



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

OCT 06 1997

Refer to
Legislative Secretary

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

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

Dear Speaker Unpingco:

Enclosed please find a copy of Substitute Bill No. 314 (COR), "AN ACT TO AMEND §413 OF ARTICLE 4, DIVISION 1 OF TITLE 6 OF THE GUAM CODE ANNOTATED RELATIVE TO PEER REVIEW.", which I have signed into law today as Public Law No. 24-84.

Peer review is a procedure whereby health care providers, such as hospitals, clinics, health maintenance organizations, and nursing homes, continuously review and improve the quality of care, performance, utilization of services and facilities, and costs of health care that they are providing. This procedure is designed to provide honest evaluation and improvement of individuals and processes within the various health care settings.

This peer review process is necessary for accreditation purposes, and will assist the Guam Memorial Hospital Authority to put into place the processes needed for future accreditation.

The peer review procedure does not relieve any individual health care provider from liability for any actions taken or failed to be taken in the course of providing health care. The procedure does provide ongoing assistance for improvement, and provides an atmosphere where health care providers can be free to cooperate in the review process.

Very truly yours,

[Signature]
Carl T. C. Gutierrez
Governor of Guam

Attachment

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

Office of the Speaker
ANTONIO R. UNPINGCO
Date: 10/7/97
Time: 1:43pm
Rec'd by: [Signature]
Print Name: Charlene [Signature]

00466

TWENTY-FOURTH GUAM LEGISLATURE
1997 (FIRST) Regular Session

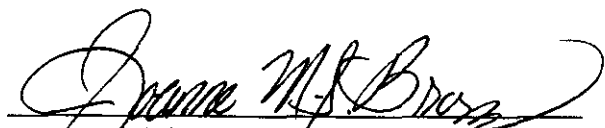
CERTIFICATION OF PASSAGE OF AN ACT TO THE GOVERNOR

This is to certify that Substitute Bill No. 314 (COR), "AN ACT TO AMEND §413 OF ARTICLE 4, DIVISION 1 OF TITLE 6 OF THE GUAM CODE ANNOTATED, RELATIVE TO PEER REVIEW," was on the 12th day of September, 1997, duly and regularly passed.



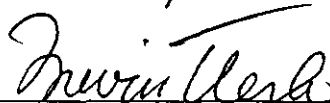
ANTHONY C. BLAZ
Acting Speaker

Attested:




JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by the Governor this 25th day of September, 1997, at
4:30 o'clock P.M.



Assistant Staff Officer
Governor's Office

APPROVED:



CARL T. C. GUTIERREZ
Governor of Guam

Date: 10-6-97

Public Law No. 24-84

**TWENTY-FOURTH GUAM LEGISLATURE
1997 (FIRST) Regular Session**

Bill No. 314 (COR)

As substituted by the Committee
on Health and Human Services and
as amended on the Floor.

Introduced by:

L. Leon Guerrero
V. C. Pangelinan
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
A. L.G. Santos
F. E. Santos
A. R. Unpingco
J. Won Pat-Borja

**AN ACT TO AMEND §413 OF ARTICLE 4,
DIVISION 1 OF TITLE 6 OF THE GUAM CODE
ANNOTATED, RELATIVE TO PEER REVIEW.**

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

1 **Section 1. Legislative Intent.** The Guam Legislature finds that strong
2 peer review policy, as provided for in this Act, does not deprive patients,
3 plaintiffs or attorneys of any of the usual legal rights. These parties continue
4 to have access to the complete medical record, and all physicians who are
5 party to any action or who have special knowledge or expertise can still testify
6 or be subpoenaed as in any other case. This Act only makes non-discoverable
7 those candid comments made at peer review meetings, which is a
8 requirement for the Guam Memorial Hospital accreditation process and a
9 vital step to continuous quality patient care service for all health care
10 providers.

11 **Section 2.** Section 413(a) of Article 4, Division 1 of Title 6 of the Guam
12 Code Annotated is hereby amended to read as follows:

13 “(a) Every health care provider may establish procedures for
14 continuously reviewing and improving the quality of care, performance
15 of medical personnel, utilization of services and facilities, and costs.
16 Notwithstanding any other provision of law, there shall be no monetary
17 liability on the part of, and no cause of action for damages shall arise
18 against any person, partnership, corporation, firm, society or other
19 entity arising from, relating to, or regarding:

20 (1) participation in quality of care or utilization reviews
21 by plan or health care provider peer review committees which are
22 licensed health care providers composed mainly of physicians and
23 surgeons, dentists, nurses, allied health professionals,
24 optometrists or any of the above;

1 (2) communication of information, the making or issuance
2 of any recommendation or evaluation to any governmental
3 agency, medical or specialists society, regarding the qualifications,
4 fitness, professional conduct or practices of health care
5 professionals, which communication, recommendation, and
6 evaluation are the results of peer reviews or quality of care or
7 utilization reviews;

8 (3) any act performed during peer reviews or quality of
9 care utilization reviews if the person acts in good faith without
10 malice. Neither the proceedings nor the records of the reviews
11 shall be subject to discovery **except** as provided in Subsection (f).
12 Nor shall any person in attendance at, serving on, or
13 communicating information to any review committee described in
14 this Section disclose or be examined as to any communication
15 thereto, what transpired therein or the findings thereof, except to
16 the extent necessary to carry out one or more of the purposes of
17 the review organization. Disclosure of the proceedings or records
18 to the governing body of a health care provider, to the person who
19 is the subject of committee review, or to any person or entity
20 designated by the health care provider to review activities of the
21 committees shall **not** alter the status of the records or of the
22 proceedings as privileged communications."

