

***I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN***  
**Informational Briefing/ Oversight Hearing / Roundtable Hearing**

STANDING COMMITTEE / SENATOR	HEARING	COMMITTEE REPORT	HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
Committee on Health, Tourism, Historic Preservation, Land, and Justice	Informational Briefing	2nd Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act.	10/3/19 5:00 p.m.	2/10/20 10:40 a.m.	



Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

January 30, 2020

The Honorable Régine Biscoe Lee  
Chairperson, Committee on Rules  
*I Mina'trentai Singko na Liheslaturan Guåhan*  
163 Chalan Santo Papa  
Hagåtña, Guam 96910

RBL

**RE: Committee Report on Informational Hearing on the 2<sup>nd</sup> Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10): Input from Health Professionals on Effect of Current Law on Standard of Care (All health professionals and patients are invited to provide written testimony or attend hearing).**

*Håfa Adai* Chairperson Lee:

Transmitted herewith is the Committee Report on the Informational Briefing on the 2<sup>nd</sup> Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10): Input from Health Professionals on Effect of Current Law on Standard of Care (All health professionals and patients are invited to provide written testimony or attend hearing).

Sincerely,

Therese M. Terlaje



Revisión Rec'd: 2/4/20 @ 3pm.

2020 FEB 10 AM 10:40



Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåhan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

## COMMITTEE REPORT

### INFORMATIONAL BRIEFING on

**2<sup>nd</sup> Informational Briefing on Guam's  
Medical Malpractice Mandatory Arbitration  
Act (10 GCA, Chapter 10): Input from  
Health Professionals on Effect of Current  
Law on Standard of Care (All health  
professionals and patients are invited to  
provide written testimony or attend  
hearing)**

**by Senator Therese M. Terlaje**

---

Mailing Address: Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910

Office Address: Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam 96910

Tel: (671) 472-3586 | Fax: (671) 969-3590 | Email: [senatorterlajeguam@gmail.com](mailto:senatorterlajeguam@gmail.com)

[www.senatorterlaje.com](http://www.senatorterlaje.com)



Senator Therese Terlaje &lt;senatorterlajeguam@gmail.com&gt;

## First Notice of Public Hearings- Thursday, October 3, 2019

1 message

**Senator Therese Terlaje** <senatorterlajeguam@gmail.com>

Fri, Sep 20, 2019 at 7:33 PM

To: Speaker's Office <speaker@guamlegislature.org>, Vice Speaker Telena Cruz Nelson <senatorcnelson@guamlegislature.org>, Office of Senator Shelton Guam Legislature <officeofsenatorshelton@guamlegislature.org>, "Office of Senator Kelly Marsh (Taitano), PhD." <office.senatorkelly@guamlegislature.org>, Senator Regine Biscoe Lee <senatorbiscolee@guamlegislature.org>, "Senator Joe S. San Agustin" <senatorjoessanagustin@gmail.com>, Senator Therese Terlaje <senatorterlajeguam@gmail.com>, Senator Clynt Ridgell <sen.cridgell@teleguam.net>, Senator Jose Pedro Terlaje <senatorpedo@senatorjpterlaje.com>, Senator Sabina Perez <office@senatorperez.org>, Senator Wil Castro <wilcastro671@gmail.com>, Senator Louise Borja Muna <senatorlouise@gmail.com>, Senator Telo Taitague <senatortelot@gmail.com>, Senator James Moylan <senatormoylan@guamlegislature.org>, "Senator Mary C. Torres" <senatormary@guamlegislature.org>

Cc: phnotice@guamlegislature.org

Bcc: lifestyleeditor@glimpsesofofguam.com, carlsonc@pstripes.osd.mil, dcrisost@guam.gannett.com, dmgeorge@guampdn.com, The Post Editor in Chief <editor@postguam.com>, editor@saipantribune.com, michael ko <gktv23@hotmail.com>, guam@pstripes.osd.mil, Jason Salas <jason@kuam.com>, John Oconor <john@postguam.com>, Jon Anderson <jontalk@gmail.com>, KISH <kstokish@gmail.com>, life@guampdn.com, mabuhaynews@yahoo.com, Guam PDN <news@guampdn.com>, Sorensen Pacific Broadcasting <news@spbgum.com>, Bruce Hill <pacificjournalist@gmail.com>, parroyo@k57.com, KPRG Guam <pdkprg@gmail.com>, Phill Leon Guerrero <phill@spbgum.com>, publisher@glimpsesofofguam.com, rlimtiaco@guampdn.com, Sabrina Salas <sabrina@kuam.com>, Steve Limtiaco <slimtiaco@guampdn.com>, Manny Cruz <cruzma812@gmail.com>, Jerick Sablan <jpsablan@guampdn.com>, K57 <news@k57.com>, KPRG <admin.kprg@gmail.com>, Maria Louella Losinio <louella.losinio@gmail.com>, Pacific Island Times <pacificislandtimes@gmail.com>, cherrie@mvariety.com, emmanuel@mvariety.com, junhan@mvariety.com, bryan@mvariety.com, businesseditor@glimpsesofofguam.com, Patti Rodriguez <parroyo@spbgum.com>, heugenio@guampdn.com, raygibsonshow@gmail.com, Mar-Vic Cagurangan <publisher@pacificislandtimes.com>, pattiontheradio@yahoo.com, Kelly Park <kcn.kelly@gmail.com>, akaur@gannett.com, Desk Editor <deskeditor@postguam.com>, vincent.duenas@takecareasia.com, annie.bordallo@gmha.org, reylim@hotmail.com, kiarahmani@hotmail.com, philipf@bankpacific.com, "Mae N. Pangelinan" <mae.pangelinan@dphss.guam.gov>, Myrna Leon Guerrero <myrna.leonguerrero@dphss.guam.gov>, Nathaniel Berg <nberg@guamradiology.com>, Guam Medical Society <theguammedicalsociety@gmail.com>, Arania Adolphson <aadolphson@amc.clinic>, AM David <amdavid@guam.net>, lillian perez-posadas <lillian.perez-posadas@gmha.org>, joleen.aguon@gmha.org, hoa nguyen <hoavannguyen@yahoo.com>, "Edward Blounts Jr." <eab221@gmail.com>, Troy Torres <troy@kanditnews.com>, D L <dlubofsky@outlook.com>, Theo Pangelinan <theo.pangelinan@gmha.org>

September 20, 2019

### MEMORANDUM

To: All Senators, Stakeholders and Media

From: Senator Therese M. Terlaje  
Chairperson, Committee on Health, Tourism, Historic Preservation, Land and Justice

Subject: **FIRST NOTICE of Public Hearing** – Thursday, October 3, 2019 beginning at 2:00 p.m.

*Håfa Adai!*

Please be advised that the Committee on Health, Tourism, Historic Preservation, Land and Justice will convene a public hearing on **Thursday, October 3, 2019 at 2:00 PM** in *I Liheslaturan Guåhan's* Public Hearing Room (Guam Congress Building, Hagåtña).

## AGENDA

- **2:00 p.m.:** Guam Memorial Hospital Authority Oversight Hearing
- **5:00 p.m.:** 2<sup>nd</sup> Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10): Input from Health Professionals on Effect of Current Law on Standard of Care (All health professionals and patients are invited to provide written testimony or attend hearing)

We look forward to your attendance and participation. *Si Yu'os Ma'åse'*

### **Upcoming Hearings on Guam's Medical Malpractice Mandatory Arbitration Act:**

**Thursday, November 7, 2019 at 2:00 p.m. – 3<sup>rd</sup> Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10):** Options Overview: Recommendations for Improvement (All health professionals and patients are invited to provide written testimony or attend hearing).

*The hearing will broadcast on local television, GTA Channel 21, Docomo Channel 117/60.4 and stream online via I Liheslaturan Guåhan's live feed. A recording of the hearing will be available online via Guam Legislature Media on YouTube after the hearing. If written testimonies are to be presented at the Public Hearing, the Committee requests that copies be submitted prior to the public hearing date and should be addressed to Senator Therese M. Terlaje. Testimonies may be submitted via hand delivery to the Office of Senator Therese M. Terlaje at Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam; to the mail room of the Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam; or via email to [senatorterlajeguam@gmail.com](mailto:senatorterlajeguam@gmail.com). In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services should contact the Office of Senator Therese M. Terlaje at (671) 472-3586 or by sending an email to [senatorterlajeguam@gmail.com](mailto:senatorterlajeguam@gmail.com).*

We look forward to your attendance and participation. *Si Yu'os Ma'åse'--*

### **Office of Senator Therese M. Terlaje**

Committee on Health, Tourism, Historic Preservation, Land and Justice

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

Office Location: Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam 96910

Mailing address: Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910

T: (671) 472-3586 F: (671) 989-3590 Email: [senatorterlajeguam@gmail.com](mailto:senatorterlajeguam@gmail.com)

website: [www.senatorterlaje.com](http://www.senatorterlaje.com)

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 **FIRST NOTICE\_10.03.19 GMHA\_2ND MED ARB\_TMT.pdf**  
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Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåban*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

September 20, 2019

**MEMORANDUM**

To: All Senators, Stakeholders and Media

From: Senator Therese M. Terlaje  
Chairperson, Committee on Health, Tourism, Historic Preservation, Land and Justice

Subject: **FIRST NOTICE of Public Hearing – Thursday, October 3, 2019 beginning at 2:00 p.m.**

*Håfa Adai!*

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**AGENDA**

- 2:00 p.m.: Guam Memorial Hospital Authority Oversight Hearing
- 5:00 p.m.: 2<sup>nd</sup> Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10): Input from Health Professionals on Effect of Current Law on Standard of Care (All health professionals and patients are invited to provide written testimony or attend hearing).

We look forward to your attendance and participation. *Si Yu'os Ma'åse'*

**Upcoming Hearings on Guam's Medical Malpractice Mandatory Arbitration Act:**

Thursday, November 7, 2019 at 2:00 p.m. – 3<sup>rd</sup> Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10): Options Overview: Recommendations for Improvement (All health professionals and patients are invited to provide written testimony or attend hearing).

*The hearing will broadcast on local television, GTA Channel 21, Docomo Channel 117/60.4 and stream online via [I Liheslaturan Guåhan's live feed](#). A recording of the hearing will be available online via [Guam Legislature Media](#) on YouTube after the hearing. If written testimonies are to be presented at the Public Hearing, the Committee requests that copies be submitted prior to the public hearing date and should be addressed to Senator Therese M. Terlaje. Testimonies may be submitted via hand delivery to the Office of Senator Therese M. Terlaje at Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam; to the mail room of the Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam; or via email to [senatorterlajeguam@gmail.com](mailto:senatorterlajeguam@gmail.com). In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services should contact the Office of Senator Therese M. Terlaje at (671) 472-3586 or by sending an email to [senatorterlajeguam@gmail.com](mailto:senatorterlajeguam@gmail.com).*

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Office Address: Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam 96910

Tel: (671) 472-3586 | Fax: (671) 969-3590 | Email: [senatorterlajeguam@gmail.com](mailto:senatorterlajeguam@gmail.com) | [www.senatorterlaje.com](http://www.senatorterlaje.com)

"All the world's a stage, and all the men and women merely players." – Jaques. Keep up with nonfictional world players and events in this section. Send us your thoughts to editor@postguam.com.

GUAM DAILY POST • THURSDAY, SEPTEMBER 26, 2019

# The Amazon isn't on fire, Brazil's Bolsonaro tells the UN General Assembly; it's full of riches

By Marina Lopes  
The Washington Post

Brazilian President Jair Bolsonaro rejected calls for foreign intervention in the burning Amazon rain forest.

ENVIRONMENT VS ECONOMY

the hands of the international media, because of the fires in the Amazon, awoke in us a feeling of patriotism. "It is a fallacy to say that the Amazon is on fire."

said. "But the sensationalist attacks, opposing and making ourselves that we have suffered, in large part at the hands of our political opponents, are the real enemies of this government."

The Port Authority of Guam Board of Directors will hold a Special Board meeting on **Thursday, October 3, 2019 at 3:30 p.m.**, at the Board of Directors' Conference Room, Port Authority of Guam, Cabras Island, Piti. Business to be transacted include: Legal Matters pursuant to §8111(c). Individuals with disabilities who may need special accommodations may contact Mr. Simeon Delos Santos, ADA Coordinator at 477-5931/4, ext. 430

## PUBLICATION NOTICE

In accordance with the provisions of Guam Code Annotated, Title XI, Chapter III, Section 3315, notice is hereby given that:

**CARSON GUAM CORPORATION**  
dba: **CARSON GUAM CORPORATION**

has applied for a Class: 3 WHOLEALER Alcoholic Beverage License said premises being marked as Lot: 5164-2-R1 B 21 BLDG. 100,102,104 Guerrero St. Tamuning, Guam.

Committee On Health, Tourism, Historic Preservation, Land and Justice



**SENATOR THERESE M. TERLAJE**  
I Mina'trentai Singko na Liheslaturan Guahan  
35th Guam Legislature | 472-3586

**PUBLIC HEARING • 2:00 P.M. • Thursday, October 3, 2019**  
Guam Legislature Public Hearing Room, Guam Congress Building, Hagåtña

### AGENDA:

- 2:00 p.m. Guam Memorial Hospital Oversight Hearing
- 5:00 p.m. Informational Hearing- **Guam's Medical Malpractice Mandatory Arbitration Act (Citation 10 GCA, Chapter 10): Second Part of a Series.** Input from Health Professionals on Effect of Current Law on Standard of Care. All health professionals, patients and members of the public are invited to submit written testimony and attend the hearing.

Testimonies may be submitted to our office at Ada Plaza Center, Suite 207, 173 Aspinal Avenue, Hagåtña, Guam 96910, to the Guam Congress Building, or via email at [senatorterlajeguam@gmail.com](mailto:senatorterlajeguam@gmail.com). The hearing will broadcast on local television, GTA Channel 21, Docomo Channel 117/60.4 and stream online via I Liheslaturan Guahan's live feed at [http://www.guamlegislature.com/live\\_feed.htm](http://www.guamlegislature.com/live_feed.htm). This ad is paid for with government funds.



Senator Therese Terlaje &lt;senatorterlajeguam@gmail.com&gt;

## SECOND NOTICE of Public Hearing – Thursday, October 3, 2019 beginning at 2:00 p.m.

1 message

Senator Therese Terlaje &lt;senatorterlajeguam@gmail.com&gt;

Mon, Sep 30, 2019 at 9:47 AM

To: Speaker's Office <speaker@guamlegislature.org>, Vice Speaker Telena Cruz Nelson <senatorcnelson@guamlegislature.org>, Office of Senator Shelton Guam Legislature <officeofsenatorshelton@guamlegislature.org>, "Office of Senator Kelly Marsh (Taitano), PhD." <office.senatorkelly@guamlegislature.org>, Senator Regine Biscoe Lee <senatorbiscoelee@guamlegislature.org>, "Senator Joe S. San Agustin" <senatorjoessanagustin@gmail.com>, Senator Therese Terlaje <senatorterlajeguam@gmail.com>, Senator Clynt Ridgell <sen.cridgell@teleguam.net>, Senator Jose Pedro Terlaje <senatorpedo@senatorjpterlaje.com>, Senator Sabina Perez <office@senatorperez.org>, Senator Wil Castro <wilcastro671@gmail.com>, Senator Louise Borja Muna <senatorlouise@gmail.com>, Senator Telo Taitague <senortelot@gmail.com>, Senator James Moylan <senatormoylan@guamlegislature.org>, "Senator Mary C. Torres" <senatormary@guamlegislature.org>, phnotice@guamlegislature.org

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September 30, 2019

### MEMORANDUM

To: All Senators, Stakeholders and Media

From: Senator Therese M. Terlaje  
Chairperson, Committee on Health, Tourism, Historic Preservation, Land and JusticeSubject: **SECOND NOTICE of Public Hearing – Thursday, October 3, 2019 beginning at 2:00 p.m.***Håfa Adai!*

Please be advised that the Committee on Health, Tourism, Historic Preservation, Land and Justice will convene a public hearing on **Thursday, October 3, 2019 at 2:00 PM** in *I Liheslaturan Guåhan's* Public Hearing Room (Guam Congress Building, Hagåtña).

## AGENDA

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- Guam Memorial Hospital Authority Oversight Hearing

### **5:00 p.m.:**

- 2<sup>nd</sup> Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10): Input from Health Professionals on Effect of Current Law on Standard of Care (All health professionals and patients are invited to provide written testimony or attend hearing).

We look forward to your attendance and participation. *Si Yu'os Ma'ãse'*

### **Upcoming Hearings on Guam's Medical Malpractice Mandatory Arbitration Act:**

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--

### **Office of Senator Therese M. Terlaje**

Committee on Health, Tourism, Historic Preservation, Land and Justice

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

Office Location: Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam 96910

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website: [www.senatorterlaje.com](http://www.senatorterlaje.com)

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**SECOND NOTICE\_10.03.19 GMHA\_2ND MED ARB\_TMT.pdf**

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Senator

# THERESE M. TERLAJE

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

September 30, 2019

## MEMORANDUM

To: All Senators, Stakeholders and Media

From: Senator Therese M. Terlaje  
Chairperson, Committee on Health, Tourism, Historic Preservation, Land and Justice

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# Senators OK bill to clean up illegal dumps

By Kevin Kerrigan  
[kevin@postguam.com](mailto:kevin@postguam.com)

Guam lawmakers Monday approved a bill that earmarks revenue to combat illegal dumping and lengthen the life of trash cells at the Layon landfill.



**CLEANUP:** Guam Ancestral Lands Commission employee Liza Camacho clears a jungle area during the Micronesian Islandwide Cleanup on the road.

## Defendant in prison smuggling case dies

By Nick Delgado  
[nick@postguam.com](mailto:nick@postguam.com)

One of the defendants arrested in connection with an alleged plot to smuggle contraband into the Department of Corrections in 2017 has died. The case for Paul Lynwood Johnson was heard before Superior Court of Guam Judge Anita Sukola on Monday. Defense attorney Joseph Al...

Committee On Health,  
 Tourism, Historic Preservation,  
 Land and Justice



SENATOR THERESE M. TERLAJE

I Mina'trentai Singko na Liheslaturan Guahan  
 35<sup>th</sup> Guam Legislature | 472-3586

**PUBLIC HEARING • 2:00 P.M. • Thursday, October 3, 2019**  
 Guam Legislature Public Hearing Room, Guam Congress Building, Hagåtña

### AGENDA:

**2:00 p.m. Guam Memorial Hospital Oversight Hearing**

**5:00 p.m. Informational Hearing- Guam's Medical Malpractice Mandatory Arbitration Act (Citation 10 GCA, Chapter 10): Second Part of a Series.** Input from Health Professionals on Effect of Current Law on Standard of Care. All health professionals, patients and members of the public are invited to submit written testimony and attend the hearing.

Testimonies may be submitted to our office at Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam 96910, to the Guam Congress Building, or via email at [senatorterlajegum@gmail.com](mailto:senatorterlajegum@gmail.com). The hearing will broadcast on local television, GTA Channel 21, Docomo Channel 117/80.4 and stream online via I Liheslaturan Guahan's live feed at [http://www.guamlegislature.com/live\\_feed.htm](http://www.guamlegislature.com/live_feed.htm). This ad is paid for with government funds.

### NOTICE OF PUBLIC HEARING

The President of the University of Guam, in conjunction with the Board of Regents' Committee on Student Affairs, Scholarships, Alumni Relations, and Honorary Degrees and the Budget, Finance, and Audit Committee, has scheduled a public hearing beginning at 2:00 p.m. on Friday October 11, 2019, in room 129 located on the ground floor of the Jesus S. and Eugenia A. Leon Guerrero School of Business and Public Administration Building at the University of Guam campus.

The purpose of the hearing is to afford an opportunity for the members of the community to provide comments and recommendations toward the following matters:

- Proposed Tuition Adjustment
- Proposed Adjustment of Certain General Student Fees, Course Fees, and Service Fees

Individuals may obtain a copy of the proposal from the RFK Library, the Office of the President or on the following Website at [www.uog.edu](http://www.uog.edu) or by sending an e-mail to [bor.testimony@triton.uog.edu](mailto:bor.testimony@triton.uog.edu).

Written testimony may be submitted in advance of the hearing or at the hearing. Testimonies may be faxed to 734-2907 or e-mailed to [bor.testimony@triton.uog.edu](mailto:bor.testimony@triton.uog.edu).

Individuals with disabilities in need of assistance during this hearing may contact the ADA Coordinator at 735-2244, TDD 735-2243.

/s/ Thomas W. Krise, Ph.D.  
 President

This ad was paid with public funds. UOG is an equal opportunity employer and provider.

**Re: Guam Medical Malpractice Mandatory Arbitration Act**

1 message

Senator Therese Terlaje &lt;senatorterlajeguam@gmail.com&gt;

Tue, Sep 17, 2019 at 5:15 PM

[Redacted]

Hafa Adai Mr. Keogh,

We are accepting written testimony, which will be included in the Committee Report at the conclusion of the series of hearings, and will be available to the public. Written testimony can be submitted via email here, and can be read into the record if you wish to send a representative to do so. The hearing will also be live streamed on the Legislature's live feed, which can be found here <https://www.youtube.com/channel/UCWGC3ELFerIK7HtSuf70tyg>.

Thank you for your willingness to share your experience and to testify.

Séa A.Cruz

Chief of Staff

--

**Office of Senator Therese M. Terlaje**

Committee on Health, Tourism, Historic Preservation, Land and Justice

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

Office Location: Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam 96910

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T: (671) 472-3586 F: (671) 989-3590 Email: [senatorterlajeguam@gmail.com](mailto:senatorterlajeguam@gmail.com)website: [www.senatorterlaje.com](http://www.senatorterlaje.com)

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On Tue, Sep 17, 2019 at 3:37 PM [Redacted] wrote:

Dear Senator Terlaje,

I have seen the notice through the Guam Bar Association of the upcoming hearings on the referenced subject. I have been practicing on Guam and Micronesia for over 42 years. Over this period I have represented numerous clients on both sides of medical malpractice complaints. This representation has involved cases initiated in the Superior Court of Guam prior to the enactment of the MMMAA, several arbitration proceedings under the MMMAA, and Guam Superior and Supreme Court trials and appeals after having complied with the MMMAA. I have also handled medical malpractice claims against GMH under the Government Claims Act. I suggest that I have valuable experience and testimony to impart. Unfortunately, I am currently off-island and will not return until September 27, after the currently scheduled hearings. If any accommodation can be made to allow me to present testimony after my return I will be happy to do all I can to assist in this process.

Thank you for your attention to this request.

Sincerely,

Robert L. Keogh

KEOGH LAW OFFICE

247 Martyr Street

Suite 105

Hagatna, GU 96910

Telephone: 1 (671) 472-6895

Facsimile: 1 (671) 472-6929

[www.keoghlawoffice.com](http://www.keoghlawoffice.com)

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**Re: Informational Hearings: Guam's Medical Malpractice Mandatory Arbitration Act**

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>  
To: Guam Bar Association <info@guambar.org>

Tue, Sep 17, 2019 at 3:30 PM

Hafa Adai Edgar,

Thank you for the update. We will be in touch should any further assistance be required.

Sincerely,

Séa A.Cruz

Chief of Staff

--

**Office of Senator Therese M. Terlaje****Committee on Health, Tourism, Historic Preservation, Land and Justice***I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

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On Tue, Sep 17, 2019 at 1:53 PM Guam Bar Association <info@guambar.org> wrote:

Hafa Adai Senator,

Just a quick FYI, the request for participation on the Medical Malpractice Mandatory Arbitration Act is scheduled to go to the GBA members (active and inactive) today at 2 pm. I have also posted the request on the Guam Bar website under Announcements as it was the only way to link the PDF letter. I hope our members will take the time to provide their feedback on this important matter.

Please let me know how the Guam Bar can further assist you in any way.

Best Regards,

Edgar Dumlao

*Administrative Support Staff*

**GUAM BAR ASSOCIATION**

284 West Chalan Santo Papa

Hagåtña, Guam 96910

Telephone: 671.989.4227

Email: [info@guambar.org](mailto:info@guambar.org)Web: [guambar.org](http://guambar.org)

The Guam Bar Association is administered by its Board of Governors.

President: Jacqueline T. Terlaje

Vice President: Minakshi V. Hemlani  
Treasurer: John C. Terlaje  
Secretary: Janice M. Camacho  
Member at Large: Joaquin (Jay) C. Arriola, Jr.  
Member at Large: Joseph (Jojo) A. Perez  
Past President: Jacqueline T. Terlaje

On Mon, Sep 16, 2019 at 3:02 PM Guam Bar Association <info@guambar.org> wrote:  
Hafa Adai Senator!

We are in receipt of your email and notification. I'll be happy to share the request for participation to our GBA members via Listserve email.

Best,  
Edgar Dumlao  
*Administrative Support Staff*

## **GUAM BAR ASSOCIATION**

284 West Chalan Santo Papa  
Hagåtña, Guam 96910  
Telephone: 671.989.4227  
Email: [info@guambar.org](mailto:info@guambar.org)  
Web: [guambar.org](http://guambar.org)

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Secretary: Janice M. Camacho  
Member at Large: Joaquin (Jay) C. Arriola, Jr.  
Member at Large: Joseph (Jojo) A. Perez  
Past President: Jacqueline T. Terlaje

On Mon, Sep 16, 2019 at 1:14 PM Senator Therese Terlaje <senatorterlajeguam@gmail.com> wrote:  
September 15, 2019

### **Transmitted via electronic mail**

[info@guambar.org](mailto:info@guambar.org)

Jacqueline T. Terlaje, Esq.,  
President, Guam Bar Association  
284 West Chalan Santo Papa, Hagåtña, Guam 96910

Hafa Adai Ms. Terlaje and Guam Bar Association Members,

As Chairperson of the Legislature's Committee on Health, I invite you and your members to participate in a series of informational hearings as part of the committee's efforts to examine Guam's Medical Malpractice Mandatory Arbitration Act:

<http://www.guamcourts.org/CompilerofLaws/GCA/10gca/10gc010.PDF>

The goal of the first hearing on Thursday, September 19, 2019 at 2:00 p.m., is to present senators and the public with a basic background of the malpractice law, and prior cases interpreting said law. I have invited the Attorney General of Guam to briefly discuss and distinguish the law governing claims against the government and the government health professionals. I have invited Attorney Mitch Thompson, who represents several providers, including the Seventh Day Adventist Clinic, to present an overview of Guam's Medical Malpractice Mandatory Arbitration Act and a few of the relevant past

cases. To accommodate for any differing interpretation or caution regarding the law or the cases, I am also inviting input from those lawyers who affirmatively responded to the Guam Bar Association's call out for lawyers interested in assisting the Legislature with examination of Guam's Medical Malpractice Mandatory Arbitration Act. Senators will be allowed to ask questions of the panel following the presentation or any testimony. Following the information from the lawyers, there will be an opportunity at the first hearing for a limited number of patients or the general public to comment.

All health professionals are invited to a second hearing on Thursday, October 3, 2019 at 5:00 p.m., to focus on the impacts of the current law on their practice, on whether the law ensures the appropriate standard of care on Guam, and the impacts of the law on the availability of qualified health professionals. I have invited the heads of the Guam Medical Association and the Guam Medical Society to lead the health professional's panel. The second hearing will also allow limited testimony from patients and the general public.

Following the second hearing, I would invite each of you to submit suggestions for reform or arguments against reform, which will be more fully considered at a third hearing on Thursday, November 7, 2019 at 2:00 p.m. The Committee is particularly interested in your input as to whether the law can be improved to better protect patients and to ensure an appropriate standard of care. These hearings are for informational purposes only, to allow senators to hear suggestions and make inquiry towards formulation of legislation. The third hearing will also allow testimony from patients and the general public.

We ask that all testimony be submitted in writing in advance, to be distributed to all Senators, and that oral testimony be limited to five minutes.

Note that as of today, no bill has been introduced during this legislative term to revise the current Medical Malpractice Arbitration Act. A separate public hearing on any bill that might be introduced to specifically amend to the law is required. The above-described schedule is subject to change if a bill is introduced or if legislative session is scheduled during these times.

Thank you for your assistance and I look forward to your presence and participation.

Sincerely,  
Therese M. Terlaje

--

**Office of Senator Therese M. Terlaje**

Committee on Health, Tourism, Historic Preservation, Land and Justice

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

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website: [www.senatorterlaje.com](http://www.senatorterlaje.com)

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**Re: Informational Hearings: Guam's Medical Malpractice Mandatory Arbitration Act**

1 message

Senator Therese Terlaje &lt;senatorterlajeguam@gmail.com&gt;

Tue, Sep 17, 2019 at 5:33 AM

To: dlubofsky &lt;dlubofsky@yahoo.com&gt;

Hafa Adai Mr. Lubofsky,

You can submit your testimony via email to [senatorterlajeguam@gmail.com](mailto:senatorterlajeguam@gmail.com) or via hand delivery to the Office of Senator Therese M. Terlaje at Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam; to the mail room of the Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam. One copy is fine.

Respectfully,  
Charissa

--

**Office of Senator Therese M. Terlaje**

Committee on Health, Tourism, Historic Preservation, Land and Justice

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On Tue, Sep 17, 2019 at 12:22 AM dlubofsky &lt;dlubofsky@yahoo.com&gt; wrote:

Thank you Senator,  
Where and how do I submit testimony and how many copies.  
Thank you,  
David

[Get Outlook for Android](#)**From:** Senator Therese Terlaje <senatorterlajeguam@gmail.com>**Sent:** Monday, September 16, 2019 11:29:20 AM**To:** dlubofsky <dlubofsky@yahoo.com>**Subject:** Informational Hearings: Guam's Medical Malpractice Mandatory Arbitration Act

Hafa Adai Mr. Lubofsky,

This is to invite you to a series of informational hearings on September 19, October 3, and November 7, 2019 relative to Guam's Medical Malpractice Mandatory Arbitration Act. There is a set agenda for each hearing, designed to ascertain an overview of the law, and suggestion for changes, and there is time set aside for public input during each hearing. We ask that all testimony be submitted in writing in advance, to be distributed to all senators, and that oral testimony be limited to 5 minutes.

Thank you for your patience and we look forward to your participation at one or all of the hearings.

Therese Terlaje

--

Office of Senator Therese M. Terlaje

Committee on Health, Tourism, Historic Preservation, Land and Justice

*I*

*Mina'trentai*

*Singko* na Liheslaturan Guåhan

35th Guam

Legislature

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**Re: Malpractice**

1 message

Edward Blounts Jr. <[REDACTED]>  
To: Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 6:56 PM

Dr Cabrera just spoke. It was added in at the last minute. There were no slides. He mentioned the old law that was struck down. The new law, and the issue of some people not being able to afford arbitration.

The members then discussed their concerns. About 1/2 of our members do not have malpractice insurance, so changes to the law worry them.

We want to keep arbitration as it protects physicians by preventing frovalois suits but we want to increase access. We outlined several steps that could help this

The society will not issue an official statement till Thursday when we address the issue again but I have typed a position based on our last meeting. IT IS ONLY PRELIMINARY AND CAN CHANGE. I will add to it and amend based on Thursdays meeting. And the final version goes out Thursday night.

Due to senator Terlaje's support. I met with her at the GMA meeting last month I will send my preliminary report in a second e mail. This is the current consensus of out members and board. As the president my personal feelings are irrelevant as I represent my board and members but in this case I agree with the society.

As I said I will forward, in a separate e mail the society's current position. This could change Thursday evening and our final report will be released then

Ed Blounts

On Mon, Sep 16, 2019, 5:55 PM Senator Therese Terlaje <senatorterlajeguam@gmail.com> wrote:  
Hafa Adai Dr. Blounts,

Thank you for your invitation. We will try our best to be there.

You mentioned that your discussion in July was led by Dr. Cabrera. Are you able give a summary of the discussion and provide any materials he may have used or presented during the discussion? This would assist us in preparation for the Public Hearing on Thursday, and with preparing for your meeting, should we be able to attend.

Thank you for your interest and response.

Séa A.Cruz

Chief of Staff

--

**Office of Senator Therese M. Terlaje****Committee on Health, Tourism, Historic Preservation, Land and Justice***I Mina'trentai Singko na Liheslaturan Guåhan*

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On Mon, Sep 16, 2019 at 4:10 PM Edward Blounts Jr. <eab271@gmail.com> wrote:  
Senators,

Thank you for your interest in obtaining a physicians viewpoint on the malpractice issue. As president of the Guam Medical Society I wish to inform you that we will be holding our 2nd discussion on this issue. Our last discussion (July) was lead by Dr Cabrera. This one will feature Mitch Thompson (attorney). It will be held as part of our bi monthly educational meeting series. It is at the View, at Pacific Star. This is on September 19 (Thursday). Doors open at 6 PM and the malpractice issue will be discussed from 6 30 till 7. This is being tacked on at the last minute so there will be other issues presented that evening as well. Public health/CDC have also asked for time to speak on Dengue (7 to 7 30) and then Dr Cabrera will give our educational talk from 7 30 till 8 30. 8 30 till 9 PM will be set aside for networking and it will give our members time to speak to you.

I do apologize for the chopped up nature of this meeting. It was only this weekend we added time for malpractice and dengue.

I would like to invite you and your staff to attend. Food and water /iced tea will be provided.

Dr Nathaniel Berg has also been invited.

After this meeting the medical society will issue an official statement on this matter and we have asked our members to attend the round table series.

Thank you again for your willingness to speak with our members on this important issue

Edward Blounts DO, MSED  
2019 President, The Guam Medical Society

On Mon, Sep 16, 2019, 12:02 PM Guam Medical Society <theguammedicalsociety@gmail.com> wrote:

----- Forwarded message -----

From: **Senator Therese Terlaje** <senatorterlajeguam@gmail.com>

Date: Mon, Sep 16, 2019 at 11:48 AM

Subject: Informational Hearings: Guam's Medical Malpractice Mandatory Arbitration Act

To: Guam Medical Society <theguammedicalsociety@gmail.com>, Edward Blounts Jr. <eab271@gmail.com>

**Transmitted via electronic mail**

theguammedicalsociety@gmail.com

eab271@gmail.com

Dr. Edward Blounts, Jr.  
President, Guam Medical Society  
275G Farenholt, Ave., Suite 248  
Tamuning, Guam 96913

Håfa Adai Dr. Blounts and Guam Medical Society Members,

As Chairperson of the Legislature's Committee on Health, I invite your members to participate in a series of informational hearings as part of the committee's efforts to examine Guam's Medical Malpractice Mandatory Arbitration Act:

<http://www.guamcourts.org/CompilerofLaws/GCA/10gca/10gc010.PDF>

The goal of the first hearing on September 19, 2019 at 2:00 p.m., is to present senators and the public with a basic background of the malpractice law, and prior cases interpreting said law. I have invited the Attorney General of Guam to briefly discuss and distinguish the law governing claims against the government and the government health professionals. I have invited Attorney Mitch Thompson, who represents several providers, including the Seventh Day Adventist Clinic, to present an overview of Guam's Medical Malpractice Mandatory Arbitration Act and a few of the relevant past cases. To accommodate for any differing interpretation or caution regarding the law or the cases, I am also inviting input from those lawyers who affirmatively responded to the Guam Bar Association's call out for lawyers interested in assisting the Legislature with examination of Guam's Medical Malpractice Mandatory Arbitration Act. Senators will be allowed to ask questions of the panel following the presentation or any testimony. Following the information from the lawyers, there will be an opportunity at the first hearing for a limited number of patients or the general public to comment.

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I look forward to your presence and participation.

Sincerely,

Therese M. Terlaje

--

**Office of Senator Therese M. Terlaje**

Committee on Health, Tourism, Historic Preservation, Land and Justice

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--

Thank You,

*Guam Medical Society*

Mailing Address: 275G Farenholt Ave., Suite 248 Tamuning, Guam 96913

Email: [theguammedicalsociety@gmail.com](mailto:theguammedicalsociety@gmail.com)

**Re: Malpractice**

1 message

**Edward Blounts Jr.** [REDACTED]  
To: Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 6:56 PM

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Ed Blounts

On Mon, Sep 16, 2019, 5:55 PM Senator Therese Terlaje <senatorterlajeguam@gmail.com> wrote:  
Hafa Adai Dr. Blounts,

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Séa A.Cruz

Chief of Staff

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**Office of Senator Therese M. Terlaje**

Committee on Health, Tourism, Historic Preservation, Land and Justice

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On Mon, Sep 16, 2019 at 4:10 PM Edward Blounts Jr. <eab221@gmail.com> wrote:  
Senators,

Thank you for your interest in obtaining a physicians viewpoint on the malpractice issue. As president of the Guam Medical Society I wish to inform you that we will be holding our 2nd discussion on this issue. Our last discussion (July) was lead by Dr Cabrera. This one will feature Mitch Thompson (attorney). It will be held as part of our bi monthly educational meeting series. It is at the View, at Pacific Star. This is on September 19 (Thursday). Doors open at 6 PM and the malpractice issue will be discussed from 6 30 till 7. This is being tacked on at the last minute so there will be other issues presented that evening as well. Public health/CDC have also asked for time to speak on Dengue (7 to 7 30) and then Dr Cabrera will give our educational talk from 7 30 till 8 30. 8 30 till 9 PM will be set aside for networking and it will give our members time to speak to you.

I do apologize for the chopped up nature of this meeting. It was only this weekend we added time for malpractice and dengue.

I would like to envite you and your staff to attend. Food and water /iced tea will be provided.

Dr Nathaniel Berg has also been invited.

After this meeting the medical society will issue an official statement on this matter and we have asked our members to attend the round table series.

Thank you again for your willingness to speak with our members on this important issue

Edward Blounts DO, MSEd  
2019 President, The Guam Medical Society

On Mon, Sep 16, 2019, 12:02 PM Guam Medical Society <theguammedicalsociety@gmail.com> wrote:

----- Forwarded message -----

From: **Senator Therese Terlaje** <senatorterlajeguam@gmail.com>

Date: Mon, Sep 16, 2019 at 11:48 AM

Subject: Informational Hearings: Guam's Medical Malpractice Mandatory Arbitration Act

To: Guam Medical Society <theguammedicalsociety@gmail.com>, Edward Blounts Jr. <eab221@gmail.com>

**Transmitted via electronic mail**

theguammedicalsociety@gmail.com  
[eab221@gmail.com](mailto:eab221@gmail.com)

Dr. Edward Blounts, Jr.  
President, Guam Medical Society  
275G Farenholt, Ave., Suite 248  
Tamuning, Guam 96913

Håfa Adai Dr. Blounts and Guam Medical Society Members,

As Chairperson of the Legislature's Committee on Health, I invite your members to participate in a series of informational hearings as part of the committee's efforts to examine Guam's Medical Malpractice Mandatory Arbitration Act:

<http://www.guamcourts.org/CompilerofLaws/GCA/10gca/10gc010.PDF>

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All health professionals are invited to a second hearing on October 3, 2019 at 5:00 p.m., to focus on the impacts of the current law on their practice, on whether the law ensures the appropriate standard of care on Guam, and the impacts of the law on the availability of qualified health professionals. I have invited the heads of the Guam Medical Association and the Guam Medical Society to lead the health professional's panel. The second hearing will also allow limited testimony from patients and the general public.

Following the second hearing, I would invite each of you to submit suggestions for reform or arguments against reform, which will be more fully considered at a third hearing on November 7, 2019 at 2:00 p.m. The Committee is particularly interested in your input as to whether the law can be improved to better protect patients and to ensure an appropriate standard of care. These hearings are for informational purposes only, to allow senators to hear suggestions and make inquiry towards formulation of legislation. The third hearing will also allow testimony from patients and the general public.

We ask that all testimony be submitted in writing in advance, to be distributed to all Senators, and that oral testimony be limited to five minutes.

Note that as of today, no bill has been introduced during this legislative term to revise the current Medical Malpractice Arbitration Act. A separate public hearing on any bill that might be introduced to specifically amend to the law is required. The above-described schedule is subject to change if a bill is introduced or if legislative session is scheduled during these times.

I look forward to your presence and participation.

Sincerely,

Therese M. Terlaje

**Office of Senator Therese M. Terlaje**

Committee on Health, Tourism, Historic Preservation, Land and Justice

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

Office Location: Ada Plaza Center, Suite 207, 173 **Aspinall Avenue**, Hagåtña, Guam 96910

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—

Thank You,

*Guam Medical Society*

Mailing Address: 275G Farenholt Ave., Suite 248 Tamuning, Guam 96913

Email: [theguammedicalsociety@gmail.com](mailto:theguammedicalsociety@gmail.com)

## INFORMATIONAL HEARINGS: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 2:28 PM

September 15, 2019

**Transmitted via electronic mail**

Anita P. Arriola, Esq.  
Arriola Law Firm  
259 Martyr Street, Suite 201  
Hagåtña, Guam 96910

Håfa Adai Ms. Arriola,

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<http://www.guamcourts.org/CompilerofLaws/GCA/10gca/10gc010.PDF>

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Thank you for your assistance and I look forward to your presence and participation.

Sincerely,  
Therese M. Terlaje

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**Office of Senator Therese M. Terlaje**

**Committee on Health, Tourism, Historic Preservation, Land and Justice**

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35th Guam Legislature

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 **TMT- Medical Malpractice Letter- Anita Arriola.pdf**  
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Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåhan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

September 15, 2019

**Transmitted via electronic mail**

~~terlaje@arriolalaw.com~~

Anita P. Arriola, Esq.  
Arriola Law Firm  
259 Martyr Street, Suite 201  
Hagåtña, Guam 96910

Håfa Adai Ms. Arriola,

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Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåhan*

35th Guam Legislature

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Thank you for your assistance and I look forward to your presence and participation.

Sincerely,

Therese M. Terlaje

## INFORMATIONAL HEARINGS: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 2:23 PM

September 15, 2019

### Transmitted via electronic mail

G. Patrick Civile, Esq.  
Civille & Tang, PLLC  
330 Hernan Cortez Avenue  
Hagåtña, Guam 96910

Håfa Adai Mr. Civile,

As Chairperson of the Legislature's Committee on Health, I invite you to participate in a series of informational hearings as part of the committee's efforts to examine Guam's Medical Malpractice Mandatory Arbitration Act:

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Sincerely,  
Therese M. Terlaje

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**Office of Senator Therese M. Terlaje**

**Committee on Health, Tourism, Historic Preservation, Land and Justice**

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

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Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåhan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

September 15, 2019

**Transmitted via electronic mail**

~~pciville@civiltang.com~~

G. Patrick Civille, Esq.  
Civille & Tang, PLLC  
330 Hernan Cortez Avenue  
Hagåtña, Guam 96910

Håfa Adai Mr. Civille,

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Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåhan*

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Sincerely,

Therese M. Terlaje

**INFORMATIONAL HEARINGS: Guam's Medical Malpractice Mandatory Arbitration Act**

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>  
[REDACTED]

Mon, Sep 16, 2019 at 2:19 PM

September 15, 2019

**Transmitted via electronic mail**  
[REDACTED]

Martin F. Deinhart, Esq.  
Blair Sterling Johnson & Martinez, P.C.  
210 Archbishop Flores Street  
Hagåtña, Guam 96910

Håfa Adai Mr. Deinhart,

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**Office of Senator Therese M. Terlaje**

Committee on Health, Tourism, Historic Preservation, Land and Justice

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

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Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåhan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

September 15, 2019

**Transmitted via electronic mail**

Martin F. Deinhart, Esq.  
Blair Sterling Johnson & Martinez, P.C.  
210 Archbishop Flores Street  
Hagåtña, Guam 96910

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Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåban*

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Therese M. Terlaje

---

**Medical Malpractice Insurance Inquiry**

1 message

**Senator Therese Terlaje** <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 2:15 PM

Hafa adai Mr. Paulino,

Please find the attached letter regarding our inquiry into Medical Malpractice Insurance on Guam.

