



GUTIERREZ

OCT 06 1997

The Honorable Antonio R. Unpingco  
Speaker  
Twenty-Fourth Guam Legislature  
Guam Legislature Temporary Building  
155 Hesler Street  
Agana, Guam 96910

Dear Speaker Unpingco:

Enclosed please find a copy of Substitute Bill No. 255 (COR), "AN ACT TO ADD A NEW ITEM (4) TO §6301(d) OF TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO SETTING THE MAXIMUM LIMIT OF LIABILITY FOR GOVERNMENT EMPLOYEES AND AGENTS.", which which became law without the signature of the Governor on October 5, 1997. This legislation is designated as **Public Law No. 24-80**.

Very truly yours,

Carl T. C. Gutierrez  
Governor of Guam

Attachment

cc: The Honorable Joanne M. S. Brown  
Legislative Secretary

00462

OFFICE OF THE LEGISLATIVE SECRETARY
ACKNOWLEDGMENT RECEIPT
Received By: <u>[Signature]</u>
Time: <u>11:45am</u>
Date: <u>10-7-97</u>

Office of the Speaker	ANTONIO R. UNPINGCO
Date: <u>10/7/97</u>	
Time: <u>9:32</u>	
Rec'd by: <u>[Signature]</u>	
Print Name: <u>Carl T. C. Gutierrez</u>	

TWENTY-FOURTH GUAM LEGISLATURE  
1997 (FIRST) Regular Session

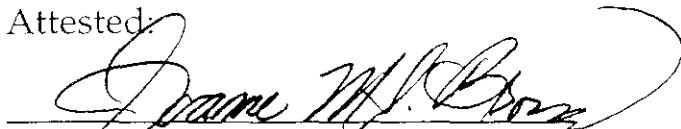
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 255 (COR), "AN ACT TO ADD A NEW ITEM (4) TO §6301(d) OF TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO SETTING THE MAXIMUM LIMIT OF LIABILITY FOR GOVERNMENT EMPLOYEES AND AGENTS," was on the 15<sup>th</sup> day of September, 1997, duly and regularly passed.



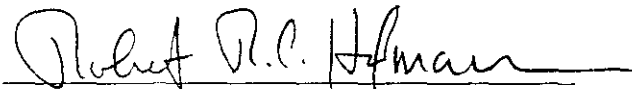
ANTHONY C. BLAZ  
Acting Speaker

Attested:



JOANNE M.S. BROWN  
Senator and Legislative Secretary

-----  
This Act was received by the Governor this 23<sup>rd</sup> day of September, 1997, at  
11:30 o'clock A.M.



Assistant Staff Officer  
Governor's Office

APPROVED:

\_\_\_\_\_  
CARL T. C. GUTIERREZ  
Governor of Guam

Date: \_\_\_\_\_

Public Law No. \_\_\_\_\_

TWENTY FOURTH GUAM LEGISLATURE  
1997 (FIRST) Regular Session

**Bill No. 255 (COR)**

As substituted by the author and as amended on the Floor.

Introduced by:

E. J. Cruz  
J. C. Salas  
T. C. Ada  
F. B. Aguon, Jr.  
E. Barrett-Anderson  
A. C. Blaz  
J. M.S. Brown  
Felix P. Camacho  
Francisco P. Camacho  
M. C. Charfauros  
W. B.S.M. Flores  
Mark Forbes  
L. F. Kasperbauer  
A. C. Lamorena, V  
C. A. Leon Guerrero  
L. Leon Guerrero  
V. C. Pangelinan  
A. L.G. Santos  
F. E. Santos  
A. R. Unpingco  
J. Won Pat-Borja

AN ACT TO ADD A NEW ITEM (4) TO §6301(d) OF  
TITLE 5 OF THE GUAM CODE ANNOTATED,  
RELATIVE TO SETTING THE MAXIMUM LIMIT  
OF LIABILITY FOR GOVERNMENT EMPLOYEES  
AND AGENTS.

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

1           **Section 1. Legislative Intent.** The Guam Legislature finds that  
2 physicians, nurses and other health professionals are increasingly difficult for  
3 Guam Memorial Hospital and other government health care providers to  
4 recruit due in part to the inadequate medical malpractice coverage.  
5 Furthermore, the Guam Legislature finds that the lack of Medical Malpractice  
6 Insurance has caused Health Professionals to rely entirely on the government  
7 for its coverage through the government of Guam Claims, contained in  
8 Chapter 6 of Title 5 of the Guam Code Annotated. The recruitment of hospital  
9 based physicians, such as anesthesiologists and emergency room physicians,  
10 is at a crisis level due in part to the inadequate medical malpractice coverage  
11 through the Government Claims Act, which does not place a cap on the  
12 liability of the physicians. This concern is also expressed by the hospital  
13 medical staff who are required by the hospital to take house calls for the  
14 patients needing acute care without an identifiable private physician. The  
15 Guam Legislature sees the need to set the maximum liability of Health  
16 Professionals and government employees.

17           **Section 2.** A new Item (4) is hereby added to §6301(d ) of Title 5 of the  
18 Guam Code Annotated to read as follows:

19           “(4) Health Professionals, including independent contractors  
20 serving as agents of the government and government employees  
21 covered under the provisions of the Government Claims Act, shall not  
22 be liable for more than the amount stated in Subsection (b). Any award  
23 against the government employer as herein provided bars further  
24 award from the Health Professional or the government employee in the

1 same cause of action for injuries arising out of the same acts or  
2 omissions unless:

3 (1) to the extent that any liability of the government of  
4 Guam or all other government agencies, (including, but not  
5 limited to, all instrumentalities, autonomous agencies, semi-  
6 autonomous agencies, public corporations), is covered by a policy  
7 or policies of insurance, the government waives the limitation of  
8 liability found in Title 5 of the Guam Code Annotated §6301;  
9 provided, that the government shall not be liable in damages for  
10 tort in any amount which exceeds the coverage of insurance and  
11 the limitation of liability contained in §6500.12 of the Government  
12 Code; or

13 (2) the Court finds that the agent or the government  
14 employee was acting outside the scope of her/his employment.”

