the court must grant such an order
28 unless the award is vacated, modified, corrected, or appealed as
29 prescribed in Sections 9990.36, 9990.37 and 9990.39 of this
30 Act. Notice of the application shall be served upon the adverse
31 party, and thereupon the court shall have jurisdiction of such
32 party as though he had appeared generally in the proceeding. If
33 the adverse party is a resident of Guam, service shall be made
34 upon the adverse party as prescribed by law for the service of
35 a civil action in the Superior Court of Guam. If the adverse
36 party shall be a non-resident, then the notice of the
37 application shall be served in like manner as other process of
38 the Superior Court of Guam served upon non-residents.

39 Section 9990.36. Vacation of Arbitration Award. In any of the
40 following cases, the Superior Court of Guam may make an order
41 vacating the award upon the application of any party to the
42 arbitration:

43 (a) Where the award was procured by corruption, fraud or undue
44 means;

1 (b) Where there was corruption in any of the arbitrators;
2 (c) Where the arbitrators exceeded their powers and the award
3 cannot be corrected without affecting the merits of the
4 decision upon the controversy submitted; or
5 (d) Where the rights of such party were substantially
6 prejudiced by the refusal of the arbitrators to postpone the
7 hearing upon sufficient cause being shown therefore or by the
8 refusal of the arbitrators to hear evidence material to the
9 controversy or by other conduct of the arbitrators contrary to
10 the provisions of this Chapter. Where an award is vacated, the
11 court shall direct a re-hearing by the arbitrators, or if the
12 court deems it appropriate, shall direct the parties to select
13 new arbitrators for another arbitration proceeding.

14 Section 9990.37. Modification of Award. In any of the following
15 cases, the Superior Court of Guam may make an order modifying
16 or correcting the award upon the application of any party to
17 the arbitration:

18 (a) Where there was an evident material miscalculation of
19 figures or an evident material mistake in the description of
20 any person, thing, or property referred to in the award.

21 (b) Where the arbitrators have awarded upon a matter not
22 submitted to them, unless it is a matter not effecting the
23 merits of the decision upon the matter submitted.

24 (c) Where the award is imperfect in matter or form not
25 effecting the merits of the controversy. The court may modify
26 and correct the award so as to effect the intent thereof and
27 promote justice between the parties.

28 Section 9990.38. Notice of Motion to Vacate or Modify. Notice
29 of a motion to vacate, modify, or correct an award must be
30 served upon the adverse party or his attorney within thirty
31 (30) days after the award is served upon the party seeking to
32 vacate, modify or correct the award.

33 Section 9990.39. Notice of Appeal and Request for Trial De
34 Novo.

35 (a) Within thirty (30) days after the award is served upon the
36 parties, any party may file with the clerk of the Superior
37 Court of Guam and serve on the other parties and the
38 Association a written Notice of Appeal and Request for Trial De
39 Novo of the action.

40 (b) After the filing and service of the written Notice of
41 Appeal and Request for Trial De Novo, the case shall be set for
42 trial pursuant to applicable court rules.

43 (c) If the action is triable by right to a jury, and a jury was
44 not originally demanded but is demanded within ten (10) days of

1 service of the Notice of Appeal and Request for Trial De Novo
2 by a party having the right of trial by jury, the trial de novo
3 shall include a jury, and a jury trial fee shall be paid as
4 provided by law.

5 Section 9990.40. Procedures at Trial De Novo.

6 (a) The clerk shall seal any arbitration award if a trial de
7 novo is requested. The jury will not be informed of the
8 arbitration proceeding, the award, or about any other aspect of
9 the arbitration proceedings. The sealed arbitration award shall
10 not be opened until after the verdict is received and filed in
11 a jury trial, or until after the judge has rendered a decision
12 in a court trial.

13 (b) All discovery permitted during the course of the
14 arbitration proceedings shall be admissible in the trial de
15 novo subject to all applicable rules of civil procedure and
16 evidence. The court in the trial de novo shall insure that any
17 reference to the arbitration proceeding is omitted from any
18 discovery taken therein and sought to be introduced at the
19 trial de novo.

20 (c) No statements or testimony made in the course of the
21 Arbitration hearing shall be admissible in evidence for any
22 purpose in the trial de novo.

23 Section 9990.41. Scheduling of the Trial De Novo. Every case
24 transferred to the court shall maintain the approximate
25 position on the civil trial docket as if the case had not been
26 so transferred, unless at the discretion of the court, the
27 docket position is modified.

28 Section 9990.42. The Prevailing Party In The Trial De Novo;
29 Costs.

30 (a) The 'Prevailing Party' in a trial de novo is the party who
31 has (1) appealed and improved upon the Arbitration award by 40%
32 or more, or (2) has not appealed and the opposing party has
33 appealed and failed to improve upon the Arbitration award by
34 40% or more. For the purpose of this rule, 'improve' or
35 'improved' means to increase the award for a plaintiff or to
36 decrease the award for the defendant.