Respectfully,

Séa A. Cruz  
Chief of Staff

--

**Office of Senator Therese M. Terlaje****Committee on Health, Tourism, Historic Preservation, Land and Justice***I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

Office Location: Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam 96910

Mailing address: Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910

T: (671) 472-3586 F: (671) 989-3590 Email: [senatorterlajeguam@gmail.com](mailto:senatorterlajeguam@gmail.com)website: [www.senatorterlaje.com](http://www.senatorterlaje.com)

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**Cassidy's Letter.docx**

272K



Senator Therese Terlaje <senatorterlajeguam@gmail.com>

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**RE: Medical Malpractice Insurance Inquiry**

1 message

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**Victor Paulino** <victorp@cassidysguam.com>  
To: Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Thu, Sep 19, 2019 at 11:26 AM

Hafa adai!

My apologies but I will not be able to attend today's public hearing. My daughter has been out sick and I'll be bringing her back in to her doctor today as she came down with an allergic reaction.

Again, my sincerest apologies.

Greatly appreciate your understanding with my absence today.

Best regards,

Vic

**Vic Paulino**

**Commercial Sales Executive**

**Cassidy's Associated Insurers, Inc.**

376 West O'Brien Drive

Hagatna, Guam, U.S.A. 96910

T: 1+ (671)472-8834

F: 1+ (671)477-3127

Email: [victorp@cassidysguam.com](mailto:victorp@cassidysguam.com)

Website: [www.cassidysguam.com](http://www.cassidysguam.com)

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**From:** Senator Therese Terlaje [mailto:[senatorterlajeguam@gmail.com](mailto:senatorterlajeguam@gmail.com)]

**Sent:** Monday, September 16, 2019 4:22 PM

**To:** Victor Paulino <victor.p@bassiqvsguam.com>  
**Subject:** Re: Medical Malpractice Insurance Inquiry

Si Yu'us Ma'ase Mr. Paulino for your prompt response.

The schedule for the public hearings referenced in our letter is as follows:

Thursday, September 19th at 2pm

Thursday, October 3rd at 5pm

Thursday, November 7th at 2pm.

A response by Thursday, the 19th would be greatly appreciated.

Thank you again for your assistance. We look forward to whatever information you're able to provide.

Séa A.Cruz

Chief of Staff

--  
**Office of Senator Therese M. Terlaje**

**Committee on Health, Tourism, Historic Preservation, Land and Justice**

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On Mon, Sep 16, 2019 at 4:06 PM Victor Paulino <[victorp@cassidysguam.com](mailto:victorp@cassidysguam.com)> wrote:

Buenas yan Hafa adai!

I confirm receipt of this email with attached letter.

Allow me some time to review the requested information and provide a response.

I'm hoping to provide a response by Thursday.

Greatly appreciate your consideration with this email reply.

Best regards,  
Vic

**Vic Paulino**

**Commercial Sales Executive**

**Cassidy's Associated Insurers, Inc.**

376 West O'Brien Drive

Hagatna, Guam, U.S.A. 96910

T: 1+ (671)472-8834

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Email: [victorp@cassidysguam.com](mailto:victorp@cassidysguam.com)

Website: [www.cassidysguam.com](http://www.cassidysguam.com)

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**From:** Senator Therese Terlaje [<mailto:senatorterlajeguam@gmail.com>]

**Sent:** Monday, September 16, 2019 2:16 PM

**To:** [victorp@cassidysguam.com](mailto:victorp@cassidysguam.com)

**Subject:** Medical Malpractice Insurance Inquiry

Hafa adai Mr. Paulino,

Please find the attached letter regarding our inquiry into Medical Malpractice Insurance on Guam.

Respectfully,

Séa A.Cruz

Chief of Staff

--

**Office of Senator Therese M. Terlaje**

## **Committee on Health, Tourism, Historic Preservation, Land and Justice**

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Senator

## THERESE M. TERLAJE

*I Mina'trentai Singko na Libeslaturan Guåhan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

September 16, 2019

### Transmitted via electronic mail

Victor Paulino, Commercial Sales Executive  
Cassidy's Associated Insurers  
376 West O'Brien Drive  
Hagåtña, Guam 96910

Håfa Adai Mr. Paulino,

As Chairperson of the Legislature's Committee on Health, I will be conducting series of informational hearings over the next three months as part of the committee's efforts to examine Guam's Medical Malpractice Mandatory Arbitration Act. I am hoping Cassidy's can provide information on the availability of Medical Malpractice Insurance on Guam, including whether other insurance companies provide this type of insurance for providers on Guam.

I am also specifically interested in the following information:

- What percentage of physicians on Guam are by insurance?
- What are the criteria providers must meet in order to avail themselves of Medical Malpractice Liability insurance?
- Have there been any denials of a provider's request for Medical Malpractice Liability Insurance? If so, what factors contributed to the denial or denials?
- How many Medical Malpractice Insurance claims have been made with Cassidy's?

Any information you can provide in general regarding Medical Malpractice Insurance on Guam and in response to these specific questions would be appreciated.

Thank you for your assistance.

Sincerely,

Therese M. Terlaje

---

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**INFORMATIONAL HEARINGS: Guam's Medical Malpractice Mandatory Arbitration Law**

1 message

Senator Therese Terlaje &lt;senatorterlajeguam@gmail.com&gt;

Mon, Sep 16, 2019 at 2:15 PM

September 15, 2019

**Transmitted via electronic mail**

R. Marsil Johnson, Esq.  
Blair Sterling Johnson & Martinez, P.C.  
210 Archbishop Flores Street  
Hagåtña, Guam 96910

Håfa Adai Mr. Johnson,

As Chairperson of the Legislature's Committee on Health, I invite you to participate in a series of informational hearings as part of the committee's efforts to examine Guam's Medical Malpractice Mandatory Arbitration Act:

<http://www.guamcourts.org/CompilerofLaws/GCA/10gca/10gc010.PDF>

The goal of the first hearing on September 19, 2019 at 2:00 p.m., is to present senators and the public with a basic background of the malpractice law, and prior cases interpreting said law. I have invited the Attorney General of Guam to briefly discuss and distinguish the law governing claims against the government and the government health professionals. I have invited Attorney Mitch Thompson, who represents several providers, including the Seventh Day Adventist Clinic, to present an overview of Guam's Medical Malpractice Mandatory Arbitration Act and a few of the relevant past cases. To accommodate for any differing interpretation or caution regarding the law or the cases, I am also inviting input from those lawyers who affirmatively responded to the Guam Bar Association's call out for lawyers interested in assisting the Legislature with examination of Guam's Medical Malpractice Mandatory Arbitration Act. Senators will be allowed to ask questions of the panel following the presentation or any testimony. Following the information from the lawyers, there will be an opportunity at the first hearing for a limited number of patients or the general public to comment.

All health professionals are invited to a second hearing on October 3, 2019 at 5:00 p.m., to focus on the impacts of the current law on their practice, on whether the law ensures the appropriate standard of care on Guam, and the impacts of the law on the availability of qualified health professionals. I have invited the heads of the Guam Medical Association and the Guam Medical Society to lead the health professional's panel. The second hearing will also allow limited testimony from patients and the general public.

Following the second hearing, I would invite each of you to submit suggestions for reform or arguments against reform, which will be more fully considered at a third hearing on November 7, 2019 at 2:00 p.m. The Committee is particularly interested in your input as to whether the law can be improved to better protect patients and to ensure an appropriate standard of care. These hearings are for informational purposes only, to

allow senators to hear suggestions and make inquiry towards formulation of legislation. The third hearing will also allow testimony from patients and the general public.

We ask that all testimony be submitted in writing in advance, to be distributed to all Senators, and that oral testimony be limited to five minutes.

Note that as of today, no bill has been introduced during this legislative term to revise the current Medical Malpractice Arbitration Act. A separate public hearing on any bill that might be introduced to specifically amend to the law is required. The above-described schedule is subject to change if a bill is introduced or if legislative session is scheduled during these times.

Thank you for your assistance and I look forward to your presence and participation.

Sincerely,  
Therese M. Terlaje

--

**Office of Senator Therese M. Terlaje**

**Committee on Health, Tourism, Historic Preservation, Land and Justice**

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---

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Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guahan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

September 15, 2019

**Transmitted via electronic mail**

~~thereseterlaje@hsn.gov.gu~~

R. Marsil Johnson, Esq.  
Blair Sterling Johnson & Martinez, P.C.  
210 Archbishop Flores Street  
Hagåtña, Guam 96910

Håfa Adai Mr. Johnson,

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Senator  
**THERESE M. TERLAJE**

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Thank you for your assistance and I look forward to your presence and participation.

Sincerely,

Therese M. Terlaje

## INFORMATIONAL HEARINGS: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 2:09 PM

September 15, 2019

**Transmitted via electronic mail**

John R. B. Bell, Esq.  
The Law Office of John Richard Bordallo Bell  
157 Veronica Way  
Tamuning, Guam 96910

Håfa Adai Mr. Bell,

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Sincerely,  
Therese M. Terlaje

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**Office of Senator Therese M. Terlaje**

**Committee on Health, Tourism, Historic Preservation, Land and Justice**

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

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Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåhan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

September 15, 2019

**Transmitted via electronic mail**

~~john.r.bell@gmail.com~~

John R. B. Bell, Esq.  
The Law Office of John Richard Bordallo Bell  
157 Veronica Way  
Tamuning, Guam 96910

Håfa Adai Mr. Bell,

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Senator  
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Sincerely,

Therese M. Terlaje

## INFORMATIONAL HEARINGS: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 2:05 PM

September 15, 2019

**Transmitted via electronic mail**

Curtis C. Vandeveld, Esq.  
The Vandeveld Law Office  
123 Hernan Cortes Avenue  
Hagåtña, Guam 96910

Håfa Adai Mr. Vandeveld,

As Chairperson of the Legislature's Committee on Health, I invite you to participate in a series of informational hearings as part of the committee's efforts to examine Guam's Medical Malpractice Mandatory Arbitration Act:

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Sincerely,  
Therese M. Terlaje

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**Office of Senator Therese M. Terlaje**

Committee on Health, Tourism, Historic Preservation, Land and Justice

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35th Guam Legislature

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**INFORMATIONAL HEARINGS: Guam's Medical Malpractice Mandatory Arbitration Act**

1 message

**Senator Therese Terlaje** <senatorterlajeguam@gmail.com>  


Mon, Sep 16, 2019 at 2:01 PM

September 15, 2019

**Transmitted via electronic mail**  


Jeffrey A. Cook, Esq.  
Cunliffe & Cook  
210 Archbishop Flores Street  
Hagåtña, Guam 96910

Håfa Adai Mr. Cook,

As Chairperson of the Legislature's Committee on Health, I invite you to participate in a series of informational hearings as part of the committee's efforts to examine Guam's Medical Malpractice Mandatory Arbitration Act:

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Thank you for your assistance and I look forward to your presence and participation.

Sincerely,  
Therese M. Terlaje

--

**Office of Senator Therese M. Terlaje**

**Committee on Health, Tourism, Historic Preservation, Land and Justice**

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

Office Location: Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam 96910

Mailing address: Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910

T: (671) 472-3586 F: (671) 989-3590 Email: [senatorterlajeguam@gmail.com](mailto:senatorterlajeguam@gmail.com)

website: [www.senatorterlaje.com](http://www.senatorterlaje.com)

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**TMT- Medical Malpractice Letter- Jeffrey Cook.pdf**

151K



Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåhan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

September 15, 2019

**Transmitted via electronic mail**

Jeffrey A. Cook, Esq.  
Cunliffe & Cook  
210 Archbishop Flores Street  
Hagåtña, Guam 96910

Håfa Adai Mr. Cook,

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Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

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Thank you for your assistance and I look forward to your presence and participation.

Sincerely,

Therese M. Terlaje

---

**INFORMATIONAL HEARINGS: Guam's Medical Malpractice Mandatory Arbitration Act**

1 message

**Senator Therese Terlaje** <senatorterlajeguam@gmail.com>  


Mon, Sep 16, 2019 at 1:54 PM

September 15, 2019

**Transmitted via electronic mail**  


Gloria L. Rudolph, Esq.  
Lujan & Wolff, LLP  
DNA Building, Suite 300  
238 Archbishop Flores Street  
Hagåtña, Guam 96910

Håfa Adai Ms. Rudolph,

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**Office of Senator Therese M. Terlaje**

Committee on Health, Tourism, Historic Preservation, Land and Justice

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

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website: [www.senatorterlaje.com](http://www.senatorterlaje.com)

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 **TMT- Medical Malpractice Letter- Gloria Rudolph.pdf**  
151K



Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåhan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

September 15, 2019

**Transmitted via electronic mail**

~~Confidential~~

Gloria L. Rudolph, Esq.  
Lujan & Wolff, LLP  
DNA Building, Suite 300  
238 Archbishop Flores Street  
Hagåtña, Guam 96910

Håfa Adai Ms. Rudolph,

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Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåhan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

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Thank you for your assistance and I look forward to your presence and participation.

Sincerely,

Therese M. Terlaje

---

**Medical Malpractice Informational Briefing Invite**

1 message

---

Senator Telo Taitague <senatortelot@gmail.com>  
To: "Senator Therese M. Terlaje" <senatorterlajeguam@gmail.com>  
Cc: Jason Taitague <senatortelot.jason@gmail.com>

Mon, Sep 16, 2019 at 9:47 AM

Hafa adai Chairwoman Terlaje,

Please see attached letter.

Best regards,  
Senator Telo Taitague

***Si Yu'os Ma'åse,***

***Create a Great Day!***

*Senator Telo T. Taitague*

*Minority Whip*

35th Guam Legislature

Suite 309 DNA Building

238 Archbishop Flores St.

Hagatna, Guam 96910

Tel: (671) 989-8356

Email: [senatortelot@gmail.com](mailto:senatortelot@gmail.com)

---

 **Ltr. to Sen.Terlaje - Medical Malpractice Info Briefings Invite.pdf**  
218K

**Re: Medical Malpractice Informational Briefing Invite**

1 message

**Senator Therese Terlaje** <senatorterlajeguam@gmail.com>  
To: Senator Telo Taitague <senatortelot@gmail.com>

Mon, Sep 16, 2019 at 1:51 PM

Håfa Adai Senator Taitague,

Thank you for your letter. We will make every effort to accommodate your request. We have requested that written testimony be submitted prior to the hearings, and that oral testimony be limited to five minutes in length.

Si Yu'us Ma'åse,

Séa A.Cruz  
Chief of Staff

--

**Office of Senator Therese M. Terlaje**

Committee on Health, Tourism, Historic Preservation, Land and Justice

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

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T: (671) 472-3586 F: (671) 989-3590 Email: [senatorterlajeguam@gmail.com](mailto:senatorterlajeguam@gmail.com)website: [www.senatorterlaje.com](http://www.senatorterlaje.com)

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On Mon, Sep 16, 2019 at 9:51 AM Senator Telo Taitague &lt;senatortelot@gmail.com&gt; wrote:

Hafa adai Chairwoman Terlaje,

Please see attached letter.

Best regards,  
Senator Telo Taitague***Si Yu'os Ma'åse,******Create a Great Day!***  
*Senator Telo T. Taitague*

*Minority Whip*

35th Guam Legislature

Suite 309 DNA Building

238 Archbishop Flores St.

Hagatna, Guam 96910

Tel: (671) 989-8356

Email: [senatortelot@gmail.com](mailto:senatortelot@gmail.com)



## OFFICE OF SENATOR

*Telo T. Taitague*

Minority Whip

*I Mina'trentai Singko Na Liheslaturan Guåhan • 35th Guam Legislature*

Ste. 309 DNA Building  
238 Archbishop Flores St.  
Hagatna, Guam 96910  
(671) 989-8356  
senatortelot@gmail.com

**September 16, 2019**

The Honorable Senator Therese Terlaje  
Chairperson, Committee on Health, Tourism,  
Historic Preservation, Land and Justice  
*Mina' Trentai Singko na Liheslaturan Guåhan*  
Sent via: [senatorterlajeguam@gmail.com](mailto:senatorterlajeguam@gmail.com)

**Subject: Medical Malpractice Informational Briefing Invite**

*Håfa adai* Chairwoman Terlaje,

Thank you for scheduling a series of informational briefings regarding the Medical Malpractice Mandatory Arbitration Act. To help ensure participation from pertinent voices across our community, I respectfully request for the Committee on Health, Tourism, Historic Preservation, Land and Justice to invite the following individuals and organizations to attend the briefings as their schedules permit:

1. Health Insurance Companies
2. Unified Judiciary of Guam
3. Attorney General of Guam
4. Guam Bar Association
5. Department of Public Health & Social Services
6. Guam Board of Allied Health Examiners
7. Guam Board of Medical Examiners
8. American Medical Center
9. Attorney Michael Phillips
10. Attorney Robert Keogh
11. Department of Administration

I appreciate your consideration of this request.

*Senseramente,*

  
**TELO T. TAITAGUE**  
Senator

## INFORMATIONAL HEARINGS: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 1:19 PM

[REDACTED]  
September 15, 2019

**Transmitted via electronic mail**

[REDACTED]  
Larry Lizama, M.D.  
IHP Medical Group  
655 Harmon Loop Road, Suite 108  
Dededo, Guam 96929

Håfa Adai Dr. Lizama,

As Chairperson of the Legislature's Committee on Health, I invite you to participate in a series of informational hearings as part of the committee's efforts to examine Guam's Medical Malpractice Mandatory Arbitration Act:

<http://www.guamcourts.org/CompilerofLaws/GCA/10gca/10gc010.PDF>

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I look forward to your presence and participation.

Sincerely,

Therese M. Terlaje

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**Office of Senator Therese M. Terlaje**

**Committee on Health, Tourism, Historic Preservation, Land and Justice**

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

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---

 **TMT- Medical Malpractice Letter- Dr. Larry Lizama.pdf**  
151K



Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåhan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

September 15, 2019

**Transmitted via electronic mail**

~~blinded~~  
Larry Lizama, M.D.  
IHP Medical Group  
655 Harmon Loop Road, Suite 108  
Dededo, Guam 96929

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[www.senatorterlaje.com](http://www.senatorterlaje.com)



Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåhan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

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I look forward to your presence and participation.

Sincerely,

Therese M. Terlaje

---

**Medical Malpractice Mandatory Arbitration Act**

1 message

**Senator Therese Terlaje** <senatorterlajeguam@gmail.com>

Sun, Sep 15, 2019 at 3:07 PM

Hafa Adai Dr. Lizama,

Here is the link to the Medical Malpractice Mandatory Arbitration Act that was passed in 1991. Please see Section 10131 regarding Damages. <http://www.guamcourts.org/CompilerofLaws/GCA/10gca/10gc010.PDF>

The schedule for the informational hearings is: September 19, October 3, and November 7 at 2p.m. Tomorrow I will be sending out a formal email inviting all health professionals to the October 3 hearing.

Thank you,  
Therese Terlaje

--

**Office of Senator Therese M. Terlaje**

Committee on Health, Tourism, Historic Preservation, Land and Justice

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

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---

**Informational Hearings: Guam's Medical Malpractice Mandatory Arbitration Act**

1 message

---

**Senator Therese Terlaje** <senatorterlajeguam@gmail.com>  


Mon, Sep 16, 2019 at 12:04 PM

September 15, 2019

**Transmitted via electronic mail**  


Mitchell F. Thompson, Esq.  
Thompson Thompson & Alcantara, P.C.  
DNA Building, Suite 801  
238 Archbishop Flores Street  
Hagåtña, Guam 96910

Håfa Adai Mr. Thompson,

As Chairperson of the Legislature's Committee on Health, I invite you to participate in a series of informational hearings as part of the committee's efforts to examine Guam's Medical Malpractice Mandatory Arbitration Act:

<http://www.guamcourts.org/CompilerofLaws/GCA/10gca/10gc010.PDF>

The goal of the first hearing on Thursday, September 19, 2019 at 2:00 p.m., is to present senators and the public with a basic background of the malpractice law, and prior cases interpreting said law. I have invited the Attorney General of Guam to briefly discuss and distinguish the law governing claims against the government and the government health professionals. I have invited Attorney Mitch Thompson (you), who represents several providers, including the Seventh Day Adventist Clinic, to present an overview of Guam's Medical Malpractice Mandatory Arbitration Act and a few of the relevant past cases. To accommodate for any differing interpretation or caution regarding the law or the cases, I am also inviting input from those lawyers who affirmatively responded to the Guam Bar Association's call out for lawyers interested in assisting the Guam Legislature with examination of Guam's Medical Malpractice Mandatory Arbitration Act. Senators will be allowed to ask questions of the panel following the presentation or any testimony. Following the information from the lawyers, there will be an opportunity at the first hearing for a limited number of patients or the general public to comment.

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Thank you for your assistance and I look forward to your presence and participation.

Sincerely,

Therese M. Terlaje

--

**Office of Senator Therese M. Terlaje**

Committee on Health, Tourism, Historic Preservation, Land and Justice

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

Office Location: Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam 96910

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T: (671) 472-3586 F: (671) 989-3590 Email: [senatorterlajeguam@gmail.com](mailto:senatorterlajeguam@gmail.com)

website: [www.senatorterlaje.com](http://www.senatorterlaje.com)

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 **TMT- Medical Malpractice Letter- Mitch Thompson.pdf**  
155K



Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåhan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

September 15, 2019

**Transmitted via electronic mail**

~~mthompson@calaw.net~~

Mitchell F. Thompson, Esq.  
Thompson Thompson & Alcantara, P.C.  
DNA Building, Suite 801  
238 Archbishop Flores Street  
Hagåtña, Guam 96910

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Senator  
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35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

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Thank you for your assistance and I look forward to your presence and participation.

Sincerely,

Therese M. Terlaje

**Re: Guam arbitration law meetings**

1 message

**Senator Therese Terlaje** <senatorterlajeguam@gmail.com>

Sun, Sep 15, 2019 at 1:33 PM

Hafa Adai Atty Thompson,

Could you please call me at [REDACTED] at your earliest convenience? I would like to discuss this matter further with you.

Thank you,

Therese Terlaje

--

**Office of Senator Therese M. Terlaje**

Committee on Health, Tourism, Historic Preservation, Land and Justice

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35th Guam Legislature

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On Fri, Sep 13, 2019 at 2:03 PM Mitch Thompson <[MThompson@ttlaw.net](mailto:MThompson@ttlaw.net)> wrote:

I have heard from a number of doctors that they would like to attend one or more of the meetings, but the current schedule (early afternoon) is disruptive of the care of their patients. I wonder if it would be possible to move at least one of these meetings to 5 p.m.?

Also, I was a little unclear as to the breakdown of the 3 meetings. Is the intent that only patients are to appear at the 1<sup>st</sup> meeting, with providers only to appear at the 2<sup>nd</sup>? I look forward to clarification on this point.

Thank you.

**Mitchell F. Thompson****Thompson Thompson & Alcantara, PC****238 Archbishop Flores Street , Suite 801****Hagåtña, Guam 96910****Telephone: (671) 472-2089**

**Facsimile: (671) 477-5206**

**Email: [Mthompson@ttalaw.net](mailto:Mthompson@ttalaw.net)**

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**Informational Hearings: Guam's Medical Malpractice Mandatory Arbitration Act**

1 message

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**Senator Therese Terlaje** <senatorterlajeguam@gmail.com>  
To: Guam Bar Association <info@guambar.org>

Mon, Sep 16, 2019 at 1:14 PM

September 15, 2019

**Transmitted via electronic mail**

info@guambar.org

Jacqueline T. Terlaje, Esq.,  
President, Guam Bar Association  
284 West Chalan Santo Papa, Hagåtña, Guam 96910

Håfa Adai Ms. Terlaje and Guam Bar Association Members,

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Committee on Health, Tourism, Historic Preservation, Land and Justice  
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35th Guam Legislature  
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 **TMT- Medical Malpractice Hearings- Guam Bar Association.pdf**  
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Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåhan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

September 15, 2019

**Transmitted via electronic mail**

[info@guambar.org](mailto:info@guambar.org)

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284 West Chalan Santo Papa, Hagåtña, Guam 96910

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Sincerely,

Therese M. Terlaje

## Informational Hearings: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 11:54 AM

September 15, 2019

**Transmitted via electronic mail**  
guammedicalassn@gmail.com

Dr. Thomas Shieh M.D.  
Guam Medical Association  
339 Chalan San Antonio, Suite 101  
Tamuning, Guam 96913

Håfa Adai Dr. Shieh and Guam Medical Association Members,

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**Office of Senator Therese M. Terlaje**

**Committee on Health, Tourism, Historic Preservation, Land and Justice**

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

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**TMT- Medical Malpractice Letter- Guam Medical Association.pdf**

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Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåban*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

September 15, 2019

**Transmitted via electronic mail**

[guammedicalassn@gmail.com](mailto:guammedicalassn@gmail.com)

Dr. Thomas Shieh M.D.  
Guam Medical Association  
339 Chalan San Antonio, Suite 101  
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Therese M. Terlaje

**Informational Hearings: Guam's Medical Malpractice Mandatory Arbitration Act**

1 message

Senator Therese Terlaje &lt;senatorterlajeguam@gmail.com&gt;

Mon, Sep 16, 2019 at 11:47 AM

To: Guam Medical Society &lt;theguammedicalsociety@gmail.com&gt; [REDACTED]

**Transmitted via electronic mail**

theguammedicalsociety@gmail.com

[REDACTED]

Dr. Edward Blounts, Jr.  
President, Guam Medical Society  
275G Farenholt, Ave., Suite 248  
Tamuning, Guam 96913

Håfa Adai Dr. Blounts and Guam Medical Society Members,

As Chairperson of the Legislature's Committee on Health, I invite your members to participate in a series of informational hearings as part of the committee's efforts to examine Guam's Medical Malpractice Mandatory Arbitration Act:

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35th Guam Legislature

Office Location: Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam 96910

Mailing address: Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910

T: (671) 472-3586 F: (671) 989-3590 Email: [senatorterlajeguam@gmail.com](mailto:senatorterlajeguam@gmail.com)

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 **TMT- Medical Malpractice Letter- Guam Medical Society.pdf**  
151K



Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåban*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

September 15, 2019

**Transmitted via electronic mail**

[theguammedicalsociety@gmail.com](mailto:theguammedicalsociety@gmail.com)

~~tab221@gmail.com~~

Dr. Edward Blounts, Jr.  
President, Guam Medical Society  
275G Farenholt Ave., Suite 248  
Tamuning, Guam 96913

Håfa Adai Dr. Blounts and Guam Medical Society Members,

As Chairperson of the Legislature's Committee on Health, I invite your members to participate in a series of informational hearings as part of the committee's efforts to examine Guam's Medical Malpractice Mandatory Arbitration Act:

<http://www.guamcourts.org/CompilerofLaws/GCA/10gca/10gc010.PDF>

The goal of the first hearing on September 19, 2019 at 2:00 p.m., is to present senators and the public with a basic background of the malpractice law, and prior cases interpreting said law. I have invited the Attorney General of Guam to briefly discuss and distinguish the law governing claims against the government and the government health professionals. I have invited Attorney Mitch Thompson, who represents several providers, including the Seventh Day Adventist Clinic, to present an overview of Guam's Medical Malpractice Mandatory Arbitration Act and a few of the relevant past cases. To accommodate for any differing interpretation or caution regarding the law or the cases, I am also inviting input from those lawyers who affirmatively responded to the Guam Bar Association's call out for lawyers interested in assisting the Legislature with examination of Guam's Medical Malpractice Mandatory Arbitration Act. Senators will be allowed to ask questions of the panel following the presentation or any testimony. Following the information from the lawyers, there will be an opportunity at the first hearing for a limited number of patients or the general public to comment.

All health professionals are invited to a second hearing on October 3, 2019 at 5:00 p.m., to focus on the impacts of the current law on their practice, on whether the law ensures the appropriate standard of care on Guam, and the impacts of the law on the availability of qualified health professionals. I have invited the heads of the Guam Medical Association and the Guam Medical Society to lead the health professional's panel. The second hearing will also allow limited testimony from patients and the general public.

Following the second hearing, I would invite each of you to submit suggestions for reform or arguments against reform, which will be more fully considered at a third hearing on November 7, 2019 at 2:00 p.m.

---

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Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåhan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

The Committee is particularly interested in your input as to whether the law can be improved to better protect patients and to ensure an appropriate standard of care. These hearings are for informational purposes only, to allow senators to hear suggestions and make inquiry towards formulation of legislation. The third hearing will also allow testimony from patients and the general public.

We ask that all testimony be submitted in writing in advance, to be distributed to all Senators, and that oral testimony be limited to five minutes.

Note that as of today, no bill has been introduced during this legislative term to revise the current Medical Malpractice Arbitration Act. A separate public hearing on any bill that might be introduced to specifically amend to the law is required. The above-described schedule is subject to change if a bill is introduced or if legislative session is scheduled during these times.

I look forward to your presence and participation.

Sincerely,

Therese M. Terlaje

---

**Informational Hearings: Guam's Medical Malpractice Mandatory Arbitration Act**

1 message

**Senator Therese Terlaje** <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 11:29 AM

**[REDACTED]**  
Hafa Adai Mr. Lubofsky,

This is to invite you to a series of informational hearings on September 19, October 3, and November 7, 2019 relative to Guam's Medical Malpractice Mandatory Arbitration Act. There is a set agenda for each hearing, designed to ascertain an overview of the law, and suggestion for changes, and there is time set aside for public input during each hearing. We ask that all testimony be submitted in writing in advance, to be distributed to all senators, and that oral testimony be limited to 5 minutes.

Thank you for your patience and we look forward to your participation at one or all of the hearings.

Therese Terlaje

--  
**Office of Senator Therese M. Terlaje**

Committee on Health, Tourism, Historic Preservation, Land and Justice

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

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**TMT- Medical Malpractice Hearings- Senators.pdf**

152K

**Informational Hearings: Guam's Medical Malpractice Mandatory Arbitration Act**

1 message

Senator Therese Terlaje &lt;senatorterlajeguam@gmail.com&gt;

Mon, Sep 16, 2019 at 11:26 AM

To: Speaker's Office &lt;speaker@guamlegislature.org&gt;, phnotice@guamlegislature.org

Bcc: reporters@postguam.com, mindy@postguam.com, The Post Editor in Chief <editor@postguam.com>, nick@postguam.com, Kevin <kevin@postguam.com>, Desk Editor <deskeditor@postguam.com>, John Oconnor <john@postguam.com>, Lannie Walker <lannie@postguam.com>, parroyo@k57.com, Phill Leon Guerrero <phill@spbguam.com>, andrea@k57.com, Sorensen Pacific Broadcasting <news@spbguam.com>, josh@spbguam.com, Joycelynn Atalig <joycelynn@spbguam.com>, amanda@spbguam.com, louella@spbguam.com, aiyana@spbguam.com, gerry@spbguam.com, jolene@spbguam.com, Joan Aguon Charfauros <joan@kuam.com>, Chris Malafunkshun Barnett <Chris@kuam.com>, adriana@kuam.com, Nestor Licanto <nestor@kuam.com>, Jason Salas <jason@kuam.com>, Sabrina Salas Matanane <Sabrina@kuam.com>, julius@kuam.com, heugenio@guampdn.com, "Kaur, Anumita" <AKaur@guam.gannett.com>, Jerick Sablan <jpsablan@guampdn.com>, "Stole, Jasmine" <jstole@guam.gannett.com>, Steve Limtiaco <slimtiaco@guampdn.com>, Mar-Vic Cagurangan <publisher@pacificislandtimes.com>, publisher@glimpsesofofguam.com, businesseditor@glimpsesofofguam.com, Bruce Hill <pacificjournalist@gmail.com>, KISH <kstokish@gmail.com>, KPRG <admin.kprg@gmail.com>, KPRG Guam <pdkprg@gmail.com>, Manuel Cruz <cruzma812@gmail.com>, Troy Torres <troy@kanditnews.com>, raygibsonshow@gmail.com, Laila Boyer <laila.boyer@mvariety.com>, editor@mvariety.com, cherrie@mvariety.com, emmanuel@mvariety.com, lyn@mvariety.com, junhan@mvariety.com, bryan@mvariety.com, jayvee\_vallejera@saipantribune.com, mark\_rabago@saipantribune.com, ferdie\_delatorre@saipantribune.com, erwin\_encinares@saipantribune.com, bea\_cabrera@saipantribune.com, kimberly\_bautista@saipantribune.com, jon\_perez@saipantribune.com, roselyn\_monroyo@saipantribune.com, ashleykspn2@gmail.com

**RE: Guam's Medical Malpractice Mandatory Arbitration Act Informational Hearings****Transmitted via electronic mail**[phnotice@guamlegislature.org](mailto:phnotice@guamlegislature.org)

Håfa Adai Speaker Muña Barnes and Colleagues,

As Chairperson of the Legislature's Committee on Health, I invite you to participate in a series of informational hearings as part of the committee's efforts to examine Guam's Medical Malpractice Mandatory Arbitration Act:

<http://www.guamcourts.org/CompilerofLaws/GCA/10gca/10gc010.PDF>

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Following the second hearing, I am extending an open invitation to the legal and health professionals, along with the public, to submit suggestions for reform or arguments against reform, which will be more fully considered at a third hearing on November 7, 2019, at 2:00 p.m. The Committee is particularly interested in input as to whether the law can be improved to better protect patients and to ensure an appropriate standard of care. The third hearing will also allow testimony from patients and the general public.

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Si Yu'os Ma'ase,

Therese Terlaje

--

**Office of Senator Therese M. Terlaje**

**Committee on Health, Tourism, Historic Preservation, Land and Justice**

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

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Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåban*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

September 15, 2019

**Transmitted via electronic mail**

phnotice@guamlegislature.org

Speaker Muña Barnes and Senators, 35<sup>th</sup> Guam Legislature  
Guam Congress Building  
Hagåtña, Guam

Håfa Adai Speaker Muña Barnes and Colleagues,

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<http://www.guamcourts.org/CompilerofLaws/GCA/10gca/10gc010.PDF>

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Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåhan*

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Sincerely,

Therese M. Terlaje

cc: All Media



Senator

**THERESE M. TERLAJE**

*I Mina'trentai Singko na Libeslaturan Guåhan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

## PUBLIC HEARING AGENDA

Thursday, October 3, 2019

**RESCHEDULED TO THURSDAY 10/10/19  
AT 1:00PM**

~~2:00 p.m.:~~ ~~Guam Memorial Hospital Authority  
Oversight Hearing~~

5:00 p.m.: 2<sup>nd</sup> Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10): Input from Health Professionals on Effect of Current Law on Standard of Care (All health professionals and patients are invited to provide written testimony or attend hearing)



# I Mina'trentai Singko na Liheslaturan Guåhan

## Office of Senator Therese M. Terlaje

Committee on Health, Tourism, Historic Preservation, Land and Justice

**Date:** Thursday, October 03, 2019

**Time:** 5:00 PM

2nd Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10): Input from Health Professionals on Effect of Current Law on Standard of Care (All health professionals and patients are invited to provide written testimony or attend hearing)

	NAME	ADDRESS	CONTACT NO.	E-MAIL	Type of Testimony		Support	
					WRITTEN	ORAL	Yes	No
1	Famulo - Fany B. Alex	Dededo						
2	- David Lubofsky	Tamuning	687-2819 <del>687-3384</del>	dlubofsky@yahoo.com	✓	✓		
3	- Monica Devera	Tiyar	647-7614	mon.devera@yahoo.com	✓			
4	- Hector Deven	Tiyar	647-7114	-16				
5	Robert Keogh	Hagåtña	472-6895	RIK@guam.net	✓			
6	DR. NGUYEN		486-6210	HOAVANNNGUYEN@yahoo.com		✓		
7	Dr. Phil Tuetkaem Tutnana					✓		
8	Dr. Berg					✓		
9	Tom Motula Mise					✓		
10	Dr. Alfonso					✓		

Dr. Peady Piana

Dr. Del Rosario



**I Mina'trentai Singko na Liheslaturan Guåhan**  
**Office of Senator Therese M. Terlaje**

Committee on Health, Tourism, Historic Preservation, Land and Justice

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	NAME	ADDRESS	CONTACT NO.	E-MAIL	Type of Testimony		Support	
					WRITTEN	ORAL	Yes	No
1	Dand Weingarten	202 Hilton Rd, Unit 12	969-7946	dandaw@thewinguan.com		✓		
2	Mitch Thompson	238 AB Flower St <sup>5th</sup> 801	472-2089	mthompson@tk.com				
3	SAMIR AMBRALE	548 Marine Corps Dr. Tau	486-0456	Samir.ambrale@phpractice.com				✓
4	Edmund Schworer	149 Likiep St Lettejts	632-5026	cathyguam@xohoc.com	✓			
5	Nancy Lentz	31 Jesus Torres Yona	489-4564	NANCYLENTZ@GMAIL.COM				
6	ANU TAYLOR	162 WESTERN BLD.	671-9280	ANURTAYLOR@GMAIL				✓
7	John R. BELL	157 Veronica Way	646-5722	john.r.bell@gmail.com				
8	Amanda del Rosario	'	480-4263	amanda-delrosario@gmail.com		✓		
9	Dr. Berg MD							
10	Dr. Sophia Li		797 5554	surgeonsophia@gmail.com				



I Mina'trentai Singko na Liheslaturan Guåhan  
Office of Senator Therese M. Terlaje

Committee on Health, Tourism, Historic Preservation, Land and Justice

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					WRITTEN	ORAL	Yes	No
1	Joleen Aguero		647-2552	joleen.aguero@yorka.zm				
2	Felix Cabrera		929-4340	felix.cabrera@grmc.gu		<input checked="" type="checkbox"/>		
3	Pam Sullivan		483-6600	pramila08@hotmail.com				
4	MIRAN RIBATI		647 2555	MIRAN.RIBATI@OMHA.ORG				
5	Cynthia Paras Kintal		988-6421	cynthia.kintal@gmail.com				
6	DINA DOMALANTA		682-2314	dedomalanta@yahoo.com				
7	A. C. Bielings MD		686-6396	drbielings@guamobp.org				
8	DENNIS STEINBERG MD		682-2412	delsam@hotmail.com				
9	EDGAR MASCARAT, MD		647-2555	emascara@hotmail.com				
10	Ruth Carnat		489-3787	rcarnata@ventur.com				



## I Mina'trentai Singko na Liheslaturan Guåhan Office of Senator Therese M. Terlaje

Committee on Health, Tourism, Historic Preservation, Land and Justice

**Date:** Thursday, October 03, 2019

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	NAME	ADDRESS	CONTACT NO.	E-MAIL	Type of Testimony		Support	
					WRITTEN	ORAL	Yes	No
1	JUN D. CAMAT		888-8495	ELJUN@YAHOO.COM				
2	Tim Arakawa		777-0696					
3	Michael Robinson		777-2481					
4	Lhyza Pingol		487-4068					
5	Dr. Mark King		488-8953					
6	ANDREW Kim, MD		864-4415					
7	Celody's Winsor MD		482 8916					
8	Jesset Rightmyer MD		777-3018					
9	Faye Jensen MD		777-0691					
10	Mark Blawie		6485437					



**I Mina'trentai Singko na Liheslaturan Guåhan**  
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	NAME	ADDRESS	CONTACT NO.	E-MAIL	Type of Testimony		Support	
					WRITTEN	ORAL	Yes	No
1	Bethany Helm	2451 SDA Clinic						
2	Phillip Tuftwanger	Amc						
3	Eco Bleosts	GMH				<input checked="" type="checkbox"/>		
4	Dr. Mcken	GMH						<input checked="" type="checkbox"/>
5								
6								
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9								
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**I Mina'trentai Singko na Liheslaturan Guåhan**  
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	NAME	ADDRESS	CONTACT NO.	E-MAIL	Type of Testimony		Support	
					WRITTEN	ORAL	Yes	No
1	ROGER MARTINEZ	562 HARMON LOOP RD DEDEDO	(671) 48-AD105	drroger@mananachiropractic.com		<input checked="" type="checkbox"/>		
2	TeresalUnderwood	744 N Manzanillo Dr Ste 121, Taming, GU 96913	671-588-2394	efwhguam@gmail.com				
3								
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	NAME	ADDRESS	CONTACT NO.	E-MAIL	Type of Testimony		Support	
					WRITTEN	ORAL	Yes	No
1	Anaelyn Lagrimas	Rede... ..	777-5651			✓		
2								
3								
4								
5								
6								
7								
8								
9								
10								



To: Senator Terlaje and the Guam Legislature  
Fr: Edward Blounts DO, MSED, 2019 President, The Guam Medical Society  
Re: Malpractice review

The Guam Medical Society is comprised of Physicians, Chiropractors, Dentists, Podiatrists, Nurses, lab workers and other allied health professionals. We have held 2 meetings to discuss this issue and our members have agreed on a position that the society will take. We believe the requirement for arbitration is needed and beneficial to Guam and its citizens; however, we believe the legislature should look into ways to reduce the financial burden to Guam's people.

Negative effects of repealing this requirement include several factors. It would decrease the number of physicians willing to practice thus reducing the populations' access to providers. Some specialties or sub specialties with higher premiums may leave island all together (on the mainland these higher cost services include Orthopedic Surgery as well as OB/Gyn, and Neurosurgery). Clinic and government costs would rise to cover the increased cost of malpractice insurance. These costs would be passed onto the patients and make health care more expensive. On Guam there is a lack of providers in some areas (most pediatric sub specialties and some adult services). To make up for this the islands providers provide care to these individuals but technically in doing so we are practicing outside the scope of our training and could be held accountable. Should the current arbitration law be repealed physicians would be less likely to perform this service and some patients would have to go off island for care that could be handled here. This again would increase health care costs. Repealing this law would hurt the people of Guam.