23 **Section 3.** Section 413(b) of Article 4, Division 1 of Title 6 of the Guam
24 Code Annotated is hereby amended to read as follows:

1 “(b) The prohibitions in this Section do not prevent any person
2 who is party to any action or proceeding from being examined in such
3 action or proceeding regarding his or her statements to the committee
4 when his or her conduct is being reviewed.”

5 **Section 4.** Section 413(c) of Article 4, Division 1 of Title 6 of the Guam
6 Code Annotated is hereby amended to read as follows:

7 “(c) This section shall **not** be construed to confer immunity from
8 liability on any health care provider. In any case in which, for but the
9 enactment of the preceding provisions of this Section, a cause of action
10 would arise against a health care provider, the cause of action shall exist
11 notwithstanding the provisions of this Section.”

12 **Section 5.** Subsection (d) of §413 of Title 6 of the Guam Code
13 Annotated is hereby re-lettered to (e).

14 **Section 6.** A new §413(d) is hereby added to Article 4, Division 1 of
15 Title 6 of the Guam Code Annotated to read as follows:

16 “(d) Medical records and non-privileged information discovered
17 by independent means are not included in this Section’s prohibition
18 relating to discovery. For the purposes of this Section, ‘proceedings and
19 records of review committees’ include, but are not limited to:
20 recordings, transcripts, minutes, summaries and reports of committee
21 meetings, and the conclusions contained therein.”

22 **Section 7.** Subsection (e) of §413 of Article 4, Division 1 of Title 6 of the
23 Guam Code Annotated is hereby re-lettered to (f) and amended to read as
24 follows:

1 “(f) The prohibitions in this Section shall not affect the discovery
2 or the use of relevant evidence in any criminal action; provided,
3 however, that the materials afforded protection under this Section may
4 only be discovered in criminal matters upon an adequate showing that
5 exceptional circumstances exist requiring their discovery and the
6 administration of justice would otherwise be impeded without
7 production thereof. Protection from discovery shall not apply to judicial
8 proceedings in which a health care practitioner contests the denial,
9 restriction or termination of clinical privileges by a hospital or clinic.”

10 **Section 8.** Subsection (f) of §413 of Article 4, Division 1 of Title 6 of the
11 Guam Code Annotated is hereby re-lettered to (g) and amended to read as
12 follows:

13 “(g) Health care providers, as the term is used in this Section,
14 means a licensed organization engaged in the providing of personal
15 health service to the public. Such licensed organizations include
16 hospitals, clinics, health maintenance organizations and nursing homes,
17 but do not include individual or sole practitioners.”

18 **Section 9.** Subsection (g) of §413 of Article 4, Division 1 of Title 6 of the
19 Guam Code Annotated is hereby re-lettered to (h) and amended to read as
20 follows:

21 “(h) In all cases, the peer review committee or subcommittee
22 shall make its findings available within the reporting guidelines of the
23 National Practitioner Data Bank under the Health Care Quality
24 Improvement Act of 1986 and within twenty-one (21) days to: (i) the
25 medical or dental professional being assessed, (ii) each licensure entity

1 or board which has licensed the person reviewed, (iii) the employer, if
2 any, of the person reviewed, and (iv) GMHA, if such committee or
3 subcommittee finds any one (1) of the following:

4 (i) the person reviewed has an alcohol or substance abuse
5 problem;

6 (ii) there are serious quality of care issues regarding the
7 person's practice;

8 (iii) to permit the person reviewed to continue practicing
9 that person's profession would represent a significant threat to the
10 health or lives of patients;

11 (iv) the person reviewed has refused to or failed to take
12 remedial actions recommended by the committee or
13 subcommittee;

14 (v) the person reviewed has violated any law relating to
15 controlled substances;

16 (vi) the person reviewed was or is licensed or has
17 continued to be licensed based upon fraudulent documents or
18 statements;

19 (vii) the person reviewed is physically or mentally
20 incapable of performing some or all of the duties normally
21 performed by a practitioner of his or her specialty or profession;

22 (viii) the person reviewed has consistently failed to follow
23 generally accepted medical or dental procedures;

24 (ix) the person reviewed has violated the ethical standards
25 of his or her profession; or

1

(x) convicted of a felony.”

PL 24-84

**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 10, 1997

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

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

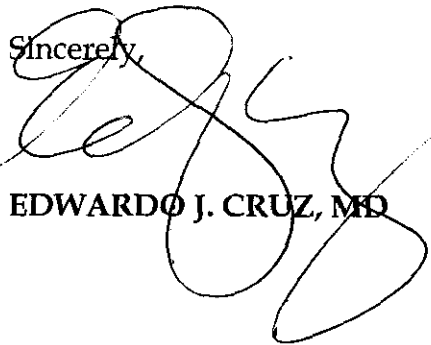
Dear Mr. Speaker:

The Committee on Health and Human Services, to which was referred Bill No. 314, "AN ACT TO AMEND §413 OF TITLE 6 OF THE GUAM CODE ANNOTATED RELATIVE TO PEER REVIEW", has had the same under consideration, and now wishes to report back the same with the recommendation to do pass as substituted.