37 (b) The 'Prevailing Party' under these rules, as defined above,
38 is deemed the prevailing party under any statute or rule of
39 court, and as such is entitled to costs of trial and all other
40 remedies as provided by law.

41 Section 9990.43. Sanction For Failing To Prevail In The Trial
42 De Novo.

43 (a) After the verdict is received and filed, or the court's

1 decision rendered in a trial de novo, the trial court shall
2 impose sanctions, as set forth below, against the non-
3 prevailing party whose appeal resulted in the trial de novo.

4 (b) The sanctions to be imposed by the court are as follows:

5 (1) Reasonable cost and fees (other than attorneys' fees)
6 actually incurred by the party but not otherwise taxable
7 under the law;

8 (2) Costs of Jurors;

9 (3) Reasonable Attorneys' fees actually incurred by
10 the prevailing party.

11 (c) Sanctions imposed against a plaintiff will be deducted from
12 any award rendered. Sanctions imposed against a defendant will
13 be added to any award rendered.

14 Section 9990.44. Applicability To Government Of Guam And Its
15 Agencies. Claims against the Government of Guam and its
16 agencies are governed by the Government Claims Act. Thus, this
17 Act does not apply to claims against the Guam Memorial Hospital
18 Authority or other health care institutions established by the
19 Government of Guam.

20 Section 9990.45. Effective Date Of Statute. This Act shall not
21 apply to any claim that accrues before the date that the Act
22 becomes law.

23 Section 9990.46. Controlling Statute. The provisions of Title
24 5, Chapter 32, Guam Code Annotated, entitled, "Deceptive Trade
25 Practices - Consumer Protection act," shall not be applicable
26 to this Act and to the extent any of the provisions of this Act
27 are inconsistent or conflict with the provisions of the
28 Deceptive Trade Practices - Consumer Protection Act or any
29 other provision of law, the terms of this Act shall prevail and
30 control.

31 Section 9990.47. Severability Clause. If any section or
32 sentence of this Act is deemed unconstitutional, then that
33 section or sentence shall be severed from the Act and the
34 remainder of the Act shall remain and be of full force and
35 effect."

Bill No. 325 (COE)
Introduced By:

D.L.G. Shimizu
J. T. San Agustin
M. Z. Bordallo
J.F. Aguon
C.T.C. Gutierrez

AN ACT TO REPEAL P.L. 13-115 AND ADD A NEW
CHAPTER XV TO TITLE X OF THE GOVERNMENT CODE
OF GUAM TO PROVIDE FOR PROMPT AND EFFECTIVE
RESOLUTION OF MEDICAL MALPRACTICE CLAIMS.

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

2 Section 1. Chapter XV of Title X of the Government Code
3 of Guam, §§9900 through 9990.14, enacted by P.L. 13-115
4 on December 23, 1977, is hereby repealed in its entirety.

5 Section 2. A new Chapter XV is hereby added to Title X of
6 the Government Code of Guam to read as follows:

7 "CHAPTER XV

8 Medical Malpractice
9 Mandatory Arbitration Act

10
11 Section 9990. Title. This Act may be cited as the
12 'Medical Malpractice Mandatory Arbitration Act.'

13 Section 9990.1. Definitions. As used in this chapter:

14 (a) 'Association' means the American Arbitration
15 Association or other entity organized to arbitrate
16 disputes pursuant to this Chapter.

17 (b) 'Health professional' means any person licensed or
18 certified to practice the healing arts within the
19 Territory of Guam.

20 (c) 'Health care institution' means any health care
21 facility, health maintenance organization or independent
22 practice association operated primarily to provide
23 medical services.

24 (d) 'Malpractice' means any tort or breach of contract
25 based on health care or professional services rendered or
26 which should have been rendered by a health professional
27 or a health care institution to a patient.

28 (e) 'Petitioner' means the patient, his relatives, his
29 heirs-at-law or personal representative pursuing a claim
30 in arbitration, or any third-party or other party
31 pursuing a claim in arbitration, against a health
32 professional or health care provider.

33 (f) 'Respondent' means the health professional or health
34 care provider defending a claim in arbitration filed by a
35 Petitioner.

1 Section 9990.2. Mandatory Arbitration. Any claim that
2 accrues or is being pursued in the Territory of Guam,
3 whether in tort, contract, or otherwise, shall be
4 submitted to binding arbitration pursuant to the terms of
5 this Act if it is a controversy between the patient, his
6 relatives, his heirs-at-law or personal representative or
7 any third-party or other party, and the health
8 professional or health care institution, or their
9 employees or agents, and is based on malpractice, tort,
10 contract, strict liability, or any other alleged
11 violation of a legal duty incident to the acts of the
12 health professional or health care institution, or
13 incident to services rendered or to be rendered by the
14 health professional or health care institution.