24-80

**Committee on Health and Human Services  
Twenty-Fourth Guam Legislature**



155 Hesler Street  
Agana, Guam 96910

Tel. (671) 472-3581 • Fax: (671) 472-3582

September 8, 1997

Honorable Antonio R. Unpingco  
Speaker  
Twenty-Fourth Guam Legislature  
155 Hsler Street  
Agana, Guam 96910

VIA: Chairperson, Committee on Rules, Government Reform and Federal Affairs

Dear Mr. Speaker:

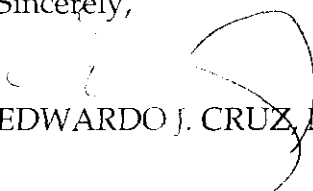
The Committee on Health and Human Services to which was referred Bill No. 255, "AN ACT TO ADD NEW ITEM (4) TO SECTION 6301(d) OF TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO SETTING THE MAXIMUM LIMIT OF LIABILITY FOR GOVERNMENT EMPLOYEES AND AGENTS," has had the same under consideration and wishes to report back the same, with the recommendation to do pass as substituted by the Committee.

The Committee Votes are as follows:

TO DO PASS:	(11) ✓
NOT TO PASS:	_____
ABSTAIN:	_____
INACTIVE FILE:	_____

A copy of the Committee Report and other pertinent documents are enclosed for your review.

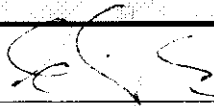



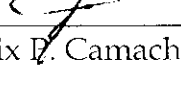
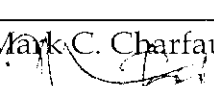
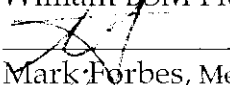
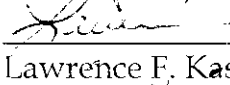
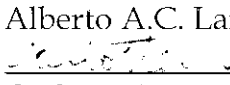
Sincerely,

  
EDUARDO J. CRUZ, MD

Enclosure:

Committee Health and Human Services  
Vote Sheet on  
Substitute Bill No. 255

AN ACT TO ADD A NEW ITEM (4) TO SECTION 6301(d) OF TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO SETTING THE MAXIMUM LIMIT OF LIABILITY FOR GOVERNMENT EMPLOYEES AND HEALTH PROFESSIONALS SERVING AS GOVERNMENT AGENTS.

COMMITTEE MEMBER	TO PASS	NOT TO PASS	ABSTAIN	INACTIVE FILE
 Eduardo J. Cruz, MD, Chairperson	✓			
 John Camacho Salas, Vice Chairperson	✓			
Antonio R. Unpingco, Speaker & Ex-Officio	✓			
 Anthony C. Blaz, Member	✓			
Elizabeth Barrett-Anderson, Member				
 Joanne M.S. Brown, Member	✓			
 Felix P. Camacho, Member	✓			
 Mark C. Charfauros, Member	✓			
William BSM Flores, Member				
 Mark Forbes, Member	✓			
 Lawrence F. Kasperbauer, Member	✓			
 Alberto A.C. Lamorena, V, Member	✓			
Carlotta A. Leon Guerrero, Member				
Lou A. Leon Guerrero, Member				
Francis E. Santos, Member				

**Committee on Health and Human Services**  
**Report on**  
**Substitute Bill No. 255**

AN ACT TO ADD A NEW ITEM (4) TO SECTION 6301(d) OF  
TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO  
SETTING THE MAXIMUM LIMIT OF LIABILITY FOR  
GOVERNMENT EMPLOYEES AND HEALTH  
PROFESSIONALS SERVING AS GOVERNMENT AGENTS.  
[Attachment 1]

Introduced by  
Senators E. J. Cruz and J. C. Salas

**PUBLIC HEARING:**

The Committee on Health and Human Services conducted a public hearing on Monday, May 19, 1997, at 8:30 a.m., to hear testimonies on Bill No. 255, "An act to add a new Item (4) to Section 6301(d) of Title 5 of the Guam Code Annotated relative to setting the maximum limit of liability for government employees and health professionals serving as government agents." The public hearing was held in the Legislature Public Hearing Room. [Attachment 2]

**MEMBERS PRESENT:**

The hearing was called to order by the Chairperson of the Committee on Health and Human Services, Senator Edwardo J. Cruz. Committee members present were:

John Camacho Salas, Vice Chairperson,  
Felix P. Camacho,  
Elizabeth Barrett-Anderson,  
Carlotta A. Leon Guerrero,  
Francis E. Santos, and  
Lou A. Leon Guerrero.

Also present were:

Frank B. Aguon Jr.,  
Thomas C. Ada,  
Judith Won Pat-Borja, and  
Vicente C. Pangelinan.

**TESTIMONY:**

Appearing before the Committee was Tyrone J. Taitano, Administrator, Guam Memorial Hospital Authority. [Attachment 3] Mr. Taitano testified that the Guam



Memorial Hospital Authority supports Bill No. 255. According to Mr. Taitano, the legislation clarifies the current statutes providing for limits on liability of health professionals, acting as agents of the Hospital. He went on to say that such limitations are critical to the effective operation of the Hospital.

Next to testify was Andrea Eberly, Acting Emergency Medical Services Director. At the outset Dr. Eberly testified that she is in support of the bill and understands that it is a clarification on the current statute. According to Dr. Eberly, the intent of the original bill is to protect GMHA employees under the government's malpractice statute and we have found that the current language is not entirely clear and would like to clarify it further.

At this time, the Chairperson called on Dr. James Murphy, Emergency Room Director. Dr. Murphy informed the Committee that if the intent of the existing statute is not clarified, it would be very difficult for the Hospital to continue to retain professionals on staff. Emergency medicine, according to Dr. Murphy, requires treatment of severely injured and ill-people in a primary care setting. To retain specialist to treat these people requires that they have a liability coverage in this situation. Dr. Murphy also testified that presently, GMHA is able to hire physician off-island with the assumption that we were covered. But the clarity needs to be there for us to obtain these specialist to come to Guam. So I strongly support this bill and will work with members of the Committee to clarify this.

At this time, the Chairperson called on Mr. Robert Keogh, a private attorney and longtime resident of Guam. Mr. Keogh informed the Committee that he has a number of questions and suggestions to offer and objected to the bill in its present form. The coverage of "tort" is too broad and unfair to the patient and beneficiary. The purpose of the legislation is to protect physicians practicing at the Hospital from liability in excess of the limits that are set by the Government Claims Act. He then went on to say that the legislation needs to be worked on to ensure that the intent of protecting health professionals employed at the Hospital is achieved. It happens, and it is not anything that anybody intends to happen. Unfortunately, physicians doing their jobs responsibly and carefully can also sometimes make mistakes. And those mistakes, can, because of the nature of the job they are doing, have catastrophic consequences and can put people in comas or into serious physical compromised conditions. The way to deal with that is to get insurance.

