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I MINA' TRENTA NA LIHESLATURAN GUAHAN
2010 (SECOND) Regular Session

Bill No. 415-30(COR)

Introduced by:

FRANK B. AGUON, JR. 

AN ACT TO PROMOTE THE EFFICIENCY OF
THE GUAM BOARD OF ALLIED HEALTH
EXAMINERS AND TO CLARIFY PORTIONS OF
THE BOARD'S ENABLING LEGISLATION, BY
AMENDING ARTICLE 8 OF CHAPTER 12, TITLE
10, GUAM CODE ANNOTATED.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Section 12802 of Article 8, Part 1, Chapter 12, Title 10, Guam
3 Code Annotated, is amended, to read:

4 "§12802. Definitions. (a) [~~Professions. For the purposes of this Act, the~~
5 ~~following Allied Health Professions shall be licensed under the Guam Board of~~
6 ~~Allied Health Examiners]~~ The Guam Board of Allied Health Examiners shall
7 license and regulate these professions as defined herein:

8 (i) Acupuncture and Oriental Medicine shall mean the science
9 [~~and art]~~ of the Ancient Healing Art of Oriental Medicine and includes all
10 traditional and modern diagnostic, prescriptive and therapeutic methods
11 [~~examination and diagnosis]~~ based on traditional Oriental medical theory; it
12 includes treatment by stimulation of [a] certain points [~~, or pints,~~] on or near
13 the surface of the body by the insertion of needles or other stimulation [~~by~~
14 ~~other sources to prevent or modify the perception of pain, or]~~ to normalize
15 physiological functions, including pain control, for the treatment, cure and
16 correction of [~~certain~~] various diseases or dysfunctions of the body; [5] it

1 includes ~~[ing]~~ the treatment by herbs or herbal medicine, therapeutic
2 massage and the specialized Chinese healing technique known as “tuina”,
3 and ~~[techniques of]~~ electroacupuncture, cupping, herbal medicines, and
4 moxibustion, or any combination of ~~[these]~~ said methods.

5 (ii) *Audiology* ~~[shall]~~ means ~~[the application of principles, methods~~
6 ~~and procedures for measurement, testing, evaluation, prediction, counseling,~~
7 ~~selling, instruction, habilitation, or rehabilitation related to hearing aids or~~
8 ~~ear molds, including the fitting of such devices, or disorders of hearing for~~
9 ~~the purpose of evaluation, identifying, preventing, rehabilitating,~~
10 ~~ameliorating or modifying such disorders and conditions in individuals]~~ the
11 profession that measures, tests, examines, diagnoses, treats, and, through
12 audiologic and electrophysiological measures, prevents and modifies
13 disorders related to hearing loss and vestibular function in both children and
14 adults; conducting habilitation and rehabilitation, including hearing
15 conservation, cerumen removal, vestibular rehabilitation, and non-medical
16 evaluation and treatment of tinnitus; and the evaluation, prescription and
17 fitting of hearing aids.

18 (iii) *Chiropractic* ~~[shall]~~ means the science, art and philosophy of
19 things natural, the science of locating and removing interference with the
20 transmissions or expression of nerve forces in the human body by the
21 correction of misalignments or subluxation of the articulations and adjacent
22 structures, more especially those of the vertebral column and pelvis, for the
23 purpose of restoring and maintaining health. It shall include the use of all
24 natural agencies to assist in the healing art, such as food, water, heat, cold,
25 electricity and mechanical appliances. ~~[The use of X-ray procedures]~~
26 Chiropractic shall ~~[be limited to]~~ include skeletal X-rays and shall exclude

1 the therapeutic use of X-radiation^[5] and the use of contrast studies that
2 introduce dyes, isotopes or similar contrast media through the skin, orally,
3 via catheterization or retrograde into any body cavity. [~~H~~] Chiropractic
4 [~~shall~~] excludes operative surgery, the prescription and [~~or~~]
5 medicine, and laboratory procedures involving [~~ed-in~~] the penetration of
6 human tissue.

