

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

STANDING COMMITTEE / SENATOR	HEARING	COMMITTEE REPORT	HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
Committee on Health, Tourism, Historic Preservation, Land, and Justice	Informational Briefing	Committee Report on 1st Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act	9/19/19 2:00 p.m.	2/5/20 10:51 a.m.	



Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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

January 30, 2020

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

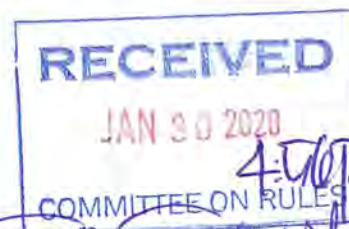
RE: Committee Report on Informational Hearing on 1st Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10) *Note: This hearing is the first of a three-part series*; Overview of Current Law and Prior Case Outcomes; Patient Perspectives.

Håfa Adai Chairperson Lee:

Transmitted herewith is the Committee Report on the Informational Briefing on 1st Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10) *Note: This hearing is the first of a three-part series*; Overview of Current Law and Prior Case Outcomes; Patient Perspectives.

Sincerely,

Therese M. Terlaje



2020 FICD - 5 AM 10:51

Revisions Rec'd 11:53am
2/3/2020



Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåban

35th Guam Legislature

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

COMMITTEE REPORT

INFORMATIONAL BRIEFING on

1st Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10):

Note: This hearing is the first of a three-part series

- **Overview of Current Law and
Prior Case Outcomes**
- **Patient Perspectives**

by Senator Therese M. Terlaje

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

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

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

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First Notice of Public Hearing- Thursday, September 19, 2019 beginning at 1:00 p.m.

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com> Thu, Sep 12, 2019 at 10:28 AM

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

Cc: phnotice@guamlegislature.org

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September 12, 2019

MEMORANDUM

To: All Senators, Stakeholders and Media

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

Subject: **FIRST NOTICE of Public Hearing – Thursday, September 19, 2019 at 1:00 PM**

Håfa Adai!

Please be advised that the Committee on Health, Tourism, Historic Preservation, Land and Justice will convene a public hearing on **Thursday, September 19, 2019 beginning at 1:00 PM** in *I Liheslaturan Guåhan's* Public Hearing Room (Guam Congress Building, Hagåtña).

AGENDA

1:00 p.m. **Bill 187-35 (COR)– T. M. Terlaje** - AN ACT TO ADOPT THE RULES AND REGULATIONS ATTACHED HERETO AS EXHIBIT A, ENTITLED: "RULES AND REGULATIONS GOVERNING ADOPTION OF CODES OF PROFESSIONAL CONDUCT AND ETHICS BY THE GUAM BOARD OF ALLIED HEALTH EXAMINERS", SPECIFICALLY ADDING A NEW §101301 TO TITLE 25 OF THE GUAM ADMINISTRATIVE RULES AND REGULATIONS.

2:00 p.m. **1st Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10)**: *Note: This hearing is the first of a three-part series*

- Overview of Current Law and Prior Case Outcomes
- Patient Perspectives

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

Thursday, October 3, 2019 at 2:00 p.m.- 2nd Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10): Input from Health Professionals on Effect of Current Law on Standard of Care (All health professionals and patients are invited to provide written testimony or attend hearing).

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

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

We look forward to your attendance and participation.

Si Yu'os Ma'åse'

--

Office of Senator Therese M. Terlaje

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

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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

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

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Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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

September 12, 2019

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

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CURRENCY EXCHANGE RATES
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52.150 PHP¥	107.74 JPY¥	1,190.82 KR₩¥	31.182 TWD NT\$	7.1165 GNY¥	1.4558 AUD A\$	0.9058 EUR €
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Landowner appeals \$3.7M tax judgment

A landowner who was ordered to pay \$3.7 million in delinquent taxes and penalties filed a notice of appeal with the District Court of Guam.

Danny Leon Guerrero, through his attorney Daniel Berman, will appeal the judgment to the 9th Circuit Court of Appeals.

District Court Chief Judge Frances Tydingco-Gatewood ordered Leon Guerrero to pay unpaid taxes he owed

from 1999 to 2002.

Leon Guerrero had purchased six parcels of land in Mongmong-To-to-Maite between November 2000 and May 2002. He subsequently transferred some interest in those properties to his ex-wife and to his sister in separate transactions.