The Committee votes are as follows:

To Pass	<u>-13-</u>
Not to Pass	<u>-0-</u>
Abstain	<u>-0-</u>
Inactive File	<u>-0-</u>

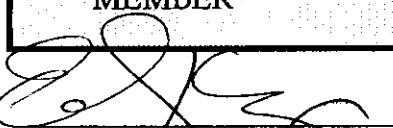

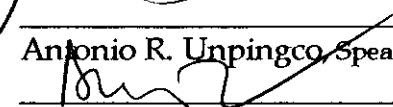
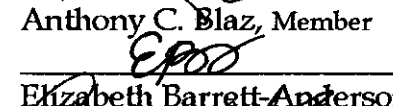
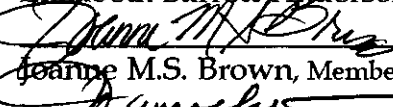
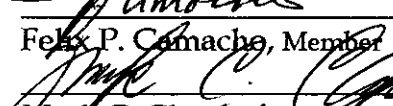

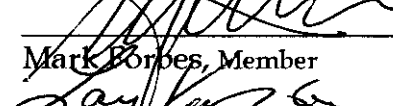
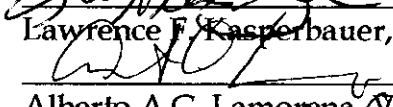
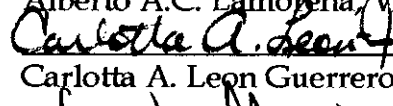
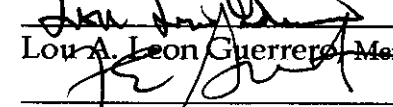
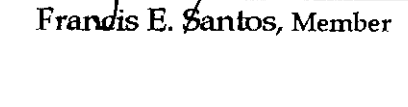


A copy of the Committee Report and other pertinent documents are enclosed for your immediate reference and information.

Sincerely,

EDUARDO J. CRUZ, MD

Enclosure:

Committee Health and Human Services
Vote Sheet on
Substitute Bill No. 314

AN ACT TO AMEND §413 OF TITLE 6 OF THE
GUAM CODE ANNOTATED RELATIVE TO PEER
REVIEW.

COMMITTEE MEMBER	TO PASS	NOT TO PASS	ABSTAIN	INACTIVE FILE
 Eduardo J. Cruz (MD), Chairperson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 John Camacho Salas, Vice Chairperson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Antonio R. Unpingco, Speaker & Ex-Officio	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Anthony C. Blaz, Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Elizabeth Barrett-Anderson, Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Joanne M.S. Brown, Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Felix P. Camacho, Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Mark C. Charfauros, Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 William B.S.M. Flores, Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Mark Forbes, Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Lawrence F. Kasperbauer, Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Alberto A.C. Lamorena, Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Carlotta A. Leon Guerrero, Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Lou A. Leon Guerrero, Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Francis E. Santos, Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Committee on Health and Human Services
Report on
Substitute Bill No. 314**

AN ACT TO AMEND §413 OF TITLE 6 OF THE
GUAM CODE ANNOTATED RELATIVE TO PEER
REVIEW.

Introduced by
Senators L. Leon Guerrero and V. C. Pangelinan

PUBLIC HEARING:

The Committee on Health and Human Services conducted a Public Hearing on Tuesday, July 29, 1997 at 8:30 a.m. to hear testimonies on Bill No. 314, "AN ACT TO AMEND §413 OF TITLE 6 OF THE GUAM CODE ANNOTATED RELATIVE TO PEER REVIEW." The public hearing was held in the Guam Legislature Public Hearing Room, Agana, Guam. [Attachment 2]

MEMBERS PRESENT:

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

John Camacho Salas, Vice Chairperson and
Felix P. Camacho.

Also in attendance were:

Frank B. Aguon Jr.,
Francisco P. Camacho and
Vicente C. Pangelinan.

TESTIMONY:

Appearing before the Committee and presenting testimony were Mr. Tyrone Taitano, Administrator, Guam Memorial Hospital Authority and Mr.

Frederick J. Horecky, Legal Counsel, Guam Memorial Hospital Authority.
[Attachment 3]

Mr. Taitano testified, "no legislation was as important to the Hospital Accreditation process and the continued improvement of medical care in the territory of Guam as the enactment of strong peer review legislation.... The Peer Review is a process whereby hospitals and healthcare providers can assess and evaluate the adequacy of health care and the providers thereof."

Unless those who participate in Peer Review proceedings and quality of care proceedings or utilization reviews are given full immunity from liability for such participation the Peer Review process cannot survive. In order to address this issue, Mr. Taitano had established a working group comprised of the Medical Executive Committee and the Hospital Legal Counsel. After numerous working sessions, the suggested changes to Section 413 were presented in written form for review by the committee.

Mr. Horecky testified in support of the current Peer Review legislation and its suggested changes as supported by the Medical Executive Committee and the President of the Medical Staff of GMHA.

There being no further witnesses, the Chairperson adjourned the Committee Public Hearing on Bill No. 314.