The current law helps protect physicians from soaring malpractice costs. Several states in the mainland have a malpractice crisis and out of control fees. Should this be repealed on Guam the same could happen here. The current arbitration requirement helps deter frivolous lawsuits, which lead to increased health care costs. It also protects the record of physicians who are practicing here in good faith and allows us to sometimes provide services that would normally be handled by specialists that are not available here, preventing some of the need to leave island for care. Guam allows suits against Guam Memorial Hospital but some states (Virginia for example) evoke sovereign immunity and the State owned hospitals cannot be sued. The current legislation helps protect physicians but does not prevent patients from seeking justice.

The Guam Medical Society believes that arbitration access can be increased through several actions. First, many cases in the mainland are taken on by attorneys even if the plaintiff cannot pay. The cases are taken on and then the fee is taken out of any award at the conclusion. Guam lawyers should be encouraged to take on a case if someone was clearly hurt or wronged as the money they pay up front for the arbitration can be recovered after a successful outcome. As the attorney would be providing up front fees it would discourage frivolous suits that would not likely succeed (protecting providers and keeping costs down) but would allow for true cases to proceed (protecting the patients/ those potentially harmed). Second we could look at closer options for arbitration. Instead of coming from the mainland we could see if such service providers could come from the Philippines or elsewhere in Asia, or Hawaii. Local physicians could also be tasked for this role or looking over TV / web based arbitration similar to tele-



medicine. It should also be noted that there are options for those with limited financial means to seek assistance with the current process. This could be expanded if Government of Guam sets up a fund to assist those in need obtain arbitration services. Physicians have certain yearly fees to maintain their practice (hospital privileges, state licensure, controlled substance permit, federal DEA license). A portion of these fees or a new fee could be used to establish a fund to help patients the government or a panel agrees is of limited means and should receive arbitration. Several steps could be taken to continue the arbitration process and protect physicians while driving the costs down and improving access.

The Guam Medical Society is not the only physicians group that asks our Senators to continue the current arbitration requirement. The Guam Medical Association as well as several clinic leaders all hold that position.

I was not involved with any of the recent lawsuits and thus do not know all of the case details but the Guam Medical Society is taking some steps to help improve care here on island. We are working with island laboratories to reduce the turn around time of off island tests, expand some services when able so they can be preformed on island. We are also working on improving lab database access to the islands physicians and as always improve education the various diseases and the most up to date treatment.

The Guam Medical Society is dedicated to improving health care on Guam and we feel that overturning the requirement for arbitration would have a negative impact on the islands health care. It would lead to fewer services, more off island referrals and increased costs. We believe that several steps can be taken to improve access to arbitration without over turning this needed requirement.

Edward Blounts, DO, MSEd  
2019 President, The Guam Medical Society

Good evening Senators. Thank you for allowing me to share my perspective as a young doctor on Guam. I am Dr. Peachy Mae Piaña. I am a board certified radiologist. My radiology practice primarily focuses on Women's Imaging with screening and diagnosing breast cancer as well as musculoskeletal radiology.

Although I was born in the Philippines, my family moved to Guam when I was 12 years old in search for a better life. Since then Guam has been my home. During my 15 years of education and training away from my family, I always looked forward to the time that I can return home to be able to give back to the community that has embraced my family all these years. This past August marks my one year of service as an attending physician on island.

We are all here today to discuss a very important issue, Guam's Arbitration Act. I was present during the last hearing and I deeply sympathize with the patients who have had bad outcomes in their care. To those who have lost loved ones, please accept my sincerest condolences to you and your family. I believe it is important to evaluate the fairness of Guam's Arbitration Act for both patients and doctors with the ultimate goal of improving patient safety and quality of care. It is important for patients to have appropriate recourse when gross negligence is committed by a doctor. At the same time, I humbly ask the legislature to be wary in advancing policies that would promote meritless lawsuits as such policies will have severely negative effects in the quality of care that our community will ultimately receive.

Here are two major points that I hope you will consider when crafting policies for medical malpractice. First is the cost of defensive medicine and second is the issue of access to care.

First, I would like to discuss the cost of defensive medicine. One of the reasons that motivated me to practice medicine in Guam is the relatively friendly environment where doctors can practice without worry of unnecessary and merit less lawsuits. There is a

general public misconception that the Arbitration Law allows physicians to be lackadaisical or lazy in our medical management and as a result have become apathetic and do whatever we want. Some have argued that, if doctors were afraid of being sued, then as a physician I would be pressured to order every study possible to diagnose a patient. I would argue that this type of medicine-- defensive medicine, is severely harmful rather than beneficial to patients. Let us be clear with what defensive medicine truly means. It means that in order to protect ourselves from medical malpractice, doctors order tests and procedures that are NOT medically necessary, pushing up the cost of every hospital or clinic visit, and possibly performing invasive and risky procedures that patients do NOT need. Doctors will be occupied by ordering numerous unnecessary tests due to fear of a law suit rather than focusing their attention on providing care consistent with the standards set by our profession and specialties. This is a serious problem. Medical decisions would be motivated more by legal questions rather than by our patient needs. If doctors order every test known to man ... it may reduce the likelihood that we will get sued, but it is NOT the best medicine for people, it is certainly NOT the type of medical care I would want for my family, myself, or my patients, and it definitely is NOT the most cost efficient. In the end, the cost of healthcare would rise, placing an undue financial burden on our patients as well as both private and public medical insurances. We struggle to find healthcare funds for Guam Memorial Hospital now. The cost of defensive medicine as a result of preventing lawsuits would further cripple the hospital.

Secondly, let us touch upon how a litigious environment, where people are very quick to sue, would affect access to care.

Access to medical care is *already* a problem in Guam with limited number of specialists. As of August 2019, according to the GBME website, there are 534 doctors who are licensed on island. However, not all of these doctors are actively practicing as full time doctors in Guam. Many of them have already left the island or just occasionally visit as locums or per diem doctors. Our best guess is that there are only 200-300 doctors working full-time and living on Guam to provide care for a population of

160,000. Equally important is that we currently lack full time access to very important specialties including cardiothoracic surgery, pediatric cardiology, vascular surgery, rheumatology and dermatology to name a few. As a result of limited specialty services and resources, physicians on Guam often have to stretch their capabilities in order to help a patient. Because the alternative would be to do nothing, letting the patient suffer and in some cases die, and this is just NOT acceptable.

Now let us imagine how the current situation can be worsened by policies that can promote a highly litigious environment.

A. The inevitable result of a litigious environment is a rise in liability insurance premiums. In this scenario, doctors may not have an option but to protect themselves by restricting their practice including eliminating high-risk procedures prone to complications, avoiding patients who have complex medical problems or patients who are perceived as litigious, or worse... we may just see a mass exodus of doctors leaving the island similar to what was seen in states like New Jersey where obgynecologists have left in large numbers during the medical malpractice crisis that they have experienced in the past.

B. Another important issue is physician recruitment. Due to Guam's isolated location from the mainland, it is extremely challenging to recruit doctors, particularly those who do not have a family connection to the island. A litigious environment would make recruitment nearly impossible. Why should doctors move to Guam where many other states have a friendlier environment to practice medicine? As of 2016, thirty-three states have imposed caps on damages sustained in medical malpractice lawsuits including places like Hawaii, Texas and California. For example, the cap for non-economic damages is \$375,000 in Hawaii, \$250,000 in Texas, and \$250,000 in California. There is currently no cap for the private practice clinics and physicians for non-economic damages in Guam. Even our sister island the CNMI have imposed a \$300,000 cap for non-economic damages. While majority of the United States is moving

forward with tort reform to prevent the abuse of medical malpractice lawsuits, we are moving backwards by considering to abolish the Arbitration Act.

C. Lastly, if Guam becomes an extremely litigious community, we will more likely have LESS homegrown doctors. There are currently very little financial incentives to entice homegrown physicians to come back to Guam. The financial compensation for doctors in Guam is typically lower than other rural communities in the mainland. As medical students, there are no special loan repayment programs available to entice homegrown doctors to come back home. There is at least the ProTech Award which is helpful but it has limited funding. On top of this, we often have to pay higher tuition for medical school even if we choose to attend a more cost-efficient public school in the mainland as we are subjected to out-of-state tuition rates. A young physician typically shoulders a large amount of medical student loans after graduation with the national average upwards of \$200,000. Our decision to go come home is primarily motivated by our sincere desire to practice at home, with our families, in our community. Guam is already a challenging place to practice medicine given our limited medical resources. If we were to criminalize the practice of medicine and meritless lawsuits abound, then the more physicians would have to really consider before choosing to practice on Guam. Please know that those of us who practice here choose to do so, and we make this choice because of our deep love for this community.

Patient safety and the quality of healthcare is important to us all. To say that doctors in Guam are not held accountable is simply untrue. If a doctor truly committed gross negligence, there are pathways that are currently available to investigate these cases and hold such doctors accountable. Not only are we held accountable by our patients and by legal liability thru the law, but we also answer to both the Guam Board of Medical Examiners as well as our national specialty boards where our license can be revoked, and we would not be able to practice medicine anywhere.

Let me conclude to say that there is no doctor who enters this profession with the intent to do harm. On the contrary, we dedicate our lives and sacrifice many things in our lives

in order to provide the highest level of care to all our patients. If the goal is to improve patient safety and enhance the quality of health care in our island, then I would urge each and every Senator here today to consider policies that will help recruit and retain physicians on Guam, rather than write laws that would worsen the physician shortage that we are already experiencing.

Thank you.

Senators,

Thank you for your time and allowing us to testify tonight.

My name is Erika Masuda Alford. I was born at Guam Memorial Hospital, and raised in Guam. After graduating from high school, I left island to attend university, medical school, and complete my residency and fellowship training. While away, every academic decision was made knowing I would one day return to the island to care for the people of Guam. My big decision to become an endocrinologist was knowing the devastating effects of diabetes in Guam, and my desire to prevent diabetes complications.

Coming home was an interesting experience to say the least. I often thought of it as practicing third world medicine in a first world country. Resources are quite limited in Guam. We do not have many specialties that are available in the US. Technology and medical equipment is also not available. When it is available, it is often not covered by insurance or the out of pocket expenses far exceed what patients are able to afford. However, in the almost 8 years I have been home as a practicing physician, I see improvements. We have more subspecialists now than we had just 8 years ago. More technology is becoming available. As more and more of our people are coming home, we are seeing improvement in health care. We have physicians who have returned to become hospitalists at GMH; I have seen the improvement in the quality of inpatient care. We have physicians who have become internists, pulmonologists, otolaryngologist, gastroenterologists, surgeons, family practitioners, sports medicine specialists, pediatricians, ophthalmologists, and gynecologists and have returned home to Guam. Medicine in Guam is improving, however, it is still far from what you would find in a big city in the US mainland.

We are often called on for help that takes us beyond our comfort zone. I am a trained adult endocrinologist. However, there is no pediatric endocrinologist in Guam. The only pediatric endocrinologist I knew in Manila has moved to California. Children would have to travel to the states if they need to see an endocrinologist. This is rather difficult, as parents would have to take their children every 6 weeks to 3 months for medication adjustment. For conditions that I am comfortable with, I see and manage the children. For conditions I am not comfortable with, I ask the parents to take the children to see a pediatric endocrinologist. I follow their recommendations while monitoring the children locally to minimize need for travel. When a child gets admitted to GMH with diabetic ketoacidosis, the pediatricians often call me to help them manage this life threatening condition. The children would not survive a plane trip to California as they are critically ill and need pediatric intensive care admission. I realize I am not a pediatric endocrinologist, but I do what I can to help these children, and every single one of them has walked out the doors of GMH.

Guam is a resilient island. We have learned over the years to deal with what comes our way. Most patients understand that we do what we can, with the resources that we have. We can't save every person, and heal every illness; we are human. However, if Guam becomes a more litigious society, we may lose the physicians that are here, and those that would have returned home. I have thought about this, and it would make it impossible for me to see the children who need me. It would also make it impossible for me to follow many of my patients with diabetes. Many of my patients come to me after their primary care physicians have exhausted all treatment options, and have multiple complications from uncontrolled diabetes. It would be difficult taking care of these patients as I will have to worry about litigation with any complications that may result from patients not taking their medications or not

following recommendations. I would not feel comfortable taking care of my sickest patients, my patients with the most complications, the ones who need me the most.

I also worry that we will need to start practicing defensive medicine. For example, a common complaint I hear from my thyroid patients is choking with swallowing. The most common reason for this is either acid reflux or post nasal drip from allergies, not the thyroid. I ask symptoms that pertain to either, and treat what I think is the likely etiology. If this doesn't work, I try treating the other etiology. It is rare that treating acid reflux or post nasal drip does not improve the choking sensation. Obviously if the symptoms do not improve, then I send patients for more invasive testing. However, if Guam becomes a litigious society, I will feel the need to send the patients to Otolaryngology for a laryngoscope and GI or general surgery for an endoscopy, or to radiology for a barium swallow to ensure I am not missing anything, and do so right away. This subjects my patients to radiation, anesthesia, and invasive procedures that could be avoided. In similar fashion, any abdominal discomfort would lead to a CT of the abdomen, and a simple headache would lead to a CT or MRI of the head without ruling out the most common causes. If the patients cannot afford their copays or deductibles when a doctor recommends a procedure, then what? Often patients cannot afford the cost of procedures that they do need, and this would add an extra financial burden for procedures that they probably don't need, but we end up ordering for fear of being sued.

I have always wanted to return to Guam and care for the people of Guam. It's not always easy, and my family has to make sacrifices so that I can do what I do. My husband has sacrificed his career. My kids sacrifice time with me. Just the other morning, my 4 year old said, "mommy, can we please snuggle? I miss you. It's always work, work, work, work, work, and I just miss you." I sacrificed time with my children so I can go to the hospital to take care of someone else's child. My phone rings when we are on vacation. My dinners are regularly interrupted with phone calls. I miss bedtimes because I am I called to the hospital to see a sick patient. My family understands that there is a sick person who needs me. But, I am not willing to sacrifice my career and my family if the island moves toward becoming a hostile work environment. Every time I've thought of leaving Guam to practice in the states, the thought quickly gets pushed aside as I love being a doctor in Guam and caring for the people in Guam. Lately, the rhetoric of physicians being evil, uncaring people has made me think more of moving back to the US.

I've also heard many comments about doctors being in Guam only because no one else will take them. I beg to differ; I was offered several jobs at major academic hospitals throughout the US before choosing to move to Guam. I know many other physicians who also were offered prestigious jobs at big hospitals in the US. We chose to come home to serve our people. We do not become doctors to hurt people; we worked hard to get through our training so that we can help people. We cry with our patients and their families when they receive a bad diagnosis or become sick. I can't count the number of times I've cried driving home. We celebrate with our patients when they do well, and get good results. We want to work with our patients to keep them as healthy as possible.

So, senators, when you contemplate changes that are needed, please consider the big picture. We have a hard enough time recruiting physicians to come to Guam, for the locals to return home as physicians. We do not want to discourage people from coming home, and we do not want to encourage our physicians to leave. Health care is improving in Guam; let's make sure it continues to improve.

*Euna M. Ayala*

**Good Evening Senators,**

**Thank you for having me here today. My name is Dr. Amanda del Rosario and I am a board-certified pediatrician at American Medical Center. I am also a part-time pediatric hospitalist at Guam Memorial Hospital. I see pediatric patients both in the clinic and hospital setting, and have been practicing here on Guam for the past 4 years.**

**I am a homegrown physician. I was raised on this island and have always considered Guam my home. From the moment I left off island for college and decided I wanted to become a doctor, there was no doubt in my mind that I would return to Guam to practice medicine. In fact, the very reason I was inspired to become a physician was because I grew up seeing firsthand how much of a need there was, and still is, for more doctors on our island. So after completing my medical training in the States, I came back to Guam because I was ready and committed to provide care to our island's children, knowing fully well that I'd be facing many challenges doing so in a resource-limited setting. I also recruited my husband, Dr. Michael Um, a California native and a pediatrician as well, to come to Guam with me and embark on this career path together.**

**But before I even started seeing babies and children as a pediatrician on Guam, I experienced what it was like to be at Guam Memorial Hospital as the family member of a sick patient. The patient was my father. He first became ill from what appeared to be a simple case of the stomach flu. But after he got hospitalized, his condition worsened, became more complicated, and he was unable to recover. He died at GMH on February 12, 2015. I share this story of my father's passing because I want it to be known that I understand what it is like to unexpectedly lose a loved one at GMH. I truly empathize with every person who has had to deal with the deep pain and heartache of losing a loved one. I remember obsessing over my father's case myself, scrutinizing the events that led up to his death, to see if there was perhaps something that was missed by his doctors. In my state of immense grief, I wanted to find someone to blame. But there wasn't. My father's doctors couldn't save him, and it wasn't their fault. My father died at GMH, and it was no one's fault. As doctors, when our patients get sick and become critically ill, we do everything we can to save them, but sometimes, despite our best efforts, we are unsuccessful. But it doesn't mean we made a mistake or didn't care enough, or didn't do a good enough job; that's actually hardly ever the case. Although the bad outcomes tend to be highlighted in the news and talked about the most, they are actually few and far between. What we don't often hear about are all the good patient outcomes and successful recoveries that occur on a daily basis, the lives we do save in the hospital, thanks to the dedicated efforts of our island's doctors and the improvement in medical care that Guam has experienced over the years.**

I love this island and I care deeply about our community. My patients are precious to me, and I treat them and their families like my family. I do not regret my decision to come home, and it makes me optimistic to see other homegrown doctors coming back to serve our island as well. I came back home not because I couldn't find a job anywhere else, but because I didn't want to practice medicine anywhere else. Knowing how hard it is to recruit physicians to Guam, I invest my time outside of work into running a nonprofit program that mentors young premed students here on Guam and pairs them with local physicians in the community. I do this because I genuinely believe that by investing in our youth and inspiring them to pursue careers in medicine, they too will one day come home to care for our island's people. But if Guam becomes a hostile work environment where the practice of medicine becomes driven by the threat of lawsuits, we will not only discourage future doctors from coming to Guam, we risk losing our current practicing physicians.

So as the Medical Arbitration Act is being reviewed, I ask that we look not only at the current Guam law, but also examine the overall way we view the culture of medicine and the physician patient relationship: if you have mistrust in the healthcare system and go into a doctor-patient relationship already thinking that your doctor is out to profit from you, then everything that doctor does will be viewed with malicious intent. We became doctors to help people, not hurt them. We sacrificed years of our lives, time away from our families, and chose to dedicate our life's work towards helping others. I ask that we not change the Arbitration Act, but rather, change the way we view our doctors who are trying to do good in the community and provide compassionate quality care to our island's medically underserved people.



Amanda del Rosario, MD

October 3, 2019

Office of Senator Therese M. Terlaje  
Ada Plaza Center, Suite 207  
173 Aspinall Avenue  
Hagåtña, Guam 96910  
Via email: senatorterlajeguam@gmail.com

**Re: Testimony Regarding the Medical Malpractice Mandatory Arbitration**

Hafa Adai Senator Terlaje,

My name is Felix Tudela Cabrera and I am a board certified internal medicine physician currently serving as the Chief Medical Officer for Guam Regional Medical City. I am also the 2020 President-elect for the Guam Medical Society.

Someone once said, "I am not interested in simplicity on this side of complexity. I am only interested in simplicity on the other side of complexity." This is in reference to 3 stages of knowledge. The first stage is after you begin understanding parts of something complex, like what a Google search might tell you about a disease for example. You read a couple of paragraphs and now you feel like you know it well. The second stage is when you commit to learn more and you begin to appreciate the depth and complexity of the field. For physicians, it takes us on average 14 years of studying and training before we begin to enter the third stage, which is that it becomes simple again. This is better described as mastery. Licensure examinations and board certifications help attest to that. However, full mastery takes a lifetime of practice. This is why we call it the practice of Medicine.

Basically what I am saying is that medicine is tough. It's tough on the mind, heart and soul of those who provide it. As long as medicine is practiced by humans, it will continue to be so. It will also continue to never be error-free. But the reality is that not all errors lead to bad outcomes and not all bad outcomes are because of error. To have a full appreciation for these facts in medicine, one must be on the other side of medicine's complexity. The side of mastery.

That being said, there are first level, simplistic assumptions being made regarding what medical malpractice actual is and what is its intended utility. The same goes for the mandatory arbitration act and what both are ultimately costing us as a society. I personally am no master on the legal topic. But I know enough to recognize it's complexity. Because it involves my profession, I am afforded the opportunity to provide some insights that I hope will be helpful.

To help understand the complexity I will offer 2 eye-opening statistics, which directly conflicts with the sentiment that perpetuates much of society regarding medical malpractice. When discussing a topic that can be quite emotionally charged, it is especially in these situations that we must take pause and seriously look at what the science is telling us—and how it helps us balance a human need.

Before doing this, we must first start by better understand what the purpose of medical malpractice actual is. Upon inception, medical malpractice lawsuits were not intended for, nor were they designed with the goal of punishing healthcare providers that harm patients. Yes, this was never intended to be a form of *punishment* for punishment's sake. The actual purpose of a malpractice lawsuit is to *make the patient whole*, as if the interaction never happened. It is also intended to incentivize providers to take appropriate precautions against avoidable harm.

Looking at the actual definition of medical malpractice gives us further insight. It is defined as *a breach of duty or deviation from the standard of care leading to harm or injuries to a patient*. This does NOT include poor outcomes or damages alone. Yet all too frequently, those who have poor outcomes believe that because of life's unfairness, someone must be at fault. All too frequently we are quick to assume that if contact occurs with a medical provider during the process of a poor outcome, then they must have been in some way, in some manner, derelict of their duty.

We can all empathize with this understandable human reaction, especially in a time of grief. But, I am sure we can all understand that bad things happen as part of life, and it doesn't always mean someone screwed up.

The biggest irony about medical malpractice being a means of accountability, can be summarized in the following study. Prior to tort reform implemented in most states in our country over the past 2-3 decades, a landmark retrospective study published in the Harvard Medical Practice Study showed:<sup>1</sup>

1. *Only 1 out of every 15 patients who are actually injured due to medical malpractice ever receive any compensation that help them become whole.*
2. *An astounding 5 out of every 6 lawsuits which result in some form of payment, mostly settlements, have absolutely no evidence of actual malpractice.*

These findings were reproduced in a similar study in 2000.<sup>2</sup> Let us put this into an analogy that helped me better contextualize how counterintuitive these stats are:

*Two cars collide at a traffic light intersection. A police officer responds to the scene. Now let's say that the police department has a long record where for every 15 red-light-runners who caused the collision, the police officer issues only 1 traffic violation citation—regardless of whether running the red light was an accident or done knowingly.*

*Now let's say in a different scenario, no one ran a red light or was in breach of duty as a driver, but the accident occurred because one of the vehicle's brakes failed or a dog suddenly ran onto the road or something unknown happened. A police officer responds to the scene. He or she sees that one of the passengers has a serious injury. Maybe it's a child. In this situation, the odds are that 5 out of 6 times the police officer ultimately gives a citation to the other car, despite there being no clear evidence of fault.*

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<sup>1</sup> *Harvard Medical Practice Study. "Patients, Doctors, and Lawyers: Medical Injury, Malpractice Litigation, and Patient Compensation in New York. The Report of the Harvard Medical Practice Study to the State of New York. Cambridge: 1990*

<sup>2</sup> *Strudler, D.M., et al. "Negligent Care and Malpractice Claiming Behavior in Utah and Colorado." *Medical Care* 38, no. 3 (March, 2000): 250-60.*

If these two scenarios was our actual reality, we would all be outraged by the system, not just those unfairly getting traffic tickets. We would all demand for traffic violation reform. We would want some means to hold the system accountable, and not automatically the individuals. We would demand a process that screens these frivolous traffic citations and throws them out before they cause more harm.

If this scenario was here on Guam and allowed to continue, who would ever want to drive here? Who would apply for a drivers license? Knowing this, who would ever want to move to Guam for work?

From a higher level view you see how broken the system is without safeguards like a vetting process that helps logic and order endure over emotional blindness. This is the reality of what medical malpractice is without provisions in place like mandatory arbitration or a screening panel. No one wants to get into a car accident, just like no doctor ever wants to lose or harm their patients.

Yet we physicians have to practice in a similar environment everyday. An environment that rightfully demands quality and safe care, all while being responsible stewards of the limited resources to do so. At times it seems society has inflated the ability of modern medicine to be able to nearly cure all and save all. At times we seem to think disability or even death is optional. If that was true then no one would ever die.

A physician's most difficult duty lies in our ability to understand and assess all the risks as best we can, and NOT be paralyzed by it. If we rejected all risks, then the greater good will not be realized and society will be left with much, much more pain and suffering. *You cannot have it both ways.*

In finding a reasonable balance, safeguards must be in place to ensure that those who are truly harmed by malpractice have the opportunity to be made whole. This is why medical malpractice can never be eliminated. This is why myself and many, if not most, of my colleagues support an amendment to the mandatory arbitration that allows actual victims reasonable recourse to become whole.

As important as it is to make these patients whole, it is just as important to do so without the significant collateral damage of punishing those who were trying to help during an inevitable bad outcome. This is why mandatory arbitration or a mandatory screening process should never be eliminated either.

That being said, I want to take a moment to sincerely express my appreciation of Mr. David Lubofsky and Ms. Anelyn Lagrimas for their brave testimony during the last hearing. I cannot imagine how difficult that must have been. In all honesty, I may disagree with many of the statements made—but this point is not relevant to what I gained from it. Listening intently was incredibly valuable to me as a physician to try to comprehend their interpretation of what reality is for them, despite differences in opinions. I applaud their efforts to try and raise the standard of care for our island, which we should all welcome in a responsible way.

On a separate note, as the Chief Medical Officer of GRMC, I would be remiss for not making it known that there are very real and dire repercussions if a full repeal to the arbitration law. GRMC is the largest employer and privileger of physicians and mid-level providers in this region. We provide medical

malpractice liability insurance for nearly all of our providers under our group plan. Those who aren't, have their own individual coverage.

We cannot allow the path where 5 out of 6 of our good doctors are at risk of having a frivolous lawsuit paid out. All claims settled or awarded are required to be reported to the National Practitioner Data Bank (NPDB). I estimate that most doctors are significantly more dismayed by the thought of having a report in their NPDB record, than financial penalties. I believe that this is true because there is no way to be made whole with a frivolous black mark on your record that could end your ability to practice medicine.

Lastly, it is worth mentioning that GRMC would never have come into existence without the ability to obtain affordable malpractice insurance. During a past conversation I had with our insurance provider, we discussed the factors that led to our underwriters being able to offer an affordable plan to us. In order of importance they are:

1. Guam has a history of being a low litigious area compared to other states.
2. The presence of the current mandatory arbitration law.
3. The volume of physicians in our plan that gives us buying power.

If a repeal of the mandatory arbitration occurs:

1. Expect insurance premiums to skyrocket.
2. Expect the high possibility of good doctors leaving Guam to provide their good care elsewhere.
3. Expect more pain and suffering in the form of the six D's for the people of Guam: Death, Disease, Disability, Discomfort, Dissatisfaction, and Debt.

My intention is not to be an alarmist, but to be a realist. It is already hard enough recruiting the talent and skills necessary to substantially elevate the local definition of the standard of care. We've all made significant cracks in our patient's glass ceiling of care. Please do not allow the roof to collapse on all of us.

In conclusion, author Simon Sinek recently wrote<sup>3</sup>, "The mind must be convinced, but the heart must be won." I pray that this testimony has done both. Thank you.

Sincerely,



**Felix Tudela Cabrera, MD, MT (ASCP)**  
**Board Certified Internal Medicine Physician**  
**Chief Medical Officer for Guam Regional Medical City**  
**Guam Medical Society President-Elect for 2020**

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<sup>3</sup>Simon, Sinek. "Together is Better: A Little Book of Inspiration." Penguin Random House, 2016.

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October 3, 2019

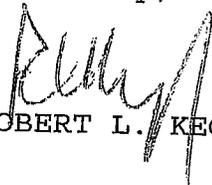
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**Re: October 3, 2019 Testimony**

Dear Senator Terlaje,

Enclosed is proposed testimony for consideration at the October 3, 2019, hearing pertaining to the Guam Mandatory Medical Malpractice Arbitration Act. If you need additional copies or would like a scanned emailed copy please let me know. I look forward to attending the hearing tonight.

Sincerely,

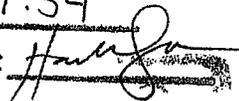
  
ROBERT L. KEOGH

RLK/tbm

**Senator  
Therese M. Terlaje**

OCT 03 2019

Time: 11:54

Received by: 

TESTIMONY OF ROBERT L. KEOGH  
GUAM MEDICAL MALPRACTICE MANDATORY ARBITRATION ACT (MMMAA)  
OCTOBER 3, 2019

Thank you for the opportunity to provide testimony regarding my experience under the current statutory framework established by The Guam MMMAA, 10 GCA §10100, et seq. (the Mandatory Arbitration Act).

I have been practicing law on Guam and the Micronesian Islands since 1977. My law practice focuses primarily on plaintiff personal injury claims which include medical malpractice cases. I have represented clients in cases in the Superior Court of Guam prior to the passage of the Mandatory Arbitration Act, as well as several cases pursued under the provisions of the Act.

I have also represented clients in medical malpractice cases against the United States of America in the District Court of Guam pursuant to the Federal Tort Claims Act and also against the Government of Guam in the Superior Court pursuant to the Guam Government Claims Act. These medical malpractice cases against the federal and local governments do not involve the application of Guam's Mandatory Arbitration Act.

I have listened to the testimony presented at the September 19 hearing and will comment later upon some of the issues raised there. First, however, I will provide details of my experience in 2 arbitration cases I have recently been involved in to demonstrate the enormous burden placed upon claimants by Guam's Mandatory Arbitration Act.

Case One:

The claimants were a husband and wife who went to a local urgent care clinic. Unbeknownst to them at the time, the husband presented with classic symptoms of a medical condition known as cauda equina syndrome, a spinal condition that required urgent or emergent surgical intervention. His condition was misdiagnosed and by the time he was able to obtain proper surgical care in the Philippines he suffered a permanent and debilitating neurological condition affecting his groin and lower extremities. A claim was pursued through the American Arbitration Association pursuant to the Mandatory Arbitration Act. The arbitration process took nearly 5 years to complete. The Claimants' costs of arbitration alone amounted to \$47,186.00. I provide herewith a document marked Attachment A which details the costs incurred. This cost represents only the Claimants' share of the AAA administrative charges. The Respondent Clinic incurred similar charges since the Arbitrators ordered the costs of arbitration to be split evenly between the parties.

In addition to the \$47,186.00 in arbitration costs, the Claimants incurred litigation expenses in the amount of \$66,066.00 which covered costs of travel to investigate and take the deposition of off-island witnesses, deposition transcripts for other witnesses, claimant's expert witness fees, and payment of the deposition fees of Respondent's expert, and other litigation costs.

By the conclusion of the proceeding, Claimants had incurred \$113,252.00 in expenses to pursue their medical malpractice claim.

The arbitration panel consisted of a local Guam attorney, a Guam based architect and a doctor from Hawaii. The arbitration trial was held at a Hilton Hotel conference room. The cost of the room rental was split by the parties. The airfare, hotel and per diem expenses of the Hawaii doctor were also split by the parties. At the conclusion of the arbitration proceeding the Claimants were awarded \$1,315,822.80. Neither party filed for a trial de novo and the award was paid.

#### Case Two:

Claimant brought a dental malpractice claim against a Guam dentist based upon the failure of 9 dental implants. The claim was initially pursued pursuant to the Mandatory Arbitration Act through the American Arbitration Association and an arbitration trial was held in 2009. The Arbitration Panel consisted of a local lawyer, a local doctor and a local businessman. The panel never reached the merits of the claim since the panel dismissed the case on statute of limitations grounds.

Claimant's share of the AAA arbitration administrative fees was \$17,806.62.

Despite the potential penalty risk under the Act of having to pay the dentist's attorney's fees and expert witness fees if he did not improve his position by 40%, Claimant filed for a trial de novo in the Superior Court. (The absurdity of the penalty provision in the Arbitration Act is demonstrated by this case. Since Claimant received nothing through arbitration it was impossible for him to improve his position by 40%. 40% of nothing is still nothing.)

4 years later, in 2013, a jury trial was held in the Superior Court. Claimant was awarded \$62,236.35. The jury award was for \$113,157.00, reduced by 45% for comparative negligence. See Attachment B.

The dentist appealed to the Guam Supreme Court which reversed and remanded the case for a new trial. The case was settled before a new trial was held. See, Kennedy v. Sule, 2015 Guam 38.

In both of the above cases the Claimants had sufficient funds to afford the exorbitant arbitration expenses. In my years of experience, most potential claimants who come to me for a consultation do not. In nearly all potential medical malpractice claims on which I am consulted, once the prospective expenses are described, the Claimants chose not to pursue their claim due to inability to afford the costs.

Medical institutions and members of the medical community are accorded special protection under Guam law in ways not given to any other potential defendant in a civil negligence case. A case in point is that while the statute of limitations for any negligence claim is two (2) years, the statute of limitations on a medical malpractice claim is set at one (1) year. 7 GCA §11308. Also, any claim against any health care institution or professional, whether in tort or contract, is required pursuant to the Mandatory Arbitration Act to be pursued through expensive arbitration before access to court is even allowed. Further, the penalty provisions embedded in the Arbitration Act (See, 10 G.C.A. §§10142 and 10143) provide a formidable deterrent to seeking post arbitration relief through the courts. The Mandatory Arbitration Act protects all health care professionals and health care institutions and their employees or agents. The health care professionals protected by the Arbitration Act include; doctors, dentists, nurses, physician assistants, nurse practitioners, chiropractors, optometrists, podiatrists, pharmacists, physical therapists, osteopaths, psychologists, acupuncturists, audiologists, speech pathologists, respiratory therapists, nutritionists, clinical dieticians, cosmetologists and even veterinarians.

On the other hand, Guam law that is designed to protect the general public from potential bad medical practice is ignored and unenforced. Case in point, 10 GCA §12212.1, part of the Guam Medical Practices Act, requires the Medical Board to establish and maintain a searchable website that shall contain a wide variety of information about each practitioner including a listing of any civil judgments or arbitration awards for death or personal injury caused by the physician's negligence, error or omission in practice. No such searchable website exists. Guam's people are given no information that is made readily available to them to make proper and informed decisions as to the competency of a health care provider who would be caring for them or their loved ones.

Notwithstanding the Mandatory Arbitration Act, medical malpractice claims are already inherently expensive to pursue. A significant component of the litigation expense in a medical malpractice case is the retention of the services of expert witnesses to provide evidence in a very elemental part of the claim, i.e., "that the medical care provided fell below the standard of care." In my experience, experts' fees are quite high, and I guess for good reason as experts have worked long and hard to acquire the expertise in their field of specialty. Guam Chief Judge Frances Tydingco-Gatewood stated the following in her opinion in Rutledge v. United States, 2008 WL 3914965 (D. Guam), a medical malpractice case against the U.S. Government where I represented the plaintiffs.

Although there is no Guam law on the issue of standard of care, generally in cases of medical malpractice what is or is not the proper standard is a question for experts and it should be established only by their expert testimony. "In professional malpractice cases, expert opinion testimony is required to prove or disprove that the defendant performed in accordance with the prevailing standard of care, except in cases where the negligence is obvious to laymen."

Id., at \*14 (citations omitted). See, Attachment C.

Thus, no medical malpractice case can proceed unless the claimant has retained the services of a qualified, credentialed expert witness who will testify under oath that in his or her opinion, to a reasonable degree of medical certainty, the treatment provided by the defendant doctor fell below the standard of care. A legal process known as a Daubert motion exists to challenge the expertise of any expert. A judge can strike the testimony of an expert witness if the expert does not possess appropriate credentials to render an opinion on the medical issue involved.

Victims of medical malpractice are, oftentimes, made uniquely vulnerable by the negligent treatment they have suffered. They are often subjected to debilitating consequences of the malpractice, are out of work and thus financially as well as physically compromised. Faced with a one year statute of limitations, the excessive costs of arbitration and litigation plus the difficulty in finding an attorney who is willing to handle their case, potential claimants find, far more often than not, that their claims will just have to go unredressed. The Mandatory Arbitration Act exacerbates their circumstance inordinately and, in essence, tends to erode rather than promote corrective justice.

I would like to address a few of the points raised during the September 19 hearing that I believe were not properly explained.

## **LIABILITY CAPS**

Caps on non-economic damages was discussed at the hearing and offered as a suitable means of protecting any defendant from a large damage award. Non-economic damages are essentially what is generally referred to as pain and suffering. Caps on pain and suffering are an inherently biased way of placing the entire burden of medical malpractice, or any negligence, upon the victim. Why? There is no reasonable basis for this policy. Guam law provides that damages must at all time be reasonable. Judges can reduce large damage awards to a reasonable level by a process called remittitur. There is no evidence that excessive jury awards are a problem on Guam.

Liability caps is an approach aggressively pursued by the insurance industry in the United states in recent years to limit jury awards in negligence claims.

I strongly urge every member of this panel to watch a documentary, available on Amazon Prime, and perhaps on other platforms, called **Hot Coffee**. The documentary treats 3 separate issues dealing with the insurance industries efforts to enact "tort reform," which is a term used to refer to limiting jury awards in negligence cases. The 3 issues are: 1. As the title suggests, the massive effort by the insurance industry to distort the verdict and outcome of the now famous McDonalds coffee case; 2. The efforts by the insurance industry to enact liability caps in as many states as possible; and 3. The effort by the insurance industry to enact laws state by state for the election, as opposed to appointment, of judges. The reason for this is that in elections, massive amounts of money can be spent by insurance companies to support favorable or "friendly" judges.

One anecdote from the documentary about caps was particularly compelling. A woman's teenage son was rendered quadriplegic through the negligence of a third party. Pursuant to an initiative in their state a few years earlier a cap of \$250,000 was enacted on non-economic damages. The woman's son was thus able to collect only \$250,000 for the pain and suffering he would endure for the remainder of his life due to the cap. When asked by the interviewer if she had voted for the initiative the woman responded yes, but that she thought the cap would only apply to "frivolous cases."

Of course the caps apply to **ALL** cases, whether frivolous or not. Caps are an insidious means of protecting insurance companies from high damage awards. They are not designed to stop frivolous cases. They are designed to limit awards in **ALL** cases, regardless of their merit. **JUDGES, NOT CAPS,** are the best way to prevent frivolous cases. If a case can be readily determined to be frivolous it is subject to being dismissed by a fair and honest judge on summary judgment. Caps are only designed to protect insurance companies and defendants.

#### **ARBITRATION FEES CANNOT BE WAIVED**

It was incorrectly stated at the September 19 hearing that the AAA can **WAIVE** arbitration fees and costs. Not so! For individuals who can prove financial hardship, the AAA will, on a case by case basis, **DEFER, NOT WAIVE,** their filing fee. Thus, regardless of the outcome of the arbitration, the fee will have to be paid at the end of the proceeding. The claimants in Case One cited above were charged a filing fee of \$10,200.00. This arbitration filing fee is hefty compared to a plaintiff's \$300.00 filing fee for a case initiated in the Superior Court of Guam or \$400.00, if filed with the District Court of Guam.

Attachment D is a letter from the American Arbitration Association sent in connection with Case One above demonstrating how they dealt with a hardship request by the Claimants. They charged \$1,200.00 up front and deferred \$9,200 of the filing fee which ultimately had to be paid at the end of the proceeding.

On top of the burdensome filing fee, which is by far the smaller portion of the arbitration expense, the fees of the arbitrators, frequently charged at a rate of \$350 per hour or more, cannot be waived or deferred. These costs must be paid up front. As pointed out earlier in Case One, the total cost of arbitration alone was \$47,186.00.

In contrast, other civil litigants in the Superior Court of Guam or District Court of Guam have judges made available to them at no additional cost. These litigants do not have to pay Judges any hourly fee for their time in studying and deciding the case. Litigants also do not have to pay for use of the courtroom and pay for the Judge's airfare, hotel room and per diem just to hear their case at a trial. These expenses are borne by all taxpayers thus spreading the costs over the population at large. This is how a society is designed to work.

## ALTERNATIVES TO THE AMERICAN ARBITRATION ASSOCIATION

At the September 19 hearing it was mentioned that there are alternatives to the AAA for administering proceedings on Guam under the Mandatory Arbitration Act. There are no viable alternatives.

First of all, PAMS was mentioned as a local alternative. It is not. One of the principal owners of PAMS is attorney Mitch Thompson, who more often than not is the defense counsel on medical malpractice claims. How could a Claimant's attorney possibly justify to his or her client using an arbitration company owned by the opposing attorney? Also, through past inquiries PAMS has advised that they do not handle medical malpractice claims. PAMS is not a viable alternative.

In addition, Section 10101(a) of The Arbitration Act defines "Association" as "The American Arbitration Association or other entity organized to arbitrate disputes pursuant to this chapter." There is no other entity organized to arbitrate disputes pursuant to this chapter. By statute, Claimants are locked into the expensive AAA to arbitrate their claims.

## STANDARD OF CARE ON GUAM

I was stunned to hear it mentioned at the September 19 hearing that the standard of care of medical practice on Guam is below that of U.S. locations. To practice medicine on Guam a physician must be a graduate of a U.S. medical school or have obtained a residency or specialized certification in the U.S. Whether there are or there aren't certain diagnostic facilities available on Guam, this does not relieve the practicing doctor from performing his or her duties to the same standard of care as any other U.S. trained and licensed physician. I urge you to ask each and every doctor who testifies at this proceeding if the "Standard of Care" that they provide their patients here on Guam is lower than the standard of care they would provide if they were practicing elsewhere.

I do not know of any other jurisdiction in the United States that statutorily mandates all medical malpractice cases to be arbitrated before claimants can have access to the courts. Most arbitrations are consented to by the parties in contracts or after the claim arises. Nevertheless, some state legislatures and state courts have attempted to invalidate certain mandatory arbitration **agreements**, in instances where there is a perception that requiring the parties to settle their disputes through arbitration would be unfair, contrary to public policy, or would somehow not protect the interests of vulnerable individuals.

In my opinion, the Guam Mandatory Medical Malpractice Arbitration Act has been put into law simply to protect the medical community at the expense of the victims of medical negligence. Before enactment of the Mandatory Arbitration Act, malpractice claims could proceed directly to court for a modest filing fee. There is no evidence of a "crisis" on Guam regarding medical malpractice claims. There is no preamble statement in the Mandatory Arbitration Act asserting that there is such a crisis that the law is seeking to remedy. Again, in my opinion, the most equitable approach to ending the burdens imposed by the Guam Mandatory Medical Malpractice Arbitration Act is simply to repeal the law and allow victims of medical negligence direct access to courts like all other civil litigants. The victims of medical negligence should be treated no differently than the victims of a negligent driver of a motor vehicle or a property owner who allows an inherently dangerous condition to exist on their property. The judicial system and process is designed to provide equal access to justice to everyone. Forcing victims of medical, dental, or even veterinarian negligence to pursue inordinately expensive arbitration amounts to nothing more than an abject denial of that right to equal justice.

