



Territory of Guam
Territorion Guam

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

RECEIVED
OFFICE OF THE SPEAKER
DATE: 3/8/94
TIME: 8:25 AM
RECD BY: Ferry

MAR 04 1994

The Honorable Joe T. San Agustin
Speaker, Twenty-Second Guam Legislature
155 Hesler Street
Agana, Guam 96910

REFERRED TO
LEGISLATIVE SECRETARY

A handwritten signature in black ink, appearing to be 'J. San Agustin', is written over the 'REFERRED TO' stamp.

Dear Mr. Speaker:

Transmitted herewith is Bill No. 457, which I have signed into law this date as
Public Law 22-87.

Sincerely yours,

A handwritten signature in black ink, 'Joseph F. Ada', is written above the printed name.

JOSEPH F. ADA
Governor

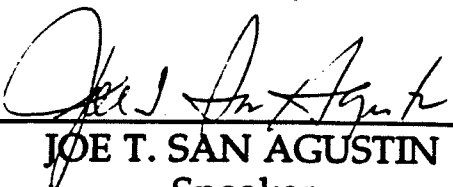
220567

Attachment

TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session

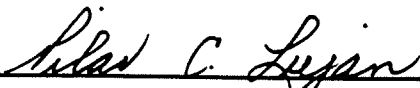
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 457 (LS), "AN ACT TO ADD §413 TO TITLE 6, GUAM CODE ANNOTATED, TO GIVE IMMUNITY TO MEMBERS OF MEDICAL STAFF REVIEW COMMITTEES AND PEER REVIEW-MEDICAL AUDITS; AND TO AMEND SECTION 5 OF PUBLIC LAW 21-134 TO PERMIT ASSIGNMENT OF HEALTH PROFESSIONALS DURING EMERGENCIES," was on the 16th day of February, 1994, duly and regularly passed.




JOE T. SAN AGUSTIN
Speaker

Attested:



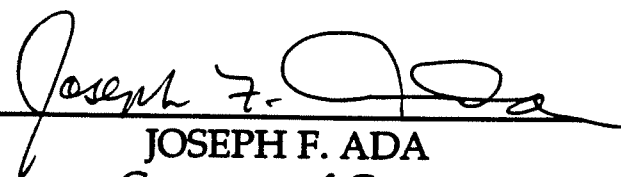
PILAR C. LUJAN
Senator and Legislative Secretary

This Act was received by the Governor this 23rd day of February,
1994, at 3:52 o'clock p.M.



Assistant Staff Officer
Governor's Office

APPROVED:



JOSEPH F. ADA
Governor of Guam

Date: MAR 04 1994

Public Law No. 22-87

TWENTY-SECOND GUAM LEGISLATURE
1993 (FIRST) Regular Session

Bill No. 457 (LS)

As substituted by the Committee on Health,
Ecology and Welfare and as further substituted
by the Committee on Rules

Introduced by:

D. L. G. Shimizu
T. C. Ada
I. P. Aguon
E. P. Arriola
M. Z. Bordallo
H. D. Dierking
C. T. C. Gutierrez
P. C. Lujan
T. S. Nelson
V. C. Pangelinan
D. Parkinson
E. D. Reyes
J. T. San Agustin
F. E. Santos
J. G. Bamba
A. C. Blaz
D. F. Brooks
F. P. Camacho
M. D. A. Manibusan
T. V. C. Tanaka
A. R. Unpingco

AN ACT TO ADD §413 TO TITLE 6, GUAM CODE ANNOTATED, TO GIVE IMMUNITY TO MEMBERS OF MEDICAL STAFF REVIEW COMMITTEES AND PEER REVIEW-MEDICAL AUDITS; AND TO AMEND SECTION 5 OF PUBLIC LAW 21-134 TO PERMIT ASSIGNMENT OF HEALTH PROFESSIONALS DURING EMERGENCIES.

1

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

1 **Section 1. Legislative findings.** The Legislature finds that for the
2 protection of patients and the Guam Memorial Hospital, the admissions and
3 patient care practices of physicians with hospital privileges are closely
4 monitored. Any deviation from the normal standard of care, all adverse
5 outcomes, and all potential problems are referred to other physicians for peer
6 review, which includes discussion of the case and its management for
7 educational purposes and may include suggestions for alternative
8 approaches to case management, and in some cases, recommendations for
9 corrective actions, if deemed necessary.

10 Complete protection from courtroom discovery procedures is essential
11 in order to encourage candid discussion involving both the peers and the
12 concerned physician. Such discussions are educational for all physicians
13 involved and lead to better medical practices. Also, such discussions are
14 essential to document important advice and any corrective actions which may
15 be necessary. These records are necessary in case formal and more serious
16 corrective actions are necessary either for the case in question or for future
17 cases. Finally, such records are used as evaluation tools to recommend
18 physicians to the members of the medical staff of Guam Memorial Hospital
19 Authority ("GMHA") after at least one year and no more than two years of
20 provisional staff status, during which their clinical management of patients is
21 closely monitored to insure clinical competence and appropriateness of
22 admission, procedures, and tests. In addition, these records are used for the
23 regularly scheduled physician reappraisals which are required by the GMHA
24 Medical Staff Bylaws, by the Healthcare Financing Care Administration, and
25 by the Joint Commission on Accreditation of Healthcare Organizations.

26 **Section 2. Legislative intent.** The Legislature finds that strong peer
27 review policy as provided in this Act does not deprive patients, plaintiffs, or

1 attorneys of any of the usual legal rights. These parties continue to have
2 access to the complete medical record, and all physicians who are party to any
3 action or who have special knowledge or expertise can still testify or be
4 subpoenaed as in any other case. This Act only makes nondiscoverable those
5 candid comments made at the peer review meetings.

6 Section 3. §413 is hereby added to Title 6, Guam Code Annotated, to
7 read:

8 **"§413. Review of quality care, health care provider peer**
9 **review committees, immunity from liability; privileged**
10 **communications; discovery; testimony; delegation of authority.**

11 (a) Every health care provider may establish procedures for
12 continuously reviewing and improving the quality of care,
13 performance of medical personnel, utilization of services and
14 facilities, and costs. Notwithstanding any other provision of law,
15 there shall be no monetary liability on the part of, and no cause of
16 action for damages shall arise against, any person who participates
17 in quality of care or utilization reviews by plan or health care
18 provider peer review committees which are licensed health care
19 providers composed chiefly of physicians and surgeons, dentists,
20 optometrists, or any of the above, for any act performed during the
21 reviews if the person acts in good faith without malice, has made a
22 reasonable effort to obtain the facts of the matter, and believes that
23 the action taken is warranted by the facts. Neither the proceedings
24 nor the records of the reviews shall be subject to discovery except as
25 herein provided, nor shall any person in attendance at the reviews be
26 required to testify as to what transpired thereat. Disclosure of the
27 proceedings or records to the governing body of a health care

1 provider or to any person or entity designated by the health care
2 provider to review activities of the committees shall not alter the
3 status of the records or of the proceedings as privileged
4 communications.

5 (b) The prohibitions in this section do not apply to medical or
6 medical-dental committees if any person serves upon the committee
7 when his or her own conduct or practice is being reviewed.

8 (c) This section shall not be construed to confer immunity from
9 liability on any health care provider. In any case in which, but for the
10 enactment of the preceding provisions of this section, a cause of
11 action would arise against a health care provider, the cause of action
12 shall exist notwithstanding the provisions of this section. Medical
13 records and other nonprivileged information discovered by
14 independent means are not included in this section's prohibition
15 relating to discovery.

16 (d) Nothing in this section shall be construed to prevent a
17 health care provider from utilizing subcommittees to participate in
18 peer review activities, nor to prevent a plan or health care provider
19 from delegating the responsibilities required by this section, as it
20 determines to be appropriate, to subcommittees including
21 subcommittees composed of a majority of non-physician health care
22 providers licensed pursuant to Guam law, so long as the plan or
23 health care provider controls the scope of authority delegated and
24 may revoke all or part of this authority at any time. Persons who
25 participate in the subcommittees shall be entitled to the same
26 immunity from monetary liability and actions for civil damages as

1 persons who participate in provider peer review committees
2 pursuant to this section.

