

**MINA' TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) Regular Session**

Bill No. 275-32(002)

Introduced by:

D.G. RODRIGUEZ, JR. 

**AN ACT TO ENSURE THE SANCTITY OF THE
MEDICAL PEER REVIEW PROCESS AT THE
GUAM MEMORIAL HOSPITAL AUTHORITY, BY
AMENDING SUBSECTION (n) OF §80109,
CHAPTER 80, TITLE 10, GUAM CODE
ANNOTATED.**

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

2 **Section 1. Legislative Findings and Intent:** *I Liheslaturan Guåhan* finds
3 that all necessary efforts must be taken to further ensure the quality, safety and
4 provision of health care at the Guam Memorial Hospital, by holding it to the
5 highest professional standards. This is in significant part assured and
6 accomplished through strict adherence to national health care standards, and
7 related applicable laws, rules and regulations intended to provide for this.

8 Further, Section 423(a)(1), of the Health Care Quality Improvement Act, as
9 Amended (HCQIA), Title IV of Public Law 99-660 (42 U.S.C. 11101 et seq.),
10 states that a health care entity (including hospitals) must report to the National
11 Practitioners Data Bank (NPDB), each time it *“takes a professional review action*
12 *that adversely affects the clinical privileges of a physician for a period longer than*
13 *30 days.”*

14 *I Liheslaturan Guåhan* takes due note of the mandate and example provided
15 in federal law, rules and regulations, as stated in the *NPDB Guidebook, Publication*

1 *No. HRSA-95-255, at Chapter E5*, wherein it provides an example of a valid action
2 to ‘void’ (reverse, rescind): “*Example: A State Medical Board submits an AAR*
3 *when it revokes a physician’s license. Six months later, the revocation is*
4 *overturned by a State court. The State Medical Board should submit a Void of*
5 *Initial Report.*” There is a clear process, and any effort to ‘void’, reverse, rescind
6 and/or amend/correct a report to the NPDB *must* follow specific and stringent
7 criteria and guidelines pursuant to Federal law, rules and regulations.

8 *I Liheslaturan Guåhan* takes further note that, “*Reporting clinical privilege*
9 *actions and certain other adverse actions against health care practitioners is*
10 *mandatory and cannot be the subject of negotiations. Any such attempts would be*
11 *viewed as trying to shirt the law. . .*”, as stated by the Director, Division of
12 National Practitioner Data Banks, U.S. Department of Health & Human Services,
13 in a communication to GMHA received on September 10, 2012, relative to the
14 actions by the GMHA Board to “void” a GMHA medical peer action conducted by
15 qualified medical professionals, pursuant to a negotiated settlement agreement in
16 an effort to avoid litigation.

17 It is the intent of *I Liheslaturan Guåhan* to ensure that the sanctity and
18 integrity of GMHA medical peer process *shall* be reestablished, reaffirmed and
19 strictly adhered to, as provided pursuant to applicable Federal law, rules and
20 regulations, and as further provided pursuant to the standards and processes, duly
21 adopted by GMHA, of the American Medical Association relative to procedures
22 and practices for the conduct medical peer reviews.

23 **Section 2.** Subsection (n) of §80109, Chapter 80, Title 10, Guam Code
24 Annotated, is *amended*, to read:

25 “(n) Adopt rules and regulations governing selection, compensation,
26 promotion, performance evaluation, disciplinary action and other terms and

1 conditions of employment affecting personnel, subject to the provisions of the
2 Administrative Adjudication Law Aet. Such rules and regulations *shall* provide
3 for the employment and retention of persons on the basis of merit, and *shall*
4 include an orderly and systematic method of recruitment and the establishment of a
5 list of qualified applicants for employment purposes, *except* that compensation for
6 non-medical personnel *shall* remain consistent with compensation plans and pay
7 scales as determined by the Civil Service Commission or its successor. *Non-*
8 *medical personnel* are defined as personnel employed by the Authority who are *not*
9 physicians, nurses, medical technicians or technologists, licensed or certificated
10 therapists of any sort, laboratory technicians, personnel certificated in any medical
11 or nursing field, nurse practitioners, pharmacists or other medical personnel. It is,
12 further, provided:

13 (1) The conduct of any GMHA Medical Peer Review proceeding *shall* be
14 conducted in strict compliance with the Health Care Quality
15 Improvement Act, as Amended (HCQIA), Title IV of Public Law 99-
16 660 (42 U.S.C. 11101 et seq.) authorizing the Secretary, U.S.
17 Department of Health & Human Services to establish a National
18 Practitioner Data Bank (NPDB) to collect and release certain
19 information relating to the professional competence and conduct of
20 physicians, dentists and other health care practitioners; and, §1921 of
21 the Social Security Act (42 U.S.C. 1396r-2) (§1921) requiring each
22 State to adopt a system of reporting to the Secretary adverse licensure
23 actions taken against health care practitioners and entities;

24 (2) A medical peer review *shall* not be overturned by the Board except as
25 strictly prescribed by the National Practitioner Data Bank, as provided
26 pursuant to Title 45 – Public Welfare, Part 60, Code of Federal

1 Regulations, and as the regulations and authorizing statutes may be
2 may be revised;

3 (3) No “Void” or Reversal of Professional Peer Review Action by Board
4 Without Successful Appeal; Mandatory. No GMHA medical peer
5 review action that adversely affects the clinical privileges’ of
6 physicians, dentists and other health care practitioners shall be
7 reversed by the Board, nor shall a “void” be sought with the National
8 Practitioners Data Bank: 1) without the appellant having successfully
9 appealed the initial action before a subsequent GMHA peer review
10 committee duly conducted by medical professionals authorized to
11 conduct the appeal proceeding; or, 2) without the finding(s) of the
12 GMHA medical peer action having been reversed by the Guam Board
13 of Medical Examiners, wherein the appellant successfully appealed
14 the GMHA medical peer review action; or, 3) without the appellant
15 having successfully appealed the GMHA medical peer review action
16 before the judiciary of Guam; any one of which may be deemed to
17 satisfactory to reverse the initial GMHA medical peer review action
18 and seek a “void” with the NPDB, *provided*, the conduct of the appeal
19 and action taken in granting the appeal is legally acceptable to the
20 National Practitioner Data Bank pursuant to applicable federal law,
21 rules and regulations.

22 (4) Personal Liability – No Waiver of Immunity. The members of the
23 Board of Trustees, and the GMHA Legal Counsel, *shall not be*
24 personally immune from legal and civil liability for a knowing
25 violation of Items (1) through (3) of this Subsection (n).”

1 **Section 3. Severability.** *If* any provision of this Act or its application to
2 any person or circumstance is found to be invalid or contrary to law, such
3 invalidity shall *not* affect other provisions or applications of this Act which can be
4 given effect without the invalid provisions or application, and to this end the
5 provisions of this Act are severable.

6 **Section 4. Effective Date.** This Act shall become immediately effective
7 upon enactment.