Additional testimony was received by the Committee from Dr. Moon G. Yun, Chairman, Department of Anesthesiology, Guam Memorial Hospital. [Attachment 4] According to Dr. Yun, the exposure to the professional liability is tremendously high. As an Anesthesiologist, it is rather difficult to build the needed doctor-patient relationship. The patient comes to the hospital to have a surgery not an anesthesia. He went on to say that the patient load to the anesthesia department has many emergencies and sick patients. According to Dr. Yun, we do not refuse any of these patients. Rather we do our best to help these patients under the circumstances, although we do not have the necessary technical equipment and support.

Dr. Yun went on to say that as an employee or agent of the Hospital, every anesthesiologist believes that the professional liability is well taken care of by the government. He elaborated saying that it was rather a big morning earthquake to find out that we are personally liable and even our own personal property are in danger. He concluded his testimony saying that that lack of professional liability insurance here on Guam and the current financial difficulties of the Hospital present a real challenge. Therefore, we are supportive of limiting the professional liability of the health professional, who are employees of the government of Guam.

At this time the Chairperson called on the Committee members to questions the witnesses. At the outset, Senator John C. Salas queried the Hospital Administrator whether there are any claims against any physician at the hospital for the medical malpractice.

Mr. Taitano responded saying that there are a number of pending suits before the Hospital. A bulk of the cases tends to involve "house doctors" rather the "ER" physicians.

Turning to Dr. Murphy, Senator Salas asked whether there are any litigation against emergency room physicians since you've been here. Dr. Murphy responded saying that he is aware of one case indirectly involving an emergency physician. Dr. Murphy stated that Emergency Room Practice(s) within the United States liability coverage is obtainable and is standard. That is one of the issues I'm pointing at here. We do a high risk specialty and coverage is standard for that specialty. It has to be obtained in most places and that is why we are brining this matter to your attention.

With regards to the same question, Dr. Eberly responding saying that during her tenure she is not aware of any pending suits or litigation. At this time Mr. Keogh interjected saying that if the intent is to protect employees of the Hospital then that particular issue should be addressed.

There being no further witnesses, the Chairperson adjourned the Committee hearing on Bill No. 255 at 9:45 a.m.

## FINDINGS:

The Committee finds the following:

- That with the current statute, the Guam Memorial Hospital finds it increasingly difficult to recruit physicians, nurses, and other health professionals to due to the inadequate coverage provided by the government.
- The lack of Medical Malpractice Insurance on Guam, has caused Health Professionals to rely entirely on the government for its coverage through the Government of Guam Claims.

- The recruitment of hospital based physicians such as anesthesiologists and emergency room physicians is at a crisis level due in part to the inadequate medical malpractice coverage through the Government Claims Act which does not place a cap on the liability of the physicians.
- This concern was expressed by the hospital medical staff who are required to take house calls for the patients needing acute care without an identifiable private physician. The Committee also concurs that there is a need to set the maximum liability of Health Professionals and government employees.
- Over 4,000 patients annually receive anesthesia. More than 40% are emergency cases. That GMH being the only civilian Hospital, the patient load is diverse from a premature baby to an octogenarian an elective to a life threatening emergency.

#### RECOMMENDATION:

The Committee, having reviewed the testimonies presented at the hearing, does hereby recommend to the Legislature the following:

**That Bill 255, "AN ACT TO ADD A NEW ITEM (4) TO SECTION 6301(d) OF TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO SETTING THE MAXIMUM LIMIT OF LIABILITY FOR GOVERNMENT EMPLOYEES AND HEALTH PROFESSIONALS SERVING AS GOVERNMENT AGENTS," be passed as substituted.**

#### Profile on Substitute Bill No. 255

Short Title:	"The Limit of Liability Act."
Date Introduced:	Submitted to the Legislature for introduction on May 13, 1997 and officially ratified during the May legislative session.
Main Sponsors:	Senators Edwardo J. Cruz and John C. Salas.
Committee Referral:	Referred by the Committee on Rules to the Committee on Health and Human Services dated May 13, 1997.
Public Hearing:	Monday, May 19, 1997, Guam Legislature Public Hearing Room.

Official Title: AN ACT TO ADD A NEW ITEM (4) TO SECTION 6301(d) OF TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO SETTING THE MAXIMUM LIMIT OF LIABILITY FOR GOVERNMENT EMPLOYEES AND HEALTH PROFESSIONALS SERVING AS GOVERNMENT AGENTS

Mark-up Meeting: Wednesday, August 20, 1997.

Recommendation: To do pass as substituted by the Author.

### **General Overview**

The Committee on Health and Human Services finds that GMH, with the existing statute, finds it increasingly difficult to recruit physicians, nurses, and other health professionals for the Hospital. It has also come to the attention of the Committee that the lack of Medical Malpractice Insurance has caused Health Professionals to rely entirely on the government for its coverage through the Claims Act. It was revealed during the public hearing that the recruitment of hospital based physicians such as anesthesiologists and emergency room physicians is at a crisis level due in part to the inadequate medical malpractice coverage through the Government Claims Act.

Most importantly, these concerns have been expressed to the Committee by the Medical staff who are required to take house calls for the patients needing acute care without an identifiable private physician. The Guam Legislature sees the need to set the maximum liability of Health Professionals and government employees.

### **Analysis**

A closer look and an analysis reveals the following:

Section 1. Legislative Intent. Outlines the Guam Legislature's position and intent on the need to amend the existing statute.

Section 2. Adds a new Item (4) to §6301(d ) of Title 5 of the Guam Code Annotated. The section as amended provided that Health Professionals serving as agents or independent contractors of the government and government employees covered under the provisions of the Government Claims Act shall not be liable for more than the amount specified for by law. Also, unlike the existing statute, it provides that any award against the government employer bars further award from the Health Professional or the government employee in the same cause of action for injuries arising out of the same acts or omissions unless:

Also, Subitem (4)(1) provides that the Government shall not be liable in damages for tort in any amount which exceeds the coverage of insurance and the limitation of liability contained in the Government Claims Act.