FINDINGS:

The Committee finds that:

1. Strong Peer Review legislation as provided for in this Act does not deprive patients, plaintiffs, or attorneys of any of the usual legal rights.
2. Undiminished protection from courtroom discovery procedures is essential in order to encourage forthright discussions involving both the peers and the concerned physician

3. For all physicians involved, such discussions would lead to improved medical practices.
4. These impending discussions are essential to document important advice and any corrective actions as deemed necessary.
5. This Act would be a vital step in meeting the requirements for the Guam Memorial Hospital accreditation process.

RECOMMENDATION:

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

That Bill 314, " AN ACT TO AMEND §413 OF TITLE 6 OF THE GUAM CODE ANNOTATED RELATIVE TO PEER REVIEW.", be passed as substituted.

**Profile on
Substitute Bill No. 314**

Brief Title:	"PEER REVIEW."
Date Introduced:	Submitted to the Legislature for introduction on July 7, 1997 and officially ratified during the next legislative session
Main Sponsors:	Senators Lou Leon Guerrero and Vicente C. Pangelinan.
Committee Referral:	Referred by the Committee on Rules to the Committee on Health and Human Services dated July 14, 1997.
Public Hearing:	Tuesday, July 29, 1997, Guam Legislature Public Hearing Room.

Official Title: AN ACT TO AMEND §413 OF TITLE 6 OF THE GUAM CODE ANNOTATED RELATIVE TO PEER REVIEW.

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

Recommendation: To do pass as substituted.

General Overview:

The Committee on Health and Human Services finds that strong peer review policy as provided for in this Act does not deprive patients, plaintiffs, or attorneys of any of the usual legal rights. Parties who continue to have access to medical records and all physicians who are party to any action or who have special knowledge or expertise can either testify or be subpoenaed as in any case.

The Guam Legislature finds that for the protection of patients and the Guam Memorial Hospital, practices of patient care by physicians and hospital admissions standards are closely monitored. All documentation relative to the Peer Review process are for purposes of educational and corrective actions when found to be necessary. The outcome of any discovery would be deemed beneficial thus leading to improved medical practice and quality of health care.

It is the Committee on Health and Human Services' position that with the revision of the existing legislation, a clarification on the participation of licensed health care providers; the method(s) used in the communication of quantifying any act performed during the peer review or quality of care utilization, will indeed be an asset in the development of the Guam Memorial Hospital accreditation process.

24th Guam Legislature
Committee on Rules, Government
Reform and Federal Affairs
Senator Mark Forbes, Chairman



07 254
RECEIVED
24TH GUAM LEGISLATURE
COM. HEALTH & HUMAN SVCS.
DATE 7-13-97 By: [Signature]

JUL 14 1997

MEMORANDUM

TO: Chairman
Committee on Health and Human Services

FROM: Chairman ~~Mark Forbes~~
Committee on Rules, Government Reform and Federal Affairs

SUBJECT: Referral- Bill No. 314

The above Bill is referred to your Committee as the principal committee. It is recommended you schedule a public hearing at your earliest convenience.

Thank you for your attention to this matter.

MARK FORBES

Attachment

orig
EJC
copy
JC



GUAM MEMORIAL HOSPITAL AUTHORITY

850 GOV. CARLOS G. CAMACHO ROAD
OKA, TAMUNING, GUAM 96911
TEL: 646-5801; 646-6876; 646-6711 thru 18
TELEX 671-6227, FAX 671-649-0145



July 29, 1997

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

Dear Chairperson Cruz and Members of the Committee:

As the Administrator of the Guam Memorial Hospital Authority, it is my pleasure to testify before the Committee concerning two (2) bills, 314 and 318, which both address the subject of Peer Review Legislation.

Nearly no legislation is as important to the Hospital Accreditation process and the continued improvement of medical care in the territory of Guam as the enactment of strong peer review legislation. It is absolutely essential that the Legislature enact clear and strong legislation which protects physicians and persons who participate in the Peer Review process. Broadly speaking, Peer Review is a process whereby hospitals and health care providers can assess and evaluate the adequacy of health care and the providers thereof. Unless physicians and those who participate in Peer Review proceedings and quality of care or utilization reviews are given full immunity from liability for such participation, and the records of such proceedings are exempt



Commonwealth Now!

from discovery except in criminal proceedings under limited circumstances, the Peer Review process cannot survive.

It has been established that physicians and health care providers will not participate in the Peer Review or quality assurance process unless they are protected for acts undertaken in good faith during such proceedings. It is also essential that the records, transcripts and proceedings themselves be exempt from disclosure; otherwise individuals will be afraid to participate in such processes because of fear of disclosure and potential liability.

Such protections with regard to participation in Peer Review and quality assurance should guarantee that physicians, health professionals and others fully and freely participate in the process. Hopefully, the result will be an improvement in the quality and delivery of health care. Health care can be improved if individuals participating in the evaluation of such care can freely, openly and honestly give their opinions and views without fear of reprisal. Open, critical evaluation of health care and providers will hopefully lead to constructive improvement.