7 (iv) *Clinical psychology* [~~shall~~] means the subspecialty in
8 psychology [~~which is~~] primarily concerned with [~~assessing and alleviating~~]
9 the assessment, diagnosis and treatment of psychological, emotional, mental
10 and behavioral disorders with special emphasis on the integration of
11 scientific research and therapeutic practice in a hospital, institution, [~~or~~
12 ~~other~~] clinical setting or other settings that require clinical intervention.

13 (v) *Individual, marriage and family therapy* [~~shall~~] means the
14 [~~intervention of a licensed therapist in assisting clients in individual,~~
15 ~~marriage and family therapy~~] use of psychotherapeutic techniques to deliver
16 services to individuals, couples, families or groups in order to diagnose and
17 treat mental, emotional and nervous disorders, whether these are behavioral,
18 cognitive or affective within the context of the individual's relationships. It
19 includes:

- 20 1. Assessment and diagnosis of presenting problems through
21 inquiry, observation, evaluation and integration of information;
22 and
- 23 2. Designing and developing treatment plans by incorporating and
24 integrating recognized psychotherapeutic theories in
25 establishing treatment goals and interventions collaboratively
26 with clients; and

1 3. Implementing and evaluating the course of treatment.

2 (vi) ~~Occupational therapy [shall mean the evaluation and treatment~~
3 ~~provided to people whose lives have been disrupted by physical injury,~~
4 ~~illness, developmental problems, the aging process, or psychosocial or~~
5 ~~eognitive difficulties. Treatment entails the assessment, evaluation and~~
6 ~~treatment to assist each individual to achieve or return to an independent and~~
7 ~~productive life through techniques which prevent disability, assisting the~~
8 ~~individual in recovery from illness or accident, and by promoting the~~
9 ~~development of functions which may have been impaired or delayed. The~~
10 ~~treatment provided may include, but shall not be limited to, the adaptation of~~
11 ~~the environment and the selection, design and fabrication of assistive and~~
12 ~~orthotic devices, and other technology to facilitate development and promote~~
13 ~~the acquisition of functional skills through purposeful activity]~~ means the
14 therapeutic use of everyday life activities and occupations with individuals
15 or groups to facilitate participation in the home, school, workplace, and
16 community to promote the health and wellness of persons at risk for
17 developing an illness, injury, disease, impairment, disability and restrictions
18 on activity. Occupational therapy addresses the physical, cognitive,
19 psychosocial, sensory and other aspects of performance in a variety of
20 contexts to support engagement in everyday activities that affect health, well
21 being and quality of life.

22 (vii) *Physical Therapy or Physiotherapy* [shall] means [the
23 ~~utilization of scientific principles for]~~ the evaluation and treatment of any
24 disability, injury or disease [by the use of] through physical, chemical or
25 mechanical means, including, but not limited to, heat, cold, air, light,
26 sound, electricity, water, massage, therapeutic exercise and rehabilitative

1 procedures, with or without assistive devices; [~~for the purpose of~~
2 ~~preventing, correcting or alleviating dysfunction resulting from such~~
3 ~~disability, injury or disease;~~] the performance of tests and measurements of
4 neuromuscular function as an aid to diagnosis or treatment; [of the human
5 condition] providing treatment based on test findings; selection of forms
6 of treatment; and consultation provided to health, education and
7 community agencies; provided that physical therapy shall not include the
8 use of [Roentgen] X-rays and radium for diagnostic and therapeutic
9 purposes, and the use of electricity for surgical purposes, including
10 cauterization. [~~Physical therapy and physical therapy services are not~~
11 ~~generic terms; they are the use of any intervention, including physical~~
12 ~~agent modalities/electrotherapy, that is provided by, or under the direction~~
13 ~~of, a licensed physical therapist.]~~

14 (viii) *Physician assistant* [~~shall~~] means a Board-licensed person,
15 qualified by academic and practical training, who practices the healing art
16 of medicine [~~provides patient services~~] under the indirect supervision of a
17 licensed physician. A physician assistant is *not* an independent
18 practitioner.

19 (ix) *Podiatric medicine* [~~shall~~] means the diagnosis[;] and the
20 medical, surgical, mechanical, manipulative and electrical treatment of the
21 human foot and ankle, including the tendons that insert into the foot, and the
22 non-surgical treatment of the muscles, nerves and tendons of the leg
23 governing the functions of the foot.