**AMERICAN ARBITRATION ASSOCIATION**  
**Detail Invoice/Statements for Case No. 74-20-1200-0294-1-TM**

<b>REFERENCE #</b>	<b>DESCRIPTION</b>	<b>AMOUNT</b>	<b>BALANCE</b>
10342801	Initial Administrative Fee	1,000.00	\$1,000.00
10343319	Initial Administrative Fee	9,200.00	10,200.00
10541404	Your share of Neutral Compensation Deposit covering 4 hours of Preliminary Matters	1,200.00	11,400.00
11023674	Your share of Neutral Compensation Deposit covering 8 hours of Study and Preliminary Matters	2,200.00	13,600.00
11041187	Final Fee	4,000.00	17,600.00
11041195	Arbitrator's Compensation for 4 days of hearing	9,200.00	26,800.00
11041209	Arbitrator's Compensation for 20 hours of study time	5,500.00	32,300.00
11041218	Expenses to be reimbursed to Arbitrator for airfare, hotel	2,136.00	34,436.00
11421766	Arbitrator's Compensation for hearing and study time	12,250.00	46,686.00
11421769	Expenses to be reimbursed to Arbitrator for travel and hearing room rental	500.00	47,186.00
<b>TOTAL CHARGES</b>			<b>\$47,186.00</b>

IN THE SUPERIOR COURT OF GUAM

HAGATNA, GUAM

SEP 26 AM 11:26

MICHAEL W. KENNEDY,

Plaintiff,

vs.

HUGH SULE,

Defendant.

SUPERIOR COURT OF GUAM Civil Case No. CV0499-02

VERDICT FORM

WE, THE JURY answer to questions submitted to us as follows:

1. Was Dr. Hugh Sule negligent in the treatment of Michael Kennedy?

Yes  No

If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

2. Was Dr. Sule's negligence a substantial factor in causing harm to Mr. Kennedy?

Yes  No

If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

3. What are Mr. Kennedy's total damages? Do not reduce the damages based on fault, if any, of Mr. Kennedy. Do not consider any bridgework performed on Mr. Kennedy's lower jaw.

Past Economic Loss ..... \$ 10,537

Future Economic Loss ..... \$ 72,680

Past Noneconomic Loss

Past physical pain and mental suffering resulting from the injury ..... \$ 0

Past loss of enjoyment of life  
resulting from the injury ..... \$ 0

Past disfigurement  
resulting from the injury ..... \$ 0

Past inconvenience  
resulting from the injury ..... \$ 14,000.-

**Future Noneconomic Loss**

Future physical pain and mental suffering  
resulting from the injury ..... \$ 0

Future loss of enjoyment of life  
resulting from the injury ..... \$ 0

Future disfigurement  
resulting from the injury ..... \$ 0

Future inconvenience  
resulting from the injury ..... \$ 14,000.-

**TOTAL ECONOMIC & NONECONOMIC DAMAGES** ..... \$ 113,157.-

If Mr. Kennedy has proved any damages, then answer question 4. If Mr. Kennedy has not proved any damages, then stop here, answer no further questions, and have the presiding juror sign and date this form.

4. Was Mr. Kennedy negligent?

Yes                       No

If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

5. Was Mr. Kennedy's negligence a substantial factor in causing his harm?

Yes

No

If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

6. What percentage of responsibility for Mr. Kennedy's harm do you assign to:

Dr. Sule: 55 %

Mr. Kennedy: 45 %

TOTAL: 100 %

Signed

*[Signature]*  
FOREPERSON

Dated: 20 Sept 13

After it has been signed, deliver this verdict form to the Judge.

1 LAW OFFICE OF  
2 **ROBERT L. KEOGH**  
3 POST OFFICE BOX GZ  
4 HAGATÑA, GUAM 96932  
5 TELEPHONE (671) 472-6895

RECEIVED  
DEC 06 2013

FILED  
SUPERIOR COURT  
OF GUAM  
2013 DEC -6 AM 9:35

MAHER & THOMPSON, P.C.

CLERK OF COURT

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF GUAM

6 **MICHAEL W. KENNEDY,**  
7  
8 Plaintiff,

CIVIL CASE NO. CV0499-02

9 vs.

JUDGMENT

10 **HUGH SULE,**

11 Defendant.

12  
13  
14 This action came on for trial before the Court and a Jury,  
15 Honorable James L. Canto II presiding, and the issues having been  
16 duly tried and the Jury having duly rendered its verdict;

17  
18 It is Ordered and Adjudged that Plaintiff Michael W. Kennedy  
19 recover from the Defendant Hugh Sule the sum of Sixty Two Thousand  
20 Two Hundred Thirty Six and 35/100 (\$62,236.35) with interest at the  
21 rate of 6% per annum as provided by law, plus his costs of action.

22  
23  
24  
25 DATE: DEC 04 2013

  
26 **HONORABLE JAMES L. CANTO II**  
27 Judge, Superior Court of Guam

28 I do hereby certify that the foregoing  
is a full true and correct copy of the  
original on file in the office of the  
clerk of the Superior Court of Guam.  
Dated at Hagatña, Guam

DEC 06 2013

 James R. Borja



**H**Rutledge v. U.S.  
D.Guam,2008.

Only the Westlaw citation is currently available.

District Court of Guam.

Deborah K. RUTLEDGE and Thomas, R. Rutledge,  
Plaintiffs,

v.

UNITED STATES of America, Defendant.

Civil No. 06-00008.

Aug. 21, 2008.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

FRANCES M. TYDINGCO-GATEWOOD, Chief Judge.

\*1 This matter came before the court for a bench trial beginning February 19, 2008 and concluding on March 18, 2008. The Plaintiffs, Deborah K. Rutledge and Thomas R. Rutledge, were represented by Robert L. Keogh, Esq. The Defendant, the United States of America, was represented by Assistant United States Attorney Mikel Schwab and Special Assistant United States Attorney Katharyne Clarke from Louisiana. The Plaintiffs brought this medical malpractice action against the United States under the Federal Tort Claims Act.

THE COURT, having considered the evidence, oral and documentary, hereby issues the following Findings of Fact and Conclusions of Law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure.<sup>FN1</sup>

<sup>FN1</sup>. To the extent that a finding of fact should be deemed a conclusion of law, or a conclusion of law deemed a finding of fact, it shall so be considered.

#### JURISDICTION AND VENUE

Plaintiffs brought this action under the Federal Tort Claims Act for damages arising out of the alleged negligent acts or omissions of employees of the United States of America ("United States") while acting within the course and scope of their employment under circumstances where the United States, if a private person, would be liable to the Plaintiffs under the laws of Guam, where the acts or omissions complained of occurred. 28 U.S.C. § 1346(b); Nationwide Mut. Ins. Co. v. Liberatoro, 408 F.3d 1158, 1163 (9th Cir.2005).

Plaintiffs satisfied the conditions precedent to bringing a lawsuit against the United States under the Federal Tort Claims Act. See 28 U.S.C. §§ 2401 and 2675. (Plaintiffs' Trial Ex. 2).

This court has original jurisdiction pursuant to the provisions of 28 U.S.C. §§ 1331 and 1346(b)(1). Jurisdiction of this court over the United States is invoked pursuant to 28 U.S.C. § 2671, et. seq.

Venue in the District Court of Guam is proper under 28 U.S.C. § 1402 because the negligent acts and omissions complained of occurred on Guam.

#### FINDINGS OF FACT

1. Plaintiff Deborah K. Rutledge ("Mrs.Rutledge") at all times pertinent herein was married to an active duty service member and considered a United States Air Force dependent. As the spouse of an active duty service member, Mrs. Rutledge's primary health care benefits

were provided by the Department of Defense through a network of medical clinics and hospitals. (Testimony ("Test.") Mrs. Rutledge, 2/19/08).

2. Plaintiff Master Sergeant Thomas R. Rutledge ("Master Sergeant Rutledge") was, at all relevant times, an active duty service member in the United States Air Force. (Test. Master Sergeant Rutledge, 3/4/08).

3. During the months of July and August of 2004, Mrs. Rutledge received medical treatment rendered by government employees of the military health care network located on Guam. (Test. Mrs. Rutledge, 2/19/08).

***JULY 27, 2004 APPOINTMENT AT ANDERSEN  
AIR FORCE BASE CLINIC***

4. Mrs. Rutledge received medical care at the Andersen Air Force Base Family Practice Clinic on July 27, 2004, August 2, 2004 and August 17, 2004. (Test. Mrs. Rutledge, 2/19/08, Plaintiffs' Trial Exs. 3, 5, and 8).

\*2 5. Mrs. Rutledge first sought treatment at the Andersen Air Force Base Clinic on July 27, 2004, because when she awoke that morning, "the right side of [her] vagina felt numb." (Test. Mrs. Rutledge, 2/19/08).

6. Mrs. Rutledge called Andersen Air Force Base Clinic and told the receptionist at the Clinic that she needed an appointment because her vagina felt numb. Specifically, she stated that she needed to see a doctor about her condition. She received an appointment for 2:40 p.m. the same day. (Test. Mrs. Rutledge, 2/19/08).

7. When Mrs. Rutledge arrived at the Andersen Air Force

Base Clinic, personnel provided her with a form called "Low Back Pain-Adult" (hereinafter referred to as "Adult Low Back Pain form"). This form included a checklist of symptoms relevant to the evaluation of low back pain in an adult. (Test. Mrs. Rutledge, 2/19/08, Defendant's Trial Ex. M 5).

8. Mrs. Rutledge completed the checklist portion of the form. She checked "yes" to the following questions: "pain worse at night in bed," "new urine or stool problems like leakage or incontinence," and "loss of sensation in the groin area." (Test. Mrs. Rutledge, 2/19/08, Defendant's Trial Ex. M 5).

9. Mrs. Rutledge was seen by Nurse Practitioner Natalie Y. Giscombe on July 27, 2004. At that time, Nurse Practitioner Giscombe was an Air Force officer, holding the rank of Major in the United States Navy, and was licensed to practice as an adult nurse practitioner. (Test. Giscombe, 2/22/08, 3/12/08).

10. Major Giscombe has since been promoted and presently holds the rank of Lieutenant Colonel (hereinafter referred to as "Lt. Col. Giscombe") in the United States Navy. (Test. Giscombe, 2/22/08).

11. Lt. Col. Giscombe ordered a urinalysis for Mrs. Rutledge. (Test. Giscombe, 2/22/08, Defendant's Trial Ex. M 7).

12. Mrs. Rutledge remained at the Andersen Air Force Base Clinic to await the results of the urinalysis. After Lt. Col. Giscombe received the results, she informed Mrs. Rutledge that the urinalysis was normal and did not show signs of a urinary tract infection. (Test. Giscombe, 2/22/08).

13. Lt. Col. Giscombe diagnosed Mrs. Rutledge with right sciatica and prescribed Naproxen, Vicodin, and Flexoril for Mrs. Rutledge. She did not order an x-ray because she believed it was not warranted at that time. (Test. Mrs. Rutledge, 2/19/08, Test. Giscombe, 2/22/08, Defendant's Trial Ex. M 6).

14. After the urinalysis ruled out the possibility of a urinary tract infection, no further testing was performed to investigate Mrs. Rutledge's complaint of urination frequency. Lt. Col. Giscombe concluded that since Mrs. Rutledge was "new to Guam," she was drinking a lot of water. In fact, Mrs. Rutledge had arrived on Guam almost ten months before, in October 2003. (Test. Mrs. Rutledge, 2/19/08, Test. Giscombe, 2/22/08).

15. Plaintiffs' expert, Dr. Gary Towle, Board Certified in Emergency Medicine, testified that it was below the standard of care to fail to perform further testing to investigate Mrs. Rutledge's complaint of urination frequency after the urinalysis ruled out the possibility of a urinary tract infection.

\*3 16. At the July 27, 2004 appointment, Lt. Col. Giscombe did not address Mrs. Rutledge's complaint of loss of sensation in the groin area. (Mrs. Rutledge, 2/19/08).

17. At the July 27, 2004 appointment, Lt. Col. Giscombe did not request Mrs. Rutledge to undress during her examination. Lt. Col. Giscombe failed to consult with her physician preceptor. Lt. Col. Giscombe did not refer Mrs. Rutledge to a specialist. (Test. Mrs. Rutledge, 2/19/08, Test. Giscombe, 2/22/08).

18. The United States expert, Dr. Michael W. Meriwether, Board Certified in Neurological Surgery, testified that the

only accurate way to test for numbness is to have the patient undress so that the affected area is exposed for examination. (Test. Meriwether, 3/10/08).

19. As a Nurse Practitioner, Lt. Col. Giscombe is considered a midlevel provider. (Plaintiffs' Trial Ex. 33).

20. A physician preceptor is a medical doctor in the Air Force who is assigned to a midlevel provider to review their work. Even though Lt. Col. Giscombe was assigned a particular physician preceptor in July and August of 2004, she was free to consult any one of the three other preceptors at the Andersen Air Force Base Clinic. (Test. Giscombe, 2/22/08).

21. Mrs. Rutledge believed she was being treated by a physician and that Lt. Col. Giscombe was a medical doctor. Consistent with this belief, even three months after her initial visit to the Andersen Air Force Base Clinic, the Plaintiffs referred to Lt. Col. Giscombe as Dr. Giscombe, when the Plaintiffs wrote a letter of complaint to the United States Air Force in October 2004. (Test. Mrs. Rutledge, 2/19/08, Defendant's Trial Ex. Y).

22. The court finds that, even assuming *arguendo*, that Lt. Col. Giscombe informed Mrs. Rutledge that she was a nurse practitioner and not a medical doctor, her actions on July 27, 2004, still fell below the standard of care when she failed to consult a physician preceptor about Mrs. Rutledge's case.

23. Mrs. Rutledge's condition did not improve after the July 27, 2008 appointment. Her condition worsened, and she experienced greater numbness in her vaginal area, and experienced numbness in her buttocks, the backs of her thighs, and soles of her feet. Additionally, she testified that she needed to press on her bladder in order to urinate.

(Test.Mrs.Rutledge, 2/19/08).

**AUGUST 2, 2004 APPOINTMENT AT ANDERSEN  
AIR FORCE BASE CLINIC**

24. Mrs. Rutledge called the Andersen Air Force Base Clinic on August 2, 2004, and insisted on receiving an appointment with a physician for the same day. She informed the appointment clerk of her inability to urinate without pressing on her bladder, and that the sensation of numbness had spread to her lower body. Mrs. Rutledge subsequently received an appointment at the Andersen Air Force Base Clinic for treatment that same day. (Test. Mrs. Rutledge, 2/19/08, Defendant's Trial Ex. M 8).

25. Staff at the Andersen Air Force Base Clinic again provided Mrs. Rutledge with the Adult Low Back Pain form. (Test. Mrs. Rutledge, 2/19/08, Defendant's Trial Ex. M 8).

\*4 26. Mrs. Rutledge completed the checklist portion of the form. She checked "yes" to the question "loss of sensation in groin area." (Test. Mrs. Rutledge, 2/19/08, Defendant's Trial Ex. M 8).

27. At the second visit, on August 2, 2004, Mrs. Rutledge was seen by Captain Steven Rau ("Capt.Rau"), an Air Force officer and a licensed physician assistant. (Test.Rau, 2/25/08).

28. Mrs. Rutledge informed Capt. Rau of her worsening condition and explained that she was experiencing greater numbness in her vagina, and that the numbness had spread to her buttocks, the backs of her thighs, and soles of her feet. Additionally, she told Capt. Rau that she needed to press on her bladder in order to urinate.

(Test.Mrs.Rutledge, 2/19/08).

29. Capt. Rau documented her complaint as "numbness in her right gluteal/thigh area, pain down her left leg to her calf." (Defendant's Trial Ex. M 8).

30. Capt. Rau was aware that this was Mrs. Rutledge's second visit to the Andersen Air Force Base Clinic for unresolved back pain and urinary complaints because he had reviewed her previous urinalysis lab results on the computer. (Test.Rau, 2/25/08).

31. On the August 2, 2004 visit, Capt. Rau performed a physical examination of Mrs. Rutledge and ordered L-spine x-rays. Just like Lt. Col. Giscombe, he did not ask Mrs. Rutledge to undress during his examination. Capt. Rau also did not perform tests addressing her complaint of numbness. (Test.Rau, 2/25/08, Test.Mrs.Rutledge, 2/19/08).

32. Capt. Rau concluded that Mrs. Rutledge was dehydrated based upon the specific gravity in her July 27, 2004 urinalysis lab results. (Test.Rau, 2/25/08).

33. Capt. Rau told Mrs. Rutledge that a radiologist at the United States Naval Hospital ("Naval Hospital") would read the x-ray and that the results would be back in one to three weeks. (Test.Rau, 2/25/08).

34. Capt. Rau briefly looked at the x-rays taken on the August 2, 2004 visit, and told Mrs. Rutledge that he did not see any "overtly concerning abnormalities on the x-ray" but that the radiologist at Naval Hospital would be able to examine them more thoroughly. (Test.Rau, 2/25/08).

35. Capt. Rau prescribed Valium to be taken instead of the Flexoril prescribed by Lt. Col. Giscombe. Mrs. Rutledge was told to continue the use of both Naproxen and Vicodin. (Test. Rau, 3/12/08, Defendant's Trial Ex. M 9).

36. Mrs. Rutledge testified that Capt. Rau told her he would prescribe physical therapy for her back at the Naval Hospital. She testified that Capt. Rau told her to call the Naval Hospital that afternoon to set up an appointment, and in the meantime he would submit her referral for physical therapy at Naval Hospital. (Test.Mrs.Rutledge, 2/19/08).

37. When Mrs. Rutledge called the Naval Hospital later that afternoon, as instructed by Capt. Rau, she discovered that Naval Hospital had no record of any referral for her. She subsequently called the Andersen Air Force Base Clinic to inform it of the situation, but never received any follow-up. She concluded that Capt. Rau had changed his mind about her need for physical therapy. (Test.Mrs.Rutledge, 2/19/08).

\*5 38. At the August 2, 2004 appointment, Capt. Rau instructed Mrs. Rutledge to return to the Andersen Air Force Base Clinic if her symptoms failed to improve. (Test. Rau, 3/12/08, Defendant's Trial Ex. M 9).

39. Just like Lt. Col. Giscombe, Capt. Rau did not consult with his supervising physician preceptor concerning Mrs. Rutledge's condition. The August 2, 2004 medical record of Mrs. Rutledge by Capt. Rau was neither reviewed nor countersigned by Capt. Rau's physician preceptor at any time. (Test.Rau, 2/25/08).

40. According to Capt. Rau in August of 2004, not all of the medical records were regularly reviewed by a physician preceptor at the Andersen Air Force Base

Clinic. The policy was for medical doctors to randomly review approximately 10% of a physician assistant's records at the end of every month. (Test.Rau, 2/25/08).

41. Capt. Rau failed to adequately address and investigate Mrs. Rutledge's complaint of loss of sensation in her groin area. Plaintiffs' expert, Dr. Towle, testified that failing to perform further testing to investigate Mrs. Rutledge's continuing complaint of urination frequency and consult with a supervising physician preceptor was below the standard of care. (Test. Towle 2/25/08).

42. Mrs. Rutledge believed she was being treated by a physician and that Capt. Rau was a medical doctor. Consistent with this belief, even three months after her initial visit to the Andersen Air Force Base Clinic, the Plaintiffs referred to Capt. Rau as Dr. Rau, when the Plaintiffs wrote a letter of complaint to the United States Air Force in October 2004. (Test. Mrs. Rutledge, 2/19/08, Defendant's Trial Ex. Y).

43. The court finds that, even assuming *arguendo*, that Capt. Rau informed Mrs. Rutledge that he was a physician assistant and not a medical doctor, his actions on August 2, 2004, fell below the standard of care when he failed to consult a physician preceptor about her case.

44. Mrs. Rutledge testified that after her August 2, 2004 appointment, her condition did not improve, so she called the Andersen Air Force Base Clinic for a referral to the Naval Hospital. (Test.Mrs.Rutledge, 2/19/08).

45. On August 16, 2004, Mrs. Rutledge called the Andersen Air Force Base Clinic for the third time since her symptoms began, complaining of back pain and numbness. Mrs. Rutledge informed the receptionist that the medication she was taking was not working and she

wanted a referral to Naval Hospital. (Test. King, 3/12/08, Defendant's Trial Ex. M 13).

46. Triage nurse Captain Stephanie King ("Capt.King") returned Mrs. Rutledge's call. Mrs. Rutledge told Capt. King that the medication was not working and that she wanted a referral to the Naval Hospital Orthopedic Clinic. In order to obtain a referral, Mrs. Rutledge was told she first had to come in for an appointment. Capt. King scheduled Mrs. Rutledge for a 9:45 a.m. appointment the next day at the Andersen Air Force Base Clinic. (Test. King, 3/12/08, Defendant's Trial Ex. M 13).

***AUGUST 17, 2004 APPOINTMENT AT ANDERSEN  
AIR FORCE BASE CLINIC***

\*6 47. On August 17, 2004, Mrs. Rutledge arrived for her scheduled appointment at the Andersen Air Force Base Clinic. Upon checking in for her appointment at the reception area, Mrs. Rutledge was again handed the Adult Low Back Pain form. She refused to fill it out because she had completed it twice in the past and received no relief. Mrs. Rutledge told the staff she would not answer any question on the Adult Low Back Pain form because she was only there to get a referral to Naval Hospital. (Test.Mrs.Rutledge, 2/19/08).

48. Instead of receiving an immediate referral she was taken to see Lt. Col. Giscombe. On August 17, 2004, Mrs. Rutledge still believed Lt. Col. Giscombe to be a physician. Mrs. Rutledge refused to be examined by Lt. Col. Giscombe, and instead insisted on a referral. Mrs. Rutledge made sure that Lt. Col. Giscombe enter the referral into the computer system in her presence, because the last time a physical therapy referral was ordered by Capt. Rau, it was never transmitted to Naval Hospital. Lt. Col. Giscombe entered the referral into the computer. The meeting with Lt. Col. Giscombe lasted approximately 10

minutes. (Test.Mrs.Rutledge, 2/19/08).

49. When Lt. Col. Giscombe saw Mrs. Rutledge on August 17, 2004, she recalled previously having examined Mrs. Rutledge on July 27, 2004. Lt. Col. Giscombe also knew from the record of her x-ray results, that Mrs. Rutledge had been seen at the Andersen Air Force Base Clinic on August 2, 2004. (Test.Giscombe, 2/22/08).

50. Mrs. Rutledge testified that Lt. Col. Giscombe told her after reviewing her chart, that it looked like she had a herniated disc. Mrs. Rutledge then asked Lt. Col. Giscombe when she was going to be informed of that diagnosis. Mrs. Rutledge testified that Lt. Col. Giscombe failed to respond to the question. (Test.Mrs.Rutledge, 2/19/08).

51. Mrs. Rutledge informed Lt. Col. Giscombe of her worsening condition and explained to her that she experienced greater numbness in her vagina, and that the numbness had spread to her buttocks, the backs of her thighs, and soles of her feet. Additionally, she testified that she told Lt. Col. Giscombe that she needed to press on her bladder in order to urinate. She told Lt. Col. Giscombe that nothing was getting better, and that her condition was worsening. (Test.Mrs.Rutledge, 2/19/08).

52. Lt. Col. Giscombe did not further investigate Mrs. Rutledge's complaint of vaginal numbness on August 17, 2004. Just like the July 27, 2004 visit, she did not ask Mrs. Rutledge to undress. Lt. Col. Giscombe failed to perform any tests regarding Mrs. Rutledge's complaints of numbness. (Test.Mrs.Rutledge, 2/19/08).

53. The United States' expert, Dr. Meriwether, testified that the only accurate way to test for numbness is to have the patient undress so that the affected area is exposed for

examination. (Test .Meriwether, 3/10/08).

54. Lt. Col. Giscombe knew that the only way to test for numbness in the perineal area would be to perform a vaginal exam and/or a rectal exam. Just as on July 27, 2004, Lt. Col. Giscombe failed to consult with her physician preceptor and failed to refer Mrs. Rutledge to a specialist. (Test.Giscombe, 2/22/08).

\*7 55. Dr. Towle testified that failing to consult with her physician preceptor given Mrs. Rutledge's symptoms, fell below the standard of care owed to Mrs. Rutledge. (Test.Towle, 2/25/08).

56. Pursuant to Andersen Air Force Base 36th Medical Group Instruction 40-112 (Plaintiffs' Trial Ex. 33), which was in effect in July and August 2004, as a mid-level provider, Lt. Col. Giscombe was required to refer her patient to her assigned physician preceptor as her patient had not improved after the second visit. Because Lt. Col. Giscombe was referring Mrs. Rutledge to higher specialty care, she did not think it was necessary to refer Mrs. Rutledge to her physician preceptor. (Test.Giscombe, 2/22/08).

57. Lt. Col. Giscombe discontinued the use of Naproxen, as Mrs. Rutledge said it was ineffective, and instead prescribed Vioxx for pain. (Test. Giscombe, 2/22/08, Defendant's Trial Ex. M 15).

#### ***ORTHOPEDIST REFERRAL TO NAVAL HOSPITAL***

58. The referral given by Lt. Col. Giscombe to Mrs. Rutledge on August 17, 2004, was a *routine referral* and not an *emergency or urgent referral* with an orthopedist at

the Naval Hospital. As a result, Mrs. Rutledge was not given an appointment to see an orthopedist at the Naval Hospital until August 23, 2004. (Test. Giscombe, 2/22/08, emphasis added).

59. Mrs. Rutledge's condition did not improve during the period between her August 17, 2004 appointment, and her scheduled August 23, 2004 appointment. She testified that during that time she was in constant pain and had difficulty sleeping. (Test.Mrs.Rutledge, 2/19/08).

60. Super Typhoon Chaba was approaching Guam over the weekend of August 21, 2004. Due to the impending storm, the Naval Hospital called Mrs. Rutledge on August 22, 2004, to cancel the orthopedic appointment scheduled for August 23, 2004. She was told that the appointment would be rescheduled after the storm passed, and that she would be among one of the first people called to reschedule and given one of the earliest appointment times, since her appointment had been scheduled for Monday morning. (Test. Mrs. Rutledge, 2/19/08, Test. Master Sergeant Rutledge, 3/4/08).

61. On or about August 24, 2004, Mrs. Rutledge experienced an episode of fecal incontinence while she was vacuuming. She attributed this event to stress. She considered it an "accident" and was ignorant of the medical significance of this event. (Test.Mrs.Rutledge, 2/19/08).

62. Mrs. Rutledge neither called 911 nor sought immediate medical care following her episode of fecal incontinence. Mrs. Rutledge testified that both Lt. Col. Giscombe and Capt. Rau never informed her that she should seek immediate medical attention if she experienced fecal incontinence. (Test. Mrs. Rutledge, 2/19/08, Test. Master Sergeant Rutledge, 3/4/08, Defendant's Trial Ex. N 1).

63. No one from the Naval Hospital called between August 22 and August 25, 2004 to reschedule Mrs. Rutledge's appointment. On August 25, 2004, Mrs. Rutledge called the Naval Hospital to reschedule her orthopedic appointment. She insisted on receiving an appointment for that week. She received an appointment for August 27, 2004. (Test.Mrs.Rutledge, 2/19/08).

\*8 64. On August 27, 2004, Mrs. Rutledge was seen at the Naval Hospital by orthopedic surgeon, Dr. Douglas Duncan. Because she felt she was unable to drive herself, Mrs. Rutledge's neighbor drove her to the appointment. (Test.Mrs.Rutledge, 2/19/08).

65. Mrs. Rutledge informed Dr. Duncan of all of her symptoms, including the numbness in her vaginal area, buttocks, the backs of her thighs, and soles of her feet. She did not immediately inform him of her episode of fecal incontinence. However, she told him about the episode when he questioned her about her bladder and bowel problems. Based on the history of her symptoms, Dr. Duncan had Mrs. Rutledge undress and performed a physical examination which included a rectal exam and a post void residual urine examination. He determined that she had little to no rectal tone, was incontinent of bowel, and was experiencing symptoms of Cauda Equina Syndrome. He immediately arranged for Mrs. Rutledge to be admitted to the Naval Hospital pending an emergency medical air evacuation to the Tripler Army Medical Center in Hawaii. (Test.Mrs.Rutledge, 2/19/08, Test.Duncan, 2/22/08).

66. On August 27, 2004, Dr. Duncan immediately diagnosed Mrs. Rutledge with Cauda Equina Syndrome, and noted on his report that she had the condition for approximately three weeks.<sup>FN2</sup>(Test.Duncan, 2/22/08).

FN2. The court notes the professionalism and quick thinking exhibited by Dr. Duncan, who had only arrived on Guam six days before. Although Guam was Dr. Duncan's first duty station as an orthopedic surgeon, he immediately recognized the gravity of Mrs. Rutledge's situation and took quick action to address the damage to Mrs. Rutledge's nerves and to prevent further damage from occurring.

#### ***IMMEDIATE TRANSFER TO HAWAII'S TRIPLER ARMY MEDICAL CENTER***

67. Dr. Joseph Orchowski ("Dr.Orchowski"), a neurosurgeon at Hawaii's Tripler Army Medical Center, had agreed, upon telephone consultation with Dr. Duncan, to accept Mrs. Rutledge for emergency care. Upon arrival at Tripler Army Medical Center, on August 27, 2004, Dr. Orchowski ordered a magnetic resonance imaging test ("MRI"), which confirmed the preliminary diagnosis of a large herniated L5-S 1 disc causing Cauda Equina Syndrome. As a result, Dr. Orchowski performed an emergency diskectomy. (Deposition of Dr. Orchowski, 3/1/07, p. 10-17).

68. Plaintiffs met with Dr. Orchowski after the surgery in preparation for their return to Guam. At that time, Dr. Orchowski told them that it may take up to two years for Mrs. Rutledge's neurological symptoms to improve. He further stated that "it was unfortunate that the disc set [on Mrs. Rutledge's nerves] for three weeks."<sup>FN3</sup>(Test.Mrs.Rutledge, 2/20/08).

FN3. At trial on March 13, 2008, the court ruled that the statement made by Dr. Orchowski was non-hearsay as admission by a party opponent.

69. Mrs. Rutledge ran into Capt. Rau in the spring of 2005 at the Andersen Air Force Base Health and Wellness Center, where he told her, "I'm sorry for what happened to you." (Test.Rau, 2/25/08).

**DR. MERIWETHER'S TESTIMONY**

70. The United States failed to present any testimony on the standard of care for negligence actions on Guam, nor did it address the standard of care when cross examining any of the Plaintiffs' medical expert witnesses.<sup>FN4</sup>

FN4. The court finds it disturbing that the United States attorneys failed to present a defense in this regard, particularly in light of the fact that millions of dollars were at risk in this action.

71. The United States presented expert opinion testimony through Dr. Michael W. Meriwether, who testified on cross examination that typical symptoms of Cauda Equina Syndrome include: pain, saddle anesthesia (numbness in groin and perineal areas), bowel or bladder dysfunction (including incontinence, retention, constipation, and urination frequency) and bilateral symptoms. Dr. Meriwether testified that the appearance of these symptoms would constitute an emergency situation, and would need to be addressed immediately. (Test.Meriwether, 3/10/08).

\*9 72. Dr. Meriwether also testified that not all Cauda Equina Syndrome patients present with all the signs and symptoms of Cauda Equina Syndrome. (Defendant's Trial Ex. A, RUT 399).

73. The medical records of Mrs. Rutledge's first visit to the Andersen Air Force Base Clinic on July 27, 2004

contained signs and symptoms indicative of Cauda Equina Syndrome. On that day, Mrs. Rutledge complained of loss of sensation in the groin area (saddle anesthesia), with 4-5 days low back pain and a new urinary symptom identified as urination frequency. (Defendant's Trial Ex. M 5).

74. Dr. Meriwether admitted that three of the four symptoms of Cauda Equina Syndrome that he listed in his testimony were present at Mrs. Rutledge's July 27, 2004 visit. (Test.Meriwether, 3/10/08).

75. Dr. Meriwether testified that it is his personal practice to make his patients undress at least to their undergarments when testing for numbness. He testified that in order to accurately test for perineal numbness, a patient would have to remove both their clothes and undergarments. (Test.Meriwether, 3/10/08).

76. The August 2, 2004 medical records from the Andersen Air Force Base Clinic demonstrate a progressing deterioration of Mrs. Rutledge's neurological condition specifically involving her sacral nerve roots. By August 2, 2004, her symptoms had become bilateral and were described as numbness in her right gluteal/perineal area, and pain down her left leg. (Defendant's Trial Ex. M 8).

77. By the time Mrs. Rutledge sought further treatment on August 17, 2004, she had a positive limp clearly indicating a continued progressive decline of her condition. (Defendant's Trial Ex. M 14-15).

78. When Mrs. Rutledge presented at the Naval Hospital on August 27, 2004, with a history of two days fecal incontinence, her condition was immediately diagnosed as Cauda Equina Syndrome. Her rectal tone was altered, and she had urine retention as confirmed by a urine residual analysis test. An MRI taken several hours later in Hawaii

confirmed the diagnosis. (Test.Duncan, 2/22/08).

79. Dr. Meriwether testified that the key to diagnosing Cauda Equina Syndrome in a patient is by taking an MRI. An MRI, though available on Guam in July and August 2004, was not taken of Mrs. Rutledge's lumbosacral spine at any time during her treatment at the Andersen Air Force Base Clinic on July 27, 2004, August 2, 2004 and August 17, 2004. (Defendant's Trial Ex. M 5).

80. The court finds that the signs and symptoms of Cauda Equina Syndrome were already present when Mrs. Rutledge consulted at the Andersen Air Force Base Clinic on July 27, 2004, August 2, 2004 and August 17, 2004.

81. The healthcare providers at the Andersen Air Force Base Clinic failed to recognize the alarming neurological symptoms of Mrs. Rutledge as needing emergency medical attention. Mrs. Rutledge was under the mistaken belief that she was under the care of medical doctors. Nothing in their treatment of her complaints led her to believe that her condition was serious or emergent. It is reasonable that the emergency nature of Mrs. Rutledge's condition would not be immediately apparent to Mrs. Rutledge, a woman with zero medical background or training.

#### ***DR. STEELE'S TESTIMONY***

\*10 82. Plaintiffs' expert, Dr. John C. Steele ("Dr. Steele"), a neurologist, testified that if Mrs. Rutledge had been properly diagnosed and treated in a timely manner on July 27, 2004, she would not suffer from permanent disability today. (Test.Steele, 3/3/08).

83. Dr. Steele testified, within a reasonable degree of

medical certainty, that if Mrs. Rutledge had been properly diagnosed and treated in a timely manner on August 2, 2004, she would have only minor residual urinary symptoms. (Test.Steele, 3/3/08).

84. Dr. Steele testified that if Mrs. Rutledge had been properly diagnosed and treated in a timely manner on August 17, 2004, Mrs. Rutledge would have suffered residual symptoms of urinary retention and overflow incontinence, but she would not have bowel incontinence and it would be unlikely for her to have significant leg weakness, gait abnormality, or painful paresthesiae. (Plaintiffs' Trial Ex. 22, Test. Steele, 3/3/08).

85. Dr. Steele personally examined Mrs. Rutledge on two separate occasions, on June 2, 2006, and on February 17, 2008. Dr. Steele reviewed and classified her physical deficits and performed a disability rating pursuant to the American Medical Association Guidelines. Dr. Steele found that Mrs. Rutledge suffered a "gait disorder" due to her antalgic gait. He further found that she suffered from bowel and bladder neurological disorders and neurological sexual impairment. (Test.Steele, 2/29/08).

86. After assessing these impairments under the American Medical Association Guidelines, Dr. Steele assigned a 76 to 96 percent whole person disability after the June 2, 2006 examination and increased it to an 88 to 98 percent whole person disability after the February 17, 2008 examination. (Test.Steele, 2/29/08).

87. Dr. Steele routinely performs this type of assessment in his practice to determine if a person is entitled to medical retirement benefits from the Government of Guam Retirement Fund. The disability assessment is not meant to imply that the person being assessed is totally unable to perform some functions of daily life, but rather it is an evaluation of a person's disability of functional capacity

when compared to a "normal" population. (Test.Steele, 3/3/08).

her own bathroom readily available and close by. (Test. Mrs. Rutledge, 2/20/08, Test. Master Sergeant Rutledge, 3/4/08).

**THE SUFFERING OF MRS. RUTLEDGE AND  
MASTER SERGEANT RUTLEDGE**

88. As a result of the delay in diagnosing Mrs. Rutledge's worsening condition of Cauda Equina Syndrome, her sacral nerve roots were irreversibly damaged. Consequently, Mrs. Rutledge suffers permanent neurological and genito-urinary injuries and resulting damages. She has numb buttocks, a numb vagina, a neurogenic bladder, bowel dysfunction and neuropathic pain for which she takes several different medications. Mrs. Rutledge also suffers from paresthesia down the back of her legs and feet. Her intermittent neuropathic pain has been described as a searing, burning pain that could last anywhere from 45 to 60 seconds. This paralyzing pain can strike at any time and in any part of her body where her spinal nerve roots and their anatomic distributions have been damaged. Mrs. Rutledge's current condition is not likely to improve given the fact that it has been four years since the date of her injury. Mrs. Rutledge has difficulty sleeping through the night and relies on hypnotic medication such as Ambien. She is unable to sit like a normal person, unable to walk for an extended period of time without experiencing pain, and is permanently disabled as a whole person. (Plaintiffs' Trial Ex. 21).

\*11 89. As a result of Mrs. Rutledge's permanent neurological and genito-urinary injuries, her husband, Master Sergeant Rutledge has suffered the loss of love, companionship, consortium, and services usually provided by a spouse in good health and of unimpaired vigor and strength. Before his wife's injuries, the couple was always "on the go." They went shopping, to the movies, attended social gatherings and barbeques, went dancing, and bowling. Presently, Mrs. Rutledge confines herself to her home where she can sleep, rest, and have the comfort of

90. Prior to this incident, Master Sergeant Rutledge and Mrs. Rutledge enjoyed an active sexual life with normal sexual intercourse approximately 2-4 times a week (Plaintiffs' Trial Ex. 21 p. 6). As a result of his wife's injuries, they have not engaged in any satisfying sexual activity. Master Sergeant Rutledge testified that they have had sex "maybe twice" in the past year. (Test. Master Sergeant Rutledge, 3/4/08).

**TESTIMONY OF ECONOMIC EXPERTS**

91. Plaintiff Deborah K. Rutledge, born in December of 1960, was 43 years old when she sustained injuries in this case. Her life expectancy, based upon the *United States Life Tables 2003*, from National Center for Health Statistics, contained in the United States' economic expert's report from the date of injury is 38.3 years to age 81.9. (Defendant's Trial Ex. U).

92. On the matter of economic damages, Plaintiffs and Defendant each presented expert testimony on Mrs. Rutledge's past and future lost income. Plaintiffs presented testimony by Gary Hiles, Chief Economist for the Government of Guam, Department of Labor. ("Mr.Hiles").

93. Mr. Hiles used Mrs. Rutledge's history of earnings throughout her life and the growth rate represented in that earnings history to project her future earning capacity through regression analysis. (Test.Hiles, 3/5/08).

94. The United States presented testimony by Dr. Laura Taylor ("Dr.Taylor"), who has a Ph.D. in Economics and

has testified in various other courts as a forensic economic consultant.

95. In calculating the lost earning capacity of Mrs. Rutledge, Dr. Taylor used the mean annual earnings in each of the occupations of Cashier, Retail Sales, and Supervisor of Food Service. The base wage for Supervisor of Food Service is higher than the employment history wage used by Mr. Hiles in his calculations. (Test. Taylor, 3/6/08).

96. Dr. Taylor testified that her calculations for earnings in each of these three occupations included fringe benefits, payroll taxes, and the discount rate. She also made two separate calculations of each of these three occupations: one that included income taxes and one that excluded income taxes. (Test. Taylor, 3/6/08, Defendant's Trial Ex. U).

97. Beginning in 2005 all of Dr. Taylor's calculations on Mrs. Rutledge's earnings are reduced by the 0.76 employment factor to account for statistically expected periods of voluntary unemployment. No involuntary unemployment was assumed. (Defendant's Trial Ex. U).

\*12 98. In predicting loss of income, it is important to consider Mrs. Rutledge's past work history. Mrs. Rutledge testified at trial about her history of employment. Her highest salary earned was when she was a general manager at a Wendy's restaurant. (Test. Mrs. Rutledge, 2/20/08).

99. Mrs. Rutledge has been employed throughout her adult life. She began working as a cashier in 1978 at the age of 17 at a Kentucky Fried Chicken restaurant. She worked there until 1981. She then went to work for Wendy's. She worked there for 12 years. She started as a cashier, then was subsequently promoted to shift manager, assistant

manager, co-manager, and finally as a general manager. She became a general manager in 1991-1992. She made roughly \$21,000 per year as a general manager. She resigned from her position at Wendy's in 1993, to try something different and to spend more time with her child. (Test. Mrs. Rutledge, 2/20/08).

100. She returned to work for Wendy's in 1998. She started as a co-manager, then became general manager. She worked as a general manager until a month before her marriage, in May 2001. She resigned to prepare for the wedding and pack up her house, when she moved. She went back to work in August of 2001, as a receptionist for an optometrist, and was also studying to become an optician. She worked until May 2003, when she resigned because she was planning on attending college. Instead, in June of 2003, Master Sergeant Rutledge received orders to deploy to Guam. (Test. Mrs. Rutledge, 2/20/08).

101. Mrs. Rutledge did not work while on Guam. At the time Mrs. Rutledge developed Cauda Equina Syndrome, she was unemployed. Her original plan while on Guam was to remain voluntarily unemployed, and after she left Guam she would go to college to become a librarian, or become a manager at Wendy's. However, she changed her mind and applied to work at a pet store because she was bored and wanted part-time work. (Test. Mrs. Rutledge, 2/20/08).

102. Mrs. Rutledge has not been employed since leaving her receptionist position in 2003. She does not believe she is currently employable because she takes medicine that makes her drowsy, she does not drive, and, if she feels ill, she either spends the day in bed or on her couch. (Test. Mrs. Rutledge, 2/20/08).