In order to address the issue of Peer Review Legislation, I established a working group comprised of the Medical Executive Committee and the Hospital Legal Counsel. After numerous working sessions, the Medical Executive Committee has endorsed the proposed new version of Section 413 of Title 6 of the Guam Code Annotated which is attached hereto and marked Exhibit

"A". I wholeheartly endorse the suggested version of Section 413 proposed by the Medical Executive Committee and the President of the Medical Staff. I believe that this suggested legislation has the following advantages over existing legislation:

(1) The new suggested version clearly defines terms such as "peer review committee", "hospital quality assurance committee", and "professional society", definitions which are lacking in the present law;

(2) The suggested version clearly establishes that there is no monetary liability or cause of action against persons, individuals or entities for any act performed during quality assurance and peer review activities, if the person or entity acts in good faith and without malice.

(3) The suggested version indicates that neither the proceedings nor records of peer review committees or hospital or clinic quality assurance committees are subject to discovery. Only such broad protection will ensure the vitality of the peer review process;

(4) Persons who participate, attend or serve upon peer review or quality assurance committees will not be required to disclose or testify or be examined concerning any communications during such proceedings, or what transpired therein, with limited exceptions.

Discovery of such proceedings would be permitted in criminal actions upon an adequate showing that discovery should be had;

(5) Certain requirements or reporting by peer review committees which are covered under Federal Law have been deleted. Since these matters are already covered by guidelines of the National Practitioner Data Bank under the Health Care Quality Improvement Act of 1986, such requirements need not be repeated in legislation dealing specifically with issues of discovery of peer review and quality assurance proceedings and records. I urge the Committee to consider and adopt the straightforward and beneficial version of the legislation proposed by the Medical Executive Committee. Your utmost consideration and approval of this suggested legislation will lead to an improvement in health care for the territory of Guam.

Sincerely,

TYRONE J. TAITANO
Administrator
Guam Memorial Hospital Authority

Enclosure: Proposed Legislation

F:\FILES3\70005\LTR\06.008



DEPARTMENT OF PUBLIC HEALTH & SOCIAL SERVICES
GOVERNMENT OF GUAM

ROUTE 10; 123 CHALAN KARETA, MANGILAO
P.O. BOX 2816 AGANA, GUAM 96910



Testimony on Bill 314: An Act To Add Amend 6 GCA Guam Code Annotated,
Section 4113(a), (c), (e), and (g)(ii) To Clarify The Immunity And Confidentiality
Given To Peer Review Committees

Good Morning Mr. Chairman and Members of the Committee:

My name is Dennis G. Rodriguez, Director of the Department of Public Health & Social Services. I am here to present testimony on Bill 314. The Department supports the intent of this bill. We recognize that there is a need to establish mechanisms that continuously review clinical care practice and also take necessary steps to improve or enhance the quality of the care provided.

Subsection (a) adds in the clause "who provides information to assist or". This is important because there may be occasions that require the information from an individual outside of the formal review committee. We support empowering all members of the health care team to participate in the process to continuously improve care and protection should be extended to those individuals.

The Department requests clarification of the section added, lines 11 through 17 on page 2 of the bill. Who is the peer review committee responding to? Are the requests for information for a listing of the documents reviewed? If a third party is requesting the committee to provide a listing of the documents that were reviewed, it appears that this could compromise the confidentiality of the process itself. On Page 3, clarification is requested again on section containing lines 13 through 19.

The Department has no other concerns with the rest of the bill as written. Thank you for the opportunity to present testimony on this.


DENNIS G. RODRIGUEZ
Director

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) 472-8403

KRISTINA L. BAIRD, Of Counsel

July 29, 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

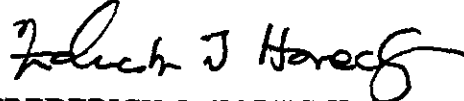
Dear Senator Cruz and Members of the Committee:

I was requested by the Hospital Administrator, Mr. Tyrone J. Taitano, to participate in the drafting of Peer Review Legislation in conjunction with the Hospital's Medical Executive Committee. I whole heartedly endorse the version proposed by the Medical Executive Committee and the President of the Medical Staff, which version has been submitted to you by the Hospital Administrator.

While I believe that the version submitted by the Medical Executive Committee is the most preferable version of Peer Review Legislation, I would also like to take this opportunity to suggest revisions and amendments to Bill No. 318 as proposed.

My suggested revisions and amendments appear in Exhibit "A" attached hereto. Should the Committee have any questions in this regard, or wish to enlist the assistance of my office in formulating and finalizing Peer Review Legislation, I would be most happy to assist in this endeavor. Thank you for your consideration of this matter.

Sincerely,



FREDERICK J. HORECKY
Legal Counsel
Guam Memorial Hospital Authority

Enclosure

cc: Mr. Tyrone J. Taitano
Hospital Administrator

FJH:psa
FAFILES3\70005\LTR\06.007

AMENDED SECTION 413 TO TITLE 6 GUAM CODE ANNOTATED.
PROPOSED DRAFT, 2ND VERSION.

413. Review of quality care, health care provider peer review committees, immunity from liability; privileged communications; discovery; testimony; delegation of authority.