24 (x) *Speech-language pathology* [~~shall~~] means [~~the application of~~
25 ~~principles, methods and procedures for the measurement, testing, evaluation,~~

1 ~~prediction, counseling, instruction, habilitation or rehabilitation related to the~~
2 ~~development and disorders of speech, voice, fluency or language, for the~~
3 ~~purpose of evaluating, identifying, treating, preventing, ameliorating, or~~
4 ~~modifying such disorders and conditions in individuals or groups of~~
5 ~~individuals]~~ the healing art of hearing screening, aural rehabilitation, speech,
6 fluency, voice, language and swallowing (dysphagia), for the purposes of
7 assessing, diagnosing, prognosticating, consulting, instructing, habilitating,
8 rehabilitating and teaching compensatory behaviors based upon scientific
9 knowledge of speech, language, communication, fluency, voice and
10 swallowing development and disorders.

11 (xi) *Veterinary medicine* [shall] means [~~veterinary surgery,~~
12 ~~obstetrics, dentistry means to diagnose, treat, correct, change, relieve or~~
13 ~~prevent animal disease, deformity, defect, injury or other physical or mental~~
14 ~~condition, including the prescription or administration of any drug,~~
15 ~~medicine, biologic, apparatus, application, anesthetic, or therapeutic or~~
16 ~~diagnostic substance or technique, or the use of any manual or mechanical~~
17 ~~procedure for artificial insemination, testing for pregnancy or for correcting~~
18 ~~sterility or infertility, or to render advice or recommendation with regard to~~
19 ~~any of the above]~~ the diagnosis, treatment, prevention of disease, and the
20 prescription and administration of drugs for the purpose of healing injury
21 and disease in animals. [;]

22 (xii) *Respiratory Therapy* means the treatment and management of
23 pulmonary diseases with medications and machines provided to patients
24 [~~whose] with conditions or illnesses [~~is that of] related to [~~(~~ breathing ~~)~~].~~~~

1 (xiii) *Dietetics or Nutrition Practice* [~~shall~~] means the integration and
2 application of principles [~~derived from the of the sciences~~] of food and
3 nutrition to provide [~~for~~] all aspects of nutrition care to [~~for~~] individuals and
4 groups, including, but not limited to, nutrition services for individuals and
5 groups and medical nutrition therapy [~~care~~] as defined by [~~this Act~~] rules
6 and regulations enacted by the Board.

7 (xiv) *Home Nursing Administrator* [~~Administration~~] means the
8 [~~leadership requirement to manage a home nursing institution~~] person having
9 primary management, leadership and control of a nursing home.

10 [~~(xv) Other allied health professions shall mean those allied health~~
11 ~~profession not having separate Board of Examiners enacted by~~ *Liheslaturan*
12 *Guahan* ~~that the Board of Allied Health Examiners~~
13 ~~incorporates into the licensing procedure under this Act.]~~

14 (xv) *Euthanasia technician* means an employee or volunteer of a
15 government operated or government contracted animal shelter, who is
16 supervised by the shelter's governing body, and who is certified by the
17 Board and by the Territorial Veterinarian to be qualified to perform
18 euthanasia on animals at the shelter.

19 (xvi) *Medical Laboratory Technician (MLT) and Clinical Laboratory*
20 *Technician (CLT).* A Medical Laboratory Technician or Clinical Laboratory
21 Technician shall, under the supervision of a medical technologist, perform
22 routine clinical laboratory tests on blood, tissue and body fluids to help in
23 the diagnosis and treatment of disease. He may use limited independent
24 judgment. He may collect blood samples, prepare chemical solutions,
25 prepare and analyze specimens, keep records of laboratory tests, maintain

1 quality control, and troubleshoot instrumentation and report results to head
2 nurses or physicians.

3 (xvii) *Massage or Massage Therapy* means the systematic manual or
4 mechanical manipulations of the soft tissues of the body, including hands on
5 energy techniques and other benefits both physical and mental, by such
6 movements as rubbing, kneading, pressing, rolling, slapping, and tapping,
7 for therapeutic purposes such as promoting circulation of the blood and
8 lymph, relaxation of muscles, relief from pain and restoration of metabolic
9 balance.