3 (e) The prohibitions in this section do not exclude the discovery
4 or use of relevant evidence in any criminal or civil action; and shall
5 not limit the authority to obtain such information by subpoena or
6 other authorized process from the peer review committees or
7 subcommittees or members thereof for uses relating to matters and
8 investigations within the jurisdiction of boards created pursuant to
9 Chapter 12 of Title 10, Guam Code Annotated, to regulate the
10 practice of the healing arts.

11 (f) "Health care provider", as the term is used in this section,
12 means a licensed organization engaged in the providing of personal
13 health service to the public. Such licensed organizations include
14 hospitals, clinics, health maintenance organizations and nursing
15 homes, but do not include individual or sole practitioners.

16 (g) In all cases, the peer review committee or subcommittee
17 shall make its findings available within fourteen (14) days to (i) the
18 medical or dental professional being assessed, (ii) each licensure
19 entity or board which has licensed the person reviewed, (iii) the
20 employer (if any) of the person reviewed, and (iv) GMHA, if such
21 committee or subcommittee finds any one of the following:

22 (i) The person reviewed has an alcohol or substance
23 abuse problem;

24 (ii) The person reviewed is incompetent or has
25 committed serious malpractice;

1 (iii) To permit the person reviewed to continue practicing
2 that person's profession would represent a significant threat to
3 the health or lives of patients;

4 (iv) The person reviewed has refused to or failed to take
5 remedial actions recommended by the committee or
6 subcommittee;

7 (v) The person reviewed has violated any law relating to
8 controlled substances;

9 (vi) The person reviewed was or is licensed or has
10 continued to be licensed based upon fraudulent documents or
11 statements;

12 (vii) The person reviewed is physically or mentally
13 incapable of performing some or all of the duties normally
14 performed by a practitioner of his or her specialty or
15 profession;

16 (viii) The person reviewed has consistently failed to
17 follow generally accepted medical or dental procedures;

18 (ix) The person reviewed has violated the ethical
19 standards of his or her profession; or

20 (x) The person reviewed has committed a crime.

21 If either subitems (v) or (x) is found to apply, the committee or
22 subcommittee making the review shall notify the Guam Police
23 Department, the National Practitioners Databank, the Attorney
24 General, and the U. S. Attorney (if a federal crime is involved). In
25 addition, such committee or subcommittee may make its findings
26 available to any of the above named organizations or persons if such

1 committee or subcommittee finds it is necessary to protect the patients
2 of the person reviewed."

3 **Section 4.** Section 5 of Public Law 21-134 is hereby amended to read:

4 "Section 5. Assignment of nurses, physicians, and other
5 ancillary health professionals including pharmacists, medical
6 laboratory technicians, radiology technicians, physical and
7 occupational therapists, dietitians and social workers, where needed
8 during emergency. The Governor after declaration by executive
9 order of a civil defense or public health or public safety emergency
10 and notwithstanding any other provision of law, may transfer
11 during the emergency period licensed nurses, physicians, and other
12 ancillary health professionals including pharmacists, medical
13 laboratory technicians, radiology technicians, physical and
14 occupational therapists, dietitians and social workers from one
15 department or agency to another department or agency where their
16 presence is critically needed."

TWENTY-SECOND GUAM LEGISLATURE

1994 (SECOND) Regular Session

Date: 2/16/94

VOTING SHEET (AS REVISED)

Bill No. 457

Resolution No. _____

Question: _____

NAME	AYE	NO	NOT VOTING/ ABSTAINED	ABSENT/ OUT DURING ROLL CALL
ADA, Thomas C.	✓			
AGUON, John P.	✓			
ARRIOLA, Elizabeth P.	✓			
BAMBA, J. George	✓			
BLAZ, Anthony C.	✓			
BORDALLO, Madeleine Z.	✓			
BROOKS, Doris F.	✓			
CAMACHO, Felix P.	✓			
DIERKING, Herminia D.	✓			
GUTIERREZ, Carl T. C.	✓			
LUJAN, Pilar C.	✓			
MANIBUSAN, Marilyn D. A.	✓			
NELSON, Ted S.	✓			
PANGELINAN, Vicente C.	✓			
PARKINSON, Don	✓			
REYES, Edward D.	✓			
SAN AGUSTIN, Joe T.	✓			
SANTOS, Francis E.	✓			
SHIMIZU, David L. G.	✓			
TANAKA, Thomas V. C.	✓			
UNPINGCO, Antonio R.	✓			

TOTAL

21 _____

August 11, 1993

The Honorable
Joe T. San Agustin
Speaker, 22nd Guam Legislature
Agana, Guam



TWENTY SECOND
GUAM LEGISLATURE

via: Committee on Rules

Dear Mr. Speaker:

The Committee on Health, Ecology & Welfare, to which was referred the bill 457: AN ACT TO ADD §413 AND 414 TO TITLE 6 OF THE GUAM CODE ANNOTATED RELATIVE TO MEDICAL STAFF REVIEW COMMITTEES AND PEER REVIEW-MEDICAL AUDITS FOR HEALTH CARE PROVIDERS, herein reports back and recommends **Bill 457 to Do Pass As Substituted.**

Dr. DAVID L.G. SHIMIZU
Senator

CHAIRMAN:
Committee on

Health,
Ecology
and
Welfare

Votes of committee members are as follows:

- 7 To Pass
- Not To Pass
- To The Inactive File
- Abstained
- Off-Island
- 3 Not Available

Sincerely,


Dr. David L.G. Shimizu

324 West Soledad Ave.
Suite 202,
Agaña, Guam
96910

Telephone:
(671)472-3543/44/45

attachments

Facsimile:
(671)472-3832

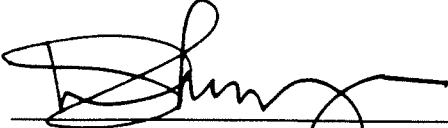



VOTE SHEET

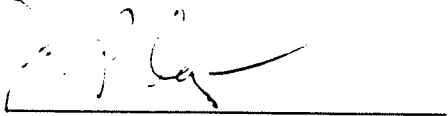
Committee on Health, Ecology & Welfare

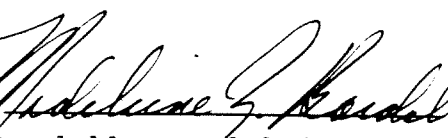
Substitute Bill 457: AN ACT TO ADD §413 AND 414 TO TITLE 6 OF THE GUAM CODE ANNOTATED RELATIVE TO MEDICAL STAFF REVIEW COMMITTEES AND PEER REVIEW-MEDICAL AUDITS FOR HEALTH CARE PROVIDERS.

SENATOR TO PASS NOT TO PASS ABSTAIN FILE


Shimizu, David L.G.

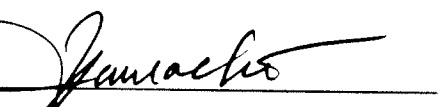

Arriola, Elizabeth P.

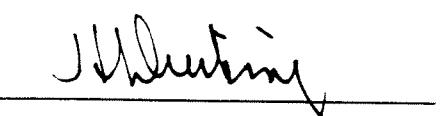

Aguon, J.P.


Bordallo, Madeleine Z.

Brooks, Doris F.

Blaz, Anthony


Canacho, Felix P.


Dierking, Herminia

Manibusan, Marilyn D.A.



Inventory of Attachments

Pursuant to §7.03.02 of the 22nd Guam Legislature Standing Rules on formal reports by Standing Committees on legislation:

fiscal note

purpose and essential elements of the bill

testimonial digest

evidence of those testifying

COMMITTEE REPORT
HEALTH, ECOLOGY & WELFARE

Bill No. 457

AN ACT TO ADD §413 AND 414 TO TITLE 6 OF THE GUAM CODE ANNOTATED RELATIVE TO MEDICAL STAFF REVIEW COMMITTEES AND PEER REVIEW-MEDICAL AUDITS FOR HEALTH CARE PROVIDERS.