(a) Every health care provider may establish procedures for continuously reviewing and improving the quality of care, performance of medical personnel, utilization of services and facilities, and costs. Notwithstanding any other provision of law, there shall be no monetary liability upon, or cause of action against any person, partnership, corporation, firm, society or other entity arising from, relating to, or regarding;

(1) participation in quality of care or utilization reviews by plan or health care provider peer review committees which are licensed health care providers composed mainly of practicing physicians and surgeons, dentists, nurses, allied health professionals, optometrists, or any of the above;

(2) communication of information, or the making or issuance of any recommendation or evaluation to any governmental agency, medical or specialists society, regarding the qualifications, fitness, or professional conduct or practices of health care professionals;

(3) any act performed during peer review or quality of care and utilization reviews if the person acts in good faith without malice, ~~has made a reasonable effort to obtain the facts of the matter, and believes that the action taken is warranted by the facts.~~ Neither the proceedings nor the records of the reviews shall be subject to discovery **except as**

~~herein provided in subsection (f).~~ Nor shall any person in attendance at, servicing on, or communicating information to any review committee described in this section disclose or be examined as to any communication thereto, what transpired therein or the findings thereof, except to the extent necessary to carry out one or more of the purposes of the review organization, the reviews be required to testify as to what transpired thereat. Disclosure of the proceedings or records to the governing body of a health care provider, to the person who is the subject of committee review, or to any person or entity designated by the health care provider to review activities of the committees shall not alter the status of the records or of the proceedings as privileged communications.

(b) The prohibitions in this section do not prevent any person who is a party to any action or proceeding from being examined in such action or proceeding regarding his or her statements made to the committee ~~apply to medical or medical-dental committees if any person serves upon the committee~~ when his or her own conduct ~~or practice~~ is being reviewed.

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

(d) Medical records and other non-privileged information discovered by independent means are not included in this section's prohibition relating to discovery. For the purposes of

this section, "proceedings and records of review committees" include, but are not limited to: recordings, transcripts, minutes, summaries and reports of committee meetings, and the conclusions contained therein.

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

(f) (e) The prohibitions in this section do not exclude the discovery or use of relevant evidence in any criminal or civil action; provided, however, that the materials afforded protection under this section may only be discovered in criminal matters upon an adequate showing that exceptional circumstances exist requiring their discovery and the administration of justice would otherwise be impeded without production thereof. ; ~~and shall not limit the authority to obtain such information by subpoena or other authorized process from the peer review committees or subcommittees or members thereof for uses relating to matters and investigations within the jurisdiction of boards created pursuant to Chapter 12 of Title 10, Guam Code Annotated, to regulate the practice of the healing arts.~~

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

(h) ~~(g)~~ In all cases, the peer review committee or subcommittee shall make its findings available within the reporting guidelines of the National Practitioner Data Bank under the Health Care Quality Improvement Act of 1986 and within fourteen (14) days to (i) the medical or dental professional being assessed, (ii) each licensure entity or board which has licensed the person reviewed, (iii) the employer (if any) of the person reviewed, and (iv) GMHA, if such committee or subcommittee finds any one of the following:

- (i) The person reviewed has an alcohol or substance abuse problem;
- (ii) The person reviewed is incompetent or has committed malpractice;
- (iii) To permit the person reviewed to continue practicing that person's profession would represent a significant threat to the health or lives of patients;
- (iv) The person reviewed has refused to or failed to take remedial actions recommended by the committee or subcommittee;
- (v) The person reviewed has violated any law relating to controlled substances;
- (vi) The person reviewed was or is licensed or has continued to be licensed based upon fraudulent documents or statements;
- (vii) The person reviewed is physically or mentally incapable of performing some or all of the duties normally performed by a practitioner of his or her specialty or

profession;

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

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

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

~~If either subitems (v) or (x) is found to apply, the committee or subcommittee making the review shall notify the Guam Police Department, the National Practitioners Databank, the Attorney General, and the U.S. Attorney (if a federal crime is involved). In addition, such committee or subcommittee may make its findings available to any of the above named organizations or persons if such committee or subcommittee finds it is necessary to protect the patients of the person reviewed.~~

RECEIVED
24TH GUAM LEGISLATURE
COM. HEALTH & HUMAN SVCS.
DATE: 8/15 By: *[Signature]*

Guam Memorial Hospital Authority
250 Gov. Carlos Camacho Road
Tamuning, Guam 96911

facsimile transmittal

File # 314

To: Senator E. Cruz, MD Fax: 472-3592
From: MaryLou M. Loualhati Date: August 15, 1997
Re: Letter from Dr. R. Gomez Pages: (including this page) 4
CC:

Urgent For Review Please Comment Please Reply Please Recycle



Notes: Senator Cruz, attached please find a copy of a letter from Dr. Gomez. If you have any questions please do not hesitate to contact me at 647-2107. *MLL*

CONFIDENTIAL

*cc: CB
JC
RL
JTE
30*

MEMORANDUM

To: Medical Staff
CC: Senator E. Cruz, Medical Director, President of the Guam Medical Society
Date: August 14, 1997
From: President of the Medical Staff *RAJ*

Subject: Clarification of urgent issues presented at the Quarterly Medical Staff Meeting (8/17/97)

Two important issues were presented tonight that may have been confusing to you. I think it is of great importance that you understand the issues and agree with the course of action to be taken.

1. Peer Review Legislation

The fact that two versions were presented I'm sure was confusing. The real issue is that there are two versions of bills that both offer: 1). protection from liability for participating in peer review (as long as you act in good faith); 2). protect peer review proceedings from discovery; 3). prohibit examination in court of participants regarding peer review proceedings; and 4). provide language to protect discovery of peer review documents even in criminal cases unless exceptional circumstances exist that require discovery of this material. Both of these versions provide for all these crucial elements.