WE THE UNDERSIGNED, Registered Nurses and Allied Health Professionals in and for the Territory of Guam, do hereby petition the members of the Twenty-Fourth Guam Legislature to support the favorable passage of Bill No. 255, entitled:

AN ACT TO ADD A NEW ITEM (4) TO SECTION 6301(d) OF TITLE 5 OF THE GUAM CODE ANNOTATED RELATIVE TO SETTING THE MAXIMUM LIMIT OF LIABILITY FOR GOVERNMENT EMPLOYEES AND HEALTH PROFESSIONALS SERVING AS GOVERNMENT AGENTS.

Print	Sign	Date:
Evangelina A. Manibusan	<i>Manibusan</i>	7-15-97
Isabel E. Santos	<i>Isabel Santos</i>	7-15-97
Linda M. Lizama	<i>Linda Lizama</i>	7/15/97
Polly Gay	<i>Polly Gay</i>	7-15-97
ARLEEN M. DELA CRUZ	<i>Arleen M. Cruz</i>	7/15/97
Rosario Realica	<i>Rosario Realica</i>	7/15/97
EVANGELINE PERBUNDO	<i>Evangelina Perbundo</i>	7/15/97
Alejandrina F. Cacho	<i>Al Cacho</i>	7/15/97
Rosalie E. Puzon	<i>Rpuzon</i>	7/15/97
MAE E. BALUYOT	<i>Maebaluyot</i>	7/15/97
LEA T. BALANO	<i>Lea T. Balano</i>	7-15-97
Linda Unpingco-DeNorcey	<i>Linda Unpingco-DeNorcey</i>	7/15/97
Rubymert G. Simpauco	<i>Rubymert G. Simpauco</i>	7/15/97
Rufina C. Santayo	<i>Rufina Santayo</i>	7/15/97
Rita Olvera	<i>Rita Olvera</i>	
Roberta Manafila	<i>RManifila</i>	7/15/97











# Guam Memorial Hospital Authority Aturidåt Espetåt Mimuriåt Guåhan

850 GOV. CARLOS CAMACHO ROAD  
OKA, TAMUNING, GUAM 96911  
TEL: 647-2444 or 647-2330  
FAX: (671) 649-0145

August 5, 1997

RECEIVED 08-386  
24TH GUAM LEGISLATURE  
COM. HEALTH & HUMAN SVCS.  
MEMORANDUM 7/5 By: [Signature]

TO: Tyrone J. Taitano (11:30 AM)  
Hospital Administrator

FROM: GMHA Medicine Department

SUBJECT: HOUSE CALL MALPRACTICE COVERAGE CONCERNS

During the July 17, 1997, Medicine Department meeting, members of the Department expressed our deep concerns regarding the current status of inadequate malpractice coverage for taking house cases.

It is well known that these patients are mostly the sickest ones admitted to the hospital and their care already constitutes a source of stress to physicians.

Whereas the Department is aware of all efforts being presently made, we can no longer accept the ever present risk involved in the day to day coverage of these patients.

We are also aware of current house call litigations and totally reject the situation where any of us may be sued while caring for house patients.

The time is of essence with the situation at hand, where we feel threatened daily when caring for these patients.

We strongly request for a swift resolution of this problem. Baring this, we may be forced to decline accepting house patients until there is adequate malpractice coverage for house cases.

We fully intend to seek the support of the other departments in the same situation.

We, the undersigned, eagerly await your kind response within two weeks. Thank you.

cc: Chairperson, GMHA Board of Trustees  
Senator Edward Cruz, MD, Chair, Health and Health Svcs  
President, GMHA Medical Staff  
Medical Executive Committee  
Chairperson, Anesthesia Department  
Medicine Department Members

Chairperson, FP/GP Department  
Chairperson, Emergency Department  
Chairperson, Ob/Gyn Department  
Chairperson, Pediatrics Department  
Chairperson, Surgery Department



COMMONWEALTH NOW!

MEMBERS: Department of Medicine

*Christiana O. Adesanya*  
Christiana O. Adesanya, MD

*N. David Emerson*  
N. David Emerson, MD

*Vincent A. Duenas*  
Vincent A. Duenas, MD

*Florencio Lizama*  
Florencio Lizama, MD

*Pablo S. Guzman*  
Pablo S. Guzman, MD

*Alix J. Chenet*  
Alix J. Chenet, MD

*Byungsoo Kim*  
Byungsoo Kim, MD

*Thu Vu*  
Thu Vu, MD

*Conceso Libao*  
Conceso Libao, MD

*Rodolfo Esperanza*  
Rodolfo Esperanza, MD

*Benjamin S. Sison*  
Benjamin S. Sison, MD

*Kwang Ming Chen*  
Kwang Ming Chen, MD

*James Moeller*  
James Moeller, MD

*Pradeepta Chowdhury*  
Pradeepta Chowdhury, MD

*John Steel* (I do not  
John Steel, MD  
you call because I do  
not have a practice)

*Kirk Bellis*  
Kirk Bellis, DO

*Arthur Loerzel*  
Arthur Loerzel, MD

*Philip A. Dauterman*  
Philip A. Dauterman, MD

*Benjamin W. Stillwell*  
Benjamin W. Stillwell, MD

*John Taitano* 7/30/97  
John Taitano, MD

*Amathew* 08/04/97



facsimile transmittal

To: Senator Eduardo Cruz, MD Fax: 472-3582

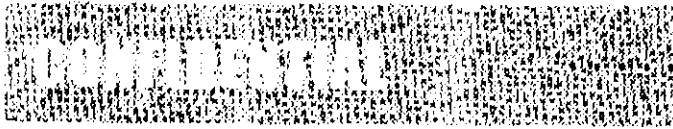
From: MaryLou M. Loualhati, MSO Supervisor Date: August 25, 1997

Re: Bill 255 Pages: (including this page) 3

CC:

Urgent     For Review     Please Comment     Please Reply     Please Recycle

Notes: Senator Cruz, please find a copy of a letter from the Director of the GMH Emergency  
Medicine Department, Dr. J. Murphy in support of your Bill 255. A hard copy of the memo will  
be hand-delivered to your office this week. If you have any questions, please do not hesitate to  
contact me at the Medical Staff Office at 647-2107.