Despite those transfers, Leon Guerrero owed taxes on these properties, the court decided. Leon Guerrero testi-

fied at trial that he was not "philosophically opposed" to paying taxes but he sincerely believed - and continues to believe - that the government of Guam owed him money, so that is why he was not paying his taxes.

The Department of Revenue and Taxation had difficulty finding the paper records of Leon Guerrero's tax assessment because documents have been destroyed by rainwater, mold and

termites. But the enforcement team presented evidence that the department completed an assessment of Leon Guerrero's taxes in January 2006, which was included in the electronic database. The judgment authorized the government of Guam to foreclose on six properties owned by the defendant, and then sell the properties and use 50% of the proceeds to pay the taxes owed. **(Daily Post Staff)**

GUAM DAILY POST • THURSDAY, SEPTEMBER 12, 2019

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



SENATOR THERESE M. TERLAJE

Mina'trental Singko na Liteslaturan Guahan
35th Guam Legislature | 472-3586

PUBLIC HEARING • 1:00 PM • Thursday, September 19, 2019
Guam Legislature Public Hearing Room, Guam Congress Building, Hagåtña

AGENDA:

1:00p.m. Public Hearing: Bill 187-35 (COR) - An Act To Adopt the Rules And Regulations attached hereto as Exhibit A, Entitled: "Rules and Regulations Governing Adoption of Codes of Professional Conduct and Ethics by the Guam Board of Allied Health Examiners" Specifically Adding a New §101301 to Title 25 of the Guam Administrative Rules and Regulations.

2:00p.m. First of a Three Part Series of Informational Briefings on Guam's Medical Malpractice Mandatory Arbitration Act (Citation 10 GCA Chapter 10)

- Overview of Current Law and Prior Case Outcomes
- Patient Perspectives

Testimonies may be submitted to our office at Ada Plaza Center, Suite 207, 173 Aspirin Avenue, Hagåtña, Guam 96910, to the Guam Congress Building, or via email at senatorterese@guam.gov.gu. The hearing will broadcast on local television, G1A Channel 21, Docomo Channel 117/60.4 and stream online via Liteslaturan Guahan's live feed at http://www.guamlegislature.com/live_feed.htm. This ad is paid for with government funds.

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SECOND NOTICE OF PUBLIC HEARING- Thursday, September 19, 2019 beginning at 1:00 p.m.

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 1:04 PM

To: Speaker's Office <speaker@guamlegislature.org>, Senator Telena Cruz Nelson <senatortcnelson@guamlegislature.org>, "Amanda S. Shelton" <senatorshelton@guamlegislature.org>, "Office of Senator Kelly Marsh (Taitano), PhD." <office.senatorkelly@guamlegislature.org>, "Senator Joe S. San Agustin" <senatorjoessanagustin@gmail.com>, Senator Jose Pedro Terlaje <senatorpedo@senatorjpterlaje.com>, Senator Regine Biscoe Lee <senatorbiscoelee@guamlegislature.org>, Clynt Ridgell <clyntridgell@guamlegislature.org>, Senator Sabina Perez <office@senatorperez.org>, Senator William Mendiola Castro <sen.wilcastro@gmail.com>, Senator Louise Borja Muna <senatorlouise@gmail.com>, Senator Telo Taitague <senatortelot@gmail.com>, James Moylan <senatormoylan@guamlegislature.org>, "Mary C. Torres" <senatormary@guamlegislature.org>

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September 15, 2019

MEMORANDUM

To: All Senators, Stakeholders and Media

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

Subject: **SECOND NOTICE of Public Hearing**– Thursday, September 19, 2019 at
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--
Office of Senator Therese M. Terlaje
Committee on Health, Tourism, Historic Preservation, Land and Justice
I Mina'trentai Singko na Liheslaturan Guåhan
35th Guam Legislature
Office Location: Ada Plaza Center, Suite 207, 173 Aspinall Avenue, Hagåtña, Guam 96910

Mailing address: Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910
T: (671) 472-3586 F: (671) 989-3590 Email: senatorterlajeguam@gmail.com
website: www.senatorterlaje.com