10 (xviii) *Other allied health professions* shall mean those allied health
11 profession *not* having separate Board of Examiners enacted by *I*
12 *Liheslaturan Guahan* that the Board of Allied Health Examiners
13 incorporates into the licensing procedure under this Act.

14 (b) [~~Terms. The following terms shall have the following definitions:~~] The Guam
15 Allied Health Practice Act does not apply to:

16 (1) The provision of services in an emergency if no fee is contemplated,
17 charged or received;

18 (2) Personnel of the United States Armed Forces and the federal
19 government acting in the discharge of their official duties or within
20 federal facilities;

21 (3) The practice of Healing Arts not described in subsection (a) hereof.

22 (4) A person administering a lawful remedy to a member of his
23 immediate family;

24 (5) A person licensed to practice a Healing Art in another United States
25 jurisdiction who renders emergency treatment or who provides

1 treatment during an epidemic or public health crisis or who teaches or
2 gives demonstrations regarding his profession.

3 (6) A full time student at an institution of higher learning pursuing a
4 degree pertaining to an Allied Health profession working under the
5 supervision of a licensed professional.

6 The Board may establish rules that establish time frames for emergency
7 practice and teaching.

8 (c) In Title 10 G.C.A., Chapter 12, and throughout the Allied Health Practice
9 Act:

10 (1) *Applicant* ~~[shall]~~ means a person seeking a license ~~[ure]~~ or renewal of
11 a license to practice [an allied health profession on Guam] a
12 profession defined by subsection (a) hereof.

13 (2) *Board* means The Board of Allied Health Examiners.

14 (3) *Collaborative Practice Agreement* ~~[shall]~~ means a written [an]
15 agreement [by and] between a clinical psychologist [or a physician
16 assistant] and a [Guam licensed] physician [practicing in the area of
17 specialty, wherein the parties to such an agreement mutually agree, in
18 writing, to the terms and conditions of the ordering and prescribing of]
19 licensed to practice medicine on Guam, whereby [they agree that] the
20 psychologist or physician assistant may [under the physician's
21 supervision] prescribe 'Schedule [Drugs] II, III, IV and V' drugs
22 under the physician's supervision.

23 (4) *Endorsement* ~~[shall]~~ means evidence of current licensure by a state or
24 jurisdiction of the United States.

1 (5) *License* [shall] means a certificate issued [to an applicant] by the
2 [Guam] Board [of Allied Health Examiners which] indicating [es] that
3 the person [whose] named [appears on the certificate has been found
4 qualified to engage in the practice of an allied health profession as
5 stated] thereon is qualified to and may practice an Allied Health
6 Profession.

7 (6) *Licensee* means a [ny] person [currently licensed by the Guam Board
8 of Allied Health Examiners] holding a current license.

9 (7) *Person* shall mean any individual, firm, partnership, association, joint
10 venture, cooperative or corporation, or any other group or
11 combination, acting in concert, whether or not acting as a principal,
12 trustee, fiduciary, receiver or as any other kind of legal or personal
13 representative, or as the successor in interest, assignee, agent, factor,
14 servant, employee, director, officer or any other representative of such
15 person, *except* that only individuals can be licensed under the rules
16 and regulations.

17 [~~(8) *Practice a healing art profession* shall mean to use any title, words,~~
18 ~~abbreviation, or letters, or by any other means to represent directly or~~
19 ~~indirectly, publicly or privately, an ability or willingness to perform~~
20 ~~any of the acts constituting the practice of any allied health profession~~
21 ~~under the purview of the Board.]~~

22 [~~(9) *Practitioner'* shall mean a physician, podiatrist, veterinarian,~~
23 ~~optometrist, clinical psychologist or physician's assistance who is~~
24 ~~authorized to prescribe, order or administer drugs in connection with~~

1 ~~medical treatment to the extent provided by the rules and regulations~~
2 ~~of the practitioner's respective Board(s).]~~

3 ~~(8)[(10)] *Prescription* means an order for drugs, treatment or therapeutic~~
4 ~~devices written, signed or orally transmitted by a licensee. [word of~~
5 ~~mouth or telephone by a practitioner of the healing art.]~~