15 Section 9990.3. Initiation Of Arbitration. Arbitration is
16 initiated by a petitioner or petitioners serving a
17 written demand for arbitration upon a respondent or
18 respondents in the same manner provided by law for the
19 service of summons in the Superior Court of Guam; except
20 that the petitioner or his agent may serve the demand
21 without the necessity of it being served by a Marshal of
22 the Superior Court of Guam. The demand for arbitration
23 shall not be filed in the Superior Court of Guam, unless
24 the petitioner or petitioners require the appointment of
25 a Guardian Ad Litem, as provided for in Section 9990.8 of
26 this Act. The demand for arbitration shall be filed with
27 the Association. The demand for arbitration shall state
28 the name and address of the petitioner or petitioners,
29 identify the respondent or respondents, and shall outline
30 the factual basis of the claim and the alleged acts of
31 negligence or wrongdoing of the respondent or
32 respondents.

33 Section 9990.4. Response To Demand. Within twenty
34 (20) days after service of a demand for arbitration, the
35 respondent or respondents shall file a response to the
36 demand for arbitration and serve it upon the petitioner
37 or petitioners, or their attorney. The response shall
38 identify any defenses then known to the respondent or
39 respondents. If a respondent fails to file a response,
40 then the petitioner or petitioners may proceed in default
41 to appoint an arbitration panel pursuant to Section
42 9990.6 of the this Act.

43 Section 9990.5. Applicability of Statute of Limitations.
44 A claim shall be waived and forever barred as against a
45 respondent if on the date the demand is served the

1 applicable statute of limitations would bar the claim.

2 Section 9990.6. Standard of Care. The prevailing standard
3 of duty, practice, or care applicable in a civil action
4 shall be the standard applied in the arbitration.

5 Section 9990.7. Administration of Arbitration. The
6 Association shall administer a proceeding filed under
7 this Chapter. The administrative expense shall be as may
8 be agreed to by the parties and the Association, or as
9 may be provided by the Association. The administrative
10 costs shall be equally shared by the parties subject to
11 an award of costs by the panel as provided in Section
12 9990.30 herein.

13 Section 9990.8. Selection of Arbitrators. An arbitration
14 under this Chapter shall be heard by a panel of three (3)
15 arbitrators. One shall be an attorney who shall be the
16 chairperson and shall have jurisdiction over pre-hearing
17 procedures, one shall be a physician, preferably but not
18 necessarily from the respondent's medical specialty, and
19 the third shall be a person who is neither a doctor,
20 lawyer, or representative of a health care institution or
21 insurance company.

22 (a) Except as otherwise provided in Subsection (d),
23 arbitrator candidates shall be selected pursuant to the
24 rules and procedures of the Association from a poll of
25 candidates generated by the Association. The rules and
26 procedures of the Association pertaining to a selection
27 of arbitrators under this Chapter shall require that the
28 Association send simultaneously to each party an
29 identical list of five arbitrator candidates in each of
30 the three categories together with a brief biographical
31 statement on each candidate. A party may strike from the
32 list any name which is unacceptable and shall number the
33 remaining names in order of preference. When the lists
34 are returned to the Association they shall be compared
35 and the first mutually agreeable candidate in each
36 category shall be invited to serve.

37 (b) Where no mutually agreed upon arbitrator is selected
38 for any category, a second list of that category shall be
39 sent pursuant to Subsection (a).

40 (c) If a complete panel is not selected by mutual
41 agreement of the parties pursuant to Subsections (a) and
42 (b) then under the applicable rules and procedures of the
43 Association, the Association shall appoint the remainder
44 of the panel on whom agreement has not been reached by
45 the parties. The appointment by the Association shall be

1 subject to challenge by any party for cause which
2 challenge may allege facts to establish that unusual
3 community or professional pressures will unreasonably
4 influence the objectivity of the panelists. A request to
5 strike an arbitrator for cause shall be determined by the
6 regional director or comparable officer of the
7 Association.

8 (d) The parties shall not be restricted to the arbitrator
9 candidates submitted for consideration. If all parties
10 mutually agree upon a panelist within a designated
11 category, the panelist shall be invited to serve.

12 Section 9990.9. Challenge for Bias. The Association shall
13 make an initial screening for bias as may be appropriate
14 and shall require a candidate for a particular case to
15 complete a current personal disclosure statement under
16 oath. In addition to other relevant information this
17 statement shall disclose any personal acquaintance with
18 any of the parties or their counsel and the nature of
19 such acquaintance. If this statement reveals facts which
20 suggest the possibility of partiality, the Association
21 shall communicate those facts to the parties if the
22 panelist is proposed by the arbitration association.

23 (a) Any party may propound reasonable questions to an
24 arbitrator candidate if such questions are propounded
25 within ten (10) days of the receipt of the candidate's
26 name. Such questions shall be propounded through the
27 Association and the candidate shall respond to the
28 Association promptly.