PUBLIC HEARING:

The Health, Ecology & Welfare Committee conducted a public hearing on Friday, June 18, 1993, at 9 a.m. to hear testimonies on Bill No. 457.

The hearing was called to order by the HEW Chairman, Dr. David L.G. Shimizu. Senator Doris F. Brooks, a committee member, was also present.

Purpose of Bill No. 457:

It is the purpose of Bill 457, as amended, to supplement and enhance the provisions of Public Law 20-177, which was enacted by the 20th Guam Legislature on May 18, 1990. The scope of Public Law 20-177: AN ACT TO ADD §412 TO TITLE 6, GUAM CODE ANNOTATED, TO MAKE RECORDS OF HOSPITAL STAFF REVIEW ACTIVITIES PRIVILEGED INFORMATION, TO ADD §3285 TO THE CIVIL CODE OF GUAM GIVING CIVIL IMMUNITY TO PARTICIPANTS IN CERTAIN MEDICAL REVIEW ACTIVITIES AND TO AMEND §12231 OF TITLE 10, GUAM CODE ANNOTATED, TO GIVE IMMUNITY TO CERTAIN PROFESSIONAL BOARDS, is limited and applied only to hospital personnel (see attachment). Public Law 20-177 also maintained the position that the disclosure of information from the committees were not violations of physician-patient privilege.

Bill 457, as amended, provides two basic protections, imperative to the success of any hospital accreditation and peer review process. First, the activities and written records of the committee shall be held in strict confidentiality. Second, committee members shall be immune from civil liabilities for their activities conducted in good faith without malice. These protections allow for participants in the peer review process to be open and honest in their evaluations of the medical practices of others without fear of legal reprisal.

Bill 457 fills in the gaps left in Public Law 20-177, since it provides and expands for the same confidential peer review committees outside of hospital personnel, including, but not limited to HMO's, clinics, and other health care facilities. Furthermore, protection from civil liabilities are extended to all participants in the peer review process. These new provisions are important for the effectiveness and success of the peer review program. Bill 457 is an important piece of legislation that is critical for the successful and efficient operation of the peer review program here on Guam.

Testimonies:

Oral and written testimonies in favor of Bill 457 were submitted by the following:

1. June S. Mair - Legal Counsel for FHP, Inc.
2. Dr. R. Wade Covill, MD - Medical Director, FHP & representative for the Guam Medical Society.
3. Lou Leon Guerrero - Director of Quality Management, FHP
4. Vincent Arriola - Government Affairs Manager, FHP
5. Peter John Camacho - Administrator, GMHA
6. Ken White - Mercy International Health Services
7. Rosie Tainatongo - Chairperson, GMHA Board of Trustees
8. Jim Gillan - Guam Memorial Health Plan
9. Eduardo Cruz, MD - GMHA
10. Ladd Baumann - Attorney, GMHA

June S. Mair recommended that the committee amend Bill 457 to provide immunity against civil liability to other health care providers participating in peer review committees.

Lou Leon Guerrero requests that the committee include language that will protect health care professionals from civil liability.

Vincent Arriola commented that there should be additional language in the Bill that specifically states participants in the peer review committee are immune from liability.

Dr. R. Wade Covill, MD, recommended that immunity protection be extended to all Peer Review Committees formed for the purpose of managing the quality of medical care on Guam.

Peter John Camacho stated that the expansion of the coverage to include clinics and other health organizations are the first steps to

ensure that a process will be implemented for the health delivery system of our island is continually being evaluated for opportunities to improve.

Kenneth R. White stated that physicians must be afforded the protection which is necessary for them to do their work.

Rosie R. Tainatongo supported that there is a concern about having one's livelihood disrupted because of a lawsuit.

Committee Findings:

Presently, Peer Review at Guam Memorial Hospital, currently does not require any written or recorded documentation relative to the provisions of Public Law 20-177. This generally is a poor process of ensuring quality health care and does not satisfy the requirement for the Joint Commission on Accreditation.

Private health care organizations such as FHP and GMHP presently incorporate peer review committees as part of their quality management system.

Because of the need for immunity from civil liability, all medical professionals are reluctant to participate on the peer review process without such protection therefore the need for additional peer review legislation becomes necessary.

Committee Recommendation:

On Bill No. 457: AN ACT TO ADD §413 AND 414 TO TITLE 6 OF THE GUAM CODE ANNOTATED RELATIVE TO MEDICAL STAFF REVIEW COMMITTEES AND PEER REVIEW-MEDICAL AUDITS FOR HEALTH CARE PROVIDERS, the Health, Ecology & Welfare Committee hereby recommends **TO DO PASS AS SUBSTITUTED.**

1

**TWENTY SECOND GUAM LEGISLATURE
1993 (First) Regular Session**

Bill No. 457

As Substituted by the HEW Committee

Introduced by:

D. L.G. Shimizu

AN ACT TO ADD §413 and 414 TO TITLE 6 OF THE GUAM
CODE ANNOTATED RELATIVE TO MEDICAL STAFF
REVIEW COMMITTEES AND PEER REVIEW-MEDICAL
AUDITS FOR HEALTH CARE PROVIDERS.

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

1 Section 1. Legislative findings. The Legislature finds that for the
2 protection of patients and the hospital, the admissions and patient care
3 practices of physicians with hospital privileges are proctored or
4 monitored. Any deviation from the standard of care, adverse outcome,
5 or potential problem is referred for peer review. Peer review includes
6 discussion of the case and its management for educational purposes and
7 may include suggestions for alternative approaches to case
8 management, and in some cases recommendations for corrective
9 action(s), if deemed necessary.

10 The complete protection from discovery is essential in order to
11 encourage candid discussion involving both peers and the concerned
12 physician. Such discussions are educational for all physicians involved
13 and often lead to better medical practice in the future. Also, such
14 discussions are essential to document important advice and any
15 corrective action(s) which may be necessary. These records are
16 necessary in case formal and more serious corrective actions are
17 necessary either for the case in question or for future cases. Finally, such
18 records are used as evaluation tools to recommend physicians to the

1 Active or Courtesy staff after at least one (1) year and no more than (2)
 2 years of Provisional Staff status, during which their clinical
 3 management of patients are closely monitored to insure clinical
 4 competence and appropriateness of admission, procedures, and tests; in
 5 addition these records are used for the regularly scheduled physician
 6 reappraisals which are required by the GMHA Medical Staff Bylaws,
 7 Healthcare Financing Care Administration (HCFA) and the Joint
 8 Commission on Accreditation of Healthcare Organizations (JCAHO)
 9 standards for all physicians at least every 2 years.

10
 11 Section 2. Legislative Intent. It must be emphasized that strong
 12 peer review policy as provided herein does not deprive patients,
 13 plaintiffs, or attorneys of any of the usual legal rights. These parties
 14 continue to have access to the complete medical record, and any and all
 15 physicians who are party to any action or who have special knowledge
 16 or expertise can still testify or be subpoenaed as in any other case.
 17 Rather, this Act only keeps nondiscoverable, those candid comments
 18 made at the peer review meeting.

19
 20 Section 3. §413 of Title 6, Guam Code Annotated is added to read:

21 **§413. Review of quality care, health care [provided] provider peer**
 22 **review committees, immunity from liability; privileged**
 23 **communications; discovery; testimony; delegation of authority.**

24 a) Every health care provider may establish procedures for
 25 continuously reviewing and improving the quality of care, performance
 26 of medical personnel, utilization of services and facilities, and costs.
 27 Notwithstanding any other provision of law, there shall be no
 28 monetary liability on the part of, and no cause of action for damages
 29 shall arise against, any person who participates in quality of care or
 30 utilization reviews by plan or health care provider peer review
 31 committees which are composed chiefly of physicians and surgeons,
 32 dentists, optometrists, or any of the above, for any act performed
 33 during the reviews if the person acts in good faith without malice, has
 34 made a reasonable effort to obtain the facts of the matter, and believes
 35 that the action taken is warranted by the facts. Neither the proceedings
 36 nor the records of the reviews shall be subject to discovery, nor shall any

1 person in attendance at the reviews be required to testify as to what
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3 governing body of a health care provider or to any person or entity
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7 b) The prohibitions in this section do not apply to medical or
8 medical-dental committees if any person serves upon the committee
9 when his or her own conduct or practice is being reviewed.