6 ~~(9) The Board shall establish rules that define the terms *Direct*~~
7 ~~*Supervision* and *Indirect Supervision* as appropriate to every~~
8 ~~profession it regulates.~~

9 ~~[(11) *Supervision* shall be one of the following:~~

10 ~~(a) *Direct supervision* shall mean supervision whereby a licensee diagnoses~~
11 ~~the condition to be treated, approves the work to be performed and remains on the~~
12 ~~premises while the procedures are being performed.~~

13 ~~(b) *Indirect supervision* shall mean supervision whereby a licensee~~
14 ~~authorizes the procedures which are being carried out, but need *not* be present on~~
15 ~~the premises when the authorized procedures are being performed. The licensee~~
16 ~~must be available on Island by telecommunications.~~

17 ~~(c) Exceptions. The definition of exceptions to the act shall include:~~

18 ~~(i) those providing service in cases of emergency where no fee or~~
19 ~~other consideration is contemplated, charged or received;~~

20 ~~(ii) personnel of the armed forces of the United States and of the~~
21 ~~United States Public Health Service or the Veterans Administration of the~~
22 ~~United States in the discharge of their official duties and/or within Federally~~
23 ~~controlled facilities;~~

24 ~~(iii) those practicing any other of the healing arts in accord with and~~
25 ~~as provided by the laws of Guam;~~

1 ~~(iv) those practicing the tenets of a religion or ministering to the sick~~
2 ~~or suffering by mental or spiritual means in accord with such tenets;~~
3 ~~provided, that no person should be exempt from the public health laws of~~
4 ~~Guam or~~
5 ~~the Federal government;~~

6 ~~(v) a person administering a lawful domestic or family remedy to a~~
7 ~~member of his or her own family; and(vi) those fully licensed to practice~~
8 ~~allied health in another jurisdiction of the United States who briefly render~~
9 ~~emergency treatment, or briefly provide critical services at the specific~~
10 ~~lawful direction of an institution or Federal agency that assumes full~~
11 ~~responsibility for that treatment or service.] ”~~

12 **Section 2.** A new subsection (l) is added to §12803 of Article 8, Part 1,
13 Chapter 12, Title 10, Guam Code Annotated, to read:

14 “(l) **Subcommittees.** The Board may create subcommittees comprised of
15 such Board members as it finds appropriate to investigate disciplinary complaints
16 and the unauthorized practice of the Allied Health professions. Said
17 subcommittees are exempt from the Open Government Law, but shall only
18 recommend actions to the Board. The Board shall take all official actions.”

19 **Section 3.** Section §12809 of Article 8, Part 1, Chapter 12, Title 10, Guam
20 Code Annotated, is amended, to read:

21 “§12809. **Continuing Education Requirements.** The Board shall enact
22 rules establishing mandatory Continuing Education requirements for license
23 renewal appropriate to every profession it licenses. The requirements shall reflect,
24 to the extent possible, those of a national certifying body or a majority of the States
25 regarding that profession. An applicant for renewal shall undergo at least thirty
26 (30) hours training specific to his area of professional expertise in every two year

1 renewal period established by 10 G.C.A. §12808(a), provided that the Board shall
2 prorate said hours for a new licensee who is licensed less than two years before a
3 renewal period ends.

4 ~~[(a) A total of thirty (30) credit hours of continuing education within each~~
5 ~~two (2) year licensure period is required of each licensee to qualify for a renewal,~~
6 ~~except for licensees under Podiatry and Physician Assistants, which require fifty~~
7 ~~(50) credit hours of continuing education. At least twenty (20) of these credit hours~~
8 ~~must be in the licensee's specific area of practice. The Board shall prorate the~~
9 ~~continuing education credit hours requirement for licenses issued less than two (2)~~
10 ~~years prior to the renewal period.]~~

11 ~~[(b) Continuing education hours may include:~~

12 ~~(1) membership in national associations;~~

13 ~~(A) membership in a national association of the licensee's~~
14 ~~practice area will provide four (4) credit hours within the~~
15 ~~renewal period; and~~

16 ~~(B) other appropriate national professional association~~
17 ~~membership will provide two (2) credit hours for each, a~~
18 ~~maximum of four (4) credit hours within the renewal period;~~