# Guam Memorial Hospital Authority Aturidåt Espetåt Mimuriåt Guåhan



850 GOV. CARLOS CAMACHO ROAD  
OKA, TAMUNING, GUAM 96911  
TEL: 647-2444 or 647-2330  
FAX: (671) 649-0145

August 20, 1997

## MEMORANDUM

**TO:** Twenty-fourth Guam Legislature  
 Sen. Thomas Ada  
 Sen. Frank B. Aguon, Jr.  
 Sen. Elizabeth Barrett-Anderson  
 Sen. Anthony C. Blaz  
 Sen. Joanne Brown  
 Sen. Felix Camacho  
 Sen. Francisco P. Camacho  
 Sen. Mark Charfauros  
 Sen. Edwardo Cruz  
 Sen. William Flores  
 Sen. Mark Forbes  
 Sen. Larry Kasperbauer  
 Sen. Alberto Lamorena  
 Sen. Carlotta Leon Guerrero  
 Sen. Lou Leon Guerrero  
 Sen. Vicente Pangelinan  
 Sen. John Salas  
 Sen. Angel Santos  
 Sen. Francis Santos  
 Speaker Antonio Unpingco  
 Sen. Judith Won Pat- Borja

**FROM:** James W. Murphy, MD, Chairperson, Emergency Medicine and EMD Members

**SUBJECT:** BILL 255

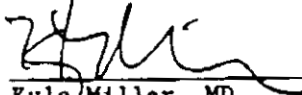
Bill 255 is of critical importance to the People of Guam. We are presently facing a crisis in Emergency Care on the island. Physicians were recently informed that they had unlimited liability in malpractice suits that exceed the limits of the Government Claims Act of 1983. All of us were hired with the presumption that our liability was capped with the Government at \$100,000 for wrongful death and \$300,000 for any other tort. In order for physicians to practice in this vital Specialty (Emergency Medicine), there needs to be at least standard malpractice protection. Currently the coverage is 10% of the stateside standard of \$1 million/\$3 million. With torts ranging up to 80 million dollars on Guam even the stateside insurance levels are not adequate.

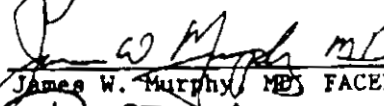
Recruiting Emergency Specialists off-island was difficult even when we thought we had adequate malpractice coverage. With our current liability coverage, it will be impossible to recruit. Senator Cruz's bill offers temporary legislative solutions until insurance options can be evaluated and secured. Currently the Emergency Department is experiencing staffing shortages due to physicians leaving island. Community physicians are filling shifts on an emergency basis. Without a fully operational Emergency Department, the island's healthcare will truly suffer. I will be happy to meet with you at your convenience to discuss the issues in detail.

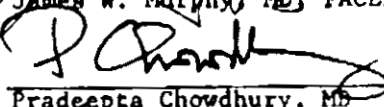
cc: Hospital Administrator  
 Associate Administrator, Medical Services  
 President, GMHA Medical Staff

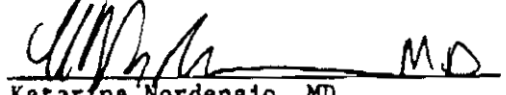


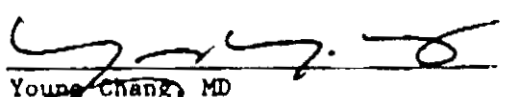
Members of the Emergency Medicine Department:

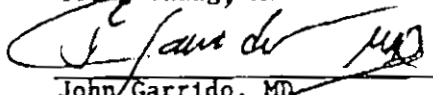
 K. Miller, MD 8/22/97  
Kyle Miller, MD

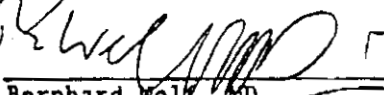
 MD FACEP 8/22/97  
James W. Murphy, MD, FACEP

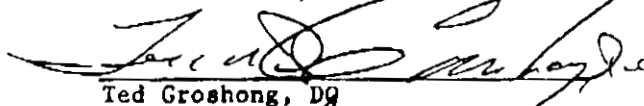
 MD MRCPsych 8/22/97  
Pradeepta Chowdhury, MD

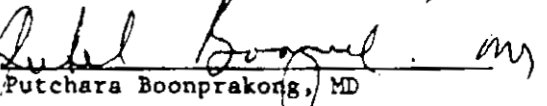
 MD  
Katarina Nordensjo, MD

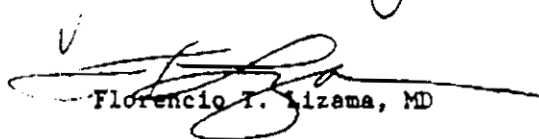
 8/23/97  
Young Chang, MD


 MD 8/22/97  
John Garrido, MD

 MD, FAAP 8/21/97  
Bernhard Wolf, MD

 8/22/97  
Ted Groshong, DO

 MD 8/23/97  
Putchara Boonprakong, MD

 MD 8/25/97  
Florencio T. Lizama, MD

 8/25/97  
Olivia Cruz, MD

# MOON G. YUN, M.I.

May 19, 1997

The Honorable Edwardo J. Cruz, M.D.  
Chairperson  
Committee on Health and Human Services  
Twenty-fourth Guam Legislature

Dear Senator Cruz:

The department of anesthesiology of the GMH has six full time and one part time anesthesiologists. There are one other anesthesiologist from SDA (Seventh Day Adventists) and two CRNAs (certified registered nurse anesthetist) from TDC (the doctors clinic) and FHP (family health plan) to help out the current patient load at Guam Memorial Hospital. Within three years it has to recruit many anesthesiologists because most of present ones are retiring. Without a liability coverage, the recruitment will be a truly difficult one, if at all achievable.

We give anesthesia care for about 4,000 patients annually. More than 40 % are emergency cases. Being the only hospital, the patient load is diverse from a premature baby to an octogenarian and an elective to a life threatening emergency. It is almost like a university hospital, except it lacks all the advanced technologies and necessary support.

The exposure to the professional liability is tremendously high. As an anesthesiologist, it is rather difficult to build the needed doctor-patient relationship. The patient comes to hospital to have a surgery not an anesthesia. The patient load to the anesthesia department of GMH has many emergencies and sick patients. We do not refuse any of these patients. We do our best to help these patients under the circumstances, although we do not have the necessary technical equipments and supports.