10 (c) This Section shall not be construed to confer immunity from
11 liability on any health care provider. In any case in which, but for the
12 enactment of the preceding provisions of this Section, a cause of action
13 would arise against a health care provider, the cause of action shall
14 exist notwithstanding the provisions of this Section. Medical records
15 and other nonprivileged information discovered by independent means
16 is not included in this Section's prohibition relating to discovery.

17 (d) Nothing in this Section shall be construed to prevent a health
18 care provider from utilizing subcommittees to participate in peer
19 review activities, nor to prevent a plan or health care provider from
20 delegating the responsibilities required by this Section, as it determines
21 to be appropriate, to subcommittees including subcommittees composed
22 of a majority of nonphysician health care providers licensed pursuant to
23 Guam law, so long as the plan or health care provider controls the
24 scope of authority delegated and may revoke all or part of this
25 authority at any time. Persons who participate in the subcommittees
26 shall be entitled to the same immunity from monetary liability and
27 actions for civil damages as persons who participate in provider peer
28 review committees pursuant to this Section.

29 (e) The prohibitions in this Section do not exclude the discovery or
30 use of relevant evidence in any criminal action; and shall not limit the
31 authority to obtain such information by subpoena or other authorized
32 process from the members of the peer review committees or
33 subcommittees for uses relating to matters and investigations within
34 the jurisdiction of boards created pursuant to Chapter 12 of Title 10
35 Guam Code Annotated to regulate the practice of healing arts.

36 (f) "Health care provider," as the term is used in this Section,

1 means a licensed organization engaged in the providing of personal
2 health service to the public. Such licensed organizations includes
3 hospitals, clinics, health maintenance organizations and nursing homes,
4 but does not include individual or sole practitioners."

5 /

6 //

7 ///

1

TWENTY SECOND GUAM LEGISLATURE
1993 (First) Regular Session

Bill No. 457
Introduced by:

D. L. Shimizu 

AN ACT TO ADD §413 and 414 TO TITLE 6 OF THE GUAM
CODE ANNOTATED RELATIVE TO MEDICAL STAFF
REVIEW COMMITTEES AND PEER REVIEW-MEDICAL
AUDITS FOR HEALTH CARE PROVIDERS.

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19 Active or Courtesy staff after at least one (1) year and no more than (2)
20 years of Provisional Staff status, during which their clinical
21 management of patients are closely monitored to insure clinical

1 competence and appropriateness of admission, procedures, and tests; in
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5 Commission on Accreditation of Healthcare Organizations (JCAHO)
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13 Rather, this Act only keeps nondiscoverable, those candid comments
14 made at the peer review meeting.

15 Section 3. §413 of Title 6, Guam Code Annotated is added to read:

16 **§413. Review of quality care, health care, provided peer review**
17 **committees, privileged communications; discovery; testimony;**
18 **delegation of authority.**

19 a) Every health care provider may establish procedures for
20 continuously reviewing and improving the quality of care, performance
21 of medical personnel, utilization of services and facilities, and costs.
22 Neither the proceedings nor the records of the reviews shall be subject
23 to discovery, nor shall any person in attendance at the reviews be
24 required to testify as to what transpired thereat. Disclosure of the
25 proceedings or records to the governing body of a health care provider
26 or to any person or entity designed by the health care provider to
27 review activities of the committees shall not alter the status of the
28 records or of the proceedings as privileged communications.

29 b) The prohibitions in this section do not apply to medical or
30 medical-dental committees if any person serves upon the committee
31 when his or her own conduct or practice is being reviewed.

32 (c) This Section shall not be construed to confer immunity from
33 liability on any health care provider. In any case in which, but for the
34 enactment of the preceding provisions of this Section, a cause of action
35 would arise against a health care provider, the cause of action shall
36 exist notwithstanding the provisions of this Section. Medical records

1 and other nonprivileged information discovered by independent means
2 is not included in this Section's prohibition relating to discovery.

3 (d) Nothing in this Section shall be construed to prevent a health
4 care provider from utilizing subcommittees to participate in peer
5 review activities, nor to prevent a plan or health care provider from
6 delegating the responsibilities required by this Section, as it determines
7 to be appropriate, to subcommittees including subcommittees composed
8 of a majority of nonphysician health care providers licensed pursuant to
9 Guam law, so long as the plan or health care provider controls the
10 scope of authority delegated and may revoke all or part of this
11 authority at any time.

12 (e) The prohibitions in this Section do not exclude the discovery or
13 use of relevant evidence in any criminal action; and shall not limit the
14 authority to obtain such information by subpoena or other authorized
15 process from the committees for uses relating to matters and
16 investigations within the jurisdiction of boards created pursuant to
17 Chapter 12 of Title 10 Guam Code Annotated to regulate the practice of
18 healing arts.

19 (f) "Health care provider," as the term is used in this Section,
20 means a licensed organization engaged in the providing of personal
21 health service to the public. Such licensed organizations includes
22 hospitals, clinics, health maintenance organizations and nursing homes,
23 but does not include individual or sole practitioners."

24 /
25 //
26 ///



GIOVANNI T. SGAMBELLURI
Director

JUN 25 1993

The Bureau requests that Bill Nos. 457 be granted a waiver pursuant to Public Law 12-229 for the following reasons:

Bill No. 457 intends to add Sections 413 and 414 to Title 6 GCA relative to medical staff review committees and peer review-medical audits for health care providers. The proposed measure poses no financial impact on the General Fund given the language of the bill.

of Giovanni T. Sgambelluri
Director
Joe G. [unclear]
93

§12015. Order of Business. The order of business of meetings of the Board shall be:

- (a) Roll call,
- (b) Approval of the minutes,
- (c) Reports from officers and committees,
- (d) Unfinished business,
- (e) New business,
- (f) Informal discussion or entertainment, and
- (g) Adjournment."

Section 2. Twenty Thousand Dollars (\$20,000) are hereby appropriated from the General Fund to the Agricultural Board of Commissioners to fund its initial work.

Section 3. The jurisdiction of this Board shall in no way interfere or overlap with the jurisdiction or authority of the Soil and Water Conservation Districts which operate pursuant to §63501 through §63512 of Title 5, Guam Code Annotated.

PUBLIC LAW NO. 20-177

Bill No. 1114 (COR)
 Date Became Law: May 18, 1990
 Governor's Action: Approved

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

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

Section 1 ... Added to 6 GCA §412, Records of Medical Studies of in-hospital staff committees.

P.L. NO. 20-177

- Section 2 ... Added to Civil Code of Guam §3285, Civil Immunity for hospital medical staff.
Section 3 ... Amended 10 GCA §12231, Good Faith Immunity.

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

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

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

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

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

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

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

"§3285. (a) Civil immunity for physicians, nurse or dentist members of certain boards and committees. Any physician, nurse or dentist who is actively engaged in the practice of such profession shall be immune from civil liability for any act, decision, or omission done or made in good faith in performance of duties as a member or agent of committees specified in §412 of Title 6, Guam Code Annotated, when such committee functions:

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

(ii) to review the duration of patient stays in health facilities or professional services furnished with respect to the medical or dental necessity for such services, for the purpose of promoting the most efficient use of available health facilities and

services, the adequacy or quality of professional services, or the reasonableness of charges made by or on behalf of physicians or dentists, or

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

(b) Civil immunity of members of, or consultants to, certain boards or committees. Every member of, or health care professional consultant to, committees specified in §412 of Title 6, Guam Code Annotated, shall be immune from civil liability for any act, decision, omission, or utterance done or made in good faith performance of duties while serving as a member or consultant to such committee, when such committee functions to review, evaluate, or make recommendations on:

- (i) the duration of patient stays in health care facilities,
- (ii) professional services furnished with respect to the medical or dental necessity for such services,
- (iii) the purpose of promoting the most efficient use of available health care facilities and services,
- (iv) the adequacy or quality of professional services,
- (v) the competency and qualifications for professional staff privileges, or
- (vi) the reasonableness or appropriateness of charges made by or on behalf of health care facilities; provided, that such entity has been established pursuant to federal or Guam law or regulation, or pursuant to standards of the Joint Commission on Accreditation of Health Care Organizations; and provided further that such act, decision, omission, or utterance is not done or made in bad faith or with malicious intent."