29 (b) A party shall not communicate with a candidate
30 directly or indirectly except through the Association at
31 any time after the filing of the demand for arbitration.
32 Any candidate who is aware of such communication shall
33 immediately notify the Association.

34 Section 9990.10. Rules of Arbitration. The arbitration
35 proceeding shall be subject to rules promulgated by the
36 Association in conformance with this Act.

37 Section 9990.11. Multiple Petitioners and Multiple
38 Respondents. In cases involving a common question of law
39 or fact, when there are multiple petitioners and/or
40 multiple respondents, the disputes, controversies, and
41 issues shall be consolidated into a single arbitration
42 proceeding.

43 (a) A person who is not a party to the arbitration may
44 join in the arbitration at the request of any party with
45 all the rights and obligations of the original parties.

1 Each party to an arbitration under this Chapter is deemed
2 to be bound by the joinder of a new party.

3 Section 9990.12. Offer of Reparation. Prior to the
4 institution of a proceeding or claim by a patient, any
5 offer of reparations and all communications incidental
6 thereto made in writing to a patient by a health
7 professional or health care institution is privileged and
8 may not be used by any party to establish the liability
9 or measure of damages attributable to the offeror.

10 (a) Such an offer shall provide that a patient has thirty
11 (30) days to accept or reject the offer, or such lesser
12 period of time as may be necessitated by the condition or
13 health of the patient.

14 (b) After any rejection or the lapse of the applicable
15 time, any party may demand arbitration.

16 (c) Any such offer to a patient shall include a statement
17 that the patient may consult legal counsel before
18 rejecting or accepting the offer.

19 (d) In a case where a potential claim is identified by a
20 health professional or health care institution where
21 reparations, in its judgment, are not appropriate, the
22 professional or institution may, at its option, file a
23 demand for arbitration which demand shall identify the
24 potential claim and deny liability.

25 Section 9990.13. Appointment of Guardian Ad Litem.

26 (a) When a minor, or an insane or incompetent person is a
27 petitioner, he must appear either by general guardian or
28 a Guardian Ad Litem appointed by the Superior Court of
29 Guam. A Guardian Ad Litem may be appointed in a claim for
30 arbitration under this Act when it is deemed by a judge
31 of the Superior Court of Guam expedient to represent the
32 minor, insane, or incompetent person in the arbitration
33 proceeding, notwithstanding he may have a general
34 guardian and may have appeared by him. The general
35 guardian or Guardian Ad Litem so appearing for an infant,
36 insane or incompetent person in any arbitration
37 proceeding shall have the power to compromise the same
38 and to agree to any settlement or decision of the
39 arbitrators to be entered therein against his ward,
40 subject to the approval of a majority of the arbitrators.

41 (b) All Guardian Ad Litem appointed by the Superior
42 Court of Guam to pursue a claim for arbitration shall be
43 appointed pursuant to §373 of the Guam Code of Civil
44 Procedure. Any petition to appoint a Guardian Ad Litem to
45 pursue a claim for arbitration shall have a copy of the

1 demand for arbitration attached thereto.

2 Section 9990.14. Stay of Proceedings When Suit is Filed.

3 If any suit or proceeding is brought in the courts of
4 Guam upon any issue referable to arbitration under the
5 Medical Malpractice Mandatory Arbitration Act, the court
6 in which said suit is pending, upon being satisfied that
7 the issue involved in such suit or proceeding is
8 referable to arbitration under this Act, shall upon
9 application of one of the parties, stay all proceedings
10 in the action until such arbitration has been had in
11 accordance with the terms of this Act.

12 Section 9990.15. Failure to Arbitrate Under This Act. The
13 party aggrieved by the alleged failure, neglect, or
14 refusal of another to arbitrate under this Act, may
15 petition the Superior Court of Guam, for an order
16 directing that such arbitration proceed in the manner
17 provided for in this Act. Five (5) days notice in writing
18 of such application shall be served upon the party in
19 default. Service thereof shall be made in the manner
20 provided by law for the service of summons in the
21 Superior Court of Guam. The court shall hear the parties,
22 and the court shall then make an order directing the
23 parties to proceed to arbitration in accordance with the
24 terms of this Act.

25 Section 9990.16. Service of Documents Upon Arbitrators:
26 Ex Parte Contact. Once the arbitration panel has been
27 selected, each of the arbitrators shall be provided with
28 a copy of the demand for arbitration and any responses
29 thereto by the Association. Each of the arbitrators shall
30 also be provided by the Association with the parties'
31 notice to each other identifying experts, witnesses,
32 documents and arbitration briefs as authorized in this
33 Act. Any motions or requests for additional discovery
34 shall also be served upon each of the arbitrators through
35 the Association.