As an employee or agent of GMHA, a branch of Government of Guam, every anesthesiologist believes that the professional liability is well taken care of by the Government of Guam, as any other government takes care of its employees. It was rather a big early morning earth quake to find out that we are personally liable and even our own personal property are in danger. To my knowledge, no anesthesiologist is working without this protection; When I hired my associates, I got the professional liability insurance for him as one of many fringe benefits. It was not only for him but also for me and my group as well. To my knowledge, all other hospitals and anesthesia groups, even locum tenens groups do the same. Under the current law, Government of Guam limits its own liability to \$100,000/\$300,000 to protect from any damage. How about the real care givers?; the real front line soldiers, who wake up two o'clock in the morning to save an auto



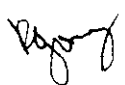
accident patient. It could be your loved one, or any one of the people of Guam. Is this a right thing to do to leave this devoted, hardworking health professional, an employee of Government of Guam, unprotected and then the Government of Guam itself is on the safe ground, well protected? There should be a real protection of these employees' personal property from any damage as long as there is no criminal wrong doing. The hospitality of Chamorro is un-matchable anywhere in the world. I truly believe this is an oversight of previous legislatures. I really appreciate and congratulate your committee to look into this situation.

The lack of professional liability insurance here on Guam and the current financial difficulties of GMH present a real challenge. I am supportive to limit the professional liability of the health professional, who is an employee or agent of Government of Guam, to the level, which the Government of Guam can be comfortable with, so long as there is a real protection of their personal property.

Respectfully yours,

Moon G. Yun, M.D.  
Chair  
Department of Anesthesiology  
Guam Memorial Hospital Authority

## **MEMORANDUM**

To: Senator Eduardo Cruz, MD  
CC: Hospital Administrator, Medical Director, Medical Executive Committee,  
President Guam Medical Society  
Date: July 16, 1997  
From: **President of the Medical Staff,**   
**Guam Memorial Hospital**

**Subject: Bill 255 (COR) re: professional liability**

---

Dear Senator Cruz;

I am writing on behalf of the Medical Staff of Guam Memorial Hospital to endorse legislation that affords much needed liability protection for Physician employees of the hospital and those acting as agents of the hospital. As you well know, this is an issue of vital importance to physicians working for the hospital, those on house-call, and for future recruiting of doctors for the hospital and the island as a whole.

As I mentioned in a previous communication with you, we believe the hospital/ Government of Guam has the duty of protecting those physicians acting as it's agents. Existing legislation (The Guam Claims Act; P.L. No. 17-29) attempted to do so, however as noted previously, language in that statute does not protect these individuals when awards are greater than the limits set. Your current version of bill 255 (COR) attempts to rectify this.

The Bill as written with the addition of a new section 6301(d)(4)5GCA, would indeed provide the protection needed to physicians working as employees and agents of the hospital. However, the exclusionary statement of, "unless they are covered by other liability insurance", and "unless:....(1) the Healthcare Professionals or Government employees have other liability insurance coverage", should be stricken. Any person acting as agent of the hospital, who happens to have independent insurance should not be penalized for this. The reason this may be important is that: 1). it preferentially targets these individuals for law suit; 2). it increases their premium (higher risk, more patients covered); 3). they are unfairly being asked to fund liability for the hospital; 4). if involved in another lawsuit (private) it may use up their allotted fund amount; and 5). it may lead to cancellation of a policy because of a hospital/house case.

My feeling is that the Government of Guam should protect ALL physicians (independent of their insurance-status) while they are acting as agents of the hospital. As you know, being on house-call is already a grievous burden for many physicians who sacrifice, their private practices, free-time, sleep-time, loss of revenue, and their peace of mind (worrying about law suits), while caring for some of the sickest patients on island. They ALL deserve to be protected as best possible.

We appreciate and applaud all your efforts in trying to address and correct this issue of vital importance to all physicians working at GMH.

Bill 246  
Bill 255

RECEIVED 07-24-97  
24TH GUAM LEGISLATURE  
COM. HEALTH & HUMAN SVCS.  
DATE: 7/14/97 By: [Signature]

**MEMORANDUM**

To: Senator E. Cruz, MD  
CC: Hospital Administrator, Medical Director, Medical Executive Committee,  
President Guam Medical Society  
Date: July 10, 1997  
From: President of the Medical Staff [Signature]  
Subject: comments re: bills 246, 255, and peer review

Dear Senator;

Included are the requested comments on the aforementioned bills.

Peer review legislation:

By now you should have received my suggested new "working" version for a peer review bill. It basically combines elements of the Guam, Hawaii, and Oregon bills. I believe this version simplifies the language and content, as well as preserves the most vital elements that need to be included. These elements include: 1). protection from discoverability of peer review and quality assurance activities by hospitals, clinics, and professional societies; 2). immunity from liability for participating in these activities, as long as it is done in good faith; 3). prohibits disclosure or examination of peer review proceedings; and 4). protects the rights of individuals being reviewed.

Other items present in the current bill were left out because they are either *not pertinent to peer review*, superfluous, or are covered by superceding law (i.e., federal law). The section that mandates reporting, based on guidelines of the National Practitioner Data Bank are mandated by federal law. Other reporting such as for substance abuse, incapacity, or ethical considerations is addressed or should be addressed elsewhere.

Bill 246 (Organ Donor Program):

Comments:

- 1). Section 83101.1 Declaration of Death is excellent, very practical, and much needed. It provides an expanded definition for death that includes cardiovascular and brain death. The definitions and procedures established are practical and consistent with current medical practice.
- 2). I agree with and applaud the establishment of a functioning Organ Donor Program on island. However my concerns lie with practical aspects. How will it be funded? Who will administer the program? As you probably know, Dr. Livingston Wong who is a renal transplant surgeon from Hawaii and a long time friend of this island, tried to establish such a program here 2-3 years ago. It was my understanding that policies and procedures were established, a nurse coordinator was identified (Ruth Whedbee/Gurusamy), and participating local surgeons were also identified. Funding was to be out of Hawaii. Guam

patients awaiting organ transplant were to have the highest priority for Guam harvested organs. For some reason the program never became functional. Perhaps it could be restarted.

3). The section that mandates GMH to submit rules and regulations for establishing this program within 120 days may be an added burden for the hospital at a time that it is overwhelmed with many problems. However, if the previously established policies and procedures can be found and easily adapted then this may be a moot point.

Bill 255 (Max. Limit of Liability for Health Professionals):

Comment:

Since hospital-contracted physicians and House-call physicians are indeed agents of the hospital (an extension of the government itself), they should be covered for liability by whatever means the government wishes. They could do this by securing private liability insurance or through protective legislation. In the past, the government has chosen the latter tack. However, since the current statute is around 20 years old it has become outdated. The current limits of \$100,000 for wrongful death and \$300,000 for other tort, are not realistic or fair sums with respect to what awards are presently. If the limits were raised to reflect fair compensation for severe damages in the present era, then I believe that your bill would be fair and acceptable to the community at large and to the physicians affected.