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

"§12231. Good Faith Immunity. No member of the Commission on Licensure to practice the healing arts, the Guam Board of Medical Examiners, the Guam Board of Dental Examiners, the Guam Board of Allied Health Examiners, the Guam Board of Nurse Examiners, the Guam Board of Examiners for Optometry or the Guam Board of Exam-

iners for Pharmacy shall be liable in any civil action for damages for any act done or omitted in good faith in performing the functions of his office."

PUBLIC LAW NO. 20-178

Bill No. 1358 (LS)	Introduced by:	E.D. Reyes
Date Became Law: May 18, 1990	J.P. Aguon	E.P. Arriola
Governor's Action: Approved	M.Z. Bordallo	H.D. Dierking
	C.T.C. Gutierrez	P.C. Lujan
	G. Mailloux	T.S. Nelson
	D. Parkinson	F.J.A. Quitugua
	J.T. San Agustin	F.R. Santos
	J.G. Bamba	D.F. Brooks
	E.R. Duenas	E.M. Espaldon
	M.D.A. Manibusan	M.C. Ruth
	T.V.C. Tanaka	A.R. Unpingco

AN ACT TO AMEND ARTICLE 4 OF
CHAPTER 2, TITLE 12, GUAM CODE
ANNOTATED, TO REVISE THE QUALIFYING
CERTIFICATE PROGRAM OF THE GUAM
ECONOMIC DEVELOPMENT AUTHORITY.

- Section 1 ... Added 12 GCA, Chapter 2, Article 4, §2400.1, GEDA Qualifying Certificate.
- Section 2 ... Added 12 GCA, Chapter 2, Art. 4, §2400, Short Title, "QC Reform Act of 1990."
- Section 3 ... Amends 12 GCA, Title 12, Chap. 2, Art. 4, Qualifying Certificate defined.
- Section 4 ... Amends 12 GCA, Title 12, Chap. 2 Art. 4, Eligibility defined.
- Section 5 ... Added 12 GCA, Chap. 2, Art. 4, §2403.2, Hotel/Motel eligibility.
- Section 6 ... Added 12 GCA, Chap. 2, Art. 4, §2403.3, Hotel QC Moratorium.
- Section 7 ... Amends 12 GCA, Chap. 2, Art. 4, §2404, Qualifying Certificate Nature of and benefits.
- Section 8 ... Amends 12 GCA, Chap. 2 Art. 4, §2405, Qualifying Certificate Issuance of.
- Section 9 ... Amends 12 GCA, Chap. 2, Art. 4, §2406, Grounds for suspension, rescission, or revocation.
- Section 10 ... Amends 12 GCA Chap. 2, Art. 4, §2407, Disqualification of QC.

DAVID A MAIR
JUNE S MAIR
JOHN A SPADE
RANDALL TODD THOMPSON
SANDRA CRUZ
KEVIN A SEELY

LAW OFFICES
MAIR, MAIR, SPADE & THOMPSON

A PROFESSIONAL CORPORATION
SUITE 807 GCIC BUILDING
AGANA, GUAM 96910

TELEPHONE 671 472-2089
671 472-2090
TELECOPIER 671 477-5276

June 18, 1993

VIA HAND DELIVERY

Senator David L.G. Shimizu
Chairman, Committee on Health,
Welfare and Ecology
Twenty-second Guam Legislature
Agana, Guam 96910

Re: Bill No. 457

Dear Senator Shimizu:

I am a member of the law firm of Mair, Mair, Spade & Thompson, which is legal counsel to FHP, Inc. in the Territory of Guam. My appearance before this committee today is in my capacity as FHP's attorney.

I wholeheartedly support Bill No. 457. It is extremely important legislation because it supplements and enhances the provisions of Public Law 20-177 which was enacted by the 20th Guam Legislature on May 18, 1990.

Public Law 20-177 dealt with in-house hospital staff committees which make findings and recommendations to reduce morbidity or mortality at hospitals. Public Law 20-177 provided that the disclosure of patient information to an in-house hospital staff committee was not a violation of the physician-patient privilege, and that the written records from such committee activities could not be admitted into evidence. Public Law 20-177 also provided that physicians, nurses or dentists serving on such in-house staff committees would be immune from civil liability for their good faith activities on such committees.

The scope of Public Law 20-177 was extremely limited. By its express provisions, Public Law 20-177 only applies to hospital personnel. Its provisions do not extend to other health care providers in the Territory of Guam, including those peer review activities of medical professionals at the Department of Public Health and Social Services, nursing homes,

Senator David L.G. Shimizu
June 18, 1993
Page 2

clinics, and health maintenance organizations such as FHP. In addition, Public Law 20-177 continued to allow the activities of in-house staff committees of the hospital to be subject to discovery in legal proceedings despite the fact that the law provided that the written records could not be admitted into evidence.

In order for any peer review process to be successful, two basic protections should be in place. First, the activities of the committee must be privileged. This means the activities of the committees and their written records should not be discoverable. Second, the participants in the peer review process should be immune from civil liability for all their activities which are conducted in good faith and without malice. Otherwise, participants on these committees will not be encouraged to evaluate candidly the medical practices of others because of the fear of subsequent reprisals.

Bill No. 457 is important because it fills in some of the gaps left by Public Law 20-177 by addressing the first of these protections: Discovery. Section 3 of Bill No. 457 adds Section 413 to the Guam Evidence Code which authorizes health care providers, including nursing homes, clinics, and health maintenance organizations which do not fit the definition of a hospital to conduct peer reviews by establishing procedures for continuously reviewing and improving the quality of care and performance of their medical personnel and their facilities. This section also provides that the records of such peer review activities of all health care providers, including those of a hospital, will not be subject to discovery.

Unlike Public Law 20-177, which conferred immunity from civil liability on participants on in-house hospital staff committees, Bill 457 does not, however, afford the same immunity for other health care providers. Therefore, to equalize the application of the laws as they apply to all health care providers in the Territory of Guam, I respectfully recommend that the committee amend Bill 457 to also provide immunity against civil liability to other health care providers participating in peer review committees. Otherwise, professionals outside of a hospital will continue to be reluctant to engage in peer review or to engage in candid discussions in those committees about their peers if they can

Senator David L.G. Shimizu
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Page 3

be sued by other health care providers for their participation on the committees.

The civil immunity which should be granted to all health care providers participating in peer review committees should not, however, be an absolute immunity. The immunity should be a qualified one which means it would only be applicable if the person participating in the committee acts in good faith without malice, has made a reasonable effort to obtain the facts of the matters discussed, and believes that the action taken is warranted by the facts.

Attached to this letter and marked Exhibit A is a proposed amendment to Section 3 of Bill No. 457 for your review and consideration which would provide all health care providers engaging in peer review activities the same immunity from suit for their good faith activities on those committees as the members of in-house hospital staff committees enjoy as a result of Public Law 20-177. The shaded areas of Exhibit A are the suggested amendments to Bill No. 457.

In closing, I would like to once again thank you for this opportunity to provide you and your committee my input on a very important bill. Thank you.

Sincerely,


JUNE S. MAIR

JSM:rsn
Enclosure
cc: Ms. Margaret Van Meter

L9340043.JSM

1 review activities of the committees shall not alter the status
2 of the records or of the proceedings as privileged
3 communications.