36 Section 9990.17. Witnesses Before Arbitrators. The panel
37 or its chairperson in the arbitration proceeding shall,
38 upon application by a party to the proceeding, and may
39 upon its own determination, issue a subpoena requiring a
40 person to appear and be examined with reference to a
41 matter within the scope of the proceeding, and to produce
42 books, records, or papers pertinent to the proceeding. In
43 case of disobedience to the subpoena, the chairperson or
44 a majority of the arbitration panel in the arbitration

1 proceeding may petition the Superior Court of Guam to
2 require the attendance and testimony of the witness and
3 the production of books, papers, and documents. The
4 Superior Court of Guam, in case of contumacy or refusal
5 to obey a subpoena, may issue an order requiring that
6 person to appear and to produce books, records, and
7 papers and give evidence touching the matter in question.
8 Failure to obey the order of the Court may be punished by
9 the Court as contempt. The fees for the attendance of any
10 person to attend before the arbitration panel as a
11 witness shall be the same as the fees for witnesses
12 subpoenaed before the Superior Court of Guam. The
13 Superior Court of Guam shall order a witness to pay the
14 cost of the aggrieved party, to include attorney's fees,
15 if it is determined that the witness wrongfully failed to
16 appear before the arbitration panel.

17 Section 9990.18. Evidence and Testimony. A hearing shall
18 be informal and the arbitrators shall be the sole judge
19 of the relevancy and materiality of the evidence offered.

20 (a) The arbitrators may receive and consider evidence in
21 the form of an affidavit, but shall give appropriate
22 weight to any objections made. All documents to be
23 considered by the arbitrators shall be filed at the
24 hearing.

25 (b) Testimony shall be taken under oath and a record of
26 the proceedings shall be made by a tape recording. Any
27 party, at that party's expense, may have transcriptions
28 or copies of the recording made or may provide for a
29 written transcript of the proceedings. The costs of any
30 transcription ordered by the panel for its own use shall
31 be deemed part of the costs of the proceedings.

32 (c) Expert testimony shall not be required but where
33 expert testimony is used, it shall be admitted under the
34 same circumstances as in a civil trial and be subject to
35 cross-examination.

36 (d) The party with the burden of establishing a standard
37 of care and breach thereof shall establish such standards
38 whether by the introduction of expert testimony, or by
39 other competent proof of the standard and the breach
40 thereof, which may include the use of works as provided
41 in Subsection (d).

42 (e) Authoritative, published works on the general and
43 specific subjects in issue may be admitted and argued
44 from, upon prior notice to all other parties.

45 (f) The panel shall accord such weight and probative
46 worth to expert evidence as it deems appropriate. The

1 panel may call a neutral expert on its own motion, which
2 expert witness shall be subject to cross-examination by
3 the parties. The costs of the expert will be deemed a
4 cost of the proceeding.

5 Section 9990.19. Identification of Expert Witnesses.

6 Within thirty (30) days after the arbitrators have been
7 selected, any petitioner pursuing a claim against a
8 respondent shall identify the expert witnesses that the
9 petitioner will call at the arbitration hearing. When
10 identifying such experts, the petitioner shall provide
11 the name of the expert, the address of the expert, and
12 shall state the subject matter on which the expert is
13 expected to testify, and state the substance of the facts
14 and opinions to which the expert is to testify and a
15 summary of the grounds for each opinion. Within thirty
16 (30) days after the petitioner has identified his
17 experts, the respondent shall identify the expert
18 witnesses that the respondent will call to testify at the
19 arbitration hearing. The respondent shall provide the
20 name of the expert witness, the address of the expert
21 witness, and state the subject matter on which the expert
22 is expected to testify, and state the substance of the
23 facts and opinions to which the expert is expected to
24 testify and a summary of the grounds for each opinion.

25 Section 9990.20. Identification of Witnesses and
26 Documents. Within thirty (30) days after the respondent

27 has identified respondent's expert witnesses, the parties
28 shall exchange a list of witnesses that they expect to
29 call to testify at the arbitration hearing along with a
30 summary of each witnesses' proposed testimony. The
31 parties shall also provide each other with copies of all
32 documents and material that they intend to introduce as
33 evidence at the arbitration hearing.

34 Section 9990.21. Additional Discovery. Additional
35 discovery, not otherwise provided for in this Act, such
36 as depositions, interrogatories and requests to produce,
37 shall not be permitted unless:

38 (a) The parties stipulate to allow additional discovery;
39 or,

40 (b) A majority of the arbitrators at the pre-arbitration
41 conference provided for in Section 9990.22 of this Act
42 authorize additional discovery for good cause shown upon
43 the application of a party to the arbitration proceeding.
44 The arbitrators shall liberally authorize additional
45 discovery if it is necessary in order for a petitioner or

1 respondent to more adequately present or defend a claim.