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SECOND NOTICE OF PUBLIC HEARING- Thursday, September 19, 2019 beginning at 1pm.pdf
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Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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

September 15, 2019

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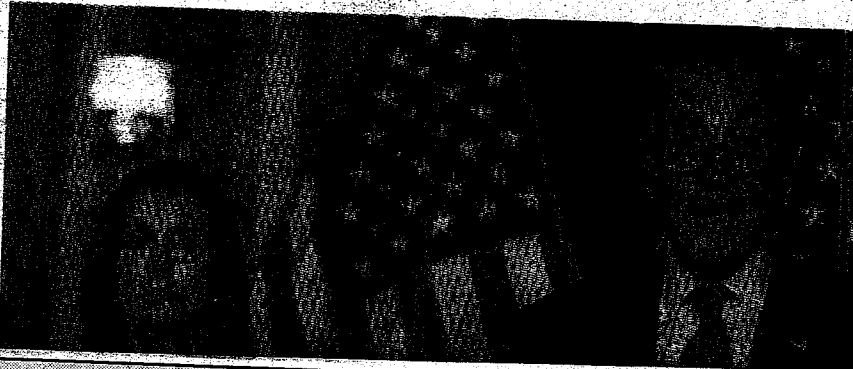
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www.senatorterlaje.com

Top Democrats tell Trump gun bill must include universal background checks

WASHINGTON (Reuters) - Top Democrats in Congress told Republican President Donald Trump on Sunday that any gun control legislation that falls short of universal background checks for gun sales "will not get the job done."

Senate Minority Leader Chuck Schumer and House of Representatives Speaker Nancy Pelosi said they spoke to Trump by phone on Sunday



Omar says she's confident Trump will be impeached

NEW YORK (Bloomberg) - Rep. Ilhan Omar said it's a matter of when, not if, President Donald Trump will be impeached, and she's not worried about House Speaker Nancy Pelosi and others not moving ahead right now.

"It is OK for some people to have hesitations, for other people to catch up to where some of us have been for a very long time," the first-term

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



SENATOR THERESE M. TERLAJE

Mina trenta Singko na Liheslaturan Guahan
35th Guam Legislature | 472-3586

PUBLIC HEARING • 1:00 PM • Thursday, September 19, 2019
Guam Legislature Public Hearing Room, Guam Congress Building, Hagåtña

AGENDA:

1:00p.m. Public Hearing: Bill 187-35 (COR) - An Act To Adopt the Rules And Regulations attached hereto as Exhibit A, Entitled: "Rules and Regulations Governing Adoption of Codes of Professional Conduct and Ethics by the Guam Board of Allied Health Examiners" Specifically Adding a New §101301 to Title 25 of the Guam Administrative Rules and Regulations.

2:00p.m. First of a Three Part Series of informational Briefings on Guam's Medical Malpractice Mandatory Arbitration Act (Citation 10 GCA Chapter 10)

- Overview of Current Law and Prior Case Outcomes
- Patient Perspectives

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



Dipartimento Kontribusion yan Adu' ana

DEPARTMENT OF

REVENUE AND TAXATION

Government of Guam

Gubetnamenton Guahan

LOURDES A. LEON GUERRERO, Governor Mags'ága
JOSHUA F. TENORIO, Lt. Governor Sigundo Mags'áhi

DAFNE MANSAPIT-SHIMIZU, Direktor
MICHELLE B. SANTOS, Deputy Direktor
Sigundo Direktor

PUBLIC NOTICE

The Real Estate Commission will hold a meeting on Tuesday, September 24, 2019 at 2:00 p.m. at the Department of Revenue and Taxation Building, Director's Conference Room, at 1240 Army Drive, Barrigada. For further information, please contact the office staff at 635-7669/7668/1844

DAFNE MANSAPIT - SHIMIZU

Real Estate Commissioner

Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Fri, Sep 20, 2019 at 4:37 PM

[Redacted text]

Hafa Adai Counsellors,

Here is a link to the video of yesterday's Legislature's Committee on Health Informational Hearing regarding Guam's Medical Malpractice Mandatory Arbitration Act: <http://bit.ly/2m14VWk>

On our website at senatorterlaje.com, you can find the written testimony that was submitted and the slides that were presented by Attorney Mitch Thompson. In addition to the submission of any additional testimony or recommendations, I am respectfully requesting your assistance in helping the Committee to understand the costs of arbitration, arbitration companies available to Guam claimants, and the amount of past arbitration awards for Guam claimants. I will also write to the American Arbitration Association and request similar information.