**Law Offices Of  
Horecky & Associates**

Suite 403, Bank of Hawaii Building  
134 West Soledad Avenue  
Agana, Guam 96910

Bill  
06-111  
RECEIVED  
24TH GUAM LEGISLATURE  
COM. HEALTH & HUMAN SVCS.  
DATE: 6/25 By: CB 10:44 A

FREDERICK J. HORECKY

Telephone: (671) 472-8275/76

KRISTINA L. BAIRD, Of Counsel

Facsimile: (671) 472-8403

**FACSIMILE COVER LETTER**

DATE: June 25, 1997

TO: The Honorable Edwardo J. Cruz  
Senator, TWENTY-FOURTH GUAM LEGISLATURE

FAX NO: (671) 472-3582

CC: Mr. Tyrone J. Taitano  
Hospital Administrator  
GUAM MEMORIAL HOSPITAL

FAX NO: (671) 649-0145

FROM: Frederick J. Horecky, Esq.

**RE: Limiting Liability of Physicians**

REMARKS: Please see attached letter of even date in connection with the above-referenced matter. Thank you.

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: - 4 -  
IF COPY IS NOT LEGIBLE OR INCOMPLETE, PLEASE  
CALL IMMEDIATELY FOR RETRANSMISSION.

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FACSIMILE OPERATOR: Cynthia B. Tamonte

27

**Law Offices Of  
Horecky & Associates**

Suite 403, Bank of Hawaii Building  
134 West Soledad Avenue  
Agana, Guam 96910

**FREDERICK J. HORECKY**

Telephone: (671) 472-8275/76

Facsimile: (671) 472-8483

**KRISTINA L. BAIRD, Of Counsel**

June 25, 1997

**VIA: FACSIMILE**  
**(671) 472-3582**

The Honorable Edwardo J. Cruz  
Senator  
**TWENTY-FOURTH GUAM LEGISLATURE**  
Office of Senator Edwardo J. Cruz  
Committee on Health and Human Services  
1st Floor, Tanaka Building, Route 4  
Agana, Guam 96910

**Re: Limiting Liability of Physicians**

Dear Senator Cruz:

Thank you for your recent forwarding of the amended version of Bill No. 255 adding subsection (4) to section 6301(d) of title 5 Guam Code Annotated. I commend you in your efforts at clarifying a problem area which receives little attention. However, I have a few concerns which I would like to bring to your attention in the specific wording of Bill No. 255 and the effect it may have.

The language as proposed may increase a litigant's recovery. The provision may be interpreted to provide a separate and distinct remedy against the physician personally. Section 6212(b) provides that a settlement or final judgment bars any further proceedings against employees as follows:

"Settlement of a claim before suit, or final judgment in a suit filed under this Chapter shall bar the claimant from any further proceedings against the employee or employees whose acts or omissions gave rise to the claim unless:

- (1) the Court finds that the employee was acting outside the scope of his employment; or
- (2) the Court certifies that it would have awarded the claimant more but for the limitations of section 6301 of this Chapter."

As written, the addition of 5 GCA, section 6301(d)(4), could allow statutory authority to seek an extra award under 6212(b)(2). Thus, it would seem that the language of 6212(b) generally barring further proceedings against the employee personally would be rendered ineffectual. The limitations of 6301 would now be unclear as to whether the claimant is entitled to only a maximum of \$100,000 in wrongful death and \$300,000 in other torts or double this amount. The claimant may well be able to recover against the Hospital subject to the limits, and in addition recover against the physician personally, subject also to these limits. Thus, the claimant could argue statutory authority for recovery of a total of \$200,000 in wrongful death and \$600,000 in other torts.

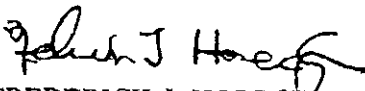
Upon review of this provision, it seems that a comprehensive approach may be beneficial. To read harmoniously with 6212, the new provision could state that a claimed act of negligence occurring within the scope of government employment is solely the liability of the Agency and is limited by 6301(b). It should also state that any other claims, those other than negligence occurring within the scope of employment, are against the physician personally and are also capped as provided by 6301(b). Finally, it should state that the two remedies are mutually exclusive. The addition of a new section, section 6301(d)(4), could read as follows:

"Government agencies shall be liable for the negligent acts or omissions of Government employees and Health Professionals, as defined in section (d)(3) above, arising out of the scope of the employment and at the direction of the Government agency with which they are employed. Government employees and Health Professionals shall only be personally liable, not to exceed the amounts specified in section 6301(b), for intentional or willful acts or actions which are not within the scope of their governmental employment. Any award against the Government employer as herein provided bars further award against the employee or Health Professional in the same cause of action for injuries arising out of the same acts or omissions."

This would also help clear up the confusing language of 6212(b) discussed above, and makes the protections read more clearly overall. It should also be noted that to limit the protections of the Government Claims Act to only those physicians who do not carry adequate insurance, by inclusion of the last sentence, may create the possibility of a Constitutional challenge. The statute treats adequately insured physicians differently than uninsured physicians and may make it desirable not to be covered.

Again, I appreciate your forwarding of the proposed Bill 255 for review. I also appreciate your efforts in weighing these concerns. Should you have any questions or comments, please feel free to call the office.

Sincerely,

  
FREDERICK J. HORECKY

cc: Mr. Tyrone J. Taitano  
Hospital Administrator

FJH:sbg/lc

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GOVERNMENT OF GUAM  
AGANA, GUAM 96910

DEPARTMENT OF ADMINISTRATION  
(DIPATTAMENTON ATMENESTRASION)  
DIRECTOR'S OFFICE  
(UFISINAN DIREKTOT)

P.O. Box 884 • Agana, Guam 96932  
Tel.: (671) 475-1250/1136 • Fax: (671) 472-8384

06-907  
RECEIVED  
24TH GUAM LEGISLATURE  
COM. HEALTH & HUMAN SVCS.  
DATE: 100at By: 6-11-97

May 19, 1997

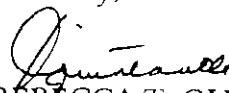
Senator Edwardo J. Cruz, M.D.  
Chairperson, Committee on Health  
and Human Services  
Route 4, T.S. Tanaka Building, Suite 100  
Agana, Guam 96910

Dear Senator Cruz:

Buenas Yan Saluda!