103. After a careful review of the documents and analysis prepared by both economists, the court is persuaded by the

testimony of the United States' expert, Dr. Taylor, and uses her calculations in determining damages as they concern loss of income.<sup>FN5</sup>

FN5. The court was very impressed with the credentials, expert report, and testimony at trial of the United States economic expert, Dr. Laura J. Taylor.

104. Plaintiffs' economic expert's report has credited Mrs. Rutledge twice for the same benefit by including both the employer's social security tax paid on Mrs. Rutledge's behalf during her work years as a fringe benefit received by Mrs. Rutledge and by including that same benefit during her retirement years in his calculations of her lost social security benefits. (Plaintiffs' Trial Ex. 23).

105. At the same time, Plaintiffs' economic expert's report has failed to account for the mandatory tax that Mrs. Rutledge would have to pay out of her earnings during her work life in order to participate in the social security system in her retirement years. (Plaintiffs' Trial Ex. 23).

\*13 106. Plaintiffs' economic expert's report also failed to account for statistically expected periods of voluntary unemployment. (Plaintiffs' Trial Ex. 23).

107. Plaintiffs' economic expert's report extended Mrs. Rutledge's work life to a statistically improbable age. (Plaintiffs' Trial Ex. 23).

108. Plaintiffs' economic expert's report increased Mrs. Rutledge's earnings at the aggressive, and highly improbable rate of 5%. This is almost twice the projected long-run rate of inflation. This rate also exceeds projections of average wage growth across all

occupations. (Plaintiffs' Trial Ex. 23).

109. Mrs. Rutledge testified that she is unable to perform a substantial amount of her normal household chores such as cleaning, vacuuming, laundry and ironing, which she was able to perform prior to her injury. She further testified to two quotes she received from home cleaning services. One of the quotes received by Mrs. Rutledge from American Maid was for \$50.00 per hour and the other quote from Home Maid Service, Inc. was for the amount of \$95.00 per week after an initial \$300.00 deep cleaning for the first visit. (Plaintiffs' Trial Ex. 29).

110. The specifics of the economic damages award is set forth below in the court's discussion on damages.

### **CONCLUSIONS OF LAW**

Under the Federal Tort Claims Act, the United States is liable in damages to an injured party for injuries arising from a negligent act or omission of its employees, if a private person would be liable under the law of the place where the act or omission occurred. *See* 28 U.S.C. § 1346(b); *Mass. Bonding & Ins. Co. v. United States*, 352 U.S. 128, 128-29, 77 S.Ct. 186, 1 L.Ed.2d 189 (1956).

Whether the United States is liable for the negligence of its employees is a question of state law. *See* 28 U.S.C. §§ 1346(b). Accordingly, the court will apply Guam law, which is where the alleged negligent acts and/or omissions occurred. *Brock v. United States*, 601 F.2d 976, 978 (9th Cir.1979). Guam law will apply to both substantive tort liability as well as to the nature and measure of damages to be awarded. *See Lawson v. United States*, 454 F.Supp.2d 373, 417 (D.Md.2006).

The Plaintiffs in the present case have the burden of proving, by the greater weight of evidence, the following: 1) United States owed Plaintiffs a duty or obligation, recognized by law, requiring the United States to conform to a certain standard of conduct, for the protection of others against unreasonable risks of harm; 2) a breach of that duty by the United States, or failure to conform to the required standard; 3) the breach of duty by the United States is the proximate cause of Plaintiffs' injuries; and 4) as a result of Plaintiffs' injuries, they have suffered actual loss or damages. *Merchant v. Nanvo Realty, Inc.*, 1998 Guam 26 ¶ 14.

#### **STANDARD OF CARE**

The Defendant, United States, is required to provide healthcare services within a certain standard of care. The standard of care on Guam is defined as “[t]he prevailing standard of duty, practice, or care by a reasonable physician in the same field practicing medicine in the community at the time of the alleged malpractice.”(10 GCA § 10106).

\*14 Although there is no Guam law on the issue of standard of care, generally in cases of medical malpractice what is or is not the proper standard is a question for experts and it should be established only by their expert testimony. “In professional malpractice cases, expert opinion testimony is required to prove or disprove that the defendant performed in accordance with the prevailing standard of care, except in cases where the negligence is obvious to laymen.” See *Garibay v. Hemmat*, 161 Cal.App.4th 735, 741, 74 Cal.Rptr.3d 715, 719 (Ct.App.2008) (quoting *Kelley v. Trunk*, 66 Cal.App.4th 519, 523, 78 Cal.Rptr.2d 122 (Ct.App.1998)).

The court finds from the testimony of Plaintiffs' expert, Dr. Towle, that the standard of care for midlevel providers

in an urgent care clinic such as the Andersen Air Force Base Clinic required that the neurological basis of Mrs. Rutledge's complaint of groin numbness be investigated and diagnosed during her visits at the Andersen Air Force Base Clinic and that a consultation with the midlevel provider's physician preceptor on the same day should have been made. The court finds that the standard of care also required that her treating healthcare providers follow up on her urinary symptoms after the urinalysis did not explain what could be causing said symptoms.

#### **FAILURE TO CONFORM TO REQUIRED STANDARD OF CARE**

At no time during Mrs. Rutledge's three healthcare visits to the Andersen Air Force Base Clinic did any of her healthcare providers investigate a differential diagnosis to address her progressing urinary complaints. Nor did her healthcare providers address her continued complaint of numbness in her groin in the context of progressive low back pain and other additional neurological complaints of pain and numbness in her legs.

Plaintiffs' expert, Dr. Towle, testified that a differential diagnosis is a method used by physicians to rank the potential diagnostic possibilities most consistent with a patient's complaints. In all three of Mrs. Rutledge's Andersen Air Force Base Clinic visits, her presenting signs and symptoms were clearly far in excess of what is seen in a normal adult patient experiencing low back pain.

On her first visit to the Andersen Air Force Base Clinic on July 27, 2004, Mrs. Rutledge already presented with mild symptoms consistent with Cauda Equina Syndrome; specifically urination frequency, numbness in the groin and 4-5 days of low back pain. Dr. Meriwether agreed that most patients do not present with all of the symptoms characteristics of Cauda Equina Syndrome (Defendant's

Trial Ex. A, RUT 401), because it is impossible, in a significant portion of patients, to exclude the diagnosis of a prolapsed intervertebral disc with suspected cauda equina compromise. Dr. Meriwether further agreed with the recommendation of the authors of the study he attached to his report that urgent MRI assessment is necessary in all patients who present with new onset urinary symptoms in the context of lumbar back pain or sciatica. (Defendant's Trial Ex. A, RUT 404). Compliance with the standard of care as established by the testimony of Dr. Towle required a recognition of Mrs. Rutledge's neurological symptoms as unusual and required, at the very least, a consultation with a physician preceptor. The court concludes that the treatment provided by Lt. Col. Giscombe to Mrs. Rutledge at the Andersen Air Force Base Clinic on July 27, 2004 fell below the standard of care required under the circumstances and the overall treatment was therefore negligent.

\*15 On August 2, 2004, Mrs. Rutledge presented with additional signs and symptoms indicative of a continuing serious neurological problem. Capt. Rau's differential diagnosis of musculoskeletal back pain clearly did not take into consideration Mrs. Rutledge's urinary complaints, her complaint of numbness in the groin or her bilateral numbness and pain symptoms in the context of her progressing low back pain. Compliance with the standard of care as established by the testimony of Dr. Towle required a recognition of Mrs. Rutledge's progressing neurological symptoms as unusual and not typical of an adult low back pain patient which required at the very least a consultation with a physician preceptor. The court concludes that the treatment provided by Capt. Rau to Mrs. Rutledge at the Andersen Air Force Base Clinic on August 2, 2004, fell below the standard of care owed to Mrs. Rutledge and the overall treatment was therefore negligent.

Capt. Rau's medical record of his consultation with Mrs. Rutledge was neither reviewed nor countersigned by his

supervising physician. This failure by a supervising physician preceptor to review and countersign his physician assistant's August 2, 2004 medical record within 7 days is below the standard of care established by Guam law, (10 G.C.A. § 121607(a) and (b)), and the overall treatment is therefore negligent.

On August 17, 2004, Mrs. Rutledge presented with worsening neurological symptoms and four weeks of progressively worsening low back pain. She was determined to have 'radiculopathic (radiating) pain to her left lower extremity to foot, positive limp, numbness in her right thigh/ and inferior aspect of right glut/perineal area.' (Defendant's Trial Ex. M 14).

At that time an MRI was already being suggested by the radiologist who had given his findings of degenerative disc disease at the L5-S1 and suggested a correlation with the patient's symptoms. (Defendant's Trial Ex. M 11). Despite these findings, a *routine referral* was given by the midlevel provider to orthopedics at the Naval Hospital. (Emphasis added).

Compliance with the standard of care as testified to by Dr. Towle required a recognition of Mrs. Rutledge's progressing neurological symptoms as unusual, progressing, and alarming which required *immediate and urgent consultation* with a physician preceptor or a neurological or orthopedic specialist. The court concludes that the treatment provided by Lt. Col. Giscombe to Mrs. Rutledge at the Andersen Air Force Base Clinic on August 17, 2004 fell below the standard of care owed to her and the overall treatment was therefore negligent. (Emphasis added).

Furthermore, on August 17, 2004, Mrs. Rutledge's third visit to the Andersen Air Force Base Clinic, Lt. Col. Giscombe was mandatorily required to comply with 36th

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Medical Group Instruction 40-112 (Plaintiffs' Trial Ex. 33). As a midlevel provider, Lt. Col. Giscombe was mandated to consult with her assigned physician preceptor if a patient's condition had not resolved after the second visit. The court concludes that Lt. Col. Giscombe's *routine referral* of Mrs. Rutledge to orthopedics at the Naval Hospital did not constitute compliance with the said Andersen Air Force Base regulatory requirement and therefore the overall treatment rendered to Mrs. Rutledge was negligent. (Emphasis added).

\*16 It must be noted that Plaintiffs' Exhibit 33 consists of the 36th Medical Group Instruction 40-112 effective June 15, 2005 and January 24, 2007. Plaintiffs assert that the 36th Medical Group Instruction 40-112, effective on May 28, 2004, referenced therein and which Lt. Col. Giscombe testified was the same, was requested by Plaintiffs and never produced by the Defendant during discovery. "[W]here relevant evidence which would properly be part of a case is within the control of a party whose interests it would naturally be to produce it and he fails to do so, without satisfactory explanation, the only inference which the finder of fact may draw is that such evidence would be unfavorable to him. In so holding, we have noted, '(t)his rule is uniformly applied by the courts and is an integral part of our jurisprudence.' " *Pier 67, Inc. v. King County*, 89 Wash.2d 379, 385-6, 573 P.2d 2. 6 (1977) (citing *British Columbia Brewers (1918) Ltd. v. King County*, 17 Wash.2d 437, 455, 135 P.2d 870, 877 (1943)), see also *Albertson's, Inc. v. Arriaga*, No. 04-03-00697-CV, 2004 WL 2045389, at \*2 (Tex.App. Sept. 14, 2004) ("[A] party's failure to produce evidence within its control raises the presumption that, if produced, the evidence would operate against him."). This is the case here.

**DEFENDANT'S BREACH OF DUTY IS THE  
PROXIMATE CAUSE OF PLAINTIFFS' INJURIES**

The court concludes that the Plaintiffs have met their

burden of proving that the United States' employees, namely, Lt. Col. Natalie Y. Giscombe, Adult Nurse Practitioner, and Capt. Steven D. Rau, Certified Physician Assistant, had a duty to diagnose and treat Mrs. Rutledge with the requisite care and skill ordinarily used by healthcare providers in the same field of medicine practicing under similar circumstances, and they failed in that duty. The United States' employees were repeatedly negligent in providing medical care and treatment to Mrs. Rutledge in all her visits to their medical facility at the Andersen Air Force Base Clinic, namely, on July 27, 2004, August 2, 2004 and August 17, 2004.

The court further concludes that the failure by the United States' medical employees to timely and properly treat Mrs. Rutledge is the direct cause of her neurological injuries and resulting damages, as well as the resulting loss of consortium of Mrs. Rutledge's husband, Master Sergeant Rutledge. No evidence was adduced at trial to show that Mrs. Rutledge's injuries and resulting permanent neurological problems and the resulting damages were caused by anything other than the delayed diagnosis of her Cauda Equina Syndrome.

The court finds that but for the negligent conduct of the United States, the damages complained of by Plaintiffs would not have occurred. The court is persuaded by the testimony of Dr. Steele, that Mrs. Rutledge would likely have recovered without any neurological damage if she had been diagnosed and treated in a timely manner on July 27, 2004; that Mrs. Rutledge would, within a reasonable degree of medical certainty, have only minor urinary symptoms if she had been diagnosed and treated in a timely manner on August 2, 2004; that Mrs. Rutledge would have suffered residual symptoms of urinary retention and overflow incontinence, but she would not have bowel incontinence and would unlikely have had significant leg weakness, gait abnormality or painful paresthesiae if she had been diagnosed and treated in a timely manner on August 17, 2004. (Plaintiffs' Trial Ex.

22 p. 2).

applicable local law

***BOTH PLAINTIFFS HAVE SUFFERED ACTUAL  
LOSS AND DAMAGES***

...

\*17 In Federal Tort Claims Act cases, the law of the state where the negligence occurred governs substantive tort liability, including the nature and measure of damages to be awarded. Calva-Cerqueira v. United States, 281 F.Supp.2d 279, 292 (D.D.C.2003) (citing Richards v. United States, 369 U.S. 1, 11, 82 S.Ct. 585, 7 L.Ed.2d 492 (1962)).

(c) *Non-economic loss* shall mean loss for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship; loss of consortium, other than loss of domestic service; hedonic damages; injury to reputation and all other non-pecuniary losses of any kind or nature.

Under Guam law, there is no limit to the amount of damages that can be awarded to plaintiffs in a medical malpractice case. Title 10 of the G.C.A. § 10131 specifically states that "damages shall be monetary only and shall be without limitation as to nature or amount unless otherwise provided by law." The only limitation to the award of damages to Plaintiffs here is the limitation imposed by the Federal Tort Claims Act, which is the amount of the claim presented to the federal agency. In this case, Mrs. Rutledge requests an award of \$10,000,000.00 for her economic and non-economic damages and Master Sergeant Rutledge requests an award of \$1,000,000.00, for non-economic damages.

Having made the determination that the government care providers breached the prevailing standards of care which proximately caused the injury to the Plaintiffs, the court makes the following conclusions with respect to damages:

***ECONOMIC DAMAGES***

Additionally, Title 7 of the Guam Code Annotated, sections 16102(a) and (c) define economic and non-economic losses as follows:

As to economic damages, Mrs. Rutledge is entitled to loss of earnings and earnings capacity and other benefits related to employment as well as replacement services loss. See G.C.A. § 16102(a). The purpose of compensatory damages is to make the plaintiffs whole. Fajardo v. Liberty House Guam, 2000 Guam 4.

***Loss of Income***

(a) *Economic loss* shall mean any pecuniary loss resulting from harm, including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities, to the extent recovery for such loss is allowed under

Mrs. Rutledge is seeking \$970,000.00 for past, present, and future loss of income and other opportunities. This figure represents the calculations submitted by Mr. Hiles. As noted above, after careful consideration, the court adopts the calculations of Dr. Taylor in United States Exhibit U. The court calculates damages for Mrs. Rutledge under the occupation of Supervisor of Food

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Service, and excludes income taxes as representing a fair lost wage earning capacity.

\*18 The court concludes that Mrs. Rutledge, as recommended by Dr. Taylor, is entitled to \$470,904.00 for past, present and future loss income and other opportunities.

### ***Replacement Services***

“Replacement services loss” is a type of economic loss as defined by Guam law. 7 GCA § 16102(a). Replacement services loss is the value of obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income, but for the benefit of himself or herself or his or her family, if he or she had not been injured. *See Lenz v. Depositors Ins. Co.*, 561 N.W.2d 559, 561 (Minn.App.1997).

The court finds that as a result of her permanent neurological injuries and deficits, Mrs. Rutledge is unable to perform a substantial amount of her normal household chores, which she was able to adequately perform prior to her injury. Those chores include cleaning, vacuuming, laundry and ironing.

Consequently, the court concludes that Mrs. Rutledge is entitled to compensation for replacement services loss in the amount of \$187,720.00 calculated at \$95.00 per week for 52 weeks a year, multiplied by 38 years. The court prefers not to perform a present value calculation of this amount since any such reduction in value would most likely be outweighed by the increased costs of such services in the future.

### ***NON-ECONOMIC DAMAGES***

In awarding non-economic damages, the court in *Scott v. United States*, 884 F.2d 1280 (9th Cir.1989) held that damages awarded for physical impairment and loss of enjoyment of life were not duplicative. Likewise, in *Ogden v. J. Steel Erecting, Inc.*, 201 Ariz. 32, 31 P.3d 806 (Ct.App.2001), the court held that “hedonic damages can be a component of a general damages claim, distinguishable from, and are not duplicative of, damages for pain and suffering.” *Id.* at 38, 31 P.3d 806, 31 P.2d at 812.

As to non-economic damages, the court concludes that Plaintiff Mrs. Rutledge is entitled to damages for physical and emotional pain and suffering, inconvenience, physical impairment, disfigurement and loss of enjoyment of life. The court also concludes that Master Sergeant Rutledge is entitled to damages for loss of consortium.

### ***Pain and Suffering***

There is no definite and specific rule for a court to follow in arriving at a dollar figure for actual compensation for pain and suffering. Pain and suffering includes mental suffering. “Anxiety, shock and worry are examples of what might be included under mental pain and suffering, and loss of capacity to work, labor and enjoy life—separately from monetary earnings—may be considered as an item causing mental suffering.” *MacDonald v. United States*, 900 F.Supp. 483, 488 (M.D.Ga.1995). Since Mrs. Rutledge's pain and suffering will continue into the future, the court will award damages for her future pain and suffering. *See Id.*

Mrs. Rutledge is fully aware of her many neurological and genito-urinary deficits. She has numbness in her vagina and buttocks and feels that part of her is “dead.” (Test.

Mrs. Rutledge 2/20/08). She suffered, and continues to suffer, mental anguish when she is told that her neurological and genito-urinary conditions are not likely to improve. She will always have a numb buttock, a numb vagina, and a neurogenic bladder necessitating that she consume a cocktail of medications. She has limited control over her bowels and is often constipated. Mrs. Rutledge also suffers from paresthesia down the back of her legs and feet. She experiences intermittent neuropathic pain which has been described as a searing, burning pain, that could last anywhere from 45 to 60 seconds. This paralyzing pain can strike anywhere where her spinal nerve roots and their anatomic distributions have been damaged. Her neuropathic pain symptoms appear consistent with her neurological injury because they affect only the areas where her nerves below the L5-S 1 distribution have been damaged.

\*19 Mrs. Rutledge is also conscious and frustrated about her inability to function sexually. Mrs. Rutledge has paresthesia and anaesthesia in certain parts of her body and decreased sensation down her leg and right heel. She has a minimal ankle reflex (1+) on the right and no ankle reflex is present on the left which is evidence of a permanent neurological injury. She often suffers depression and has had to come to grips with her permanent neurological deficits.

The court finds that Mrs. Rutledge suffers from physical and mental pain and suffering as a result of her permanent neurological and genito-urinary injuries. She has endured past suffering, current suffering, and will continue to endure it well into the future. In determining damages for the future consequences of a tort, a plaintiff must prove with reasonable certainty that the future consequence will occur or is likely to occur. See Wood v. Day, 859 F.2d 1490, 1493 (D.C.Cir.1988). The court is persuaded by the testimony of Dr. Steele that Mrs. Rutledge's neurological deficits are likely to remain as they are and not likely to improve given that almost four years have passed since her

injury and subsequent diskectomy.

Mrs. Rutledge, born in December of 1960, was 43 years old when she sustained injury in this case. Her life expectancy, based on Dr. Taylor's report, from the date of injury is 38 years or approximately 13,870 days, 1,976 weeks or 456 months.

As cited by the Plaintiffs, the court is persuaded by a prior appellate decision, Porter v. Tupaz, DCA No. 82-0180A, 1984 WL 48854 (D. Guam, App. Div. June 12, 1984). In Porter v. Tupaz, this court, sitting in its appellate division capacity over Guam Superior Court cases, held that an award of \$1,500.00 per month for 12 months for a "common whiplash" temporary 12 month injury was not an unreasonable or erroneous award. *Id.* at \*6. The court finds that Mrs. Rutledge's neurological and genito-urinary injuries are permanent and considerably more severe than a "common whiplash" injury, and thus deserving of a substantially higher award than what is reflected in Porter v. Tupaz. The court further notes that the Porter award was made in 1984, more than 24 years ago.

The court concludes that Mrs. Rutledge is entitled to an award for past, present and future physical and mental pain and suffering. As damages for her pain and suffering, the court finds and awards as damages to Mrs. Rutledge the sum of \$3,467,500.00; calculated at \$250.00 per day for 13,870 days.

#### ***Inconvenience***

Mrs. Rutledge no longer enjoys the convenience of many of the things normal people take for granted. She is unable to drive herself to places of interest and must always depend on another person to care for her. She is unable to enjoy the convenience of having normal bowel and

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bladder movements. Mrs. Rutledge takes several medications for her various neurological deficits and must suffer the inconvenience of their side effects.

\*20 The court concludes that Mrs. Rutledge is entitled to a separate award for past, present and future inconvenience. As damages for her inconvenience, the court finds and awards as damages to Mrs. Rutledge the sum of \$346,750.00; calculated at \$25.00 per day for 13,870 days.

### ***Physical Impairment***

Prior to this incident, Mrs. Rutledge enjoyed an active sexual life with normal sexual intercourse approximately 2-4 times a week (Plaintiffs' Trial Ex. 21 p. 6). As a result of her neurological and genito-urinary injuries, Mrs. Rutledge has no feeling in her vagina and is no longer able to give and receive sexual pleasure. In addition, her neurological deficits and resulting damages have practically rendered her unable to bear children which both she and her husband had planned to have.

Guam law defines physical disability as a "physical impairment which substantially limits one or more of a person's major life activities."<sup>7</sup> G.C.A. § 22101(7). This definition of physical impairment is similarly defined by the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12102(2)(A) (defining disability as "a physical or mental impairment that substantially limits one or more of the major life activities of such individual"). The Rehabilitation Act, federal legislation that empowers Americans with disabilities to maximize employment, economic and educational activities, defines a 'major life activity' as an activity of central importance to daily life, including "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working."<sup>FN6</sup> 45 C.F.R. §

84.3(i)(2)(ii).

FN6. This definition is recited verbatim in the Senate and House committee reports on the ADA and in the EEOC's ADA regulations. *See* S.Rep. No. 101-116, at 22 (1989); H.R.Rep. No. 101-485, pt. 2 at 52 (1990) (Committee on Education and Labor); H.R.Rep. No. 101-485, pt. 3 at 28 (1990) (Committee on the Judiciary); 29 C.F.R. § 1630.2(I).

The Ninth Circuit in *McAlindin v. County of San Diego*, 192 F.3d 1226 (9th Cir.1999) stated that "engaging in sexual relations, just like procreation, is a major life activity. The number of people who engage in sexual relations is plainly larger than the number who choose to have children. Moreover ... sexuality is important in how 'we define ourselves and how we are perceived by others' and is a fundamental part of how we bond in intimate relationships."<sup>FN7</sup> Id. at 1234, (citing *EEOC v. R.J. Gallagher Co.*, 181 F.3d 645, 654 (5th Cir.1999)).

The Supreme Court in *Bragdon v. Abbott*, 524 U.S. 624, 638, 118 S.Ct. 2196, 2199, 141 L.Ed.2d 540 (1998) commented that the ADA's list is merely illustrative and not exhaustive and thus, it had little difficulty in concluding that reproduction and the sexual dynamics surrounding it are central to the life process itself and is a major life activity.<sup>FN7</sup>

FN7. The United States Supreme Court has explained that the list in the ADA must be construed with regulations implementing the federal Rehabilitation Act. Id. at 638, 118 S.Ct. at 2205.

The court concludes that Mrs. Rutledge is entitled to a

separate award for past, present and future physical impairment. As damages for her physical impairment, the court finds and awards as damages to Mrs. Rutledge the sum of \$1,000,000.00.

### ***Disfigurement***

As a result of her neurological injuries and the resulting damages therefrom, Mrs. Rutledge walks with an altered gait which is a broad-based way of walking to avoid pain and provide stability. This altered gait has been described by Dr. Steele and Mrs. Rutledge's other healthcare providers as an "antalgic gait." Her gait was clearly demonstrated to the court. A disfigurement caused by an altered gait and which affects a person's overall appearance is a disfigurement of the entire body. See Streets v. Tim O'Connell and Son, Inc., No. 00A-01-012 RRC, 2000 WL 1211522, at \*1 (Del. Super. July 21, 2000) (unpublished). Mrs. Rutledge's antalgic gait clearly affects her overall appearance and easily identifies her from afar as someone who has suffered a neurological injury. See Humphrey v. United States, No. 2:04 CV 72 DDN, 2006 WL 2850548, at \*7 (E.D.Mo. Sept.30, 2006).

\*21 The court concludes that disfigurement is an element of damages that Mrs. Rutledge is entitled to under Guam law. As damages for her permanent disfigurement, the court finds and awards as damages to Mrs. Rutledge the sum of \$50,000.00.

### ***Loss of Enjoyment of Life***

Evidence adduced at trial clearly established that there is permanent impairment to Mrs. Rutledge's ability to enjoy life. She is constantly in need of rest from feelings of fatigue. Although she is able to engage in activities such as shopping, walking, or even weeding the garden, she has

to "pay for it" in terms of the pain she feels after the activities, according to the testimony of Master Sergeant Rutledge. (Test. Master Sergeant Rutledge, 3/4/08). Mrs. Rutledge has limited her outside excursions and social activities as she tires easily, is usually in pain, and prefers to be near her own bathroom where she can spend an otherwise embarrassingly long time in the toilet waiting for her bowel movement to occur. Mrs. Rutledge has difficulty sleeping through the night and relies on hypnotic medication such as Ambien. The court accepts Dr. Steele's findings that Mrs. Rutledge's neurological condition will not likely improve.

The court concludes that Mrs. Rutledge is entitled to an award for past, present and future loss of the capacity for the enjoyment of life. As damages for her loss of the capacity for the enjoyment of life, the court finds and awards as damages to Mrs. Rutledge the sum of \$1,387,000.00; calculated at \$100.00 per day for 13,870 days.

### ***Loss of Consortium***

Master Sergeant Rutledge is seeking \$1,000,000.00 for past, present, and future loss of consortium. On Guam, a loss of consortium claim is considered a derivative claim. See Dueñas v. Yama's Co., Inc. Civ. 90-00064A, 1992 WL 97213, at \*1 (D. Guam App. Div. April 6, 1992). Master Sergeant Rutledge is a devoted husband who is supportive of his wife's needs and is careful not to impose demands upon his injured wife. Many couples wed, committed to being devoted to one another "in sickness and in health", but most do not imagine a future which includes a seriously injured and partially dependent spouse every hour of every day of each year. Such is the reality for Master Sergeant Rutledge. The court concludes that Master Sergeant Rutledge has experienced, and will continue to experience, a loss of consortium due to his wife's condition. This condition is the result of the

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negligence of the United States and the failure of the Andersen Air Force Base Clinic practitioners to act within the standard of care owed to Mrs. Rutledge.

Prior to this incident, Master Sergeant Rutledge and Mrs. Rutledge enjoyed an active sexual life with normal sexual intercourse approximately 2-4 times a week (Plaintiffs' Trial Ex. 21 p. 6). As a result of his wife's injuries, they have not engaged in any satisfying sexual activity. Master Sergeant Rutledge testified that they have had sex "maybe twice" in the past year. (Test. Master Sergeant Rutledge, 3/4/08).

\*22 The court once again notes the decision in *Porter*, where the Appellate Division held that an award of \$450.00 per month for 12 months for a spouse's loss of consortium claim based upon a "common whiplash" injury was not an unreasonable or erroneous award. *Porter*, 1984 WL 48854, at \*6. The court concludes that Master Sergeant Rutledge's loss of consortium damages are considerably more severe and permanent than those experienced from a temporary "common whiplash" injury, and thus deserve a substantially higher award than what is reflected in *Porter*.

The court concludes that Master Sergeant Rutledge is entitled to an award for past, present and future loss of consortium. Since he is younger than his wife, the court bases his loss of consortium claim on Mrs. Rutledge's life expectancy of 38 years. As damages for his loss of consortium, the court finds and awards as damages to Master Sergeant Rutledge the sum of \$592,800.00 for past, present and future loss of consortium calculated at \$300.00 per week for 52 weeks a year, multiplied by 38 years.

### SUMMARY

Based on the above, the court finds that (1) the Defendant United States owed a duty of care to Mrs. Rutledge and Master Sergeant Rutledge, that is, Lt. Col. Giscombe, Adult Nurse Practitioner and Capt. Steven D. Rau, Certified Physician Assistant, United States employees, owed to Mrs. Rutledge the requisite care and skill ordinarily used by healthcare providers in the same field of medicine practicing under similar circumstances; (2) the Defendant United States breached such duty of care; (3) such breach of the duty of care owed by the Defendant United States of America was the direct and proximate cause of injuries suffered by Mrs. Rutledge and Master Sergeant Rutledge; and (4) as a result of such breach by the Defendant United States, the Plaintiffs Deborah K. Rutledge and Thomas R. Rutledge are entitled to the following compensatory damages:

- **\$470,904.00** for past, present and future loss income and other opportunities of Mrs. Rutledge;
- **\$187,720.00** for past, present and future replacement services loss of Mrs. Rutledge calculated at \$95.00 per week for 52 weeks multiplied by 38 years;
- **\$3,467,500.00** for past, present and future pain and suffering of Mrs. Rutledge calculated at \$250.00 per day, for 13,870 days;
- **\$346,750.00** for past, present and future inconvenience of Mrs. Rutledge calculated at \$25.00 per day for 13,870 days;
- **\$1,000,000.00** for the permanent physical impairment of Mrs. Rutledge;
- **\$50,000.00** for the permanent disfigurement of Mrs.

Rutledge;

States. Each party to bear its own costs and attorney's fees.

- **\$1,387,000.00** for past, present and future loss of enjoyment of life of Mrs. Rutledge calculated at \$100.00 per day for 13,870 days; and

**SO ORDERED.**

- **\$592,800.00** for past, present and future loss of consortium of Thomas R. Rutledge calculated at \$300.00 per week for 52 weeks multiplied by 38 years.

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The total award to Plaintiff Deborah K. Rutledge is **\$6,909,874 .00.**

\*23 The total award to Plaintiff Thomas R. Rutledge is **\$592,800.00 .**

The combined total award to Plaintiffs is **\$7,502,674.00.**

The court notes that no damage award is sought by Plaintiffs for past or future medical expenses since Mrs. Rutledge is eligible for military medical benefits. The damages awarded herein are only for those itemized above. No award is made for past or future medical expenses and the judgment entered in this matter does not, in any respect, include such an award.

In accordance with the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that upon consideration of the evidence produced at trial by the Plaintiffs, Master Sergeant Rutledge and Mrs. Rutledge, and the evidence of the Defendant, United States, that Judgment shall be entered in **FAVOR** of Mrs. Rutledge and Master Sergeant Rutledge on their causes of action for medical malpractice under the Federal Tort Claims Act, and **AGAINST** United



American Arbitration Association  
Dispute Resolution Services Worldwide

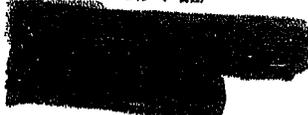
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June 20, 2012

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LAW OFFICE OF  
ROBERT L. KEOGH

Dear Mr. Keogh,

After careful consideration of your request, the Association has determined to defer \$9,200.00 of the Initial Filing Fee of \$10,200.00 and your Final Fee of \$4,000.00 which is incurred for all cases that proceed to their first hearing. Therefore, in order to initiate this matter, the Association will require a Filing Fee of \$1,000.00. If we do not receive this fee within 7 days, we will return all paperwork, and will not consider this matter properly filed. The \$9,200.00 balance of the Filing Fee and the \$4,000.00 balance of the Final Fee, if applicable, will be due at the conclusion of the case regardless of the outcome.

You may also view case financial information, as well as make payments with a credit card online via AAA's WebFile.

The Association has no authority to defer arbitrator compensation and expenses or non-Association hearing room expenses. These charges will be due and payable when invoices are sent, in accordance with the Rules.

If you agree to the above terms, please return a signed copy of this letter, together with the \$1,000.00 fee in order for the Association to proceed with further administration of this matter. This consideration will be accepted until June 28, 2012, at which time the above deferral will be withdrawn.

Please feel free to contact the undersigned if you have any questions.

Sincerely,

Kristen Parsells  
Case Filing Coordinator  
856-679-4615  
ParsellsK@adr.org

Supervisor Information: Tara Parvey, 856-679-4602, ParveyT@adr.org

Good evening Senators.

I am Phillip Tutnauer and I moved to Guam a year ago. I moved to Guam after working in a successful private practice in New Jersey and for the federal government. OBs are leaving, physicians are leaving New Jersey. It is such a stressful place to practice medicine that Guam has been a breath of fresh air coming from New Jersey. In the short time that I've been here, I've come to realize that Guam is a different place. We take care of people like family. When I talk to other health care providers in the states, I am often telling them how incredible the quality of care is on this remote island, and how much people care for each other. Let's keep it that way.

Please allow me to treat my friends, neighbors and their family members without additional stress.

Thank you for your consideration and your assistance with this very important matter.

Sincerely,

Phillip

Phillip Tutnauer, DPM, FACFAOM, FAPWHC

A handwritten signature in black ink, appearing to be 'P. Tutnauer', written over a horizontal line.

**TESTIMONY:**

**Guam Medical Malpractice Mandatory Arbitration Act**

Senator Therese Terlaje, Chairperson,  
Committee on Health, Tourism, Historic Preservation, Land and Justice

September 19, 2019

From: David Lubofsky (Speaking for Asher Dean Lubofsky)

I am David Lubofsky, the father of Asher Dean Lubofsky, who at age 5 passed away at the Guam Memorial Hospital on October 31<sup>st</sup>, 2018, almost one year ago.

Let me first start off by saying that I would prefer to be anywhere else on the planet besides here at this moment, as what has brought me here is the worst nightmare that a parent can face. The death of a child is an unrelenting nonstop painful nightmare. To make it more painful and the reason that we are all here is about how our children and family members die due to medical negligence or malpractice needlessly and those negligent doctors who then walk away with no accountability or even a record of what they did to then see and endanger others on Guam. When Asher entered the Guam Seventh Day Adventist Clinic on October 29<sup>th</sup> for his annual wellness exam, while also sick with symptoms, and saw Shishin Miyagi or when he ended up at The Guam Memorial Hospital the next day, I had no idea that he would die and I had never heard of The Malpractice Arbitration Act. I will not get into my anger over how Asher was treated, or better said, NOT TREATED, you can read that online.

This meeting is about what happened to Asher and many other children and people on Guam after their death, injury etc due to negligent medical care. This meeting is about the discriminatory Medical Malpractice Mandatory Arbitration Act that lets doctors walk away with little or no accountability after our children or family members are injured or killed by their blatant malpractice negligence. This meeting is about real people, it's about our kids, it's about the death of Asher, Baby Faith, Jqry-Wakyn, Aiden, Charlie and the list goes on and on of our dead kids due to negligence and a legal cover up with the Arbitration

**Act then the doctors who treated or mistreated these kids go on and treat your kids as if nothing happened. With Arbitration, they could kill many kids and no one would even know. IS THERE EVEN RECORDS OF THESE INCIDENTS?**

With ASHER's death, when it became time to hold Shishin Miyagi, Ethan Snider, Seventh Day Adventist Clinic and Guam Memorial Hospital responsible, we, like many others on Guam ran into the ARBITRATION Act. We heard "**I AM SORRY, IF YOU WANT TO HOLD THESE PEOPLE ACCOUNTABLE IN THE DEATH OF ASHER; YOU FIRST HAVE TO ENTER ARBITRATION AND PAY THE HUGE EXPENSES OF IT.**" We heard this over and over. So, I kept asking, the obvious question, "**Can these doctors kill us, kill our kids and then walk away with no accountability as few can afford the process?**" The killers of our family are protected by a legislative supported law, THE ARBITRATION ACT. **How many families have buried loves ones due to negligence and were told the same thing, sorry, nothing can be done; THERE IS NO ACCOUNTABILITY FOR DOCTORS?**

The Act makes it so people of average or low income cannot afford to seek justice. The Act prevents due process or going to court unless you go thru the expensive, drawn out arbitration process first. **IT DISCRIMINATES AGAINST ALL OF US, ESPECIALLY THE POOR.** When I walked into this second nightmare with the Arbitration Act, it angered me much and still does beyond words, as Guam doctors are a protected class, an elitist group that looks down at the rest of us which is evident in how many of them conduct themselves and how we are treated by this Arbitration Act, AND HOW THEY HAVE discriminated against us, especially the poor on Guam. This does not necessarily apply to all doctors, but has become part of the overall **Physician Culture on Guam**, in my opinion. The Guam Doctors know there is no accountability to the poor (or all of us) as they and we can never afford the Arbitration process. Does this play into how doctors treat us daily?

I had a parent this week message me over and over about how they cannot even get a referral for off island for a very sick 6 month old baby as the doctor seems to be full of excuses for the mother why he cannot do it. The mother is on Public Assistance. The Doctor told her to go see someone else, even though the child has been hospitalized with this same doctor at GMH multiple times and she was at GMH requesting a referral during the last hospitalization with her 6 month old baby. **Is he waiting for the baby to die? The parent is frantic, the doctor is**

**indifferent. My opinion, that is what lack of accountability does, makes doctors apathetic and they ignore the plight of our kids This is what happened to Asher, no doctors saw him for his last 12 hours alive, left him without checking him. . APATHY bred by the ARBITRATION ACT.**

The lack of accountability should anger everyone. Name any other profession on Guam that has no accountability as afforded to doctors due to the Arbitration Act? The difference is that our kids are dying. The law discriminates against the poor and that was my biggest issue initially, but as time passed and after talking to many parents and other people on Guam it's evident beyond the discrimination, that the law creates apathy among doctors as I referred to already. A better name for this Act is the **APATHY ACT**. People who are not accountable for their actions and are protected, no matter what they do wrong become apathetic. **We, AS PARENTS, will never allow our kids to be NOT accountable and we want our children to be responsible for their actions, but the people who take care of our kids medically, we do NOT hold them to the same basic standards of accountability that we hold our kids to. IT DOES NOT MAKE SENSE.**

Actually, looking back to when the Arbitration Act was enacted and supportive testimony by Mr. James Gillan, who was the administrator of the Guam Memorial Health plan at the time, lays out the true intent of the Arbitration Act. He said at that time, prior to the Act being passed into law, that doctors were practicing defensive medicine because they were worried about being sued for malpractice. In my opinion, **Defensive medicine means that they were doing everything they could for their patients, lab tests etc etc. Defensive medicine means being responsible doctors.**

Even though there were few if any malpractice cases at that time, 30 years ago, when Gillan gave his testimony, he was making the point that the doctors do too many lab tests etc back then because they feared being sued. In my opinion, he was saying **they were being TOO ACCOUNTABLE** as they worried about malpractice or being sued and that this **APATHY ARBITRATION LAW** would

alleviate that so they did not have to worry about being sued and could do less diagnostics with our kids.

**LET ME TRANSLATE FOR YOU, JIM GILAN WAS SAYING THAT WHEN DOCTORS PRACTICE DEFENSIVE MEDICINE AND DO EVERY TEST ETC BECAUSE THEY WERE WORRIED TO BE SUED, HE MEANT THE ARBITRATION ACT WILL MAKE IT SO INSURANCE COMPANIES WILL SAVE AND PAY LESS AS DOCTORS CAN DO LESS TESTS ETC. HE WAS SAYING THE LAW WOULD MAKE IT SO THE DOCTORS DO NOT HAVE TO PRACTICE DEFENSIVE MEDICINE. DO NOT HAVE TO BE ACCOUNTABLE, INSURANCE COMPANIES WOULD SAVE MONEY. DOCTORS WOULD HAVE LOWER OR NO MALPRACTICE INSURANCE AND THE STAGE WAS SET FOR APATHETIC MEDICAL CARE ON GUAM UNDER ARBITRRATION. ITS HARD FOR ME TO FATHOM, THE RATIONALE OF PRETTY MUCH TELLING DOCTORS THRU THIS LAW THAT THEY DO NOT HAVE TO PRACTICE DEFENSIVE MEDICINE, WHICH PROTECTED US UP TO THAT TIME, IF THE ARBITRATION ACT WAS PASSED, WHICH IT WAS.**

**How many have died OVER THE YEARS as this APATHETIC MEDDICAL CARE, A PRODUCT OF ARBITRATION PROTECTION, became part of our Guam Physicians culture? Baby Faith, who passed at GRMC, never got simple lab tests as that doctor seemed to not care and was not practicing defensive medicine. Asher Dean Lubofsky went into the SDA clinic with symptoms, etc but never got a simple CBC blood test, or even the wellness exam that we were there for and paid for, which may have saved his life if that doctor was practicing defensive medicine. Hey Jim Gillan, you did save money on these two dead kids and others. How many other people have died in the same situation on Guam, I would venture to say hundreds over the years? I would venture to guess that this Arbitration Act has "dumbed down" medical care on Guam so much that no matter how much money that you spend of our taxes on GMH will not fix the problems, short of making doctors accountable. BRING BACK DEFENSIVE MEDICAL CARE.**

I think it's important to note that The Arbitration Act is being questioned if it's organic or constitutional. There is a current LEGAL challenge to it in court. The law in the past, as previously written, was deemed to be unconstitutional, and

according to a Guam POST story, Attorney Pipes implied that this current law we are discussing TODAY is also not constitutional. It deprives us the right of due process to bring those who kill or injure our family members to court. Also, an interesting law is being discussed in Washington and it is said that it will pass. **THE FORCED ARBITRATION INJUSTICE REPEAL ACT, HR 1423 OR THE FAIR ACT**, will ban all forced arbitration in contracts, INCLUDING HEALTH CARE, and I would expect also legislatively enacted FORCED ARBITRATION like our Mandatory Arbitration Act. The reason for this federal law is clear, people were getting their rights violated, were robbed of due process and sold inferior goods, and services, including health care issues, and had to deal with apathy and had no rights when these contracts were in place and enforced. The ***FAIR law*** has implications for Guam and should be the writing on the wall, if for no other reason that the Arbitration law needs to be repealed.