2 Section 9990.22. Time And Place Of Arbitration Hearing.

3 Within thirty (30) days after the parties have exchanged
4 their lists of witnesses and provided each other with the
5 documents that the parties intend to introduce as
6 evidence at the arbitration hearing, the arbitrators
7 shall meet at a place designated by the chairperson and
8 conduct a pre-arbitration conference for the purpose of
9 deciding upon a date and place for the arbitration
10 hearing, and for the purpose of deciding whether
11 additional discovery should be permitted pursuant to
12 Section 9990.21 of this Act. The arbitrators, or a
13 majority of them, shall agree upon a date and place for
14 the arbitration hearing. The arbitration hearing shall be
15 conducted within ninety (90) days after the pre-
16 arbitration conference between the arbitrators and the
17 parties unless agreed otherwise by the parties. Oral
18 notice to the parties at the pre-arbitration conference
19 of the date, time and location of the arbitration hearing
20 shall be deemed sufficient.

21 Section 9990.23. Arbitration Briefs. Any arbitration
22 brief to be filed by a petitioner must be filed at least
23 ten (10) working days before the arbitration hearing. Any
24 arbitration brief to be filed by a respondent must be
25 filed at least five (5) working days before the
26 arbitration hearing. A petitioner may file a reply brief,
27 which shall respond only to matters discussed in the
28 respondent's arbitration brief, no later than two (2)
29 working days before the arbitration hearing.

30 (a) The panel may order submission of post-hearing briefs
31 within ten (10) calendar days after the close of
32 hearings. In written briefs, each party may summarize the
33 evidence in testimony and may propose a comprehensive
34 award of remedial or compensatory elements.

35 Section 9990.24. Representation By Counsel. Any party may
36 be represented in hearings before the arbitration panel
37 by counsel.

38 A party may appear without counsel, and shall be advised
39 of such right and the right to retain counsel in a manner
40 calculated to inform the person of the nature and
41 complexity of a proceeding by a simple concise form to be
42 distributed by the Association administering the
43 arbitration.

1 Section 9990.25. Attendance At Hearings. Parties to the
2 arbitration and their counsel are entitled to attend all
3 hearings. Non-party witnesses may be excluded by either
4 party upon request.

5 Section 9990.26. Oaths. The arbitrators shall require all
6 witnesses at the arbitration hearing to testify under
7 oath.

8 Section 9990.27. Arbitration In The Absence Of A Party.
9 The arbitration may proceed in the absence of any party
10 who, after due notice, fails to be present. An award
11 shall not be made solely on the default of a party. The
12 arbitrators shall require the attending party to submit
13 evidence.

14 Section 9990.28. Adjournments. Hearings may be adjourned
15 by a majority of the arbitrators only for good cause, and
16 an appropriate fee will be charged if the arbitrators
17 determine that a party has wrongfully caused an
18 adjournment to take place.

19 Section 9990.29. Waiver of Statutory Rights. Any party
20 who proceeds with arbitration after knowledge that any
21 provision of this Act has not been complied with and
22 fails to state his objections thereto in writing shall be
23 deemed to have waived his right to object.

24 Section 9990.30. Fees and Costs of Arbitration. Except
25 for the parties to the arbitration and their agents,
26 officers, and employees, all witnesses appearing pursuant
27 to subpoena are entitled to receive fees and mileage in
28 the same amount and under the same circumstances as
29 prescribed by law for witnesses in civil actions in the
30 Superior Court of Guam. The fee and mileage of a witness
31 subpoenaed upon the application of a party to the
32 arbitration shall be paid by that party. The fee and
33 mileage of a witness subpoenaed solely upon the
34 determination of the arbitrator or the majority of a
35 panel of arbitrators shall be paid in the manner provided
36 for the payment of the arbitrators' expenses.

37 (a) The costs of each arbitrator's fees and expenses,
38 together with any administrative fee may be assessed
39 against any party in the award or may be assessed among
40 parties in such proportions as may be determined in the
41 arbitration award. Each party shall bear its own
42 attorney's fees in the arbitration proceeding.

43 Section 9990.31. Damages. Damages or remedial care shall

1 be without limitation as to nature or amount unless
2 otherwise provided by law.

3 Section 9990.32. Timely Award. The award of the
4 arbitrators shall be rendered promptly by the arbitrators
5 and, unless otherwise agreed by the parties, not later
6 than twenty (20) business days from the date of the close
7 of the hearing. However, if the arbitrators fail to
8 render an award within twenty (20) business days from the
9 date of the close of the hearing, the arbitrators' award
10 shall not be vacated on this ground unless it can be
11 proven that a party has been seriously prejudiced due to
12 the fact that the arbitrators have not rendered an award
13 within twenty (20) business days.

14 Section 9990.33. Award of Arbitrators. A majority of the
15 panel of arbitrators may grant any relief deemed
16 equitable and just, including money damages, provision
17 for hospitalization, medical, or rehabilitative
18 procedures, support, or any combination thereof.