4 b) The prohibitions in this section do not
5 apply to medical or medical-dental committees if any person
6 serves upon the committee when his or her own conduct or
7 practice is being reviewed.

8 c) This Section shall not be construed to
9 confer immunity from liability on any health care provider. In
10 any case in which, but for the enactment of the preceding
11 provisions of this Section, a cause of action would arise
12 against a health care provider, the cause of action shall exist
13 notwithstanding the provisions of this Section. Medical
14 records and other nonprivileged information discovered by
15 independent means is not included in this Section's prohibition
16 relating to discovery.

17 d) Nothing in this Section shall be construed
18 to prevent a health care provider from utilizing subcommittees
19 to participate in peer review activities, nor to prevent a plan
20 or health care provider from delegating the responsibilities
21 required by this Section, as it determines to be appropriate,
22 to subcommittees including subcommittees composed of a majority
23 of nonphysician health care providers licensed pursuant to Guam
24 law, so long as the plan or health care provider controls the
25 scope of authority delegated and may revoke all or part of this
26 authority at any time. Persons who participate in the

1 subcommittees shall be entitled to the same immunity from
2 monetary liability and actions for civil damages as persons who
3 participate in provider peer review committees pursuant to this
4 Section.

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

13 f) "Health care provider," as the term is used
14 in this Section, means a licensed organization engaged in the
15 providing of personal health service to the public. Such
16 licensed organizations includes hospitals, clinics, health
17 maintenance organizations and nursing homes, but does not
18 include individual or sole practitioners.

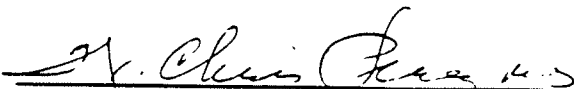
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Guam Medical Society
June 17, 1993

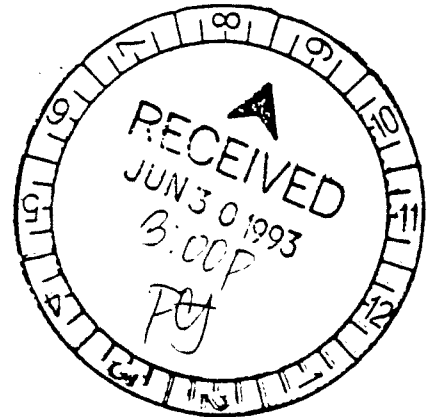
At the regularly scheduled June Guam Medical Society meeting held on June 17, 1993, proposed peer review legislation, bill #457, was presented to and discussed by the general membership. The key elements of the bill, i.e. protection from discovery of Peer Review Committee proceedings, and immunity from civil reprisal for good faith activities were unanimously endorsed. However, it was noted that the draft bill does not extend immunity protection to health care providers outside of the hospital setting. The Society, by formal resolution, wishes to:

1. Endorse the present draft provisions, and
2. Recommend that immunity protection be extended to all Peer Review Committees formed for the purpose of managing the quality of medical care on Guam.

It was further resolved that R. Wade Covill, MD, would convey these recommendations to the legislative hearing session scheduled for June 18, 1993. It is the Society's conviction that these protections are absolutely necessary and vital to protecting the public interest.


W. Chris Perez, Acting President
Guam Medical Society

GMS.01



Testimony to the
Committee on Health & Welfare
BILL NO. 457

*An Act to add section 413 & 14 to title 6 of
the Guam Code Annotated Relative to Medical
Staff Review Committees and Peer Review -
Medical Audits for Health Care Providers.*

Good morning Senator Shimizu and members of the Committee on Health & Welfare. My name is Lou Leon Guerrero, a registered nurse by profession and the Director of Quality Management/Quality Improvement for the FHP Asia-Pacific Region. I would like to extend my sincere appreciation for the opportunity to testify in support of Bill #457.

As the QM/QI Director, my overall scope of responsibility is to assure that the medical care and services delivered meet standards set by our professionals, meet the requirements set by the company, meet the standards set by the National Committee of Quality Assurance, and above all meet the requirements of our members. In essence, my role is to assure that we deliver a quality product.

The concept, tools & techniques used to make quality a reality are those taught by Phil Crosby & Associates called the Quality Improvement Process or QIP. QIP is used in the daily business of our Quality Management activities.

The profession of medicine today is faced with more and more pressure to be accountable for the quality of care they provide. Outside bodies like the Joint Commission on Accreditation of Health Care Organization (JCAHO), the National Committee on Quality Assurance (NCQA), Medicare, various consumer protection organizations, and legislators are increasingly seeking to regulate medical practice. The news media feature public cries for scrutiny. Critics of healthcare focus on the physicians alleged failure to self regulate their profession. Consumers demand quality of medical care. In response, Health Care organizations like hospitals, HMO's, group practices and Health Care Plans have established Medical Quality Management Committees to oversee and assure that quality medical care is delivered.

The single most important activity in improving the quality of medical care is Peer Review. Like other professions, medicine must become active in their Peer Review Process. Open, frank, blunt deliberations, discussions & debate must take place during the Peer Review process so that as a committee we could get to the root causes, recommend corrective actions, monitor and measure our actions and thus improve quality.

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There is reluctance with physicians to become involve primarily because of lack of protection from civil liability and lack of protection from discovery of proceedings.

The bill before us will address the latter. I humbly ask the committee to include language that will protect health care professionals from civil liability.

In closing, I thank you, Senator Shimizu, and your committee and applaud your efforts to assure that the public receive quality health care and service. The passage of bill #457 with language to include protection from civil liability is a step in the right direction.



June 18, 1993

Sen. David L. G. Shimizu
Chairman, Committee on Health, Ecology, & Welfare
Twenty-Second Guam Legislature
Agana, Guam 96910

Dear Senator Shimizu,

On behalf of FHP Inc., I am very pleased to appear before this committee in support of Bill No. 457. This legislation is clearly a statement in support of high quality healthcare utilizing the peer review process.

The peer review process involves assembling a group of physicians to review and comment on specific patient cases of their peers and even themselves. This is the medical field's method of self-regulation and it is universally practiced throughout the United States. The peer review committee bases their review solely on available medical records and documents. During this time; open, honest, and frank discussions take place. These sensitive discussions are the basis for successful peer review. From this, they, along with the individual physician being reviewed, become better educated in the treatment of patients, they offer suggestions on enhancing the care rendered, and they are encouraged to become physicians that are dedicated to improving their practice. The end result is that the patients receive care from quality doctors.


To be meaningful and successful, the members of the committee must be afforded the highest level of immunity from civil liability. It is essential that what transpires during peer review discussions remains confidential. Without this, many physicians are reluctant to participate in the peer review process.

Commenting on the bill, we believe there should be additional language in the bill that specifically states participants in the peer review committee are immune from liability and that no cause of action for damages shall arise against any participant. Again, individuals who participate in the peer review process want to be assured of complete immunity during their discussions.

FHP, Inc. P.O. Box 6578 Tamuning, Guam 96911
Administrative: 646-6956-9 • Clinic: 646-1894-7

Sen. David L.G. Shimizu
Bill No. 457
Pg. 2

Other than this addition, we believe the bill is a step in the right direction for improving the quality of healthcare on Guam. As a major provider of healthcare on Guam, we offer our assistance in addressing this issue. Thank you for allowing us to participate in this hearing.


Vincent P. Arriola
Government Affairs Manager

GUAM MEMORIAL HOSPITAL AUTHORITY

850 GOV. CARLOS G. CAMACHO ROAD
OKA, TAMUNING, GUAM 96911
TEL: 646-5801; 646-6876; 646-6711 thru 18
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Testimony on Bill 457: "An Act To Add Section 413 and 414 To Title 6 Of The Guam Code Annotated Relative To Medical Staff Review Committees And Peer Review-Medical Audits For Health Care Providers"

Good Morning Mister Chairman and members of the Committee:

My name is PeterJohn Camacho, Hospital Administrator. I am here to present testimony on Bill 457, an act to add sections 413 and 414 to title 6 of the Guam Code Annotated relative to Medical Staff Review Committees and Peer Review Medical Audits for healthcare providers.