19 ~~(2) subscription to appropriate professional journals will~~
20 ~~provide two (2) credit hours per subscription, limited to five (5)~~
21 ~~subscriptions;~~

22 ~~(3) attendance of a conference will provide one (1) credit hour~~
23 ~~for each hour of conference attended (The conference must be within~~
24 ~~the renewal period.);~~

1 ~~(4) teaching, workshops and in-service will provide one (1)~~
2 ~~credit per hour of teaching, workshop or in-service (This is limited to~~
3 ~~ten (10) credit hours.);~~

4 ~~(5) speeches or presentation of papers will provide five (5)~~
5 ~~credit hours each for non-professional audience; ten (10) credit hours~~
6 ~~each for professional audience;~~

7 ~~(6) publication in a professional journal, any publication within~~
8 ~~the field, will provide ten (10) credit hours;~~

9 ~~(7) attendance at local association meetings will provide one (1)~~
10 ~~point per meeting, up to twelve (12) credit hours;~~

11 ~~(8) videotapes, or other audio-visual materials prepared by a~~
12 ~~professional association or educational institution and approved by the~~
13 ~~Board, will provide one (1) credit hour for every hour viewed, limited~~
14 ~~to ten (10) credit hours; or~~

15 ~~(9) others, as required by discipline.]~~

16 ~~[(c) The Board, in its sole discretion, may require the licensee to provide~~
17 ~~receipts, attendance certification or other evidence of participation for credit hours~~
18 ~~claimed.]”~~

19 **Section 4.** Section 12813 of Article 8, Part 1, Chapter 12, Title 10, Guam
20 Code Annotated, is amended, to read:

21 “**§12813. Unlawful Practice.** Any person who practices a healing art
22 profession without an appropriate current valid license, as regulated by this Board,
23 shall be guilty of a misdemeanor upon the first offense and guilty of a third degree
24 felony for second and subsequent offenses. No person without a current valid
25 license may receive any compensation for services so rendered.”

1 **Section 5.** Section 12819 of Article 8, Part 1, Chapter 12, Title 10, Guam
2 Code Annotated, is amended, to read

3 **“§12819. Fee Schedule.** The Board shall enact rules to assess fees for
4 licensure, renewal and related functions. The Board shall charge fees for
5 application by endorsement, application by examination, Certificates of Exemption,
6 license fees, renewal fees, late fees, collaborative practice agreements, license
7 verification, re-issuance of certificates and license cards, issuing copies of statutes,
8 rules and regulations, photocopying and such related functions as the Board finds
9 appropriate. Fees collected pursuant to said rules shall be deposited in the
10 Revolving Fund created by 10 G.C.A. §12229. All fees shall be non-refundable.

11 ~~[The Board in accordance with the following fee schedule will assess fees~~
12 ~~for each applicant for licensure. Fees received by the Board shall be deposited in~~
13 ~~the Revolving Fund of § 12229 of Article 2, Chapter 12 of Title 10 of the Guam~~
14 ~~Code Annotated in accordance with the laws of Guam. All fees are non-refundable.~~

15 ~~Application by Endorsement \$125.00~~

16 ~~Application by Examination 125.00~~

17 ~~Nursing Home Administrator Application 125.00~~

18 ~~Certificate of Exemption 50.00~~

19 ~~License Fee (Initial) 125.00~~

20 ~~Renewal Fee 80.00~~

21 ~~Late Renewal (Penalty) 100.00~~

22 ~~Collaborative Practice Agreement~~

23 ~~For Prescriptive Authority (initial or renewal) 50.00~~

24 ~~License Verification 25.00~~

25 ~~Re-issuance of Certificate 75.00~~

26 ~~Re-issuance of License Card 10.00~~

1 ~~Practice Act 5.00~~
2 ~~Rules and Regulations 10.00~~
3 ~~Photocopy (up to five (5) pages) 4.00~~
4 ~~Photocopy (each additional sheet) 0.50~~
5 ~~Examination fee (as determined by the Board.)~~

6 The adoption or amendment of a [above] fee schedule and other fees, to
7 include the adoption or amendment of any rule pertaining to any fee, determined
8 by the Board, as authorized pursuant to applicable law, shall be subject to
9 amendments through the Administrative Adjudication Law, Rule Making
10 Procedures, pursuant to Article 3 of Chapter 9 of Title 5 of the Guam Code
11 Annotated, and as further provided pursuant to §12825 of this Article 8.”