The only substantive differences are that one bill goes on to prohibit disclosure of anything that happened during peer review, and also helps protect individual physicians who are contesting the denial, restriction, or termination of clinical privileges by a hospital or clinic by making peer review material available to them in this particular case. Both of these items could easily be incorporated in to the other version.

Certain superfluous items and language cloud one bill and perhaps could be eliminated. This however does not detract from the intent of the bill, which is to provide meaningful peer review protection. *The bottom line is that both versions will provide peer review protection* and it's just a matter of which would be preferable. This will be worked out by the sponsoring senators and our input via the MEC.

2. Malpractice protection for House Call and hospital-based physicians

The issue is that the Medical Staff was under the impression for many years that they were covered for malpractice when acting as "agents of the hospital" (House Call and hospital employees). Review of the actual statute (Guam Claims Act of 1983), however states that "government employees...[are] liable for any amount of tort damages in excess of the limitations on judgments against the government". This means you are potentially liable



**Twenty-Fourth Guam Legislature
Committee on Health and Human Services
Senator Edwardo J. Cruz, MD
Chairperson**

Revised Agenda July 22, 1997

Public Hearing

Tuesday, July 29, 1997

8:30 a.m. - 12:00 p.m.

Guam Legislature Public Hearing Room

Bill No. 134 , An Act to add and amend various sections of Chapter 80, Division 4, 10 GCA Relative to Guam Memorial Hospital Authority third-party payment methodologies and for other purposes.

Bill No. 196, An Act to establish the Guam Healthcare Access Act, to administer the Guam Medical Assistance Program (MAP), and the Medically Indigent Program (MIP) using a cost containment method through a managed card system.

Bill No. 283, An Act to add a new Section 80104(r) to Title 10, Guam Code Annotated, relative to adopting a home bound patient care program at the Guam Memorial Hospital Authority.

Bill No. 314, An Act to amend 6 GCA , §413(a), (c), (e) and (g)(ii) to clarify the immunity and confidentiality given to Peer Review committees.

Bill No. 318, An Act to repeal and reenact Section 413 of Title 6 of the Guam Code Annotated relative to Peer Review.

Twenty Fourth Guam Legislature
Committee on Health and Human Services
SENATOR EDUARDO J. CRUZ, M. D. CHAIRPERSON,

TESTIMONY SIGN IN SHEET

Date of Hearing: _____	Location: _____
Agenda Item: <u>314</u> → <u>Bill 318</u>	

Name (Please Print)	Organization	Contact No.	ORAL/WITTEN	FOR/AGAINST
1. <u>Tyree J. Tada</u>	<u>GMA</u>	_____	<u>Written</u>	_____
2. <u>Hosecky</u>	_____	_____	_____	_____
3. _____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____
5. _____	_____	_____	_____	_____
6. _____	_____	_____	_____	_____
7. _____	_____	_____	_____	_____
8. _____	_____	_____	_____	_____
9. _____	_____	_____	_____	_____
10. _____	_____	_____	_____	_____

Twenty Fourth Guam Legislature
Committee on Health and Human Services
SENATOR EDUARDO J. CRUZ, M. D. CHAIRPERSON,

TESTIMONY SIGN IN SHEET

Date of Hearing: _____	Location: _____
Agenda Item: <u>Bill 314</u>	

Name (Please Print)	Organization	Contact No.	ORAL/WRTTEN	FOR/AGAINST
1. <u>Tyrae Taitan</u>	<u>GMIT</u>	_____	<u>WRU</u>	<u>FR</u>
2. _____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____
5. _____	_____	_____	_____	_____
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8. _____	_____	_____	_____	_____
9. _____	_____	_____	_____	_____
10. _____	_____	_____	_____	_____



Senator Eduardo J. Cruz, M.D.
Chairperson
Committee on Health and Human Services
Route 4, T.S. Tanaka Building,
Suite 100, Agana, Guam 96910
Tel: 472-3581 Fax: 472-3582



July 22, 1997

MEMORANDUM VIA FACSIMILE

To:	Members, Committee on Health and Human Services	Fax No.:
	Ex-Officio Speaker Antonio R. Unpingco	472-3400
	Vice Speaker Anthony C. Blaz	472-3562
	Sen. John C. Salas, Vice Chairperson	472-3583
	Sen. Elizabeth Barrett-Anderson	472-3433
	Sen. Joanne M.S. Brown	472-4090
	Sen. Felix P. Camacho	472-9747
	Sen. Mark C. Charfauros	472-3440
	Sen. William B.S.M. Flores	472-3511
	Sen. Mark Forbes	477-5036
	Sen. Lawrence F. Kasperbauer	475-2000
	Sen. Alberto A.C. Lamorena	472-3588
	Sen. Carlotta A. Leon Guerrero	477-1923
	Sen. Lou A. Leon Guerrero	472-3832
	Sen. Francis E. Santos	477-3048
From:	Chairperson	472-3582
SUBJ:	(Revised) Notice of Public Hearing	
	8:30 am - 12:00 pm, Monday, July 29, 1997	


NUMBER OF PAGES INCLUDING THIS SHEET :2

Please find attached the Revised agenda for Tuesday, July 29, 1997.