In the Accreditation Manual For Hospital, 1993, Medical Staff section, standard MS.5.1 states that the medical staff provides effective mechanisms to monitor and evaluate the quality of patient care and the clinical performance of individuals with delineated clinical privileges, as a component of the organization's quality assessment and improvement process. Opportunities to improve care are addressed, and important problems in patient care are identified and resolved. This is the essence of peer review. What is important to note is that although this standard is found in the medical staff section of the accreditation manual, this function is also tied into the governing body and the hospital's entire quality program.

The Quality assessment and improvement chapter states that there must be a written plan for assessing and improving quality and that there is a planned, systematic and ongoing process for monitoring, evaluating and improving the quality of care. Additionally, the conclusions, recommendations, actions taken and results of the actions taken are documented.

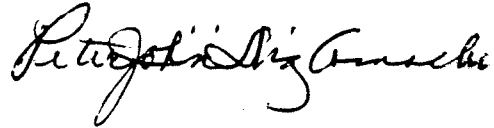
The lack of protection of the written proceedings of peer review has resulted in a reluctance by the physicians to participate in peer discussions, much less document them. When you consider the potential financial loss that could result from civil litigation, it is not very hard to understand this reluctance. The result of this is that there would not be a way to demonstrate to surveyors that a planned, systematic and ongoing process that reviews the quality of care provided truly does exist. Thus, the Quality Assessment/Improvement program would be at best incomplete and at least suspect.



Testimony on Bill 457
Committee on Health, Welfare & Ecology
Twenty-second Guam Legislature
June 18, 1993

The ones who stand to lose the most though would be the people of our island and specifically the patients. The opportunities to improve would never be realized, as long as there is this hesitation to participate in these types of activities.

Bill 457 will enable the Medical Staff to participate in truly meaningful peer review activities. Expansion of the coverage of protection to include clinics and other health organizations are the first steps to ensure that a process will be implemented for the health delivery system of our island is continually being evaluated for opportunities to improve. On behalf of the Authority, I am respectfully requesting this committee to recommend the passage of Bill 457 to the legislature. Thank you.





GUAM MEMORIAL HOSPITAL AUTHORITY



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Testimony on Bill 457: "Addition of Sections 413 and 414 to Title 6 of the Guam Code Annotated Relative to Medical Staff Review Committees and Peer Review Medical Audits for Health Care Providers"

Good Morning Senator Shimizu and members of the Committee:

My name is Rosie R. Tainatongo, Chairperson of the Guam Memorial Hospital Board of Trustees. I am here to present testimony on Bill 457, an act to amend Title 6 GCA relative to peer review. Generally, Peer Review is the activity by which the healthcare practitioners discuss the management and outcome of a patient's stay. This is particularly important when there are difficulties or problems that are encountered. The purpose would be to identify ways to improve the services provided.

The history of this effort goes back to 1990 when Bill 1114 was signed into law as P.L. 20-177. At that time, certain provisions of the proposed legislation were deleted. Specifically, those sections dealt with protection of the written proceedings and discussions of the peer review process. The Medical staff were very supportive of this legislation.

Upon the passage of Bill 1114 into law, the practitioners were very disappointed. As with anyone, there is a concern about having one's livelihood disrupted because of a lawsuit. Accordingly, although there was peer review going on, it was not documented. As you are aware, accreditation or certification means you must be able to demonstrate compliance. Without the written records, it would be very difficult to show that you are adhering to standards.

Bill 457 is a means to address the concerns of the physicians. More importantly, it will allow greater participation in the process to continually evaluate and improve the quality of healthcare services provided to the members of our community. On behalf of the Board of Trustees, I am urging the passage of Bill 457. Thank you.





MERCY International Health Services

34605 TWELVE MILE ROAD FARMINGTON HILLS MICHIGAN 48334-3293 USA
TELEPHONE 313 489-6100 TELEFAX 313 489-6102

June 15, 1993

Honorable David L.G. Shimizu, Ed.D.
Chairperson, Committee on Health, Welfare
and Ecology
Twenty Second Guam Legislature
Agana, Guam 96910

Dear Senator Shimizu:

Thank you for giving our organization the opportunity to testify in support of proposed Legislative Bill No. 457, addition of sections 413 and 414 to Title 6 of the Guam Code Annotated Relative to Medical Staff Review Committees and Peer Review-Medical Audits for Health Care Providers. Mercy International Health Services has been engaged in providing management development and operations advisory assistance to Guam Memorial Hospital Authority for nearly four years.

Representing Mercy International Health Services as Senior Administrative Advisor and Team Leader assigned to Guam Memorial Hospital Authority, my purpose is to train and develop managers on the requirements of a well-run community hospital. Previously, I had ten years experience in senior administrative positions with hospitals in the States. In my experience in the States of Oklahoma and Texas, it would have been virtually impossible to have physicians participate in quality improvement and peer review activities if it were not for statutes protecting the deliberations of hospital department and committee meetings.

The previous Legislative Bills 1114 and 1115 were not sufficient to provide medical staff peer review activities from being discoverable. Therefore, physicians and other members of the medical staff are reluctant to discuss openly the findings, recommendations and conclusions of peer review activities. Furthermore, sources of topics for continuing medical education are foregone when peer review discussions are not held.

One of the key components of a continuous quality improvement program is the evaluation of the quality of patient care rendered by all of the Hospital's staff. In order for patient care to be improved, the medical staff must participate in a quality program which reviews the processes and outcomes of patient care. Heretofore, physicians were reluctant to discuss information pertaining to medical care and the decisions rendered by their peers.

Senator D. Shimizu
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In order for a Hospital to meet the Joint Commission accreditation requirements, it is imperative that a medical staff peer review and continuous quality improvement program be established. Additionally, this process must have an unbroken documented history for at least two years. We are fortunate, on Guam, to have a cadre of well-qualified physicians, dentists, and podiatrists representing all major specialties and these physicians are sincerely interested in providing the highest quality care to their patients. We must afford them the protection which is necessary for them to do their work.

Thank you again for allowing us the opportunity to express our support of the pending legislation.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth R. White".

Kenneth R. White, MPH, FACHE
Senior Administrative Advisor

COMMITTEE REPORT
HEALTH, ECOLOGY & WELFARE

Bill No. 457

AN ACT TO ADD §413 AND 414 TO TITLE 6 OF THE GUAM CODE ANNOTATED RELATIVE TO MEDICAL STAFF REVIEW COMMITTEES AND PEER REVIEW-MEDICAL AUDITS FOR HEALTH CARE PROVIDERS.

PUBLIC HEARING:

The Health, Ecology & Welfare Committee conducted a public hearing on Friday, June 18, 1993, at 9 a.m. to hear testimonies on Bill No. 457.

The hearing was called to order by the HEW Chairman, Dr. David L.G. Shimizu. Senator Doris F. Brooks, a committee member, was also present.

Purpose of Bill No. 457:

It is the purpose of Bill 457, as amended, to supplement and enhance the provisions of Public Law 20-177, which was enacted by the 20th Guam Legislature on May 18, 1990. The scope of Public Law 20-177: AN ACT TO ADD §412 TO TITLE 6, GUAM CODE ANNOTATED, TO MAKE RECORDS OF HOSPITAL STAFF REVIEW ACTIVITIES PRIVILEGED INFORMATION, TO ADD §3285 TO THE CIVIL CODE OF GUAM GIVING CIVIL IMMUNITY TO PARTICIPANTS IN CERTAIN MEDICAL REVIEW ACTIVITIES AND TO AMEND §12231 OF TITLE 10, GUAM CODE ANNOTATED, TO GIVE IMMUNITY TO CERTAIN PROFESSIONAL BOARDS, is limited and applied only to hospital personnel (see attachment). Public Law 20-177 also maintained the position that the disclosure of information from the committees were not violations of physician-patient privilege.