12 **Section 6.** Section 12821 of Article 8, Part 1, Chapter 12, Title 10, Guam
13 Code Annotated, is amended, to read:

14 **“§12821. Procedures for Enforcement and Disciplinary Action.** The
15 Board may, pursuant to the Administrative Adjudication Law, take disciplinary
16 action against a licensee for a violation of this Article, the Allied Health Practice
17 Act, and the statutes, rules and regulations that pertain to the professions it licenses
18 and regulates.

19 (a) The Board shall prove the charges by a preponderance of the
20 evidence, provided that the licensee must prove an affirmative defense.

21 (b) The Board may summarily suspend a license without a formal
22 hearing if it determines that an imminent threat to public health and safety
23 requires suspension, provided that the Board shall immediately commence
24 proceedings pursuant to the Administrative Adjudication Law and conduct a
25 hearing on the merits within sixty (60) days of the suspension.

1 (c) The Board may issue a Cease and Desist Order or may seek in the
2 Superior Court of Guam an injunction to prevent any person from violating
3 the Allied Health Practice Act or pertinent statutes, rules and regulations.
4 Violation of a Cease and Desist Order or an injunction is contempt of court.

5 (d) If a Board member is disqualified from hearing a disciplinary
6 action against a licensee who practices that member's profession, the
7 Governor shall appoint a Guam licensee from that profession to sit as a
8 Board member for that proceeding only. Said temporary appointee need not
9 meet the statutory requirements for Board membership.

10 (e) The Board may initiate and defend court proceedings needed to
11 enforce its actions and decisions.

12 (f) The Office of the Attorney General shall represent the Board in all
13 administrative and court proceedings.

14 ~~[(a) Board Authority. The Board shall be empowered to commence~~
15 ~~legal action to enforce the provisions of the Allied Health Practice Act and~~
16 ~~to exercise full discretion and authority with respect to disciplinary actions.~~

17 ~~(b) Separation of Functions. In the exercise of its power, the Board's~~
18 ~~investigative and judicial functions should be separated to assure fairness,~~
19 ~~and the Board should be required to act in a consistent manner in the~~
20 ~~application of disciplinary sanctions.~~

21 ~~(c) Administrative Procedures. The existing administrative~~
22 ~~procedures act or similar statute, in whole or in part, should either be~~
23 ~~applicable to or serve as the basis of the procedural provisions of the Allied~~
24 ~~Health Practice Act. The procedural provisions should provide for~~
25 ~~investigation of charges by the Board, notice of charges to the accused; an~~
26 ~~opportunity for a fair and impartial hearing for the accused before the Board~~

1 ~~or its examining committee; and opportunity for representation of the~~
2 ~~accused by counsel; the presentation of testimony, evidence and argument;~~
3 ~~subpoena power and attendance of witnesses; a record of proceedings; and~~
4 ~~judicial review by the courts in accordance with the standards established by~~
5 ~~the jurisdiction for such review.~~

6 ~~(d) Standard of Proof. The Board should be authorized to use~~
7 ~~preponderance of the evidence as the standard of proof in its role as trier of~~
8 ~~fact.~~

9 ~~(e) Informal Conference. Should there be an open meeting law, an~~
10 ~~exemption to it should be authorized to permit the Board, at its discretion, to~~
11 ~~meet in informal conference with an accused licensee who seeks or agrees to~~
12 ~~such a conference. Disciplinary action taken against a licensee as a result of~~
13 ~~such an informal conference, and agreed to in writing by the Board, and the~~
14 ~~accused licensee should be binding and a matter of public record. However,~~
15 ~~license revocation and suspension should be dealt with in open hearing. The~~
16 ~~holding of an informal conference should *not* preclude an open hearing *if* the~~
17 ~~Board determines such is necessary.~~