The Committee on Health and Human Services will conduct a Public Hearing on Tuesday, July 29, 1997 starting at 8:30 a.m. to 12:00 pm at the Legislature Public Hearing Room.

We look forward to your participation and attendance.

Sincerely,

 (original on file)
EDUARDO J. CRUZ, M.D.

cc: Executive Director
Protocol
Clerk Of The Legislature
All Senators

AEM/at



Senator Edwardo J. Cruz, M.D.
Chairperson
Committee on Health and Human Services
Route 4, T.S. Tanaka Building,
Suite 100, Agana, Guam 96910
Tel: 472-3581 Fax: 472-3582



July 22, 1997

MEMORANDUM VIA FACSIMILE

Fax No.:

TO:	Administrator, Guam Memorial Hospital Authority	649-0145
	Medical Director, Guam Memorial Hospital Authority	649-0145
	President, GMHA Medical Staff (PacificCare)	632-6200
	Director, Dept. of Public Health & Social Services	734-5910
	Director, Department of Mental Health & Substance Abuse	649-6948
	Director, Guam Health Planning & Development Agency	477-3956
	Administrator, Guam Board of Medical Examiners	477-4733
	Director, SPIMA	477-9015
	Director, Department of Vocational Rehabilitation	477-2892
	Director, Bureau of Budget and Management Resources	482-2825
	Director, Department of Administration	477-6788
	President, Guam Medical Society	637-4444
FROM:	Chairperson	472-3582
SUBJ:	Notice of Public Hearing Tuesday, July 29, 1997	

NUMBER OF PAGES INCLUDING THIS SHEET :2

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Sincerely,

(signature on file)

EDUARDO J. CRUZ, MD

attachment

AEM/at



Senator Edwardo J. Cruz, M.D.
Chairperson
Committee on Health and Human Services
Route 4, T.S. Tanaka Building,
Suite 100, Agana, Guam 96910
Tel: 472-3581 Fax: 472-3582



July 22, 1997

MEMORANDUM VIA FACSIMILE

Fax No.:

TO:	Division Manager, Calvo's Insurance Underwriters, Inc.	477-4141
	Governmental Affairs Manager, FHP	646-1725
	Office Manager, GMHP	477-1784
	Regional Manager, MultiCover/Moylan's Insurance	649-5386
	Director of Clinics, Pacific Care Medical Center	649-4507
	Public Relations, Seventh Day Adventist Clinic	649-0709
	Plan Administrator, StayWell Insurance	477-5096
	President, Doctor's Clinic	646-9828
FROM:	Chairperson	472-3582
SUBJ:	Notice of Public Hearing Tuesday, July 29, 1997	

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(Signature on file)

EDUARDO J. CRUZ, MD

attachment

AEM/at



Senator Edwardo J. Cruz, M.D.
Chairperson
Committee on Health and Human Services
Route 4, T.S. Tanaka Building,
Suite 100, Agana, Guam 96910
Tel: 472-3581 Fax: 472-3582



July 22, 1997

MEMORANDUM VIA FACSIMILE

Fax No.:

TO: Office of the Governor of Guam
FROM: Chairperson
SUBJ: Notice of Public Hearing
Tuesday, July 29, 1997

472-7561

472-3582

NUMBER OF PAGES INCLUDING THIS SHEET :2

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Sincerely,

(Signature on file)

EDUARDO J. CRUZ, MD

attachment

AEM/at



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: Tuesday, JULY 29, 1997
TIME: 8:30 A.M. TO 12:00 P.M.
PLACED: PUBLIC HEARING ROOM, GUAM LEGISLATURE, AGANA, GUAM

AGENDA: LEGISLATIVE BILLS BEFORE THIS COMMITTEE TO BE HEARD:

1. BILL NO. 134 An Act to add and amend various sections of Chapter 80, Division 4, 10 GCA Relative to Guam Memorial Hospital Authority third-party payment methodologies and for other purposes
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5. BILL NO. 318 An Act to repeal and reenact Section 413 of Title 6 of the Guam Code Annotated relative to Peer Review.



BUREAU OF BUDGET & MANAGEMENT RESEARCH
OFFICE OF THE GOVERNOR, Post Office Box 2950, Agaña, Guam 96910

AUG 13 1987

CARL T.C. GUTIERREZ
GOVERNOR

MADELEINE Z. BONDALLO
I.T. GOVERNOR

JOSEPH E. RIVERA
DIRECTOR

FRANCES J. BALAJADI
DEPUTY DIRECTOR

The Bureau requests that Bill No(s). 314(COR) be granted a waiver pursuant to Public Law 12-229 for the following reasons:

Bill No. 314 is an act to amend Subsections 413(a), (c), (e) and (g)(ii) to Title 6 of the Guam Code Annotated relative to clarifying the immunity and confidentiality given to Peer Review Committees. The intent of the proposed legislation is administrative in nature.

It should be noted that Bill No. 318 also proposes to repeal and reenact Section 413, Subsections (a) through (h), to Title 6 of the Guam Code Annotated.

Joseph E. Rivera
JOSEPH E. RIVERA
Acting



19/2



24th Guam Legislature

SENATOR EDUARDO J. CRUZ, M.D.

Chairperson,
Committee on Health and Human Services

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