Bill 457, as amended, provides two basic protections, imperative to the success of any hospital accreditation and peer review process. First, the activities and written records of the committee shall be held in strict confidentiality. Second, committee members shall be immune from civil liabilities for their activities conducted in good faith without malice. These protections allow for participants in the peer review process to be open and honest in their evaluations of the medical practices of others without fear of legal reprisal.

Bill 457 fills in the gaps left in Public Law 20-177, since it provides and expands for the same confidential peer review committees outside of hospital personnel, including, but not limited to HMO's, clinics, and other health care facilities. Furthermore, protection from civil liabilities are extended to all participants in the peer review process. These new provisions are important for the effectiveness and success of the peer review program. Bill 457 is an important piece of legislation that is critical for the successful and efficient operation of the peer review program here on Guam.

Testimonies:

Oral and written testimonies in favor of Bill 457 were submitted by the following:

1. June S. Mair - Legal Counsel for FHP, Inc.
2. Dr. R. Wade Covill, MD - Medical Director, FHP & representative for the Guam Medical Society.
3. Lou Leon Guerrero - Director of Quality Management, FHP
4. Vincent Arriola - Government Affairs Manager, FHP
5. Peter John Camacho - Administrator, GMHA
6. Ken White - Mercy International Health Services
7. Rosie Tainatongo - Chairperson, GMHA Board of Trustees
8. Jim Gillan - Guam Memorial Health Plan
9. Eduardo Cruz, MD - GMHA
10. Ladd Baumann - Attorney, GMHA

June S. Mair recommended that the committee amend Bill 457 to provide immunity against civil liability to other health care providers participating in peer review committees.

Lou Leon Guerrero requests that the committee include language that will protect health care professionals from civil liability.

Vincent Arriola commented that there should be additional language in the Bill that specifically states participants in the peer review committee are immune from liability.

Dr. R. Wade Covill, MD, recommended that immunity protection be extended to all Peer Review Committees formed for the purpose of managing the quality of medical care on Guam.

Peter John Camacho stated that the expansion of the coverage to include clinics and other health organizations are the first steps to

ensure that a process will be implemented for the health delivery system of our island is continually being evaluated for opportunities to improve.

Kenneth R. White stated that physicians must be afforded the protection which is necessary for them to do their work.

Rosie R. Tainatongo supported that there is a concern about having one's livelihood disrupted because of a lawsuit.

Committee Findings:

Presently, Peer Review at Guam Memorial Hospital, currently does not require any written or recorded documentation relative to the provisions of Public Law 20-177. This generally is a poor process of ensuring quality health care and does not satisfy the requirement for the Joint Commission on Accreditation.

Private health care organizations such as FHP and GMHP presently incorporate peer review committees as part of their quality management system.

Because of the need for immunity from civil liability, all medical professionals are reluctant to participate on the peer review process without such protection therefore the need for additional peer review legislation becomes necessary.

Committee Recommendation:

On Bill No. 457: AN ACT TO ADD §413 AND 414 TO TITLE 6 OF THE GUAM CODE ANNOTATED RELATIVE TO MEDICAL STAFF REVIEW COMMITTEES AND PEER REVIEW-MEDICAL AUDITS FOR HEALTH CARE PROVIDERS, the Health, Ecology & Welfare Committee hereby recommends **TO DO PASS AS SUBSTITUTED.**

MAY 19 '93 1

TWENTY SECOND GUAM LEGISLATURE
1993 (First) Regular Session

Bill No. 457 (LS)
Introduced by:

D. L. Shimizu 

AN ACT TO ADD §413 and 414 TO TITLE 6 OF THE GUAM
CODE ANNOTATED RELATIVE TO MEDICAL STAFF
REVIEW COMMITTEES AND PEER REVIEW-MEDICAL
AUDITS FOR HEALTH CARE PROVIDERS.

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

1 Section 1. Legislative findings. The Legislature finds that for the
2 protection of patients and the hospital, the admissions and patient care
3 practices of physicians with hospital privileges are proctored or
4 monitored. Any deviation from the standard of care, adverse outcome,
5 or potential problem is referred for peer review. Peer review includes
6 discussion of the case and its management for educational purposes and
7 may include suggestions for alternative approaches to case
8 management, and in some cases recommendations for corrective
9 action(s), if deemed necessary.

10 The complete protection from discovery is essential in order to
11 encourage candid discussion involving both peers and the concerned
12 physician. Such discussions are educational for all physicians involved
13 and often lead to better medical practice in the future. Also, such
14 discussions are essential to document important advice and any
15 corrective action(s) which may be necessary. These records are
16 necessary in case formal and more serious corrective actions are
17 necessary either for the case in question or for future cases. Finally, such
18 records are used as evaluation tools to recommend physicians to the
19 Active or Courtesy staff after at least one (1) year and no more than (2)
20 years of Provisional Staff status, during which their clinical
21 management of patients are closely monitored to insure clinical

1 competence and appropriateness of admission, procedures, and tests; in
2 addition these records are used for the regularly scheduled physician
3 reappraisals which are required by the GMHA Medical Staff Bylaws,
4 Healthcare Financing Care Administration (HCFA) and the Joint
5 Commission on Accreditation of Healthcare Organizations (JCAHO)
6 standards for all physicians at least every 2 years.

7 Section 2. Legislative Intent. It must be emphasized that strong
8 peer review policy as provided herein does not deprive patients,
9 plaintiffs, or attorneys of any of the usual legal rights. These parties
10 continue to have access to the complete medical record, and any and all
11 physicians who are party to any action or who have special knowledge
12 or expertise can still testify or be subpoenaed as in any other case.
13 Rather, this Act only keeps nondiscoverable, those candid comments
14 made at the peer review meeting.

15 Section 3. §413 of Title 6, Guam Code Annotated is added to read:

16 **§413. Review of quality care, health care provided peer review**
17 **committees, privileged communications; discovery; testimony;**
18 **delegation of authority.**

19 a) Every health care provider may establish procedures for
20 continuously reviewing and improving the quality of care, performance
21 of medical personnel, utilization of services and facilities, and costs.
22 Neither the proceedings nor the records of the reviews shall be subject
23 to discovery, nor shall any person in attendance at the reviews be
24 required to testify as to what transpired thereat. Disclosure of the
25 proceedings or records to the governing body of a health care provider
26 or to any person or entity designed by the health care provider to
27 review activities of the committees shall not alter the status of the
28 records or of the proceedings as privileged communications.

29 b) The prohibitions in this section do not apply to medical or
30 medical-dental committees if any person serves upon the committee
31 when his or her own conduct or practice is being reviewed.

32 (c) This Section shall not be construed to confer immunity from
33 liability on any health care provider. In any case in which, but for the
34 enactment of the preceding provisions of this Section, a cause of action
35 would arise against a health care provider, the cause of action shall
36 exist notwithstanding the provisions of this Section. Medical records

1 and other nonprivileged information discovered by independent means
2 is not included in this Section's prohibition relating to discovery.

3 (d) Nothing in this Section shall be construed to prevent a health
4 care provider from utilizing subcommittees to participate in peer
5 review activities, nor to prevent a plan or health care provider from
6 delegating the responsibilities required by this Section, as it determines
7 to be appropriate, to subcommittees including subcommittees composed
8 of a majority of nonphysician health care providers licensed pursuant to
9 Guam law, so long as the plan or health care provider controls the
10 scope of authority delegated and may revoke all or part of this
11 authority at any time.

12 (e) The prohibitions in this Section do not exclude the discovery or
13 use of relevant evidence in any criminal action; and shall not limit the
14 authority to obtain such information by subpoena or other authorized
15 process from the committees for uses relating to matters and
16 investigations within the jurisdiction of boards created pursuant to
17 Chapter 12 of Title 10 Guam Code Annotated to regulate the practice of
18 healing arts.

19 (f) "Health care provider," as the term is used in this Section,
20 means a licensed organization engaged in the providing of personal
21 health service to the public. Such licensed organizations includes
22 hospitals, clinics, health maintenance organizations and nursing homes,
23 but does not include individual or sole practitioners."

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