19 (a) The award in the arbitration proceeding shall be in
20 writing and shall be signed by the arbitrators or a
21 majority of the panel of arbitrators. An award cannot be
22 rendered unless it is signed by a majority of the
23 arbitrators. Award shall include a determination of all
24 the questions submitted to arbitration by each party, the
25 resolution of which is necessary to determine the
26 dispute, controversy, or issue.

27 (b) The panel shall determine the degree to which each
28 respondent party, if more than one, was at fault for the
29 total damages accruing to any other party to the
30 arbitration, considering all sources of damage involving
31 parties to the arbitration, but excluding the damages
32 attributable to persons not parties to the arbitration.

33 (c) The panel shall prepare a schedule of contributions
34 according to the relative fault of each party which
35 schedule shall be binding those parties, but such
36 determination shall not affect a claimant's right to
37 recover jointly and severally from all parties where such
38 right otherwise exists in the law.

39 Section 9990.34. Award of Remedial Services. In the case
40 of an award, any element of which includes remedial
41 services, contracts, annuities, or other non-cash award
42 element, the panel shall determine the current cash value
43 of each element of the award and shall also determine a
44 total current cash value of the entire award.

45 (a) An award of remedial surgery or care shall not

1 require that the patient undergo such treatment or care
2 by the health care professional or institution whose
3 conduct resulted in the award.

4 (b) A claimant need not accept the benefits of an award
5 for remedial surgery or other non-cash award element and
6 such refusal shall not affect the claimant's right to
7 receive any other part of the award, nor shall the
8 refusal entitle the claimant to payment of the current
9 cash value of the portion refused except as provided in
10 Subsections (c) and (d).

11 (c) Where the total determined current cash value of the
12 entire award is ONE HUNDRED THOUSAND DOLLARS
13 (\$100,000.00) or less, any party may be satisfied or
14 request satisfaction of all or a designated part of an
15 award by payment in a lump sum of the current cash value
16 of the total award or part of the award so designated.

17 (d) Where the total determined current cash value of the
18 entire award is greater than ONE HUNDRED THOUSAND DOLLARS
19 (\$100,000.00) the award shall provide that at least one-
20 third (1/3), unless otherwise stipulated by the parties,
21 of its total current cash value shall be payable in cash
22 lump sum, which payment may represent the current cash
23 value of remedial elements of the award or other
24 compensable damages.

25 Section 9990.35. Delivery of Award to Parties. The
26 parties shall accept as legal delivery of the award the
27 placing of the award or a true copy thereof in the mail
28 by the arbitrators addressed to such party at its last
29 known address or to the party's attorney, or personal
30 service of the award on the party or the party's
31 attorney.

32 Section 9990.36. Confirmation of Award. At any time
33 within one (1) year after an award is made, any party to
34 the arbitration may apply to the Superior Court of Guam
35 for an order confirming the award, and thereupon the
36 court must grant such an order unless the award is
37 vacated, modified, corrected, or appealed as prescribed in
38 Sections 9990.37, 9990.38 and 9990.40 of this Act. Notice
39 of the application shall be served upon the adverse
40 party, and thereupon the court shall have jurisdiction of
41 such party as though he had appeared generally in the
42 proceeding. If the adverse party is a resident of Guam,
43 service shall be made upon the adverse party as
44 prescribed by law for the service of a civil action in
45 the Superior Court of Guam. If the adverse party shall be

1 a non-resident, then the notice of the application shall
2 be served in like manner as other process of the Superior
3 Court of Guam served upon non-residents.

4 Section 9990.37. Vacation of Arbitration Award. In any of
5 the following cases, the Superior Court of Guam may make
6 an order vacating the award upon the application of any
7 party to the arbitration:

8 (a) Where the award was procured by corruption, fraud or
9 undue means;

10 (b) Where there was corruption in any of the arbitrators;

11 (c) Where the arbitrators exceeded their powers and the
12 award cannot be corrected without affecting the merits of
13 the decision upon the controversy submitted; or

14 (d) Where the rights of such party were substantially
15 prejudiced by the refusal of the arbitrators to postpone
16 the hearing upon sufficient cause being shown therefore
17 or by the refusal of the arbitrators to hear evidence
18 material to the controversy or by other conduct of the
19 arbitrators contrary to the provisions of this Chapter.

20 Where an award is vacated, the court shall direct a re-
21 hearing by the arbitrators, or if the court deems it
22 appropriate, shall direct the parties to select new
23 arbitrators for another arbitration proceeding.

24 Section 9990.38. Modification of Award. In any of the
25 following cases, the Superior Court of Guam may make an
26 order modifying or correcting the award upon the
27 application of any party to the arbitration:

28 (a) Where there was an evident material miscalculation of
29 figures or an evident material mistake in the description
30 of any person, thing, or property referred to in the
31 award.