18 ~~(f) Summary Suspension. The Board should be authorized to~~
19 ~~summarily suspend a license prior to a formal hearing when it believes such~~
20 ~~action is required due to imminent threat to public health and safety. The~~
21 ~~Board should be permitted to summarily suspend a license by means of a~~
22 ~~vote conducted by telephone conference call or other electronic means, *if*~~
23 ~~appropriate Board officials believe such prompt action is required.~~
24 ~~Proceedings for a formal hearing should be instituted simultaneously with~~
25 ~~the summary suspension. The hearing should be set within thirty (30) days~~
26 ~~of the date of the summary suspension. No court should be empowered to~~

1 lift or otherwise interfere with such suspension while the Board proceeds in
2 a timely fashion.

3 ~~(g) Cease and Desist Orders/Injunctions. The Board should be~~
4 ~~authorized to issue a cease and desist order and/or obtain an injunction to~~
5 ~~restrain any person or any corporation or association, and its officers and~~
6 ~~directors from violating the provisions of the Allied Health Practice act.~~
7 ~~Violation of an injunction should be punishable as contempt of court. No~~
8 ~~proof or actual damage to any person should be required for issuance of a~~
9 ~~cease and desist order and/or an injunction, nor should issuance of an~~
10 ~~injunction relieve those enjoined from criminal prosecution for violation of~~
11 ~~the Allied Health Practice Act.~~

12 ~~(h) Board Action Reports. All the Board's final disciplinary actions~~
13 ~~and license denials, including related findings of fact and conclusions of law,~~
14 ~~should be matters of public record. Voluntary surrender of and voluntary~~
15 ~~limitation(s) on the license of any person should also be matters of public~~
16 ~~record.~~

17 ~~(i) Tolling Periods of License Suspension or Restriction. The Board~~
18 ~~should provide, in cases of license suspension or restriction, that any time~~
19 ~~during which the disciplined allied health professional practices in another~~
20 ~~jurisdiction without comparable restriction shall *not* be credited as part of the~~
21 ~~period of suspension or restriction.]”~~

22 **Section 7.** Section §12823 of Article 8, Part 1, Chapter 12, Title 10, Guam
23 Code Annotated, is amended, to read:

24 **“§12823. Unlawful Practice; [of Allied Health Profession: Violation**
25 **and] Civil and Criminal Penalties.”**

1 ~~[(a) It shall be declared unlawful for any person, corporation or association~~
2 ~~to perform any act constituting the practice of an allied health profession as defined~~
3 ~~in the Allied Health Practice Act without first obtaining a license in accordance~~
4 ~~with that Act and the rules and regulations of the Board.]~~

5 ~~[(b)]~~ (a) The Board shall be authorized to issue a cease and desist order
6 and/or obtain injunctive relief against the unlawful practice of an allied health
7 profession by any person~~[, corporation or association]~~.

8 ~~[(c) Any person, corporation or association performing any act constituting~~
9 ~~the practice of an allied health profession, as defined in the Allied Health Practice~~
10 ~~Act, or causing or aiding and abetting such action, shall be deemed guilty of a~~
11 ~~felonious offense.]~~

12 ~~[(d) A practitioner located in another state practicing within the state by~~
13 ~~electronic or other means without a license issued by the Board shall be deemed~~
14 ~~guilty of a felonious offense.]~~

15 (b) It is unlawful for any person to engage or attempt to engage in the
16 occupation or practice of an Allied Health profession as defined in the Allied
17 Health Practice Act, for compensation without a current license or certification to
18 practice the Allied Health profession, issued pursuant to Title 10 G.C.A. Chapter
19 12, and any other applicable laws.

20 (c) A violation of § 12823(b) shall be subject to the criminal penalties set
21 forth in Title 10 G.C.A. Chapter 12, and any other applicable laws.

22 (d) The Board shall have the authority to deny, suspend, or revoke a license
23 or certification or impose other civil penalties set forth in Title 10 G.C.A. Chapter
24 12, and any other applicable laws.”

25 **Section 8. Savings Clause and Effective Date.** All existing Continuing
26 Education requirements and fees shall continue in effect until January 1, 2012,

- 1 unless earlier modified by the Board. The remainder of this Act takes effect
- 2 immediately.