Let's just step back for a minute and ask who protects us as citizens on Guam from medical negligence, malpractice etc. **With this Arbitration Act, what options exist for the average person with a valid complaint against a doctor?** What do we do, where do we go? Every system of medical care should have a check and balance system with protections for the citizens. What protections do we currently have on Guam? What recourse do we have? **Let me outline them for you briefly.**

When we have a problem with a medical person, we have the Guam Board of Allied Health Examiners and we have the Guam Board of Medical Examiners. We can file complaints with them, but this has been proven to be useless. The Guam Board of Medical Examiners gives off island doctors licenses to practice on Guam to those applicants who only meet minimal qualifications and they have licensed doctors who have malpractice histories. They bring these new doctors here, put us at risk, while offering them low malpractice insurance due to the Arbitration Act, with protection from law suits. Some of these doctors may not be able to work anywhere else, but the Board led by Dr. Nathaniel Berg does not seem to be worried about that. Then when we complain about a doctor, or the death of a child, this Board that has major conflicts of interest, including financial, will investigate and make decisions, not mitigating their own serious conflicts of interest, not interviewing the complaining parties, as in our case, the parents of a dead child, then release the results of their so called investigation to the media before talking to the family or informing the family. In my opinion, there should be an oversight hearing of the Medical Examiners Board, and the law that created it. **They were recently described as corrupt on a local news media. How many**

**doctors on Guam have a history or claims against them for MALPRACTICE and they were then licensed by the Board? How many doctors on Guam have complaints against them for malpractice or investigations of complaints for the public to be aware of? ASK THE BOARD THIS? It should be public record. A doctor can kill our kids and go on to the next child and this Board does not have a public record, which is our right. OVERSIGHT HEARING TIME.**

The Guam Board of Allied Health Examiners is another place that takes complaints against Physician Assistants, as we filed, but they do not take complaints seriously and do not do what they are mandated to do. A dead 5 year old child, Allied Board gets a complaint regarding a Physician Assistant who denied my son to see a doctor 20 hours before Asher died, among other things. Nine months later, The Allied Board has not done anything with the complaint. It just sits there. They never even communicated with the family. When they are faced with complaints, they do NOT care obviously by their actions. Are they waiting for another child to die before they act on a complaint? Total apathy by this Board, still boggles my mind how they can see themselves as professionals who have the community's best interest in mind.

IT'S CLEAR, we as consumers of health care, families, parents etc. have no protection, not from the politically appointed governing Boards who are apparently self serving, not from the courts due to the Arbitration Act and up to now not from our elected leaders who have allowed us to suffer and die due to these problems with the Boards and Arbitration.

**It is too late for my son Asher Dean; nothing you can do will benefit him or us. Our suffering will not be alleviated by a repeal of this Apathy Arbitration Act, but we can take some solace to know that other families will not suffer as we and others have by making doctors responsible for destroying lives. Asher was taught the difference between right and wrong and to be responsible, sadly and obviously his doctor and others were not.**

**IMPROVE MEDICAL CARE ON GUAM, SAVE LIVES, REPEAL THE MALPRACTICE ARBITRATION LAW.**

**DAVID LUBOFSKY, FATHER OF ASHER LUBOFSKY who was robbed of his life by the people that this Arbitration ACT protects.**

## WRITTEN TESTIMONY

### Guam Medical Malpractice Arbitration Act

Senator Therese Terlaje, Chairperson,  
Committee on Health, Tourism, Historic Preservation, Land and Justice

From: Monica Ann Ninete Devera (Speaking for Charles Vincent Ninete Blas)  
October 3, 2019

My name is Monica Ann Ninete Devera, mother of Charles Vincent Ninete Blas. Charles passed away at the Guam Regional Medical Center on January 23, 2016.

As a mother, seeing your child pass away in front of your eyes is the most painful nightmare any parent should never have to go through. Especially when you had placed your trust in the hands of Doctors.

On the morning of Friday, January 8<sup>th</sup>, my son had 3 seizures. The last seizure caused him to fracture 3 areas in his body. He fractured his right scapula, right femur and his right hip. Not only did he suffer from epilepsy, but he was born with a medical condition called Osteogenesis Imperfecta, also known as Brittle Bones.

That morning, he was transported to GRMC and was admitted. The operating room at that hospital was closed on weekends, so they scheduled him for surgery on Monday, January 11<sup>th</sup>. However, it was rescheduled to take place on the 13<sup>th</sup> at 9:00 a.m. The procedure was supposed to last only 45 minutes. Dr. Arafiles, who was the physician that was to do the surgery, said it shouldn't take more than 45 minutes. Since Charles's scapula was only a hairline fracture and the femur had a rod inserted from the Shriner's Hospital in Hawaii, he did not need surgery for these two fractures. His hips were the only area that Dr. Arafiles said needed surgery to insert an iliosacral screw fixation to his right hip to help him move. The procedure was cut short and they did not push through with planned surgery of putting screws because they discovered that his bones were too brittle.

As I waited in the waiting area, 45 minutes went by, and there were no signs of Dr. Arafiles. I get a phone call at 11:30 from him. He said that surgery was cancelled because he wasn't able to place the screws and plate in because his bones were too brittle that every time he tried to screw the screw in, the bone was

too soft. Then he said he would keep him there for a few more days, then discharge and recommend him physical therapy when he feels better. I then asked him where my son was and he said, "Oh he should be out soon."

I went to the front desk of the recovery room to inquire where my son was and the nurse made a phone call to the back, but he was nowhere to be found. The nurse made several phone calls. By the third call she found him and told me to go up to his room and wait there because they were cleaning him up.

That's when the nightmare began. At around 1:30 that afternoon, my son was wheeled up and looked like he was in so much pain. He said "Mom, can you ask the doctors for pain meds please? My hip is really hurting." As I was reaching to touch his forehead, my son was so hot that I ran to the nurse to let them know he was burning up and that he was asking for pain meds.

Sure enough, his fever shot up to 105 and the nurse gave him pain meds and said that she will notify the doctors of his fever. With the room being so cold, my son was shivering, and I wanted to sponge bathe him try and break his fever because I was afraid that he might have another seizure. I asked the nurse if they could turn off the aircon so that I can sponge bathe him, she said that the AC had only 1 control and she cannot turn it off. So, I took a chance and sponge bathed him as fast as I could to try and break his fever. I had never felt so helpless until that day.

From the day of the surgery to the 16<sup>th</sup>, my son was only given Oxycodone and other pain medication to ease his discomfort. In the early morning of the 16<sup>th</sup>, Charles was given a Chest XRAY and a blood culture test for bacteria. That same day he started the Vancomycin antibiotic. The nurse came in and was holding what I thought was an IV bag. I asked her what she was going to give him and she said that it was antibiotics ordered from the doctor. Every time they administered that antibiotic, my son would complain that the medication coming out of the IV line was burning his arms. Every time I brought it to the nurse's attention, they would always say that the antibiotic is very strong and that it's supposed to burn. If I knew at that time that my son was having an allergic reaction to that antibiotic, I would have made them stop. After doing research after my son had passed away, I learned that the antibiotic was supposed to be given by the weight of the patient. Administering too much is high risk of heart attack, and that is exactly what my son died of. My son was not the average height and weight of men his age because of his osteogenesis imperfecta.

His fever took <sup>several</sup> 4 days to break after the surgery. Even after the fever broke, my son was not his usual self. The doctor decided to discharge him on the evening of Wednesday, January 19<sup>th</sup>. He was told to be discharged and follow up within a few days to schedule for physical therapy. That evening at around 7:30 pm, a nurse came in and told me that he was getting discharged that evening. At around 10:30 pm, a nurse prepared his discharge papers with instructions and a written prescription for pain meds which I thought was awkward because it was really late in the evening and no pharmacy was open. No actual pain medication was to be taken home, I went to the front desk and asked the nurse why can't they give him his medication to take home instead of a piece of paper, the pharmacies are all closed at this time, and they replied "Not too sure mom, but it's doctor's orders." I then asked why they can't just keep him one more night, since the 4<sup>th</sup> floor wasn't even full, so that my son can be given his pain meds till at least the morning. Again, the response was, "Sorry doctor's orders." It was close to midnight already, my son was being discharged with a broken hip, femur and scapula, and no pain meds to take home. Imagine that!

On January 23, which was the Saturday morning that he passed, I had to make a run to the bank and found my son up listening to his music on his phone. I asked him if he wanted to eat before he took his meds but insisted to wait till my daughter wakes up. So, I told him I'll be back. Not even 30 minutes, I get a phone call. As I answered, all I kept hearing was my son in the background screaming, "Please tell mom to help me, my heart is on fire." I told my daughter to hang up and call 911 and I rushed to my house. Shortly thereafter the ambulance arrived. My son begged the paramedics from inside my home and in-route to GRMC to help him understand why his chest was on fire and pleaded to help him make the pain go away. As we arrived in the ER, he told the nurse to please help him make the pain go away. When the nurse asked him what his pain was from 1 to 10, he said it was a 15. He continued to chant repeatedly, "Please, please help me." The nurse left and came back with something in a syringe and my son asked if that was pain meds and she said yes. Not even 30 minutes after giving him that shot, my son started vomiting. I don't know how many times I had to empty that vomit container, but he was vomiting blood mixed with a lot of white thick fluids. He was panicking and although his hip was fractured, he kept squirming in his bed and ignored his hip pain, begging the nurses to help him for his chest. I ran outside to get a nurse to call the doctors and a doctor came in and

said that he wanted to get a CT scan done on him right away to see if there is anything in his chest that may be causing any blood clots.

As they were getting him ready to get a CT scan, my son grabbed my hand and yelled, "Mom please don't let me die mom." I then told him, "I promise I won't let you die son." Those were the last words I had with my son Charles Vincent.

Not even 5 minutes later, I heard, "Code blue CT scan room, code blue CT scan room" over the intercom. My mind went blank for a few seconds and I grabbed my husband and begged him to tell me that wasn't for my son.

We waited in the waiting room for two hours before the doctors came out and said, "I'm so sorry, we tried to revive your son several times, but no luck." As we were going to see my son in the trauma room, I wished that it was all just a bad dream. Even to this day I still do. I felt helpless seeing and touching his cold body that afternoon. Especially since it's been 3 long years and still can't seem to get any honest answers.

On the following Monday, January 25<sup>th</sup>, I get a phone call from GRMC saying that my son's remains will be forwarded to GMH to Dr. Espinola's office because an autopsy needed to be conducted. The autopsy protocol since my son was a patient at GRMC, was discharged, came back and had passed away there. I inquired with them if I would be able to contact Dr. Espinola myself and was advised that it's not required and to just wait for the autopsy to be completed.

I received a phone call from Island Funeral Home on Thursday, January 28<sup>th</sup> at 4:00 that afternoon, informing me that my son's remains were at the funeral home. I was told that I would be able to come down and prepare him for his viewing which was set for Sunday the 31<sup>st</sup>. His funeral was set for Monday, February 1<sup>st</sup>.

As I was getting my son dressed up for his viewing, I inquired with Nancy Aquino, who is the owner of the funeral home, what was the final results of Charlie's autopsy. To my surprise, she told me that there was no autopsy done. I asked her why and she said that Dr. Espinola didn't need to do one because he based his decision on what the medical records indicated was his cause of death. It was too late that afternoon to call his office, so the following morning I called

and found out that Dr. Espinola was off island and would not be available till Thursday, February 4<sup>th</sup>. So, I made an appointment to meet with him that morning.

During that meeting, I had informed Dr. Espinola that I had concerns and told him what had happened to my son. He went on to mention that if he knew that I had concerns of my son's passing, he would have returned my son's remains back to GRMC to conduct the autopsy. But he said that he made his decision because GRMC only forwarded Charles's remains with the medical records of the day he had passed, and no other medical records was attached stating that he was hospitalized from January 6<sup>th</sup> to the 19<sup>th</sup>. He advised me that it is beyond his control now, and that I can only resolve this issue if I take this to court.

After I buried my son, I immediately went to GRMC to retrieve my son's medical records. After weeks of reviewing his files, trying to search for answers, I put several puzzles together to see what the actual cause of his death was. My son was only admitted for fractures, from the 8<sup>th</sup> to the 19<sup>th</sup>, before his surgery which was on the 13<sup>th</sup>, all his vital signs where normal and no fever whatsoever. All I could think of was that Dr. Arafles went in, drilled his hip, hit his bone marrow, closed him back up and caused him to have sepsis shock. Dr. Alley Insaf was the physician who prescribed the antibiotic, but I guess did not do his homework on the dosage because I sure did. This is what I discovered on the antibiotic pamphlet. **VANCOMYCIN WARNING: OTOTOXICITY** has occurred in patients receiving VANCOMYCIN. It has been transient or permanent. It has occurred mostly in patients who have been given excessive doses. **HYPOTENSION:** Rapid bolus administration maybe associated with exaggerated hypotension including shock and rarely cardiac arrest. To avoid hypotension, administer in dilute solution over 60 minutes or more. Frequently monitor blood pressure and heart rate. My son's heart rate and blood pressure were so high during the time he was given that antibiotics. The dosages were to be given by the weight of the patient. My son was on 84 lbs. The dosages where 250 milligrams four times on the 16<sup>th</sup>, 250 milligrams four times again on the 17<sup>th</sup>, then 1,000 milligrams two times on the 18<sup>th</sup>, and 1,000 milligrams two times on the 19<sup>th</sup>. I know I'm not a physician, but these are the only explanations that I could think of on what killed my son. **OVERDOSE** which caused his **CARDIAC ARREST**.

In June of 2016, I inquired with an attorney Sergio Rufo, who at one point was practicing here in Guam, but had moved to Hawaii. He stated that I had a very good case, but I needed to come up front with \$60,000.00 for the arbitration that needed to be filed within 1 year from his death. I was in shock because I had no idea that January 23<sup>rd</sup> would have been the last time that I would see my son and did not prepare \$60,000.00 thinking that he would pass away. To this day, I am still in dept with the Our Lady of Peace because I wasn't prepared to bury my own child.

This meeting is to let all the families who are victims of this Medical Malpractice Mandatory Arbitration Act speak up and let you politicians see what this law is doing to all of us poor people. Protecting the doctors should not be a priority here. What right do these doctors have to just take our loved one's life and walk away like nothing out of the ordinary happened? This law needs some serious revisions because our loved ones are all not resting in peace.

My son, to this day, visits me and yes you all may think I'm crazy saying this today, but believe me. My son's soul is not at peace because he was murdered while in the trusted hands of those physicians.

I gave up at one point because I didn't have that kind of money and the 1 year was getting close. On December of 2016, I was reading the newspaper and saw another patient was suing GRMC for wrongful death. I was overwhelmed and my depression started to worsen seeing that, so I went searching once again for another attorney.

On June 22, 2017, I met with Attorney Gloria Rudolf and she took my case. We went to court in April of 2018, Judge Censon was the judge. The judge stated to have my case rescheduled because they wanted to wait for the decision of another similar case being heard by Judge Sukola. When the hearing was over, my attorney advised me to just hang tight and wait. Here I was thinking "Oh I shouldn't bother her because she said to hang tight and wait." However, in January of this year, I was browsing on my computer. For some odd reason, I'm not sure if it was my son giving me signs, but out of nowhere I just typed my name and when I did, I discovered a court document with my name on it. It was a court document filed by GRMC which stated, "DECISION AND ORDER GRANTING DEFENDANT'S MOTION TO DISMISS" that was FILED and recorded on May 4, 2018, at 10:23 a.m. I immediately called Attorney Rudolph's

office to see if I was able to meet with her and try to get answers as to why I was never notified of this court hearing and why I was never given a copy. But she wasn't available, so I left a message for her to return my call. I made 10 calls here and there after that for about a month, but not once did I ever get a returned call.

Money is not going to bring back my son, Asher Dean, Baby Faith, Jqry-Wakyn, Aiden, and anyone else who I missed who are all victims of this negligence. We just want justice and to put a stop to these doctors' in thinking that it's okay doing what they're doing.

We all have repeatedly time and time again heard about this arbitration law, and we are all here today to plead for your help.

So, we ask this from you to please improve medical care on Guam, work together in saving lives, and let's repeal this Malpractice Arbitration law.

Having to relive this nightmare is very overwhelming for me and my family. Although its been 3 years and 8 months that I haven't seen my son, I feel that I need to find closure or him. And by doing so, may his soul rest in peace, as well as all the other families who have all lost a loved one.

Thank you,

Monica Ann Ninete DeVera

## MMMA hearing 2 by Anelyn Lagrimas

To be honest, I wasn't going to testify, speaking like this really puts me and my dad at risk, at the first hearing I didn't expect this to be on the news for some of the staff at GRMC to be upset with me, even to the point where one of the doctors personally asked me to be replaced as my Dad's attending physician during the following week. Not only that but incidents of negligence that have never happened before just so happened to occur afterwards. So I also wanted to point out that his medication labels were switched for his wound and was administered to him on multiple occasions causing him to cry in agonizing pain, had I not pointed it out and questioned it last week, they wouldn't have switched it (meaning none of the staff cared to even read the label). Also the following day his food orders were pureed and they mistakenly gave him a solid tray and had I not come on time, it would've put my dad in a deadly position (I also have pictures of these incidences) however you should understand now how unprotected my dad is with the current law, I have nowhere else to turn to but force myself back to publicly speak now and bring it out to light. They must really be sick of me and my Dad already, to the point that I fear he might not be in safe hands because of me due to subtle retaliation. If it really isn't by coincidence and if it helps, I'm sorry I was oblivious to think that you wouldn't find out. I did not intend for my dad's lack of care to be made known Island wide and I thank you for all the hard work you've done thus far. It's not easy trying to reverse my dad's H.A bed sore. I just want you to know this is nothing against some of the hardworking staff at GRMC... Ironically, I have nothing against the physicians, doing the best they can and missing the signs of something as simple as a stage 1 bed sore, I'm actually against the fact that our hospitals are understaffed, in recent news GRMC under new management had laid off about 40 staff but I'm just trying to save my dad by all means and if it means bringing this to light then so be it, I just hope you do not take it against my dad who's worsening condition already puts him in a completely helpless state

I come here to represent the now 900 and counting Guam residents who have signed a petition to repeal the tripleMA

Is mandatory arbitration fair? All 50 of the US states don't impose forced arbitration on their people. Yet only on Guam, is our government forcing us to go through arbitration where chances of a settlement are 0 to none. But we wouldn't really know, would we? Records of any malpractice and negligence cases are tossed out the window through forced closed door arbitration hearings so that no light is shed on issues brought up. The basic question is, does it serve the people of Guam? The tripleMA, no matter how you defend it, really is biased, it's biased because you impose the burden of costs that could go up to hundreds of thousands of dollars on the poor to average citizens on Guam, not only that, but that money can easily be tossed away through the chances of manipulated private proceedings

I believe in our healthcare system. I believe in our health professionals, to trust in your ability and not cower to the court's due process, just because of your title. The law carves out a special kind of privilege, somewhat close to immunity. But that isn't fair is it? We should all be held liable for our actions, and work ethic, so that in the end, people will know that you IN FACT did the best you can. But the tripleMA makes us doubtful of that. It makes it IMPOSSIBLE TO REALLY KNOW WHETHER YOU DID YOUR BEST WITHOUT OPEN DUE PROCESS. OTHERWISE ALL THE DOCTORS TESTIFYING HERE ARE SAYING MY DADS NEGLIGENCE CASE IS BASELESS AND WITHOUT MERIT. REALLY ITS HOSPITAL ACQUIRED STAGE 4, A NEVER EVENT.

In the states, it's only allowable if the doctor gets his patients to sign off on an Arbitration agreement, and only some doctors actually have the guts to do that, many opting out reasoning that it makes them look bad to their patients. So what does that really say? Even the best doctors and hospitals in the US have to go through court to defend the work that they do. All I'm asking for is public and open liability... because the people of Guam deserve that...

It's no question that people on Guam know someone that has complained about a hospital and medical care on island, take GMH for example. How are they even able to operate in such conditions that are easily let go? So really ask yourselves, do you even have the people's trust and should you impose forced arbitration proceedings on them.

The tripleMA was imposed 30 years ago, it's outdated. Recruiting doctors through means of protection is questionable, because then you'd just be after quantity over quality. Quantity shouldn't even be an issue because insurances nowadays offer off-island treatment care.

Defending the tripleMA is like saying that these physicians and hospitals are 100% perfect, everything they do is right and shouldn't be questioned in court. They did their work 100% accurately with no flaws.

(I say that because arbitration is unrealistic, and really biased, based on a political system, that if lawmakers don't support unfair means of something that is forced and imposed on the people of Guam, then they lose the support of the elite and the HMO)

As for the standard of care on Guam, what really lowers the standard of care on Guam is when these issues are not brought to light. Like my dad's bedsores. It makes me question, why is it only my dad that got a stage IV life threatening hospital acquired bed sore. Who gets to determine the standard of care? What, is it not the standard of care that my dad's bed sores not preventable? I just want to inform you that damage done by the cause of his wound is extremely hard to reverse; and last I heard, the infection has even reached the bone ... and he is even more at risk of dying than he was first admitted due to a simple preventable NEVER EVENT, that will probably never see it's day in court with National Standards in place to prevent it.

Was my dad the only one that suffered from negligence like this? But we'll never know because cases like these are barred from entering the court. Is that justice? Is that what you call standard of care? Standard of Care is not determined by hiding face but openly and publicly accepting what went wrong in order to improve. Otherwise how will be able to learn from our mistakes? YOU SEE THE REPEAL OF THE TRIPLEMA AS SOMETHING TO FEAR, I SEE IT AS THE LIGHT TO BRING AWARENESS OF THE NEGLIGENCE THAT DOES HAPPEN. Why do you fear? If you in fact know and are confident that everything you do is right and ethical. Why not trust the justice system, just as you ask the public to trust negligence and malpractice to NEVER happen in the medical system. Thank you.

Also to all the physicians that expressed fear of being sued, because technically everyone is at risk of being sued, businesses, the average worker, etc. here is a quote I would like to share by Bertrand Russell: "Fear is the main source of superstition and one of the main sources of cruelty. To conquer fear is the beginning of wisdom"



Senator Therese Terlaje <senatorterlajeguam@gmail.com>

**Different - Brief - 90 seconds**

1 message

**Dr. Bieling** 

Thu, Oct 3, 2019 at 11:10 PM

Senatorterlaje:

Patients and families who have suffered adverse medical outcomes are crying out! That is understandable. They are seeking "justice", whatever that may mean. In many jurisdictions arbitration has been a proven means to that end. It is not perfect.

We have heard powerful emotional testimony. The attorney tried to brush aside emotion, posited he only presents evidence. We take him at his word. How about logic? There is a fundamental flaw in the underlying logic.

There is a huge wound out there. No question. The remedies proposed are not holistic and not patient focused. They are myopically provider focused. All the pain focuses on a punitive element to the provider. Compensation, restitution, restrictions, punishment, revenge, an eye for an eye ... I suffer, therefore the provider must suffer. The underlying logic to this is the provider is the culprit. Straighten out the provider and the pain is cured.

Will punitive and restrictive measures, "boxing in" the Dr. Alfords and Delrosarios, prevent adverse medical outcomes or at least decrease them? I don't think so.

Systems are so complex, the provider is but a small and diminishing link in the chain. The provider is not the sole cause of the big wound and cannot singlehandedly cure the wound. Loss of provider availability will be real. The testimony of Dr. Cabrera was sobering.

The real goal is to improve medical outcomes and avoid adverse outcomes. Punitive and restrictive measures, removing safety blankets, will not further that goal.

We need investment, investment in structure and facilities, investment in continuing education and professional growth.

Respectfully, Friedrich C. ("Chris") Bieling, MD, Board Certified Obstetrician and Gynecologist



Senator Therese Terlaje <senatorterlajeguam@gmail.com>

## Testimony

1 message

Thomas Shieh, MD, FACOG

Thu, Oct 3, 2019 at 6:10 PM

Dear Honorable Senator Terlaje,

I am at GMH taking care of a very high risk pregnant mom, who is in desperate need of my presence. I will not be at the hearing, however, our colleagues will and I am sure their testimony will demonstrate to you and other senators that the mandatory arbitration law must be intact. Our good doctors have made much improvements to healthcare on Guam and I am doing my part for women's and babies health.

Should you have questions please contact me. I am on Guam taking care of patients because I care and my colleagues have ask me to stay. Please do not repeal, modify as we must keep mandatory arbitration. Our specialist Dr Hirata Maternal Fetal Medicine who comes on Guam as a rotating specialist will not come should there be no mandatory arbitration. He has saved so many babies and high risk pregnant moms.

Thank you.

Thomas Shieh, MD, FACOG  
Board Certified, ABOG  
Office: (671) 648-2229 (BABY)  
Sent from Yahoo Mail for iPhone



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35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

## COMMITTEE REPORT DIGEST

### I. OVERVIEW

The Committee on Health, Tourism, Historic Preservation, Land and Justice convened a public hearing on **Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10)** on **Thursday, October 3, 2019** at **5:00 PM** in *I Liheslatura's* Public Hearing Room to discuss **Input from Health Professionals on Effect of Current Law on Standard of Care (All health professionals and patients are invited to provide written testimony or attend hearing).**

#### **Public Notice Requirements**

Notices for this Public Hearing were disseminated via email to all senators and all main media broadcasting outlets on **Friday, September 20, 2019** (5 -day Notice) and again on **Monday, September 30, 2019** (48-Hour Notice). The notice was also published in the Guam Daily Post on **September 26 & October 1, 2019**.

#### **Senators Present**

Senator Therese M. Terlaje, Chairperson  
Senator Kelly Marsh Taitano, Senator  
Senator Telo Taitague, Senator  
Speaker Tina Muña Barnes

#### **Appearing before the Committee**

Dr. Hoa Van Nguyen, Family Medicine  
Dr. Nancy Lentz, Internal Medicine  
Dr. Nathaniel Berg, Diagnostic Radiology  
Thomas Matula, Nurse Anesthetist  
Dr. Peachy Mae Piaña, Diagnostic Radiology  
Dr. Erika Alford, Internal Medicine  
Dr. Amanda Del Rosario, Pediatrics  
Dr. David Weingarten, Neurosurgery  
Dr. Felix Cabrera, GRMC Chief Medical Officer and Internal Medicine  
Attorney Robert Keogh  
Dr. Phillip Tutnauer, Podiatric Medicine  
David Lubofsky, Father of †Asher Dean  
Monica Devera, Mother of †Charles Vincent  
Anelyn Lagrimas



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## II. SUMMARY OF TESTIMONY & DISCUSSION

The informational hearing was Called-to-Order at 5:09 PM.

*(Proceedings are informally transcribed below. For an official record of hearing please go to:*

<https://www.youtube.com/watch?v=yWxsPCLjVcU&t=557s>)

### **Chairperson Therese M. Terlaje:**

*Håfa Adai*, everyone. Thank you for coming today. So, this is the Committee on Health, Tourism, Historic Preservation, Land and Justice. The public hearing is October 3, 2019 and its 5:09 p.m. Notices for this public hearing were disseminated via email to all senators and all main media broadcasting outlets on Friday, September 20 and again on Monday, September 30, 2019. The notice was also published in the Guam Daily Post on September 26 and October 1, 2019.

An invitation was sent to the Guam Medical Association on September 15, as well as the Guam Medical Society on September 16. And we had asked them to invite all their members.

I would like to acknowledge the presence of my colleagues. We have Senator Kelly Marsh Taitano and we have Senator Telo Taitague. Thank you, colleagues.

This is an informational hearing on the Guam Medical Malpractice Mandatory Arbitration Act and the impact on medical practice, standard of care and the Availability of Health Professionals on Guam.

On September 19<sup>th</sup>, we had the first hearing and all testimonies from that hearing are on the website, [senatorterlaje.com](http://senatorterlaje.com). There's also a link to the hearing that you can watch the audio and the video. The Attorney General and all members of the Guam Bar were invited to that hearing and the public was also invited to submit testimony.

For today's hearing, health professionals have been invited and we've asked them to focus on the impacts of the current law on their practice on whether the law ensures the appropriate standard of care on Guam and the impacts of the law on the availability of qualified health professionals.

I've invited the heads of the Guam Medical Association and the Guam Medical Society to lead the health professionals panel and all their members to follow. And we will also hear testimony from additional attorneys who were not able to make the first hearing

And we have members of patients here also to testify and members of the public. At the end of this hearing, I would invite each of you to a third hearing or to, at least, submit testimony for our consideration at a third hearing on November 7, 2019 at 2:00 p.m.



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The Committee is particularly interested in your input as to whether the law can be improved to better protect patients and to ensure an appropriate standard of care. These hearings are for informational purposes only to allow senators to hear suggestions and make inquiry towards formulation of legislation. The third hearing will also allow testimony from the general public.

Note that as of today, no bill has been introduced during this legislative term to revise the current Medical Malpractice Arbitration Act. A separate public hearing on any bill that might be introduced to specifically amend to the law will be required.

So, we are now going to invite Dr. Blounts, but I don't think he's here right now...or a representative from the Guam Medical Society. So, yes. Dr. Nguyen, from the Guam Medical Association, to begin.

**Dr. Hoa Van Nguyen:**

Okay. Thank you, Senators, for accommodating the time change, allowing our physicians to attend this Medical Arbitration Law. It's important because we have patients that, you know, we schedule ahead of time. So, thank you so much for that.

Today, we really have a full panel of physicians from different sector, practicing on Guam, who will share that thought and concern on any change to the mandatory Medical Arbitration Law that... to us is most likely impact really, the quality of medical care in Guam.

We have, I think, seven of us here on the front. So, if you can hold off on your question until the last person. They have a lot to say. So, I appreciate that very much.

Again, my name is Dr. Hoa Van Nguyen. I am representing the GMA as a board member and, also, as a private medical practice in Guam since 2005. You know, there's a lot of pro and con to using arbitration to resolve a medical malpractice claim. And sometimes, the patient, you know, may or may not have a choice with the rising cost of the health care in health insurance.

You know, a lot of states have total reform in that always looking for way to reduce the burden that medical malpractice case placed on the health care industry. Now, I have been practicing in Guam since 1995 with the Air Force.

And I mean, throughout my practice, have privilege of taking care of thousands of patient over the past two...no, 1995, where some of the family under my care that consisting over four generations. You know, they trust the physician they coming back and I say from now four generations and make you look very old but that's what happened.

As a physician, we really choose this profession knowing that we sacrificed a lot of time including our family. It does not matter if you are on and off island, the patient can always get a hold of you as the



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digital age, you know, happen they call you on a cell phone and on WhatsApp. So they always can get ahold of you.

And the patient are actually part of your second family. You know, your family is at home but the patient your second part of family. That's how the profession look. You go off island, you actually miss them. You know, you want to come back because they miss you.

So, you know that's the trust that they have in you. That's part of the true reason why most of the physician...we don't retire we practice until the end. You know, that's because that's our family. Now, back to the Mandatory Arbitration Law, I really liked to change the thought or belief that this law is there to protect the physician.

That is not intention of the law. The Medical Malpractice Arbitration Law is their protect a patient in the state and territory. Now, you look at the history and review all the medical facts, in the state, most of state has arbitration law and cap on the malpractice in order to retain the physician in the state or to provide the health care for their resident.

I'm not sure why we're going backward and try to change something that have been challenged two or three-time in court and determine legal in our Constitution. It doesn't make sense. We are in the location that is far, far away from the mainland and recruit when the physician are so hard to get them to come out here.

Most of physicians have no idea what Guam is and the distance from the mainland will discourage them from practicing on Guam. And from the business standpoint, the most common question the physician asked in an interview is, do we have to practice defensive medicine?

Defensive medicine is detrimental to the patient as it drives the cost of medical care upward and do more harm to the patient than helping them. And the cost of medical care will not be in reach for the majority of our patient.

There's many times that we order lab and study on our patient and they can't afford it just because you want to practice defensive medicine. The Mandatory Arbitration Law is a bestselling point for our recruitment as physician are tired of beating up by frivolous lawsuit in the state ending on settlement by the insurance company without a day in court to prove that it is or is not a malpractice they just settle and get out the way

We definitely will have problem with recruitment if a significant change on this law occur. So, shortage of physician, you know, we gone back for 10-20 years and very detrimental to Guam. You know, just imagine, a few years ago, we don't have an Orthopedic surgeon.

You know, you don't have Orthosurgeon. You don't have neurosurgeon. You don't have ENT. You don't have OB. You don't have cardiologists. You don't have Oncologists.

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And, the key here is no doubt, the list of specialty have grown since 2005 during current practice condition on Guam but you know, if the law change, all the specialty will leave Guam and again, back few years ago, I have a fracture and I can't send no one because there's no Ortho on island.

If you want to drive those people out, that's one way we're going to do it. Now, regarding the cost of arbitration that was a court case, I mean, last hearing we have a debate which one cheaper. But you know, arbitration...if you search in the internet it's a lot cheaper and a lot faster.

You know, Dr. Joey Helms, I think he forward a fee schedule arbitration for AA to you and from the last legislative hearing there. And you know for comparison...you know, arbitration timeline costs like three to six months and you know, based on complexities of the case and it costs anywhere from ten to thirty thousand.

I reviewed the case correctly on this fee schedule on there for AA, but you know, on a court case, it's going to tie up one or two years. And it takes us a lot of time away from our patient care and the cost is outrageous, you know, over a hundred thousand easy.

You know and so it's really take a long time. You asked if you have malpractice insurance in Guam? Yes, we do. Manufacture insurance is available in Guam at this time and the cost is less than the state due to our Mandatory Arbitration Law and due to non-petitioner's population.

The people here don't know...it's not in the right mind to sue very much. So, the costs of insurance is lower. But if any change on this law, the cost of malpractice insurance will most likely not obtainable from any physician.

It's going to be skyrocket and the outcome is if the malpractice insurance company pull out of Guam due to low number of physician—we only have like two or three physician here compared to a state that have thousands of physician, they might pull out and we don't have any malpractice insurance.

Again, with that in place our practice will be changed a lot. We'll be cherry-picking which patient will we'll see and which patient we will not see. Doesn't matter what it is because if you have a high-risk patient that really need your care, you don't want to pick them up because now you put yourself at risk for a lawsuit.

So, you're going to have all these sick patient on Guam that will have no home to go to. You know, in our profession, we really accept, in some occasion, the ending inevitable loss of life outpatient despite the best effort we can do. In those occasions, we're really saddened with the patient.

Again, they are our second family. You know, we don't want to lose them either but that's something that that's part of life and we learned that after our loss and move forward to the next patient. But we do not like to lose any patient.

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You know, I really ask, you know, as senators, to make decision really based on logic and reality and not based on empathy for a few...you know, because the decision you make really affect the whole population of Guam.

You know, people can't afford to go somewhere if they need a specialty—there's a lot of specialty in this room. And if they all move off island, we really in trouble. I'm going to be in trouble I have no one to refer my patient to...for the care of my pa—for my family.

So it's just really...you know, you have to make decision. You know, based on evidence and not just on empathy of someone. So, I just ask you to consider, you know, regarding when you make decision of these mandatory arbitration law. Okay.

**Chairperson Therese M. Terlaje:**

Thank you, Dr. Nguyen.

**Dr. Hoa Van Nguyen:**

Thank you.

**Chairperson Therese M. Terlaje:**

Should we go—did you suggest—Is Dr. Blounts here?

**Dr. Hoa Van Nguyen:**

I don't see him.

**Chairperson Therese M. Terlaje:**

Okay, so we will proceed. I have Dr. Phil Tutnauer? Yes. Please state your name for the record and then you may proceed.

**Dr. Nancy Lentz:**

Thank you, Senator. I'm Dr. Nancy Lentz.

**Chairperson Therese M. Terlaje:**

I'm sorry just...can you say it again? Louder? I can't hear you. All right.

**Dr. Nancy Lentz:**

Dr. Nancy Lentz.



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**Chairperson Therese M. Terlaje:**

Thank you.

**Dr. Nancy Lentz:**

As I said, I'm a member of the Guam Medical Society and in the stead of Dr. Blounts tonight, I would like to read the statement that we have prepared.

*Please see attached testimony (read by Dr. Nancy Lentz representing Guam Medical Society submitted by Dr. Edward Blounts).*

Thank you.

**Chairperson Therese M. Terlaje:**

Thank you, Dr. Lentz. All right, thank you. So, I'd like to ask all the other people who are going to testify, if they could keep their testimony to five minutes for the rest of you and to submit as much as you want in writing.

All of it is going to be included in a committee report and for all the senators. It will also be posted on my website for access for the public. So, Dr. Berg, you may begin.

**Dr. Nathaniel Berg:**

Okay. Thank you, Senator Terlaje, Senator Taitague, Senator Kelly Marsh. Thank you very much for allowing us to come here today. I'm coming to you here today as your neighbor, as someone else who calls Guam home and has done so for more than 25 years.

I raised my kids here. My kids get health care here. I trust the doctors that I send my kids to. I trust the doctors to take care of me and my wife. And part of that is...probably is I trust them over the last 25 years, things have gotten a lot better here.

We have a very good quality health care here and I firmly believe that my kids are safe. When I get up in the morning that they'll be taken care of if something goes wrong medically but like many of you, this morning, I woke up and I read in the paper that we're terrible group of physicians here, that we're horrible.

I think the word horrible was in there. We're a horrible health care community here. And I think we know that that's not true. We know that empirically, it's not true. And so then, why are we here if we are a terrible community?



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There is actually a need for health care providers to understand what causes stress in life. And so we learn, and there's a list, and it's typically 100 things on that list. What are the things that cause stress?

And on that list, the typical things you're going to look at, things like divorce, marriage, having children, then you have to learn things like it's not just losing a job, it's promotions, right? Having a child is a very stressful event. And that list of 100 items is very variable.

Where does divorce sit versus moving right? Where do those things sit? When one list might be number 32 and the next one, it's going to be number 16. Depends on who made those lists, right? But it's typically a list of hundred, varies from school to school but there's one thing that sits at number one.

It doesn't change. There's only one item that never changes on that list. It never moves. It's the very top of that list, every single time. It's the death of a child. It's the worst and most horrific thing that can happen to any human being period, right?

I get choked up thinking about it, right? I got four kids. Somebody said to me the other day, I can't even think about that. I've got a five-year-old, I can't—don't talk about it. And I said that I got two twenty-five year olds, I can't think about it. And I have younger kids too.

It's horrible and to say, I can imagine how someone feels...that's not true. It's so painful that we can't even imagine it, right? So that has come out as—that event had took place here and we are all extraordinarily sympathetic.

There's no baby killer here. There's no one here who's sitting here saying, I don't care. We all care. It's a natural human emotion. We all went into healthcare because we wanted to help people to prevent those things. In fact, if you ask of someone coming into medical school, the number one choice they want is to be pediatricians to help kids.

Now, we don't always stay in that but it's incredible that people do and take care of kids knowing that sometimes things don't go right. So, if it's not true, then what is true? If we're not all bad? If the health care community is not filled with horrible people? What is true?

Well, I think it is if you stop and you think about it. Is there anyone in here, really, who's lived with me here on this island that I call home? I go home every day at 5 o'clock. This is where I live. Has health care gotten better over the last 25 years here? I don't think there's a single person who can honestly say it has not gotten better, remarkably so.

When I moved here, there's no CAT scans. Now, we have four—no, five MRIs. Five MRIs here. So, access to high-quality health care that has completely utterly changed over the last 25 years. And you might even say what about over the last 20—15—10? Doesn't matter. We all know it's getting better and better.

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I remember a time when they were having trouble getting air traffic controllers to come out here. Maybe people remember 20 years ago and the reason, they wouldn't—didn't want to come because they didn't have access to good health care for their families.

No one says that now. I don't want to move to Guam because of the horrible health care that they have there. We don't have a problem doing that. We have good quality health care. Perfect? No, but for an isolated island community? Yes.

We have incredibly good health care here. And I like to think that is because this health care community wants it that way. We want better health care for you, for all of us, for my kids, right? So, we have self-governed ourselves and the Guam Board of Medical Examiners, which has been accused of being extraordinarily unethical is not such a body.

Instead, that is a body that is made up of seven individuals who put themselves to a certain extent in the firing line because we need to judge our colleagues but that's what we're supposed to do and they weren't randomly picked by one person, they may be appointed by the governor but they are confirmed here.

So, you've had a chance to look at them and decide, are these ethical people, who will take that oath to protect the public. And all the ones you've put in, all take that very seriously. And not everybody has been approved over the last 25 years. So it's people that you think will go in and do that job of investigating, of looking to see other people that we want to bring in. We don't want to bring in terrible people here.

We've been—you've been told in all sorts of press releases and the like, that the standards are incredibly low. Let's talk about reality. When you go to look at the standards as they're set nationally. In each state, you can go to California, you finish high school, four years. Finished medical school, four years.

And then—I'm sorry, high school, four years. College, four years. Medical school, four years. And then, you have to do an additional year of training in California before they'll give you a license. In Pennsylvania, you have to do two additional years of training before you'll get your license.

In Michigan, three. In Guam, three years of progressive post graduate medical education. It's among the most stringent requirements that exist. And routinely, we don't give people their licenses because they don't meet even our educational requirements. It basically means you have to have trained to be a specialist. You can't do one internship here, one internship over there.

You can in Pennsylvania. You can't here. You can't do an internship in surgery, a year of psychiatry, a year dermatology, get a license in Michigan because that's three years of postgraduate education. On Guam, it has to be progressive. You have to continuously go up that chain so no, we have an incredibly restrictive and high bar to cross before you can get a license here.

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And when you sit on that—we're there, preventing people from coming in here, who we don't think want to be part of that continuous improvement in care here. People who want to come here call it home and make it a better place. That happened to me.

When you say we have a terrible community—when I first got here and people like Chris Perez, Larry Lizama, John Taitano—these are really good doctors who came and said to me, please, stay here. When you get out of the military, join us in making this a better place.

I love Guam. I think about Chris—was a good friend of mine—it was incredibly good person—God rest his soul. And he helped to keep people here who want to make Guam a better place to live and it's worked. So, if you look at the Guam Board of Medical Examiners who has done an incredibly good job of keeping out people that we didn't want to come here, who didn't want to make this a better place to live, it's not just us, it's not just this group of doctor sitting in a quiet room with some white coat shield.

You have a member of the public that you've confirmed here, who sits there and is our vice chair. He's not interested in protecting doctors. He, like the rest of us, wants to protect the public. That's what his job is. He, like the head of the Health Profession Licensing Organization, Xena Pescina—she is a member of the public who sits there and watches us and makes sure that we're doing the right thing.

It's okay. We don't mind that. We have a member of the Attorney General's Office, who sits there and makes sure that we do the right thing. Also, that's okay. Those checks and balances should be in there. We'd like to believe we do it anyway but it's nice to know as some day, I won't be on there that there are people watching out to make sure there isn't a white code of silence. That those investigations are done thoroughly.