32 (b) Where the arbitrators have awarded upon a matter not
33 submitted to them, unless it is a matter not effecting
34 the merits of the decision upon the matter submitted.

35 (c) Where the award is imperfect in matter or form not
36 effecting the merits of the controversy. The court may
37 modify and correct the award so as to effect the intent
38 thereof and promote justice between the parties.

39 Section 9990.39. Notice of Motion to Vacate or Modify.
40 Notice of a motion to vacate, modify, or correct an award
41 must be served upon the adverse party or his attorney
42 within thirty (30) days after the award is served upon
43 the party seeking to vacate, modify or correct the award.

44 Section 9990.40. Notice of Appeal and Request for Trial

1 De Novo.

2 (a) Within thirty (30) days after the award is served
3 upon the parties, any party may file with the clerk of
4 the Superior Court of Guam and serve on the other parties
5 and the Association a written Notice of Appeal and
6 Request for Trial De Novo of the action.

7 (b) After the filing and service of the written Notice of
8 Appeal and Request for Trial De Novo, the case shall be
9 set for trial pursuant to applicable court rules.

10 (c) If the action is triable by right to a jury, and a
11 jury was not originally demanded but is demanded within
12 ten (10) days of service of the Notice of Appeal and
13 Request for Trial De Novo by a party having the right of
14 trial by jury, the trial de novo shall include a jury,
15 and a jury trial fee shall be paid as provided by law.

16 Section 9990.41. Procedures at Trial De Novo.

17 (a) The clerk shall seal any arbitration award if a trial
18 de novo is requested. The jury will not be informed of
19 the arbitration proceeding, the award, or about any other
20 aspect of the arbitration proceedings. The sealed
21 arbitration award shall not be opened until after the
22 verdict is received and filed in a jury trial, or until
23 after the judge has rendered a decision in a court trial.

24 (b) All discovery permitted during the course of the
25 arbitration proceedings shall be admissible in the trial
26 de novo subject to all applicable rules of civil
27 procedure and evidence. The court in the trial de novo
28 shall insure that any reference to the arbitration
29 proceeding is omitted from any discovery taken therein
30 and sought to be introduced at the trial de novo.

31 (c) No statements or testimony made in the course of the
32 Arbitration hearing shall be admissible in evidence for
33 any purpose in the trial de novo.

34 Section 9990.42. Scheduling of the Trial De Novo. Every
35 case transferred to the court shall maintain the
36 approximate position on the civil trial docket as if the
37 case had not been so transferred, unless at the
38 discretion of the court, the docket position is modified.

39 Section 9990.43. The Prevailing Party In The Trial De
40 Novo; Costs.

41 (a) The 'Prevailing Party' in a trial de novo is the
42 party who has (1) appealed and improved upon the
43 Arbitration award by 40% or more, or (2) has not appealed
44 and the opposing party has appealed and failed to improve
45 upon the Arbitration award by 40% or more. For the

1 purpose of this rule, 'improve' or 'improved' means to
2 increase the award for a plaintiff or to decrease the
3 award for the defendant.

4 (b) The 'Prevailing Party' under these rules, as defined
5 above, is deemed the prevailing party under any statute
6 or rule of court, and as such is entitled to costs of
7 trial and all other remedies as provided by law.

8 Section 9990.44. Sanction For Failing To Prevail In The
9 Trial De Novo.

10 (a) After the verdict is received and filed, or the
11 court's decision rendered in a trial de novo, the trial
12 court shall impose sanctions, as set forth below, against
13 the non-prevailing party whose appeal resulted in the
14 trial de novo.

15 (b) The sanctions available to the court are as

16 (1) Reasonable cost and fees (other than
17 attorneys' fees) actually incurred by the party
18 but not otherwise taxable under the law;

19 (2) Costs of Jurors;

20 (3) Attorneys' fees not to exceed \$40,000.00;

21 (c) Sanctions imposed against a plaintiff will be
22 deducted from any award rendered. Sanctions imposed
23 against a defendant will be added to any award rendered.

24 (d) In determining sanctions, if any, the court shall
25 consider all the facts and circumstances of the case and
26 the intent and purpose of Mandatory Arbitration in the
27 Territory of Guam.

28 Section 9990.45. Applicability To Government Of Guam And
29 Its Agencies. Claims against the Government of Guam and
30 its agencies are governed by the Government Claims Act.
31 Thus, this Act does not apply to claims against the Guam
32 Memorial Hospital Authority or other health care
33 institutions established by the Government of Guam.

34 Section 9990.46. Effective Date Of Statute. This Act
35 shall not apply to any claim that accrues before the date
36 that the Act becomes law.

37 Section 9990.47. Severability Clause. If any section or
38 sentence of this Act is deemed unconstitutional, then
39 that section or sentence shall be severed from the Act
40 and the remainder of the Act shall remain and be of full
41 force and effect."
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