The Department of Administration finds that §6301 (b), (c), and (d) (1), (2), (3) currently sets the maximum limit of liability to Health Professional and government employees. We therefore, do not have any comments to the proposed bill number 255.

Sincerely,

  
REBECCA T. QUINTANILLA  
Acting Director

OF BUDGET AND MANAGEMENT RESE

Bill No. 255  
 Amendatory Bill YES  NO

Date Received 6/25/97  
 Date Reviewed 8/12/97

Department/Agency Affected: Guam Memorial Hospital Authority  
 Department/Agency Head: Tyrone J. Taitano  
 Total FY Appropriation to Date: Autonomous

Bill Title (preamble): AN ACT TO ADD A NEW SUBSECTION 6301 (d) (4) TO TITLE 5 GUAM  
 CODE ANNOTATED RELATIVE TO SETTING THE MAXIMUM LIMIT OF LIABILITY FOR GOVERNMENT  
 EMPLOYEES AND HEALTH PROFESSIONALS SERVING AS GOVERNMENT AGENTS.

Change in Law: Yes, Add a new Subsectin 6301(d)(4) to Title 5 Guam Code Annotated

Bill's Impact on Present Program Funding:  
 Increase Decrease Reallocation  No Change

Bill is for: Operations Capital Improvement  Other ( )

FINANCIAL/PROGRAM IMPACT

PROGRAM CATEGORY	ESTIMATED SINGLE-YEAR FUND REQUIREMENTS (Per Bill)		TOTAL
	GENERAL FUND	OTHER	
Health and Welfare	1/		

FUND	ESTIMATED MULTI-YEAR FUND REQUIREMENTS (Per Bill)					TOTAL
	1st	2nd	3rd	4th	5th	
GENERAL FUND	1/					
OTHER						
TOTAL						

FUNDS ADEQUATE TO COVER INTENT OF THE BILL? YES/NO-IF NO, ADD'L AMOUNT REQUIRED \$  
 AGENCY/PERSON/DATE CONTACTED: GMHA / John A.B. Pangelinan / 8/12/97

FUND	ESTIMATED POTENTIAL MULTI-YEAR REVENUES					TOTAL
	1st	2nd	3rd	4th	5th	
GENERAL FUND						
OTHER						
TOTAL						

ANALYST Orlinda S. Guerrero DATE 4/10/97 DIRECTOR Joseph E. Rivera, Acting DATE AUG 13 1997

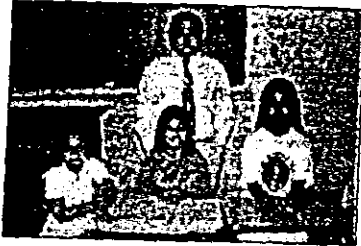
FOOTNOTES: 1/ There is a potential fiscal impact to the government of Guam should Bill No. 255 be enacted into law. However, per the GMHA Comptroller, the impact cannot be ascertained at this time due to the unavailability of data.

08-467  
 RECEIVED  
 24TH GUAM LEGISLATURE  
 COM. HEALTH & HUMAN SVCS.  
 DATE: 8/18/97 By: A. A.S.A.



*The Committee on Health & Human Services will conduct a Public Oversight Hearing on Monday, May 19, 1997, at the Legislative Public Hearing Room, starting at 8:30 a.m. The agenda for the day's activity will be:*

- 8:30 am BILL NO. 255: AN ACT TO ADD A NEW SUBSECTION §6301(d)(4) TO TITLE 5 GUAM CODE ANNOTATED RELATIVE TO SETTING THE MAXIMUM LIMIT OF LIABILITY FOR GOVERNMENT EMPLOYEES AND HEALTH PROFESSIONALS SERVING AS GOVERNMENT AGENTS.
- BILL NO. 246: AN ACT TO AUTHORIZE THE GUAM MEMORIAL HOSPITAL AUTHORITY TO ESTABLISH AN ORGAN DONOR CENTER; TO PROMULGATE RULES AND REGULATIONS THROUGH THE ADMINISTRATIVE ADJUDICATION LAW AND TO CITE THE ACT AS "THE GIFT OF LIFE ACT OF 1997"
- 9:30 am Confirmation Hearing- Governor's appointment of Mr. Mark W. Chamberlain, Acting Member, Guam Memorial Hospital Board of Trustees
- Term Length: Unexpired term of Peter S. Dumaliang  
Expiration Date: October 24, 2000
- 10:00 am Recess
- 10:30 am Oversight: Department of Public Health and Social Services (DPHSS)
- 12:00 pm End of Oversight Hearing



## Crystals, trees and comets win Islandwide Science Fair

Page 3

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# Pacific Sunda

Vol 28, No. 106 Agana, Guam, May 18, 1997

A Gannett Newspaper



24th Guam Legislature  
**SENATOR EDUARDO J. CRUZ, M.D.**  
Chairperson,  
Committee on Health and Human Services

### THE PUBLIC IS INVITED TO REVIEW AND COMMENT ON THE FOLLOWING DURING THIS PUBLIC HEARING:

- DATE:** MAY 19, 1997  
**TIME:** 8:30 A.M. TO 12:00 P.M.  
**PLACE:** PUBLIC HEARING ROOM, GUAM LEGISLATURE, AGANA GUAM
- AGENDA:** CONFIRMATION HEARING OF THE GOVERNOR'S APPOINTMENT OF:
- 8:30 A.M. Bill No. 255 An Act To Add A New Item (4) to 6301 (d) of Title 5 of the Guam Code Annotated Relative to Setting the Maximum Limit of Liability for Health Professionals Servings as Government Agents and Government Employees.  
  
Bill No. 246 An Act to Authorize the Guam Memorial Hospital Authority to Establish an Organ Donor Center; to Promulgate Rules and Regulations through the Administrative Adjudication Law and to Cite the Act as "The Gift of Life Act of 1997."
  - 9:30 A.M. Mr. Mark W. Chamberlain, Acting Member, GMH Board of Trustees  
Term Length: Unexpired term of Mr. Peter S. Dumaliang  
Expiration Date: October 24, 2000
  - 10:00 A.M. PRESENTATION: Legislative Resolution Honoring EMS Week and all Emergency Medical Services Personnel.
  - 10:30 A.M. Regular Oversight Public Hearing of Department of Public Health and Social Services (DPHSS).
  - 12:00 P.M. End of Oversight Hearing for DPHSS.