There's also one other governing organization which you may not be aware of called the Federation of State Medical Boards. That says if you want to be a part of our licensing process of all the states and territories. You'd better do things in a way that meets national standards. And they come and visit us and they require us to go to their meetings. Which Xena and I just got back from.

It is a governing organization that knows what's being done in every state. And they send people out here to look at us and examine and make sure we're doing the right thing. And we have to go through ethics training ourselves here; which was just last week as a matter of fact.

So, we have to go and do that ourselves. And I think that the proof is in the pudding. In that for 25 years that I've been here, I can't tell before that. I can tell you 25 years' things have progressively gotten better. Better, better, better it's better now than it was last year. It keeps getting better because we are a good self-governing organization.

You can use arbitration, it's there but I think the reason we're here is an extraordinarily tragic event. But that should not derail the continuous improvement in healthcare that we have seen working with the current system. It works and that one event should not change the incredible healthcare growth that we've seen that makes us a better island. So, that air traffic controllers will continue to come out now because they know it's good quality healthcare.

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**Chairperson Therese M. Terlaje:**

Thank you, doctor.

**Dr. Nathaniel Berg:**

Thank you for your time.

**Chairperson Therese M. Terlaje:**

Si Yu'os ma'åse'

Doctor, please state your name for the record. And I'd like to acknowledge the presence of our Speaker Tina Muña Barnes. Thank you, speaker.

Please proceed.

**Thomas Matula:**

Hi my name is Thomas Matula and I'm a nurse anesthetist. I just want to just give a little of my background. I lived here 26 years ago and when I came here. I had an immediate connection with Guam. And even after I left in 1997, I knew I'd make my way back here and is special to me because my daughters' went to local schools, my wife went to University of Guam Nursing School; it was when they got their first accreditation and you know.

But it was really the community that I fell in love with and the people. And back then 26 years ago, it was a different place with medical access. And I came back in 2014, and I was just amazed on how much how everything has grown here.

And you know just talking like what Dr. Berg said it's we made tremendously great strides. And in my field in anesthesia, I've been in the medical field, 26 years but 19 of those years have been in the field of anesthesia. There was a time in my profession we were a high liability practice, it was a very dangerous profession. You know 40, 50 years ago much has changed since that time.

So, my job is to keep people safe and that's what I tell all my patients. One of the things I love about this community in Guam is and I say this over and over and I've worked in many facilities. I've worked in major trauma centers. I've worked in combat situations. I've worked in large institutions. Teaching institutions, small hospitals, medium sized hospitals.

I've been in private practice for 11 years as an independent provider and out of all my experiences. Guam has an amazing patient population. Their personality is just some of the kindest, gentlest; gentle most loving people I've worked with. And it's this kind of environment that makes me proud to be here. And many of my colleagues that I work with, their somehow interrelated to many of our patients.

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We have family members here that attend local schools, go to churches and you know participate in the local activities. And you know it's just the amount of accountability and responsibility I have to this community is more profound than I've ever felt for any community I've ever lived in.

Having said that, I just want to talk a little bit about you know eroding the arbitration rule can really have a lot of negative impacts on this great community we have here. And I also want to state that you know I serve 5 years in an anesthesia in the United States Navy.

And since when I retired for the last 14 years, I've been in civilian practice. But even you know the premise of like a highly litigious medical environment. You know will make medical healthcare providers practice more safely because of financial consequences as a false premise.

When I was in the medical field I was afforded basically untouched medical liability. You know I could not be sued, the government could. Now having said that. It did not change anyway I practiced. You know adding a penalty you know on making a mistake. You know doesn't change the way I practice.

When I came out to civilian world I had to carry my own medical liability practice. And I still was that same driven person with the underlying intrinsic value of you know driving me to do the best possible practice. Regardless of fear of liability hanging over my head. But having said that I just want to say you know there are some really detrimental community impacts with you know if you erode this arbitration issue.

And you know I've worked in very highly litigious states before. And I've seen out of control lawsuits and in the negative impacts it's had on patients and many medical providers. And again as mentioned before it produces very costly defensive medical practice which drives up the cost for everybody.

Defensive medicine is time wasting and in truly costing often unnecessary lab consults and costlier diagnostic procedures are order against the statistical reasoning just to mitigate a fear of a lawsuit. And this is just bad all the way around.

So, you know this type of environment also leads to medical providers too burdensome stress refusal medically complicated patients. And the ultimate medical provider burnout. The results of the provider are a departure to move on to more work friendly environments in an impossible sooner retirement and career change.

Guam is a special place and I wanted my accountability to my medical colleagues, my accountability to the community will never fail. And on top of that I also have in a sense I don't want any rogue providers coming in here in disrupting everything we have accomplished.

And so I have a responsibility to keep my medical colleagues you know that we're all connected to this community. And that we are all driven to the same you know accountability to you know do the right things and deliver safe medical practice.

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But I think if you erode this arbitration rule it's going to have a lot of untoward effects and it's going to dismantle all the progress Guam has made. And I have seen in the last 26 years.

Thank you for your time.

**Chairperson Therese M. Terlaje:**

Thank you, Mr. Matula.

Please state your name and you may proceed.

**Dr. Peachy Mae Piaña:**

Good evening Madame Chair, Speaker and Senators. Thank you for allowing me to share my perspective as a young doctor on Guam. I am Dr. Peachy Mae Piaña. I'm a board certified radiologist at Guam Radiology Consultants.

**Chairperson Therese M. Terlaje:**

Could you just repeat it again one more time? Yeah.

**Dr. Peachy Mae Piaña:**

*Please see attached testimony.*

**Chairperson Therese M. Terlaje:**

Thank you, Dr. Piaña.

Please state your name for the record and proceed.

**Dr. Erika Masuda Alford:**

Thank you. Erika Masuda Alford. Senators, thank you for your time and allowing us to testify tonight.

My name is Erika Masuda Alford. I was born at Guam Memorial Hospital, the current one and raised in Guam. I graduated from high school just across the street. I remember okaying at the Plaza de España, my cathedral grade school P.E. class.

I left the island to attend University Medical School and complete my residency and fellowship trainings. I knew I always wanted to be a doctor. I also knew that I always wanted to come home. This is home.

Every academic decision I made while I was gone was made knowing that I was coming home. Every big decision. I made the decision to become an endocrinologist knowing the devastating effects of



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diabetes in Guam and my desire to prevent all these diabetes complications. Coming home after being trained in a very large academic institution it was an interesting experience to say the least. It felt like practicing third world medicine in a first world country.

Why do I say that? We lack so many resources. We don't have many of the specialties that are available in the United States. We also lack a lot of the technology and medical equipment that is available in the United States. And when the technology is available it is often not beyond the affordable means of our patients or the insurance does not cover it.

However, in the last 8 years that I've been home I have seen tremendous growth and tremendous improvement in Guam medical care. We are seeing improvements on a yearly basis. We have more physicians who have returned home. Just in the last 8 years we have transitioned to a hospitalist service.

We have had so many physicians from here who work as hospitalists and I see great improvement in-patient care at GMH. We also have had many physicians return home and sub specializing. We have pulmonology, otolaryngology, gastroenterology. We have surgeons, family practitioners, sports medicine specialists, pediatricians, ophthalmologists and gynecologists. All who have returned home. Medicine in Guam is improving however it is still a far cry from what you will find at any major U.S. city. In Guam we are often called onto help at the edges of our comfort zone or sometimes even beyond our comfort zone.

I'm a trained board certified adult endocrinologist however there is no pediatric endocrinologist in Guam. We had a pretty awesome one in Manila but I was told that a couple months ago she moved to California. So we don't even have that anymore.

Children would have to travel to the states every 6 weeks to 3 months just to see their endocrinologist that is often not feasible for the vast majority of families on the island. So for the conditions that I am comfortable with I just take care of the kids.

For the conditions that I'm not very comfortable with. I have them fly to see a pediatric endocrinologist. Get all their recommendations and follow their recommendations. So that it minimizes the amount of travel that they have to do. When children get admitted to Guam Memorial Hospital in diabetic ketoacidosis or diabetic coma the pediatricians often call me to help them manage the children.

The children would never survive a plane trip all the way to California just so that they can get admitted with the help of a pediatric endocrinologist.

I realize I am not a pediatric endocrinologist. I'm an adult one but I do what I can to help these children and every single one of them have walked out the doors of Guam Memorial Hospital. Guam is a resilient island. We've learned how to deal with things that come our way.

Most patients understand that we do what we can with the limited resources that we have. We can't save every patient. We can't heal every illness. Don't get me wrong we try our best but we are still human beings.

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If Guam becomes a more litigious society we may lose physicians that are here and those that have returned home. It would also make it impossible for me to care for some of my sickest patients.

For example, my diabetic patients most of the patients who come to me with diabetes have had multiple complications. Their physicians, their primary care physicians have tried every medication that they know. And once they have almost given up or they're beyond their comfort zone. They send them to me.

A lot of my patients well I shouldn't say a lot. I have a handful of patients who don't like to take their medications, don't like to follow instructions. These are still patients who are someone's who are someone's mother, father, sister or brother. They need care and I care for them.

I would not feel comfortable taking care of the sickest patients. If I have to worry about the next lawsuit or my sickest thyroid cancer patients who have metastatic disease. Well what if something happens? What if it goes somewhere I don't want it to? I don't always have access to the newest technology or medications.

For the most advanced cases I wouldn't be comfortable seeing these patients. If I have to worry about the next lawsuit. I also worry about not just the severe cases but the simple everyday things. When we have to practice defensive medicine for example among my thyroid patients, "Doc, I'm choking." It's a common complaint you know "my pills aren't coming down, going down" most of the time choking is due to post nasal drip or acid reflux.

So I talk to my patients try to figure out which one it is and treat it. If that doesn't work I try the other and see if it gets better. I mean I tell them call me. Call me if you need me. Call me if things don't get better and if things don't get better then I go to more invasive testing.

But if I have to worry about every lawsuit and practice defensive medicine that same patient. Instead of me saying okay I think it's just this. Let's give it a try for a couple weeks. I would probably go immediately to sending them to an ear, nose and throat for a laryngoscope, a gastroenterologist for an EGD and maybe even a barium swallow.

What does this subject the patient to? Extra radiation, anesthesia and invasive procedures that really could have been avoided in a similar fashion. Any abdominal pain would elicit a CT scan of the abdomen again more radiation. Any chest pain?

So if you walk into an emergency room in Connecticut where I did my residency you would immediately get a CT scan, a chest x-ray, about 20 tubes of blood even though it was a simple viral infection.

And this happens all over the U.S. and here's the other problem. What are the patients can't afford their co-pays and their deductibles? This happens more than you can possibly imagine. What happens then? My patients who actually need the procedure for a known diagnosis who need follow-up and surveillance.



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A lot of them can't afford their deductibles and their co-pays. Well if every patient who comes in with a little belly pain because of a urinary tract infection gets a CT scan ordered. What's going to happen to our society.

I have always wanted to return to Guam and care for the people of Guam. It's not always easy our families make sacrifices so that we can be physicians. It's not easy. The other day my 4 years-old said and I felt so guilty about it, "mommy it's always work, work, work, work. I never get to see you. I miss you" that's all she wanted was time with me. My husband has sacrificed his career so that I can come home. It's not fair to him but he does it anyway.

You know we can't even have dinner for the family and I know I've seen this with many of my other physician colleagues. You're eating dinner with your family your phone goes off you have to run to the hospital.

We can't even take vacations without our phones going off and what are we supposed to do? Our patients need us. You know my family understands that sacrifices need to be made so that I can do what I need to do. So that I can take care of sick patients.

You know my husband always says "baby, mommy has to go to take care of someone sick. So mommy will be right home? Then she ends up going to bed without seeing me.

Every time I thought to leave Guam to go to the states that thought goes away quickly because this is home. But lately hearing all this all the rhetoric about physicians being evil uncaring people has made me seriously considered moving back to the U.S.

I've also heard many comments about doctors being on Guam because no one else wants us. I beg to differ. I've gotten many jobs offers at prestigious academic hospitals to become a physician, a professor there.

I know other physicians have even turned down a Stanford professorship just so that they could come home to serve their people. We do not become doctors to hurt people. We worked hard to get through our training so that we can help people. We cry with our patients and their families when they had received a bad diagnosis or become sick.

I cannot count the number of times I've driven home from GMH tearing so badly I couldn't see the road in having to pull over. We celebrate with our patients when they do well, when they get results, when things improve. We want to work with our patients to keep them as healthy as possible.

So senators when you contemplate changes that are needed please consider the big picture. We have a hard-enough time to recruiting physicians to come to Guam for the locals to return home as physicians. We do not want to discourage people from coming home. We want to encourage our physicians to stay. We do not want to encourage them to leave. Healthcare is improving in Guam. Let's make sure it continues to improve.

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Thank you.

**Chairperson Therese M. Terlaje:**

Thank you, Dr. Alford.

Please state your name for the record and proceed.

**Dr. Amanda Del Rosario:**

Amanda Del Rosario.

Good evening, senators. Thank you for having me here today. My name is Dr. Amanda Del Rosario and I'm a board-certified pediatrician at American Medical Center. I'm also a part-time pediatric hospitalist at Guam Memorial Hospital. I see pediatric patients both in the clinic and hospital setting. And I've been practicing here in Guam for the past 4 years. I'm a home-grown physician. I was raised on this island and I've always considered Guam my home.

From the moment I left off island for college and decided I wanted to become a doctor there was no doubt in my mind that I would return back to Guam to practice medicine. In fact, the very reason I was inspired to become a physician was because I grew up here seeing firsthand how much of a need there was and still is for more doctors on our island.

So after completing my medical training in the states. I came back to Guam because I was ready and committed to provide care to our islands children. Knowing fully well that I'd be facing many challenges doing so in a resource limited setting.

I also recruited my husband, Dr. Michael Um, a California native and a pediatrician as well to come back to Guam with me and embark on this career path together. But before I even started seeing babies and children as a pediatrician in Guam.

I experienced what it was like to be at Guam Memorial Hospital as the family member of a sick patient. The patient was my father; he first became ill went from what appeared to be a simple case of the stomach flu – excuse me. But after he got worse and he couldn't recover. He died at GMH on February 12, 2015.

Sorry, I share the story of my father's passing because I want it to be known that I understand what it is like to unexpectedly lose a loved one at GMH. I truly empathize with every person who has had to deal with the loss of a loved one that deep in pain and that heartache.

I also remember obsessing over my father's case scrutinizing the events that led up to his death. Using my medical knowledge to try to see if there was something perhaps that had gone wrong. Some sort of mistake that his doctors made but there wasn't.

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In my state of immense grief, I wanted to find someone to blame. My father's doctors couldn't save him but it was not their fault. He died at GMH and it was no one's fault. As doctors when our patients get sick and become critically ill. We do everything we can to save them but sometimes despite our best efforts we are unsuccessful. But it doesn't mean we made a mistake or didn't do a good enough job or didn't care enough.

Although it's the bad outcomes that tend to be highlighted in the news and talked about the most. They're actually few and far between and what we don't often hear enough about are all the good patient outcomes and the successful recoveries that occur on the daily basis.

The lives that we do save in the hospital thank to the dedicated efforts of our island doctors and the improvement in medical care that Guam had experienced over the years.

In the relatively short time that I've been back home. I can already attest to the fact that despite our island being medically underserved. The quality of medical care has improved significantly as you've heard from my colleagues.

Although there are still a very few pediatric specialists on island. We're fortunate to have adult medicine specialists like Dr. Alford who are willing and able to help care for kids. This saves so many of my patients and their parents from having to deal with the burdens of off island care.

And as for the pediatric patients at GMH who do need to be urgently transferred off island we now have the Angels in Need Fund. A charity fund that was established by Dr. Um to provide financial assistance to patients who can't afford to go off island.

It was only a few years ago when Dr. Um had a patient at GMH who died while waiting for off island transfer because his family was still trying to raise funds for travel expenses. I remember how Mike was so outraged by the unfairness of the situation that he worked tirelessly to create the Angels in Need Fund.

So that now no child will have to die at GMH because of the lack of medical funds. With this type of physician leadership and teamwork amongst primary care physicians and specialists. Care in Guam continues to improve and I am proud to be a part of a collegial and patient-centered work environment.

We all work together. Help each other out and we do what we can with what we have to take care of the kids on our island. The current Medical Malpractice Arbitration Act allows us to advocate for our patients and provide medical care to the best of our ability despite how limited our resources are.

Without the Arbitration Act I fear that our entire culture of medicine will change and our patients will suffer as a direct consequence. Physicians will be pressured into practicing defensive medicine. As you've heard in order to protect ourselves from potential lawsuits from a pediatric standpoint practicing defensive means that our children will be subjected to unnecessary tests and procedures that are not only costly but potentially painful, invasive and even harmful.

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Common childhood conditions with benign causes will end up getting major diagnostic workups. Imagine every child with a headache getting a CT scan and radiation exposure to their developing brain. Imagine every infant with fever and vomiting getting extensive blood work, a urine catheterization and a spinal tap done.

Perhaps even worse and most frightening of all imagine every child who needs surgery or other specialty care having to go off island because adult specialists will no longer see them for fear of being sued.

The Angels in Need Fund will be exhausted, more children will die and pediatric care in Guam will change for the worse. Practicing defensive medicine is not good medicine and it's not how I want to practice as a pediatrician.

I love this island and I care deeply about our community. My patients are precious to me and I treat them and their families like my family. I don't regret my decision to come home and it makes me optimistic to see other homegrown doctors coming back to serve our island as well.

I came back home not because I couldn't find a job anywhere else but I didn't want to practice medicine anywhere else. Knowing how hard it is to recruit physicians to Guam. I invest my time outside of work into running a non-profit program that mentors young pre-med students here in Guam and pairs them with local physicians in our community.

And I do this because I genuinely believe that by investing in our youth and inspiring them to pursue careers in medicine they too one day come home to serve and care for our islands people. But if Guam becomes a hostile work environment where the practice of medicine becomes driven by the threat of lawsuits.

We will not only discourage future doctors from coming to Guam we risk losing our current practicing physicians. So as the Medical Arbitration Act is being reviewed. I ask that we look not only at the current Guam law but also examine the overall way we view the culture of medicine and the physician patient relationship.

If you have mistrust in the healthcare system and go into a doctor-patient relationship already thinking your doctor is out to profit from you. Then everything that doctor does will be viewed with malicious intent.

But we became doctors to help people not hurt them. We sacrificed years of our lives. Time away from our families and chose to dedicate our life's work towards helping others. So I ask that we not change the Medical Arbitration Act but rather change the way we view our doctors. Who are trying to do good in the community and provide compassionate quality care to our islands medically underserved people.

Thank you.



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**Chairperson Therese M. Terlaje:**

Thank you, Dr. Del Rosario.

We've got other people to testify but before we switch panels. I'd like to ask the Speaker, if she has any questions of this panel? Senator Marsh? Senator Taitague?

**Senator Telo Taitague:**

Thank you, Madame Chair. I'd like to thank you all for being here tonight and it's hard enough. I know that you're away from your families as your job requires sometimes. But to have to come here but it's important that we hear what you have to say.

Being that on this I think this board would be a good, Dr. Berg, especially may have an opinion on this as well as yourself or the medical society. But my question is I guess would either the medical society or Guam you know the two doctors had might be able to answer this question.

But what is the actual number of doctors on Guam per capita and how does it compare to the other U.S. jurisdictions?

**Dr. Nathaniel Berg:**

I can answer that perhaps not as specifically as you'd like but we are currently the only jurisdiction that is considered underserved by the Health and Human Services. We're considered a Health Professional Shortage Area or HSPA for every single specialty that exists in medicine. We are currently the only place that has a shortage of every single specialty.

So I can't tell you a number wise per specialty. What the Health and Human Services determines whether you're short or not and that has to do with certain services that are provided and funding and grants. So I can tell you there's not specialty.

**Senator Telo Taitague:**

This is per capita?

**Dr. Nathaniel Berg:**

It's done on a per capita basis yeah.

**Senator Telo Taitague:**

Per capita, okay.



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**Dr. Hoa Van Nguyen:**

Can I answer the question? You know as primary care you know in the average primary care provider per patient you see about a 1000 or 1200 per provider. Right now in Guam even in my practice you know you have one provider you have about three to four thousand patients. You know you can triple an amount of primary care physician in Guam and we still have a shortage.

You know it's access to care but primary care is so short that you know it's unbelievable. You know one provider will have three to four thousand patients. That's three, four times the amount patient they're supposed to be.

**Senator Telo Taitague:**

Is this a case in most states?

**Dr. Hoa Van Nguyen:**

Well its shortage across the United States but in the territory, we are way behind.

**Senator Telo Taitague:**

So, my next question is Dr. Berg, is there a standard of care that doctors provide to patients on Guam lower than the standard of care that would be provided if you were practicing elsewhere?

**Dr. Nathaniel Berg:**

I think it's actually a tough question that I think you've heard here that we are forced not by someone twists of our arm. We are forced to step into areas where we are the best choice. So I think the standards are determined by our level of training. So I'm held to the standard of a board-certified radiologist. Dr. Lentz should be held to the standard of a board-certified family practitioner.

But sometimes as Dr. Alford said, she does things that in the state someone would say, what are you doing, you're not supposed to be seeing kids, you're not trained to do that. Can she meet the standards of that? She makes the best effort that she can and which she loved to have a pediatric endocrinologist here.

Who says I'm a 100% certain of all the standards. I'm not going to speak for her but I'll say for myself. in fact, I would like you to speak about that. But I get forced again to do things. I don't think you guys... how do I say, with all due respect.

I come home sometimes and if my son sees me frazzled, if he sees me, if I'm up- same thing happens every day, like I don't know about you but I get asked every day, "Are you going to be home tonight dad?" So when I come home and they see me how frazzled, they know that I have to go in and do things that normally, we might not do.

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We certainly wouldn't do them but the level of training that we have. Over 25 years of experience I've again sometimes you it's every day I say you know are you able to go off island? No. Why not? I'll give you a thousand reason. Often "I'm taking care of my sick mom and I'm the only one at home," "I've got five kids," "I'm single mom, I can't afford it." "I have immigration issues."

I have this, I've had so many issues. They can't leave and I'll tell you, no, I haven't done very many of these before. Your probably better off going to someplace where you find someone who meets the standard. I don't use that language per se but that's your answer and they say, "Dr. Berg, just do the best you can," and I do.

**Senator Telo Taitague:**

Thank you.

**Dr. Nathaniel Berg:**

I do what I can do to help but am I necessarily at meeting the standards that someone who was trained to do those specific procedures meets, I do the best I can. That's what I can tell you.

**Senator Telo Taitague:**

Thank you so much Dr. Berg.

**Dr. Nathaniel Berg:**

But it might be worthy speaking at hearing Dr. Alford.

**Senator Telo Taitague:**

My next question Dr. Byung, right is that how you pronounce you name?

**Dr. Peachy Mae Piaña:**

Piaña?

**Senator Telo Taitague:**

Piaña? Okay. Thank you. I'm sorry.

So if this law was repealed the Mandatory Arbitration is repealed and it follows the same type of tort law or laws that govern the state of Hawaii and it's something let's say that you know it repeals and then we incorporate that law Hawaii follows. Would you leave Guam?



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**Dr. Peachy Mae Piaña:**

To be quite honest, I don't... I'm not really familiar with the entire Medical Malpractice Law in Hawaii. I do know that they have that cap set but I don't know what it is there in terms of you know; Did it go arbitration? Do they have a mediation panel? Did they go straight to litigation?

I think I would have to review that.

**Senator Telo Taitague:**

Okay, but because I heard you talking about Hawaii.

**Dr. Peachy Mae Piaña:**

Yeah.

**Senator Telo Taitague:**

That's why I was asking I mean Hawaii is pushing toward a lot of you know tort reform and I thought you might know about it. So that's my question.

**Dr. Peachy Mae Piaña:**

I mean to answer question just in general, like I don't think any one of us wanted to come home just to leave. Right?

**Senator Telo Taitague:**

Right.

**Dr. Peachy Mae Piaña:**

I mean our goal is to stay here.

**Senator Telo Taitague:**

Okay.

**Dr. Peachy Mae Piaña:**

And we hope that we can continue to work together you know, make that happen for not to make practicing medicine satisfactory for physicians and remain safe for patient at the same time.



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**Senator Telo Taitague:**

Well, thank you so much. And Madame Chair, I like to request that those who have testimonies that testified, that we can get a copy for us.

Thank you so much.

**Dr. Peachy Mae Piaña:**

Thank you.

**Chairperson Therese M. Terlaje:**

Thank you again. You're welcome to stay. If you have to leave, I understand that maybe the two (people) from the two medical organizations can stay up here on this panel. And I'm going to call if there are any other physicians here to testify.

Many of you signed in but did not indicate that you wanted to give oral testimony. But if you did, please take a seat here. Is there a Dr. Phil Tutnauer? Okay then. All right. David Weingarten, please. Attorney Keogh you can have a seat and Dr. Felix Cabrera and it looks like Dr. Brown is here.

Thank you. Please state your name for the record and you may proceed.

**Dr. David Weingarten:**

Hi, I'm Dr. David Weingarten, I'm a neurosurgeon in private practice here. Thank you for the opportunity to speak here. A lot of what I had to say tonight was actually already said by most of the other physicians here.

You've clearly heard some very passionate speakers who are very proud to be physicians here and have some significant concerns about the possibility of repeal of this bill.

I think Dr. Lentz in her statement from the Guam Medical Society addressed the vast majority of my points. And I think one of the most important of those is that I don't think we have to be either a physician advocate or a patient advocate in some sort of mutually exclusive way. There are ways to make arbitration more accessible.

I think many of us very strongly believe that patients should have access to an arbitration system and to remedy if they are harmed. I don't think any of us believe that bad physicians or bad practice should be protected against remedy.



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But arbitration I think is a critical means by which that kind of remedy can be sought in a fair and just fashion. There are certainly numerous examples. Thank you. There are certainly numerous examples of states that have seen significant exodus of physicians when they have repealed some of their tort reform.

And have seen significant return of physicians when they have induced new tort reform. I know that I believe it was Missouri back in 2002 to 2005 lost about 35% of their neurosurgeons and did not have another influx until they passed new tort reform.

Senator Taitague, I'd like to if I may address a couple of your questions. When you ask them, I immediately felt strongly about answering some of those questions. I sit on several committees at Guam Memorial Hospital and your question about whether or not we have less than the mainland standard of care here.

I think really strikes home to me because one of the things that I'm very proud that we have done in the last couple of years at GMH is I think that we have gone a long way towards substantially improving some of our quality control. Substantially improving the things that for example the Centers for Medicare Services look for in our quality control and we have been very diligent about making sure that physicians are held accountable.

Dr. Berg told you that there are physicians who have not gotten licensed here because they didn't meet the standards. We have not privileged physicians who did not meet our standards. We have disciplined physicians who had persistent issues.

So I think that we have a fairly robust system here for dealing with some of those concerns but I think some of the physicians who said to you that we do stretch our limits here are absolutely spot on. And one of the things that we have been addressing just recently in some of our committees at GMH is what should we do with physicians for example who have not performed a particular procedure for a very long time. What do we do for procedures that are very rare for a ruptured cerebral aneurysm?

For example, the literature shows that if you are at a center that clips less than 50 of those a year your complication rate will be substantially higher now. There are two full-time practicing neurosurgeons on this island and neither of us has clipped more than 2 aneurysms in the last 2 years. So it's just not something that we do very often. It's not something that we see. Should we be allowed to do those things? That's a question we've been asking ourselves but you know certainly the complication rate would be substantially higher here because we are not a center that does 50 of those a year.

But if someone ruptures a cerebral aneurysm and you don't treat it, they die. And so if I'm the only person or if I'm away Dr. Nyame is the only person who can clip that aneurysm even if we're not a cerebrovascular specialist. Even if we're not a center that does 50 of those a year. We're all you got. And so are we at the standard of care of a cerebrovascular specialty center, absolutely not but as Dr. berg said we do our best.

I'm sorry if I may?

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**Chairperson Therese M. Terlaje:**

Yes.

**Dr. David Weingarten:**

There was one other question that you asked of one of the other physicians. Would she leave if this law were repealed and I would answer that if for myself if I may? By itself just with the repeal of the law, I would say no, that would not make me leave.

Fear of malpractice would not make me leave. I completely agree with that Tom Matula said, I don't think that defensive medicine is something I actually practice. I don't think that a change in the malpractice law would change the way that I practice.

What would make me leave Guam is if what has happened in some other places where tort reform has been eliminated or in some way substantially decreased drove up the malpractice rates substantially. I have never been sued but I would wager that simply because you know my title is neurosurgeon, I probably pay the highest malpractice rates on this entire island.

Yeah, typically obstetrician, gynecology, neurosurgery and cardiothoracic surgery are at the very top of that and even never having been sued. I pay over \$60,000 a year and Guam is considered a fairly low tort area.

And so that's why those rates are lower. You look at places like Florida and some of those rates have been as high as \$200,000 a year just for malpractice insurance. And so if the arbitration law is abolished and if no other tort reform takes its place and Guam is seen as a potentially high tort risky area.

And the malpractice rates go through the roof that yes that would make me leave because this is an extremely challenging environment. And I love it. I love practicing here. I started my own business here but it would be cost prohibitive for me to stay here in this limited resource environment.

In an environment where the insurance companies reimburse at a level way below what they do on the mainland. Where they deny tremendous percentage of the procedures that I do and that's not to criticize the insurance companies either.

Their rates are also much lower here. That's just the environment that we're in but the reimbursement is substantially lower here. And so if my malpractice rates were to double or triple I do not think it would continue to be worth it to me to practice here.

**Chairperson Therese M. Terlaje:**

Thank you, doctor.

Dr. Cabrera?



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**Dr. Felix Cabrera:**

Good evening, Dr. Felix Tudela Cabrera. Good evening, Chair Terlaje, Speaker Muña Barnes and Senator Taitague and Senator Marsh Taitano.

Thank you for having us tonight. So again my name is Dr. Felix Tudela Cabrera, son of Saipan born raised, moved to the states and went to school came back and actually been Guam has been home for about the past 8 years or so. But I really still feel like I served the entire Mariana Islands even in my current position right now which is I'm board certified Internal Medicine Physician and I'm the Chief Medical Officer for Guam Regional Medical City.

I'm also the 2020 President elect for Guam Medical Society. So I want to start by acknowledging that there are a variety of opinions regarding what medical malpractice actually is and what its intended utility. The same goes for the Mandatory Arbitration Act and what both are ultimately costing us as a society.

I, personally am no expert on the legal topic but I know enough to recognize its complexity at least for me. I will offer 2 eye opening statistics which directly conflicts with the sentiment that perpetuates much of society regarding medical malpractice.

When discussing a topic that can be quite emotionally charges it is especially in these situations that we must take pause and seriously look at what the science is telling us. And how it helps us balance a human need. But before we start by better understanding what the purpose of the medical malpractice actually is.

So upon its inception medical malpractice lawsuits were not intended nor were they designed with the goal of punishing health care providers that harm patients. Yes, this was never intended to be a form of punishment for punishments sake.

The actual purpose of malpractice lawsuits is to make the patient whole that was harmed as if the interaction never happened. It is also intended to incentivize providers to take appropriate precautions against avoidable harm.

So looking at the actual definition of medical malpractice gives us further insight. It is defined as a breach of duty or deviation from the standard of care. Leading to harm or injuries to a patient. This does not include poor outcomes or damages alone.

Yet all too frequently those who have poor outcomes believe that it's because of life's unfair that it's someone's fault and someone must be at fault. All too frequently we make we are quick to assume that if contact occurs with a medical provider in the process that they must have been in some way in some manner derelict of their duty.



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We can all empathize with this understandable human reaction especially in a time of grief. I'm sure we can understand that bad things happen as a part of life and it doesn't always mean someone screwed up.

The biggest irony about medical malpractice can be summarized in the following study. Prior to tort reform implemented through most of the country over the past two or three decades, a landmark retrospective study published by the Harvard Medical Practice Study show:

1. 1 out of every 15 patients who are actually injured due to medical malpractice ever receive any compensation that help them become whole, 1 in every 15.
2. An astounding 5 out of every 6 lawsuits which result in some form of payment mostly settlements have absolutely no evidence of actual malpractice.

Again a retrospective study looking back. So let me put these statistics in an analogy that helped me better contextualize this data. Let's say, 2 cars collide at a traffic light intersection. A police officer responds to the scene. Now let's say that the police department has a long record where for every 15 red-light runners who caused the collision, the police officer only offers 1 traffic ticket regardless of whether running the red-light was an accident or done knowingly. Let's say in a different scenario no one ran a red-light. There's no collision of course there was no breach of duty of the driver but the accident occurred because 1 of the vehicle's brakes failed or a stray dog ran onto the road or just some unknown reason what that happened. The accident occurred; a police officer responds to the scene. He or she sees that 1 of the passengers has a serious injury. Maybe it's a child so he or she gives a ticket to the other driver and that this is known to occur about 5 out of 6 times in this situation.

If these 2 scenarios was our actual reality, we would all be outraged by the system, not just those unfairly getting traffic tickets. We would all demand for traffic reform. We would want some means to hold the system accountable, and not automatically the individuals. We would demand a process that screens these frivolous traffic citations and throws them out before they cause more harm.

If this scenario was here on Guam and allowed to continue. Who would ever want to drive here knowing this? Who would ever want to move to Guam to work? Who gets a driver's license here? This is the reality of what medical malpractice is without provisions in place like mandatory arbitration or screening panel. No one wants to get into a car accident. Just like no doctor wants to harm or lose a patient.

Yet physicians have to practice in a similar environment every day. An environment that rightfully demands quality and safe care, all while being responsible stewards of the limited resources to do so. At times it seems society has inflated the ability of modern medicine to be able to nearly cure all and save all. At times we seem to think disability or even death is optional. If that was true, then no one would ever die.

A physicians most difficult duty lies in our ability to understand and assess all the risks as best we can, and not be paralyzed by it. If we rejected all risks, then the greater good will not be realized and society will be left with much, much more pain and suffering. You cannot have it both ways.



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In finding a reasonable balance, safeguards must be in place to ensure that those who are truly harmed by malpractice have the opportunity to be made whole. This is why malpractice can actually never be eliminated and I don't think it should.

But this is why myself and many if not most of my colleagues support an amendment to the mandatory arbitration tool that laws actual victims' reasonable recourse to become whole in some form.

As important as it is to make these patients whole, it is just as important to do so without the significant collateral damage of punishing those who are trying to help during an inevitable bad outcome. Like trying to clip an aneurysm and somebody who would otherwise would have just died. But you gave them a chance, a fighting chance.

So that being said, I think it's actually really important that I take a moment to sincerely express my appreciation for Mr. David Lubofsky and Ms. Anelyn Lagrimas for their brave testimony during the last hearing. I cannot imagine how difficult that must have been.

In all honest, as much as I put myself in trying to empathize with them you know the reality is that I disagree with many of the statements they made. But that's not the point and that's relevant in me saying that and in what I actually gained from it listening intently was incredibly valuable to me as a physician.

To try and comprehend their interpretation of what reality is for them. Despite the differences in opinions that we may have. I know their hearts are in the right place and I applaud their effort to try and raise the standard of care for our island. We should all welcome in a responsible way.

And standard of care is a legal definition, it's not a medical term. That's really used that means has anything of significant meaning because the standard of care changes every day. It changes where you are and basically it's about reaching to the ceiling of care the best as you can.

So on a separate note, as the Chief Medical Officer of GRMC, I would be remiss for not making it known that there are very real and dire repercussions if a full repeal to the arbitration law. GRMC is the largest employer and privileger of physicians and mid-level providers in this region.

We provide medical malpractice liability insurance for nearly all of our providers under our group plan. Those who aren't, have their own individual coverage because you have to have it to practice in our private hospital.

So we cannot allow the situation where 5 out of 6 of our good doctors are at risk of having a frivolous lawsuit paid out in their name. All claims settled or awarded are required to be reported to the National Practitioner Databank. I estimate most doctors are significantly more dismayed by the thought of having a wreck you know a hit in their NPDB record than actual financial penalties. I believe this is true because there is no way to be made whole with a frivolous record that could compromise your ability to continue practicing medicine.



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Lastly it is worth mentioning that GRMC would never have even come into existence in the first place without the ability to afford to have affordable malpractice insurance. During a past conversation I have with our insurance providers we discussed the factor that led to our underwriter actually being able to offer us an affordable plan.

So in order of importance this is what was listed:

1. Guam has a history of being a low litigious area compared to other states.
2. The presence of the Mandatory Arbitration Act.
3. The volume of physicians in our plan that gives us buying power.

If there was a repeal of the mandatory arbitration you can easily expect insurance premiums to skyrocket, expect the high possibility of good doctors leaving Guam to provide their good care elsewhere. For those of us who remain expect more pain and suffering.

My intention is not to be an alarmist but to be a realist. It is already hard enough recruiting the talent and skills necessary to substantially elevate the local definition of the standard of care. We've all made significant cracks in this glass ceiling of care for our patients. Please do not allow the roof to collapse on all of us.

So I'll end with a quote by Simon Sinek, "the mind must be convinced, but the heart must be won." I pray that our testimonies tonight have done both.

Thank you.

*Please see attached testimony.*

**Chairperson Therese M. Terlaje:**

Thank you, doctor.

Mr. Keogh?

**Attorney Robert Keogh:**

I've prepared written testimony which I've submitted.

**Chairperson Therese M. Terlaje:**

Been distributed and it would be on our website.

**Attorney Robert Keogh:**



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I will therefore try and abbreviate some of my comments here. Since this is already a long evening and much of what I've had what I would have to say has already been said in writing. I would say though that Dr. Nguyen began this proceeding tonight by saying that the purpose here was to present evidence not empathy and not emotion.

My purpose here is to talk about evidence. I've been practicing law here since 1977. I handle medical malpractice claims on behalf of clients, former patients of some doctors here. I would like to just since we're here to talk about the arbitration statute. I'd like to talk about two experiences. Just to give us an example of cases that I've handled involving the arbitration statute.

Case Number One: The claimants were a husband and wife who went to a local urgent care clinic. Unbeknownst to them at the time, the husband presented with classic symptoms of a medical condition known as cauda equina syndrome, a spinal condition that required urgent or emergent surgical intervention. His condition was misdiagnosed and by the time he was able to obtain proper surgical care in the Philippines he suffered a permanent and debilitating neurological condition affecting his groin and lower extremities. A claim was pursued through the American Arbitration Association pursuant to the Mandatory Arbitration Act. The arbitration process took nearly 5 years to complete. The claimants' costs of arbitration alone amounted to \$47,186.00.

I've provided a document that shows what those costs were and attached it as Exhibit A. Those costs represent only the claimants' share of the Triple A administrative charges. The respondent clinic shared in those administrative charges because the arbitration panel awarded that the costs be split evenly between the parties.

In addition to the \$47,000.00 in arbitration costs, the claimants' incurred other litigation expenses in the amount of over \$66,000.00. The costs include travel to investigate and take the depositions of off island witnesses, deposition transcripts for other witnesses, claimant's expert witness fees, and payment of the deposition fees of respondent's expert, and other litigation costs.

Thus by the conclusion of that arbitration proceeding the claimant's had to pay over a \$113,000.00 out of their own pockets to pursue their remedy. That was because that's what was required by the mandatory arbitration statute. It wasn't a choice that they made to pursue that arbitration.

Guam law mandated that they pursue arbitration through the Triple A. The arbitration panel that the couple had through the Triple A consisted of a local Guam attorney, a Guam based architect and a doctor from Hawaii. The arbitration trial was held at a Hilton Hotel conference room. The cost of the room rental was split by the parties. The airfare, hotel and per diem expenses of the Hawaii doctor were also split by the parties. At the conclusion of the arbitration proceeding the claimants were awarded \$1,315,822.80. Neither party filed for a trial de novo and the award was paid.



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Case Number Two: Claimant brought a dental malpractice claim against a Guam dentist based upon the failure of 9 dental implants. The claim was initially pursued pursuant to the Mandatory Arbitration Act through the American Arbitration Association and an arbitration trial was held in 2009. The arbitration panel consisted of a local lawyer, a local doctor and a local businessman. The panel never reached the merits of the claim since the panel dismissed the case on statute of limitations grounds. In other words, they decided it was not timely filed.

The claimant's share of the Triple A arbitration administrative fees was \$17,806.00.

Despite the potential penalty risk under the Mandatory Arbitration Act of having to pay the dentist's attorney's fees and expert fees if he did not improve his position by 40%, claimant filed for a trial de novo in the Superior Court. The absurdity of the penalty provision in the arbitration act is demonstrated by this case. Since claimant received nothing through arbitration it was impossible for him to improve his position by 40%. 40% of nothing is still nothing.

4 years later in 2013 a jury trial was finally held in the Superior Court. Claimant was awarded \$62,236.00. the jury award was actually \$113,000.00 but it was reduced by 45% for his own comparative negligence.

I've attached the jury verdict forms to my testimony. The dentist then appealed the case to the Guam Supreme Court which was reversed and remanded the case for a new trial all over again. The case was ultimately settled before a trial was held.

In both of those cases the claimants had sufficient funds to afford the absorbent and arbitration expenses. In my years of experience most vast majority of potential claimants who come to me for a consultation do not have the resources to afford to go through the arbitration.

In nearly all potential medical malpractice claims on which I am consulted, once the prospective expenses are described, the claimants chose not to pursue their claim due to inability to afford the costs.

And how many of us can afford \$113,000.00 to pursue a medical malpractice claim even if the potential outcome as in the case number one could be a million dollars or more. They'd still have to have the funds to put upfront to be able to pursue that in order to recover that. To be made hold as was described previously.

Medical institutions and members of the community on Guam are accorded special protection in many ways not given to other potential defendants in a civil litigation in a civil negligence case. A case in point is that while the statute of limitations for any negligence claim is 2 years.

The statute of limitations on a medical claim against any health care institution or professional what is 1 year. Also any claim against any health care institution or professional whether in tort or contract is required pursuant to the Mandatory Arbitration Act. To be pursued through that expensive arbitration



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process before they're even allowed to go to court. The further penalty provisions embedded in the arbitration act provide for a formidable deterrent to seek post arbitration relief through the courts.

The Mandatory Arbitration Act protects all health care professionals and health care institutions and their employees or agents. The health care professionals protected by the arbitration act include doctors, dentists, nurses, physician assistants, nurse practitioners, chiropractors, optometrists, podiatrists, pharmacists, physical therapists, osteopaths, psychologists, acupuncturists, audiologists, speech pathologists, respiratory therapists, nutritionists, clinical dieticians, cosmetologists, and even veterinarians.

On the other hand, Guam law that is designed to protect the general public from potential bad medical practice is ignored and unenforced. Case in point 10 GCA part of the Guam Medical Practices Act requires the medical board to establish and maintain a searchable website that shall contain a wide variety of information about each practitioner including a listing of any civil judgements or arbitration awards for death or personal injury caused by a physician's negligence, error or omission in practice.

No such searchable website exists. Guam's people are given no information that is made readily available to them to make proper and informed decisions as to the competency of a health care provider who would be caring for them or their loved ones.

I just heard it mentioned that physicians are required to report any judgements against them to the National Physicians Databank. That is not a databank that is available to the public. I've tried searching it. The public cannot get it. I don't know how you do get it or what is done with that database but it's not available to the general public on the internet.

Notwithstanding the Mandatory Arbitration Act, medical malpractice claims are already inherently expensive to pursue. A significant component of the litigation expense in a medical malpractice case is the retention of the services of expert witnesses to provide evidence in a very elemental part of the claim. That the medical care provided fell below the standard of care.

In my experience experts' fees are quite high and I guess for good reasons because they've gone through medical school and they've attained the level of expertise. On Guam the District Court of Guam had ruled that to pursue, to prevail in a medical malpractice claim you have to have an expert witness.

That expert witness has to provide testimony that to a reasonable degree of medical certainty the treatment that was provided to that claimant fell below the standard of care. So much of the testimony that's been given here today is about good honest hard-working doctors who are doing the best they can.

I remember Dr. Del Rosario describing quite emotionally how she had to go through the process of having her father die at GMH and what did she do afterwards. She searched the records. She did as much as possibly could to see if anything was done wrong. And she didn't find it. If she had found it, I

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submit what she would have done is consult a lawyer to try and find out what could be done to pursue a claim for the wrongful death of her father.

And that is her right and it should be the right of every individual to pursue a claim to be made hold if there is a malpractice.

No medical malpractice can proceed unless the claimant has retained the services of a qualified, credentialed expert who will testify under oath that the doctors, the physicians who is being sued his care and treatment of that patient fell below the standard of care.

A legal process known as a Daubert motion exists to challenge the expertise of any expert. A judge can strike the testimony of an expert witness if the expert does not possess appropriate credentials to render an opinion on the medical issue involved.

In any malpractice case against a doctor another doctor is going to have to testify to a reasonable degree of medical certainty that what the doctor defendant did fell below the standard of care. It is rare circumstances that you can obtain a medical opinion from a qualified doctor to give that kind of testimony in court and those cases are the only cases that will proceed.

Victims of medical malpractice are oftentimes made uniquely vulnerable by the negligent treatment that they have suffered. They are often subjected to debilitating consequences of the malpractice. They are out of work, financially unstable or and most likely physically compromised.

Faced with a one-year statute of limitations the excessive costs of arbitration and litigation plus the difficulty of finding an attorney who is willing to handle their chase potential claimants find far more often than not that their claims will just have to go unredressed. They will not be made whole.

The Mandatory Arbitration Act exacerbates their circumstance inordinately and in essence tends to erode rather than promote corrective justice.

A number of things have been mentioned that the prior hearing such as liability caps. I've given some testimony about what liability caps represent. That's really perhaps out of the context of this hearing here today. But I do urge everyone to watch a documentary film that is available on Amazon Prime. I think and maybe some other platforms, called Hot Coffee.

And of course by its title you can tell it's about the famous McDonald's case and how the insurance industry in Guam made not on Guam in the United States made that case a cause celeb. And unnecessarily so because it mischaracterized drastically what happened in that case.

The other 2 issues that Hot Coffee documentary address are the election of judges and liability caps. I'll give the one anecdote from that documentary about caps in that documentary a woman's teenage son



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was rendered quadriplegic through the negligence of a third party. He was a teenage boy going to spend the rest of his life quadriplegic unable to move his arms or legs anything below his neck.

A few years earlier in that state an initiative had enacted, a \$250,000 cap on non-economic damages. Non-economic damages are essentially what we call pain and suffering. So the woman's son was only able to collect \$250,000 because of that cap for the pain and suffering that he will endure for the remainder of his life bring quadriplegic.

When the interviewer in that documentary asked the woman if she had voted for that initiative? She said yes but she thought that the initiative that cap would only apply to frivolous cases. Caps do not apply to only frivolous cases. They apply to every case.

I submit that judges not caps are the best remedy to prevent frivolous cases. A case can be dismissed if a judge determines on summary judgement that the claim is frivolous. A cap places the burden on that individual who was injured to protect the entire society from frivolous litigation by limiting their recovery to in that case \$250,000. In Saipan it's \$350,000. Here we don't have caps. Caps do not prevent negligence. Caps just prevent recovery.

One of the other points I just wanted to raise was that it has been mentioned in the last haring that Triple A can waive those expenses. They do not waive them they can defer the filing fee and the filing fee was \$10,200 just to file the case with Triple A. We made a request for a hardship deferral and they deferred \$9,200 of it. They required a \$1,000 filing fee but the claimant still had to pay for all the other administrative costs and the costs of the arbitrators. That still in the end that additional \$9,200 they had to pay it regardless of the outcome. They'd still be responsible to pay that.

In contrast civil litigants in the Superior Court or the District Court have judges made available to them at no additional costs. These litigants do not have to pay judges an hourly fee for their time for studying their case or deciding their case.

They don't have to pay for the use of a courtroom, airfare, hotel room or per diem just to hear their case at trial. These expenses are borne by all taxpayers thus spreading the costs over the population at large. This is how our society is designed to function.

The burden of the few circumstances of where there is a bad outcome based upon bad medical care and it does happen. It happened doesn't happen and I can't imagine that it happens from these passionate doctors who have testified here today. But it does happen and when it does happen that burden should not be borne by the individual who is injured by that outcome.

It should be borne by the society as a whole and that's how insurance works and that is not how this Mandatory Arbitration Act works. It puts the burden on the individual claimants to come up with as much as in case number one - \$46,000 to be able to pursue their claim.



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I'm going to stop there and if you had any questions, I'd be happy to answer them but I appreciate this opportunity to talk with you tonight.

*Please see attached testimony.*

**Chairperson Therese M. Terlaje:**

All right. Thank you very much Attorney Keogh.

Doctor, would you state your name for the record and please proceed.

Just one second Attorney Keogh okay turn your mic off.

**Attorney Robert Keogh:**

Sorry.

**Chairperson Therese M. Terlaje:**

Thank you.

**Dr. Edward Blounts:**

Good evening, senators. I'm Dr. Edward Blounts, thank you for having this hearing so late so that we could bank it in. I am President of the Medical Society, Chair of Internal Medicine at Guam Memorial Hospital and currently Chief Recruiter for Guam Memorial Hospital for physicians.

I came to Guam five and a half years ago. I never thought I would stay here this long. It was I wanted to travel after finishing my training. And I end up falling in love with this island. A lot of the people here have become my family, very close friends. And I really enjoy being here.

I went into medicine actually because when I was 18, I thought I just had a bad flu, bad cold. And I just kept feeling worse and worse. Eventually my mom was able to convince me to go in and see the doctor.

After over a week of constantly saying Eddie go to the doctor and Eddie go to the doctor. Unfortunately, it turned out I had leukemia and I wound up having a particularly aggressive type of leukemia and required a bone marrow transplant. And it just wound up being a very complicated cases.

I got very ill during the process and it took me a while to get back but through that process. I got to see how good my doctors were. How my physicians cared about me and really were in there fighting for me and doing everything they could to make sure I would get through it. And seeing them and seeing how they were, that's what really made me want to become a doctor and want to go into medicine.

A lot of people here on island have similar stories. It may not be a health problem that they had but it could be a health problem that a family member had or somebody else. A lot of the doctors here really



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do want to help people to the best of their abilities. A lot of people say that you know you're working on Guam because he can't get a job in the mainland. You're working on Guam because you're hiding from something. That's not the case. A lot of the doctors that I work with here a lot of the doctors that I've recruited they have other options and they end up staying here because they fallen in love with Guam just like I have.

People have spoken to about what steps are being taken to I know Dr. berg with the licensing board, he addressed a lot about the qualifications to get licensed. What happens as somebody that recruits for the hospital, we look into that too.

Anytime that a physician applies to work for me at GMH. We go through we speak to their previous employers, we check their references, we check the previous states where they're licensed to see if there's any actions against them.

And we, GMH, we do check the National Practitioner Databank. That is a databank that it's accessible to all the hospitals and I believe the clinics on island and the people that work with me and do the recruiting. They will look into the databank before anybody is hired. Before we even you know before credentialing has even started or things go to the department.

One of the first things that is done is that databank is accessed and we don't just access that databank when a physician is being hired. We every 2 years when the physician is up for reappointment that databank is checked again.

So the physicians the National Practitioner Databank is being used but its site for the health care professionals and the people hiring them because it's something that should be kept in context. Another thing I'd like to address too is something that a lot of my colleagues have talked about and that is you know the limitations that we're faced with here.

As I'm a Primary Care Physician, I'm just general internal medicine. But here on island we don't have a Liver Specialist, we don't have at the hospital a Gastroenterologist and we do the best we can to help these people and get through their problems. They could be sent off island but for a lot of people being sent off island is either impossible financially or it's a burden for their family.

So we do the best we can to treat certain conditions here that is a little bit out of what we were trained for but the alternative is the person won't be able to get the care. Another thing too besides somebody not having the funds. They're just not wanting to go off island.

A lot of times I run into patients that ideally would best handled off island and you start talking to them and you find out they don't have a passport and their insurance company mandates that they get care in the Philippines or in Taiwan. And or the Philippines would be cheaper than the mainland.

But the problem is they don't have a passport and it could take several weeks to get that issued and what are we going to do in the meantime? Are we just going to do nothing and let the patient continue to



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deteriorate or are we going to do the best we can for them? To help them to care for them here knowing that we're the best advocate they have.

Last thing I'd like to say is I'm from Pennsylvania, that's where I came from before relocating here to Guam. And Pennsylvania was hit with a malpractice crisis several years ago. The hospital that I was born in, the hospital that my sisters were born in, they no longer have a maternity ward.

They're OB/GYN service has closed because of the malpractice cost that was associated with it and it led to other specialties closing up shop too. In Pennsylvania – Neurosurgery, Orthopedic surgery as well.

And so my I'm not going to tell the senators what to do but I'm going to say that this decision that you guys come to is going to be a very important decision and it's going to have ramifications way out into the future. And depending on what happens you know I'm hoping that we're just not back here in a few years trying to fix more problems that are created.

So thank you for listening to me and thank you for your time.

**Chairperson Therese M. Terlaje:**

Thank you, Dr. Blounts.

Please proceed. Please state your name for the record.

**Dr. Phillip Tutnauer:**

Good evening, senators. I am Phillip Tutnauer and I'm a board certified Podiatrist. And I moved to Guam over a year ago. I moved to Guam after working and successful private practice in New Jersey and I also work concurrently at that time for the federal government.

OB's have left New Jersey or have limited their scope of practice to just doing gynecology. Physicians have left New Jersey in very high numbers. It is such a stressful place to practice medicine. That I have to tell you Guam has been a breath of fresh air coming from New Jersey and the Northeast.

In the short time I've been here I've come to realize that Guam is a different, great place. We take care of people like family. When I talk to other health care providers in the states. I am often telling them how incredible the quality of care is on this remote island. And how much people care for each other.

Let's keep it that way. Please allow us to treat our friends, our neighbors and their family members without additional stresses.

Thank you for your consideration and your assistance with this very important matter.

**Chairperson Therese M. Terlaje:**

Thank you, doctor.



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All right. We have does a couple. Well. All right. Can we just confirm so that you're talking about the same databank I think it was Mr. Keogh, Attorney Keogh and Dr. Blounts and Dr. Cabrera?

**Dr. Felix Cabrera:**

Yes, I believe so.

**Chairperson Therese M. Terlaje:**

Thank you. All right.

Attorney Keogh, can you stay and we're going to hear from the next panel.

**Attorney Robert Keogh:**

I'm sorry?

**Chairperson Therese M. Terlaje:**

Can you stay?

**Attorney Robert Keogh:**

Yeah.

**Chairperson Therese M. Terlaje:**

All right. Thank you. Okay, so we've got David Lubofsky and Roger Martinez. Okay and so if I could have 2 seats for them. They're going to come up. That's the end of my list. Is there anyone else who was waiting to testify if you could please check in with my staff. Please come up Ms. Devera.

I very much appreciate all of you being here and the testimony and the story said of coming with it. It's a really been an eye opening night.

Thank you. All right. Mr. Lubofsky, you can begin.

**David Lubofsky:**

My name is David Lubofsky. Thank you senators for having me back again today.

I am David Lubofsky, the father of Asher Dean Lubofsky, who at age 5 passed away at the Guam Memorial Hospital on October 31<sup>st</sup>, almost one year ago.



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As stated in the last meeting I would prefer to be anywhere else besides here dealing with like what I like to refer to as the blatant medical negligence and apathy that took Ash's life. With no accountability or even a public record about the doctor did, or didn't do.

Then knowing the same doctor will be able to go off and see and endanger others on Guam. Thanks to the arbitration act isn't it true doctors that under the Arbitration Apathy Act. Doctors could kill my many and we'll never know it.

With all the protection it offers the doctors with the built in secrecy and privacy included being covered by their colleagues. We heard Dr. Berg say we're here because of one event and public policy should be based on empathy or based on one event.

But in fact we don't know how many events there are. We don't know how many deaths. We don't know how many injuries because the arbitration act prevents those from coming to light. It hides it. Then we hear the arbitration act being justified or rationalized as the standard of care issues to get doctors to Guam.

It's not about this meeting is not about the doctors. This meeting is about real people. It's about the victims about our kids, our family and out of respect for some of the victims. It's about the death of Asher Dean. It's about the death of baby Faith, Jqry-Wakyn. It's about the death of Aiden. It's about the death of Charlie. It's about Anelyn Lagrimas father, who heard about his mistreatment last week at Guam Regional. And the list goes on and on of our injured and dead relatives and friends through the negligence and a legal cover up with the Arbitration Apathy Act.

Look around please doctors, your victims have real faces. You'll be to be clear what we are discussing here does not have to do with all Guam doctors, I want to make that perfectly clear. Guam has some great doctors. I've seen many and clearly and treated by the same dentist for 25 years. I have 6 kids who have been at one time or the other in the Guam medical system over the last 45 years, yes, 45 years. Stead of care or stay of treatment for all of them was fine that is until Asher into the Seventh Day Adventist Clinic. And saw Mr. Shishin Miyagi on October 29<sup>th</sup>.

Isn't this what we are talking about really not the good doctor, not even the average doctor but that doctor who begs negligent mistakes and should be held accountable to protect all of us. All Guam doctors meet the so called standard of care until they injure or kill somebody negligently.

It's not about the islands standard of care. It's about negligence by a few that the medical community as a whole want to protect. They all maintain their own personal interest.

During the last meeting we read from Attorney Mitch Thompson and Attorney Bell who practice on both sides of the aisle with claimants and defendants. Both agreeing that the cost of arbitration is extremely high, tens of thousands of dollars.

As Attorney Keogh say today making it near impossible to bring these cases to arbitration and to hold these negligent doctors responsible. Last meeting, I was astonished really astonished to hear Dr.

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Nguyen, Acting President of the Guam Medical Association state that we are confused about arbitration. That's his words, confused my gosh.

He said this act isn't to protect the doctors. It's about the overall quality of care on Guam and it helps bring doctors to island. I'm wondering if Dr. Nguyen has read the act. If the act is supposed to improve medical care or bring doctors to Guam.

And the concern is standard of care why is the arbitration process as secretive as we were last meeting. The talk is already on Guam has nothing to do with bringing doctors here. Isn't that secrecy part of arbitration to protect the doctor not our families, not the community.

To hide who did what. Please name any other investigative hearing or accusation of negligence on Guam that affords such privacy or secrecy. Why do we lose our freedom of speech forcibly when we agree to the forced arbitration?

The proceedings prevent us from speaking about the issues then why are we sent and we don't like the outcome of arbitration again is forced onto us, that we have to pay the doctors legal fees if we want to go to court. Again negating due process, a basic constitutional rights.

Shouldn't we know which doctors to avoid. Really this great doctors speaking today. This great doctors on Guam. I've met many but wouldn't that be prudent to know which doctors to avoid for medical insurance choice. Isn't this outright.

The hosting of care has been mentioned by Dr. Nguyen and others here today. And we've heard over and over again. It's made up with no real proof. It's an excuse this Dr. Nguyen tell his patients that's sorry that you are not happy at our clinic but it's about the Guam standard of care. Or does he take responsibility.

Do other doctors take responsibility for patient issues.? Are there many complaints? As I said earlier I have 5 kids. They had good standard of care and overall good or even great doctors. Asher didn't, Asher died.

Maybe that's a national average. 17% get deadly lousy care. You can't sit here now and tell us that standard of care it's not like California, Texas as Dr. Nguyen did last meeting, it's laughable. It's laughable when you consider that medical errors negligence in the U.S.A. where recent studies is the third leading cause of death.

Not one study, many studies. According to a recent study by John Hopkins more than 250,000 people in the United States die every year because of death after heart disease and cancer. Are you saying that standard of care is worse than the states as Dr. Nguyen implied last time and as we're hearing today?

And that statistically more people on Guam died due to it or would die if we did not have the arbitration law. That's a good question. I'd like to have that answer. Extrapolating the statistical data for Guam



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based on the studies in the states. It would it mean that we have about 107 or more deaths per year due to medical negligence.

I bet no one in this room heard that projection and never will either as the arbitration act prevents these debts from being reported accurately or covers up the medical negligence that we face and died.

From these studies that have been done over and over and they can be checked by the intellectuals if they want. If we follow national averages on negligent deaths by doctors. why is it that we have one of the strictest malpractice arbitration laws in the country? It makes sense to me should we try to get rid of some of these bad doctors rather than exposing them to other children or family members.

The arbitration or apathy act would bring doctors to Guam has not been proven here today or in the past, it's just talk. There's no such evidence of that. It's a meritless claim. Attorney Richard Pipes sated in a recent interview it's a naked finding that there is no crisis in getting doctors that no such crisis exists.

So who do we listen to as 100 people per year die from negligence projected not statistically. Do we listen to the doctors with the strictest malpractice policy of self-protection in the country? Who in who have arbitration hearings privately that cannot be discussed or do we listen to Attorney Keogh today or Attorney Pipes who successful are you the last malpractice law was unconstitutional or what about the national statistics.

The statement of medical malpractice is an epidemic concern and we may be losing over a 100 people or more per year on Guam to death due to negligence. Again going back to what Mr. Berg said we should base policy on one child since it's my child I agree. We should base policy on statistics and court real questions.

How many people are injured or killed on Guam yearly and why don't we know that? Oh we don't know that because of the arbitration law. Do we listen to the families who have lost loved ones to the careless, lazy apathetic mistakes? Do we look at the danger that is created by doctors who kill or injure then practice the next day on the next unsuspecting patient due to the protection of arbitration?

Under the umbrella of arbitration how can you say that you are protecting the people of Guam and want to bring good doctors to Guam and improve standard of care if this is true. Why do you bring doctors to Guam who only meet minimum requirements and some have histories of malpractice already?

Some of these doctors may not be able to work in other places not all but some. How can you sit there and justify that? Then bring these people here give them protection on the arbitration and privacy. And you put us at risk and act as if you're doing us a favor.

This does not improve quality of care on Guam. Isn't it true among some of your community of doctors that some say Guam is known as a place to go to work as a doctor if you can't work in other places. I'm not saying that implies the doctors here and I'm not saying applies to all doctors.



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I am saying that there are doctors on Guam who have told me literally have told me that it's a hidden secret. The Guam Medical License Board of Examiners license the doctor as an example in the states with more than one malpractice claim against them. God knows why they license them and then they brought them out here.

He negligently did the same thing to a Guam patient with serious consequences. We have no idea how many times this has happened as it's hidden from us. Is this how we are protected by Mr. Nathaniel Berg and the licensing board. Is this how that board in the Medical Association Society supposed to improve or maintain medical standards of care by bringing these people here will hurt or kill us.

According to KUAM interview with Dr. Joan Gill Guam Medical Board member she said accessing information about your doctor is not as easy as it is in the states. Where most medical licensing board have websites with information available about doctors. So we can make informed choices.

Dr. Gill said the board, the medical licensing board, is hoping to implement the same thing on Guam that was 8 years ago but still nothing. Senator Tina Muña Barnes about 8 years ago also I believe sponsored and passed the Patient Protection Through Information Act. This is all about patients' profile being public information.

So that we can know who these doctors are, complaints against them. If you go to the pretty much non-functional website of the Guam Board of Medical Examiners there used to be a dead link for this law. This is another example of how our medical examiners board doesn't protect us. They have not followed this law this has been a law for 8 years.

Have not set up the website in trying seemly to hide the bad doctors from us. Just like arbitration. It's all about protecting themselves at the power of the community. Even violating a law do we deserve the same thing of information as in the states?

Isn't this information a factor of standard of care in for medical decisions. Why can't always be broken to protect our doctors as a medical board seems to be doing. Dr. Gill also spoke about peer reviews when the board receives complaints about doctor.

A peer review is a form of self-regulation by qualified members of a profession within the relevant field. It's not a radiologist reviewing a pediatricians' work. Even though a licensing board may think that. Peer reviews if ever really ever happens.

My son Asher was never for what Dr. Gill that should happen, a peer review. Another step in the process that we as consumers should have another step in the process that we don't which protects doctors again protection of doctors. And apathy is the undercurrent of this which pretty much again defines the Arbitration Act along with some arrogance.

It's obvious to us not only as parents but the community that the local Medical Association and Society and the Guam Licensing Board of Medical Examiners is about the protection of themselves at the peril of the community.

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The sad thing about it is there great doctors on Guam. And I don't understand why they want to protect wanted here and then the arbitration act or the apathy act. It's just another tool to silence us. I'm not going to focus on how the act discriminates against all of us especially the poor. Guam doctors and what most people think. I've got most of them are great but they're a protected class that looks down at the rest of us.

Which is evident now many of them conduct themselves. The testimony not following the patient protection law and their conflict of interest. They cover for each other proves that not to mention arbitration act.

Again this does not necessarily apply to all doctors but had become part of the overall physician culture on Guam, in my opinion. James Killian gave testimony way back when the arbitration law has been enacted. He said doctors used to practice these defensive medicine but they were worried about being sued for malpractice and that this arbitration act would alleviate that as we've heard today.

So they're not have to worry about being sued. Defensive medicine would be one less worry when the act well I heard doctors here talking we don't want it defensive medicine. We don't want to do this. We don't want to do defensive medicine.

Well defensive medicine means to me that they were doing everything that they could for their patients, lab test, etcetera. Defensive medicine to me means being responsible doctors. Standard of care correlates with defensive medicine not with arbitration.

Baby Faith for days without defensive medicine had no lab tests that could have saved her life. Asher Dean without defensive medicine was left alone in a hospital room for 12 hours. Maybe if they were defensive they would have been in watching him. Not to mention at the SDA clinic.

How many have died over the years to the apathetic of medical care on Guam. A product of arbitration protection. When apathy became part of our Guam physicians culture. If the stats are correct as mentioned earlier.

At least 100 have died by the medical negligence since Asher left us. How many is that over the last 30 years since the act has been law. Let me repeat again Asher Dean, Baby faith, Jqry-Wakyn, Aiden, Charlie and many more.

It's not standard of care or even arbitration that killed them. Isn't doctors that did it that should be held accountable. With the arbitration act there are no options for the average person with a valid complaint against the doctor. Even though it was referred to earlier that there were.

What do we do? Where do we go? Every system of medical care should have a check and balances with protections for the citizens. That's also a variable of standard of care. I provided information last week, our last meeting on how the Guam Board of Medical Examiners has failed us and is rife with conflicts of interest.

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Senator  
**THERESE M. TERLAJE**

*I Mina'trentai Singko na Liheslaturan Guåhan*

35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

I didn't say it but they have been referred to as corrupt in a local recent media report. They do not even allow for a follow the law dealing with the patient protects him through freedom information act.

Someone asked them why we have the Guam Board of Allied Health Examiners who do not act on complaints even the death of a child. My son Asher's one-year anniversary of his death is this month and they received a complaint and they did nothing. It's been 10 months and counting, nothing done by that board. There's nothing – zero, it's a useless board.

I'm asking the doctors here right now. All those doctors on Guam. How many doctors on Guam have a history on claims against them for malpractice and they were then licensed by the Guam Medical Examiner's Licensing Board? How many doctors residing on Guam have complaints against them for malpractice or investigation of complaints for the public to be aware of? What's the secret?

Dr. Gill said this is known in other places. Why do we not know it isn't this our right? This right of ours is negated by the arbitration act. It's the law under the patient protections and information act. I'll be honest with you know you might be hearing a lot of anger in me a lot. And maybe it's coming through what I'm saying but in my opinion and I repeat myself, we have great doctors on Guam.

But doctors should be ashamed of themselves with willful disregard arrogance elected to telling us we are confused. Which we heard last week. Talking to us about standard of care and trying to justify a lot that kills us and protects them, simple as that.

We die no one know we die or how we died and next day you're in office. The self-serving attitude is now public record. The arbitration law is just one example as I understand and so intent of the medical community to protect their own not including other laws. It's time to fix things rather than benefiting from this draconian arbitration apathy act.

As Attorney Mitch Thompson accurately said during the last meeting, doctors did not want to judge their colleagues. There is no protection for us, the average person. The Guam medical examiners allied board have proven that over and over again.

As some of the testimony we hear earlier today trying to justify the act. My opinion is any change in arbitration law should not include Guam doctors to oversee complaints of other doctors per what Attorney Mitch Thompson said.

What we have experienced personally and what we have seen and heard here today, they are not impartial. It will not protect our interests over their own. I think the crux of medical problems in Guam are issues would care come apathy arbitration act and attitude of those physicians that try to justify it.

I said this before it's too late for my son Asher Dean nothing you can do will benefit him of us suffering will not be leaving anybody. Repeal this arbitration act nothing. Get nothing out of it but I can tell you we'll take some no other families will not suffer as we and others have.



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By making doctors responsible for destroying lives. If there is 107 deaths a year we should know who they are. You know Asher Dean was taught the difference between right and wrong. He was taught the difference in right and wrong and to be responsible.

Sadly and obviously his doctors maybe including some in attendance today were not. Get rid of bad doctors. Do not bring more to Guam. Improve medical care on Guam. Save lives, repeal a malpractice arbitration. It will save lives and improve medical care on the island. It's a guarantee.

Thank you, senators.

*Please see attached testimony.*

**Chairperson Therese M. Terlaje:**

Mr. Lubofsky, thank you very much again for being here tonight and testifying and submitting your testimony in writing. It's been provided to all the senators and it will be uploaded also on the website. And I want to again extend my condolences to you. I know it must be very difficult.

Ms. Devera?

**Monica Devera:**

Good evening

*Please see attached testimony.*

**Chairperson Therese M. Terlaje:**

Thank you very much Ms. Devera and I'm very, very sorry for your loss of Charles Vincent. Condolences, I know. Thank you for coming here today tough.

Is Mr. Martinez still here or Dr. Berg? All right. Any other member of the Guam Medical Examiner's Board?

All right. So our final testimony today will be from Anelyn Lagrimas. Please proceed.

**Anelyn Lagrimas:**

*Please see attached testimony.*

**Chairperson Therese M. Terlaje:**



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Thank you very much Ms. Lagrimas. I hope your dad is doing okay. But there are a couple things I guess that we don't have the answers to right now and that is I think Mr. Lubofsky you're right that the GME does not have online yet.

Some of the things that have been mandated by law and we will follow up with that. And if may I ask the panel my colleagues if they have questions.

Speaker Barnes?

**Speaker Tina Muña Barnes:**

*Si Yu'os ma'åse'* Madame Chair.

I just want to thank everybody for being here tonight. And this is not very easy as we hear the stories from even family out there. But I know in our efforts as policymakers to be I don't even know if there is the right word to say.

But I want to say that based on the testimony presented tonight and last week or two weeks ago that there our laws are old. And we should not be afraid to bring it up to the forefront again. And bring all the stakeholders to the same table in the medical profession, in the boards, in the families. And see what we can do together.

I was going to ask Attorney Keogh based on some of the research that our policy staff has done here. One idea that came to mind and I'm just going to be bold to ask about it. In the state of Massachusetts physicians and attorneys have expressed support of reducing unnecessary lawsuits and improve patient safety.

By requiring the claimant to give the provider a 182 written notice before any action is commenced and if would be called like a cooling period and then after that, the claimant can go into court.

And there are a lot of other things that was talked about. About even with the National Practitioner Databank and how Guam is maybe only 29% compliant. The updates based on both the laws that we as policy makers have passed. I know mine and Vice Speaker Cruz's law was passed in 2011. And then Senator Mary Torres and Senator Jim Espaldon then passed legislation to update a lot of that in the 34<sup>th</sup> Guam Legislature.

Based on that policy that's one hand. Is there anymore recommendations that could be included and maybe without giving you at least the copy for that. I guess my least my simple one would be that cooling period based on the first presentation you've given to be, be given to this body.

**Attorney Robert Keogh:**



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Yeah. I'm not familiar with that approach but obviously there's some serious consideration and emotion on both sides of this issue. And all I'm suggesting is that something has to be done to spread the burden out.

So that each individual claimant doesn't have to spend 40, 50, 60 thousand dollars to get redress of a grievance. I'm not sure what the answer to that is, the cooling period. I mean essentially the Government Claims Act has a similar provision.

As that you file a claim and the government has 6 months to decide it, to investigate it and decide it. That's something worth considering but I don't think it ultimately addresses the concerns of the medical community. Which is that allowing free range as one of the doctors said open season on doctors.

That's not what we're looking at is open season on doctors. We're looking at being able to have a redress of a legitimate grievance. Insurance rates are probably at the base of the medical community's concern with that.

And there may be other alternatives to look at. Captive insurance of some kind to provide that protection but not to put the full burden on the claimants to have to come up with the kind of money. That they have to come up with and a malpractice case is inherently expensive as I said because you need an expert.

And an expert is a physician who is going to give an opinion that what another physician did was below the standard of care. That's hard to get to get one doctor to say something against another. You'll never get a doctor here on Guam to give an opinion that another doctor committed malpractice.

It's just too small a community and that's understandable. So it takes going off island to find an expert that you're going to have to pay for to give that opinion. That is required before even any kind of claim can be considered or brought and then add on top of that the expense of a 40 or 50 thousand dollars' arbitration proceeding. Most people can't afford to do that. So I don't know what the answer to it is yet. I am I've only given recent thought to this in presenting testimony here today but clearly this is something that needs to be addressed. And I wish you the best. I'm trying to figure out the answers for that.

**Speaker Tina Muña Barnes:**

I was also reading the letter. Talk to you about one of the cases that was presented and you talked about the fees that could be deferred and but yet at the ultimate end they still had to pay. The claimant still had to pay the full fee.

And I also wanted to ask is there any certified arbitration lawyers? I mean the system in place here on Guam? We had to pay for the expert to come here and do the ruling. So there so are we saying there's not certified arbitration here?

**Attorney Robert Keogh:**

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To my knowledge there is not. I think I mentioned in the testimony. I don't know if Mr. Thompson is still here or not but PAM's is the Pacific Arbitration something society. I don't know. Is owned in part by Mr. Thompson.

So as I said I can't recommend to a client that we use an arbitration procedure that is controlled by the lawyer on the other side of the case. I think my clients would justifiably laugh me out of the office for even recommending it.

No there is no other here. And in fact as I described in my testimony the statute actually can be interpreted to say we are required to use the Triple A, American Arbitration Act because there's none that is certified here for the specific purpose of arbitrating under that statute.

But the arbitration alone by just having to have 3 arbitrators at \$300, \$400 an hour for them to even review your case. Look you know to hear your testimony the review to order whether discovery can be done. It's incredibly expensive. Whereas if you can go to court, you get a judge and a courtroom and a jury for the filing fee.

And that spreads. That spreads the expense out over the community which is what insurance does is spreads the cost of risk out over a broad spectrum. Everybody who drives a car on Guam is required to have insurance. There should be a similar spread of risk on medical malpractice and it does happen.

It is exceedingly rare that it happens. That an outcome is bad outcome caused by negligence. It is exceedingly rare and the only way to determine whether or not that bad outcome was negligence is to have certified expert an appropriate expert give you an opinion that is below the standard of care.

**Speaker Tina Muña Barnes:**

Thank you Attorney Keogh. Madame Chair as I know that in this in the efforts I want to take the time to thank you for continuing to move early. Understand that we have one more part that we are going to look at as it relates to policy and I do know that there are several states out there.

That sometimes we don't need to reinvent the wheel. We can just look at things and emulate them and bring it to and work it to the standards of what we would need as a community, as a small community.

So I'm going to continue to work closely with the oversight chair and I want to take the time to thank her and all of you guys for being here. The pros and the cons and it's something that we need to work on really hard.

But I want to share that based on the testimonies provided in the last and these two hearings that several of the ideas that our policy team is looking at could possibly come to the forefront. And I make that commitment to being trying to look with what would be good for the majority of all.

Thank you.



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**Chairperson Therese M. Terlaje:**

Thank you, Speaker.

Senator Taitague?

**Senator Telo Taitague:**

Thank you, Madame Chair and thank you for the opportunity to go next. I have another appointment but I really appreciate everyone for being here today.

I think it's about a balanced you know balance on both ends – the patient as well as a doctor. So that's what I'm looking for and I appreciate Robert you being here today. I've read a lot about your work that you've done and one of the things I wanted to ask a question about with you real quickly.

Is do you happen to know how many cases or complaints that have been filed on Guam? Is there any kind of data showing these you know attempts for mitigation for wrongful death or any kind of suits or anything like that? Or some that didn't even make it. Do you have any data like that?

**Attorney Robert Keogh:**

I do not and I don't think there is any such collection of data. I myself have probably handled a dozen or so medical malpractice claims over a 42-year career here. So that's not a lot. It doesn't happen a lot but I can tell you I have had the experience of far more consultations with clients where they just cannot afford to go forward with it. That's in the 50 or 60 the amount that I've had to just say sorry you know if you can't come up with.

As one of the witnesses testified she was asked to come up with \$60,000 that probably includes not just arbitration cost but an expert witness and all your litigation costs as well. But that's not an unusual amount to have to quote to a client of what it's going to cost to ultimately do their case.

**Senator Telo Taitague:**

So Robert you're saying that you've probably tried about 12 cases however there is about 50 out there that they don't even get as far as going to you or is that why you're saying or couldn't even do it because.

**Attorney Robert Keogh:**

Never proceeded for lack of funds.

**Senator Telo Taitague:**



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Oaky that's a little bit more than what I thought. The other question I had real quick is do you think it's fair that the physicians that are covered at Guam Memorial Hospital where you there is a cap on anyone who sues a physician at GMH. Do you think that's fair for the private sector had to have the same afford that same opportunity to have a cap?

**Attorney Robert Keogh:**

I'm not a fan of caps because again it placed the burden that should be shared by this community as a whole. On that one individual and I think I mentioned that the quadriplegic person all they got in that case because of a cap was \$250,000. Was their pain and suffering for a lifetime of living as a quadriplegic worth more than \$250,000 probably. If there were no cap in that case were to go to a jury, I would not be surprised for it to produce a result of \$10 million or more.

**Senator Telo Taitague:**

And my last question for you Robert would be of all the cases have you tried as an attorney. I'm sure you do a lot of research when going to defend your clients and maybe you've even gone as far as researching other states and their laws that oversee tort law for medical malpractice.

Of your research what state do you think that provides more of a fair perspective for both the patient and the doctors?

**Attorney Robert Keogh:**

I don't know I really haven't done that research but I will say that to give a comparison of contrast. One of the attachments I provided with my testimony was a decision from the federal court in a case against the United States government where there is no cap.

And this was a woman who was rendered paraplegic as a result of what was determined by Judge Tydingco-Gatewood as being negligence. She was awarded seven and a half million dollars that included not only pain and suffering but all her future medical expenses and all her future loss of enjoyment of life and her husband's loss of consortium as well.

So without caps the damages can be high and that was not a jury that awarded that. That was a Guam judge a good one. I'm very careful and thoughtful Guam judge but based on the evidence. This young woman who was rendered paraplegic was awarded seven and a half million dollars for her injury.

**Senator Telo Taitague:**

Well thank you Robert for that and you know I have researched all the states and territories on their laws with regard to that. I was just curious to see which state that you would favor over to provide that balance to both the patient and the doctors but I appreciate all your information.

**Attorney Robert Keogh:**

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I'd love to see your research and I can give my opinion.

**Senator Telo Taitague:**

Right here okay this thick. Maybe said lastly is you know Anelyn, Dr. Carbullido is here today from GRMC and hearing the opening of your Cabrera I'm sorry Cabrera. Debbie's going to kill me is she's saying that I'm a good friend of your sisters.

But I was kind of really taken back on your opening. It takes a lot of courage to be here considering you know your father's still at the hospital and under care of physicians. And that's one of the biggest scares that anybody who wants to talk about on medical malpractice. And you know maybe changing something that the fear of retaliation and I'm hoping you know Dr. Cabrera you know that's not happening with Anelyn. It's very disturbing to hear.

Anelyn, my number is 989-TELO, so if you have any issues I'd like you to call me.

**Anelyn Lagrimas:**

Okay. Thank you.

**Senator Telo Taitague:**

Thank you. Thank you, Madame Chair for the opportunity.

**Chairperson Therese M. Terlaje:**

Thank you. Senator Taitague I mean I'm sorry Senator Taitano.

**Senator Kelly Marsh Taitano:**

I will just add my comments to those that have been given already here. It's very important as you know to listen to everybody and I know what it is to come in and testify. And I know all of us here just really appreciate that time that you've taken and the difficulty in testifying.

And I remember from the first of the hearings and then again now. I mean there's so much that's just really sobering. Its issues are so deep the whole community can be affected by this. And really it with the testimony that you've given here. I think for all of us it's really made us think deep and hard about these issues.

And so as they've said we don't have any answers at this point but I appreciate all that you've gone through to be able to do this and to be making us think long and hard about if there are any improvements to be made so truly thank you for that.



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**Chairperson Therese M. Terlaje:**

Thank you, senator. I also would like to extend my thanks to all of the physicians and nurses who came today to listen to the testimony. Those who provided testimony. Those who've submitted in writing of course the lawyers who were here last week or yeah and tonight.

And of course the patients and those who with very serious losses or facing very serious risks. I want to just extend my thanks and I agree with you that I think the more we talk about it. I we are all in the same you know we're all patients. We all need our doctors. We are all very grateful for our doctors.

And doctors to are going to be patients and we're all going to need lawyers. I hear stories about lawyers who won't take malpractice cases because then doctors won't see them. You know I mean but I agree with you Ms. Lagrimas right that the more open we are we're trying to get you know to what's good for our community.

And that's our intent and I think being very open is going to help us. We lack of some data I think would be helpful and I haven't also been able to get enough data to satisfy me you know.

Moving forward kind of scientifically right or anything like that so that's unfortunate but we will take a look at that. Also so again so there will be another hearing on November 7<sup>th</sup>, there isn't any real agenda for it right now.

I'm just looking for proposals I'm going to allow my colleagues the opportunity to you know discuss proposals. If you would like to come and help us with this. Please come you know so we can ask you what you think we can take your proposals and debate them any better.

So that will be on November 7 at 2:00 P.M.

Thank you again.

You may submit testimonies to my office directly at the Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña Guam 96910 or to the mailroom of the Guam Legislature in the Guam Congress Building, or through email at [senatorterlajeguam@gmail.com](mailto:senatorterlajeguam@gmail.com).

So these hearings are always brought put on YouTube the recordings of them are always put on YouTube you can go back and watch them later. Testimony that I receive is always given to the senators and it will be put online.

Thank you very much. *Si Yu'os ma 'åse'*

This meeting is adjourned.

The public hearing was adjourned at 8:30 PM.

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### III. FINDINGS & RECOMMENDATIONS

The Committee on Health, Tourism, Historic Preservation, Land and Justice finds the following recommendations based on testimony submitted at the public hearing:

**Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10): Input from Health Professionals on Effect of Current Law on Standard of Care**, was the second hearing of a three-part series on Informational Hearings held. Summaries of issues and suggestions for change from all three hearings will be published in totality on the Committee Report for the final hearing to be held on November 7, 2019.



Senator  
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35th Guam Legislature

Committee on Health, Tourism, Historic Preservation, Land and Justice

## **SENATOR THERESE TERLAJE BEGINS THE FIRST PART OF A SERIES OF INFORMATIONAL HEARINGS ON GUAM'S MEDICAL MALPRACTICE LAW.**

**FOR IMMEDIATE RELEASE (September 20, 2019)**— Committee on Health Chairperson Senator Therese M. Terlaje commenced the first part of a series of informational hearings on Guam's Medical Malpractice Mandatory Arbitration Act.

Thursday's first informational hearing focused on the basic background of Guam's Medical Malpractice Mandatory Arbitration Act. The Office of the Attorney General of Guam, Attorney Mitch Thompson, and members of the Guam Bar Association, including lawyers who volunteered to assist the Legislature with examining the malpractice law, were invited to attend and shared an overview of the current statute and relevant cases. Patients and members of the public also testified and shared their personal experiences and the impact the malpractice law has had on their families. From our first hearing, we learned that arbitration costs are clearly an issue and more information is needed from providers of arbitration services and those who have engaged in the process.

"Having the input from the legal community, medical professionals, and patients is important as we address the intent of the law, and its impact on the standard of health care on Guam. I'm grateful for the willingness of our legal and health professionals for assisting in this regard. A review is long overdue, and is critical especially for families who have experienced the loss of a loved one. Thank you to Mr. David Lubofsky and Ms. Anelyn Lagrimas for not only having the courage to share your experiences and the impact the medical malpractice law has had on your families, but for the extensive research you have done in the process. I offer my deepest condolences to our families experiencing loss, and remain committed to ensuring fairness in the process and most of all, access to justice," said Senator Therese Terlaje.

All health professionals are invited to a second informational hearing on Thursday, October 3, 2019 at 5:00 p.m. to focus on the effect of the current law on standards of care. A third informational hearing is scheduled for Thursday, November 7, 2019 at 2:00 p.m. and will focus on recommendations for improvement. All hearings will take place at the Public Hearing Room of the Guam Congress Building. Patients and the public are invited to attend both hearings and provide written testimony.

As the committee receives written testimony, they will be posted on [www.senatorterlaje.com](http://www.senatorterlaje.com) for public viewing. The website will provide links to watch the public hearings and other announcements regarding the schedule.

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