From our first hearing, we learned that arbitration costs are clearly an issue and more information is needed from providers of arbitration services and those who have engaged in the process. Having the input from our legal community, medical professionals and patients is important as we address the intent of the law, and its impact on the standard of care on Guam. I'm grateful for the willingness of our legal and health professionals for assisting in this regard.

I hope to call a meeting with volunteers from the Guam Bar Association in the upcoming weeks and prior to the third Informational Hearing.

Thank you for your assistance.

Therese M. Terlaje

--
Office of Senator Therese M. Terlaje

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

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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website: www.senatorterlaje.com

Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 23, 2019 at 8:23 AM

Hafa Adai Mr. Bell,

Thank you for submitting your written testimony and sharing your experience of Guam's Medical Malpractice Mandatory Arbitration Act at last week's Committee on Health's Information Hearing. Here is a link to the video of the hearing: <http://bit.ly/2m14VWk>

On our website at senatorterlaje.com, you can also find the written testimony that was submitted and the slides that were presented by Attorney Mitch Thompson. In addition to the submission of any additional testimony or recommendations, I am respectfully requesting your assistance in helping the Committee to understand the costs of arbitration, arbitration companies available to Guam claimants, and the amount of past arbitration awards for Guam claimants. I will also write to the American Arbitration Association and request similar information.

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Therese M. Terlaje

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

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Senator Therese Terlaje <senatorterlaje@guam@gmail.com>

Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlaje@guam@gmail.com>



Hafa Adai Dr. Nguyen,

Thank you again for sharing your testimony at last week's informational hearing on Guam's Medical Malpractice Mandatory Arbitration Act. We will transcribe your testimony and keep in our files and on the record as we continue the remaining informational hearings on the medical malpractice law.

As we continue to receive them, we will post all the written testimonies on our website at senatorterlaje.com, along with a link to watch the public hearings.

All health professionals are invited to a second informational hearing on Thursday, October 3, 2019 at 5:00 p.m. to focus on the effect of the current law on standards of care. We welcome our health professionals to submit written testimony. Patients and the general public are also invited to attend and share their testimony as well.

Thank you again, and feel free to reach out to our office if you have any questions.

Ken Quintanilla,
Communications Director

Office of Senator Therese M. Terlaje

Committee on Health, Tourism, Historic Preservation, Land and Justice
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Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 23, 2019 at 8:27 AM

Hafa Adai Mr. Thompson,

Thank you for your presentation and sharing your experience and insight of Guam's Medical Malpractice Mandatory Arbitration Act at last week's Committee on Health's Information Hearing. Here is a link to the video of the hearing: <http://bit.ly/2m14VWk>

On our website at senatorterlaje.com, you can also find the written testimony that was submitted and the slides that you presented. In addition to the submission of any additional testimony or recommendations, I am respectfully requesting your assistance in helping the Committee to understand the costs of arbitration, arbitration companies available to Guam claimants, and the amount of past arbitration awards for Guam claimants. I will also write to the American Arbitration Association and request similar information.

From our first hearing, we learned that arbitration costs are clearly an issue and more information is needed from providers of arbitration services and those who have engaged in the process. Having the input from our legal community, medical professionals and patients is important as we address the intent of the law, and its impact on the standard of care on Guam. I'm grateful for the willingness of our legal and health professionals for assisting in this regard.

I hope to call a meeting with volunteers from the Guam Bar Association in the upcoming weeks and prior to the third Informational Hearing.

Thank you for your assistance.

Therese M. Terlaje

--

Office of Senator Therese M. Terlaje

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

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35th Guam Legislature

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

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Tue, Sep 24, 2019 at 4:00 PM

Hafa Adai Pram,
Welcome back, and thank you for following-up on our previous email.

Here are the details for the second informational hearing:

What: Second Informational Hearing on Guam's Medical Malpractice Mandatory Arbitration Act

When: Thursday, October 3, 2019 at 5:00 p.m.

Where: Public Hearing Room, Guam Congress Building (Hagatna)

Agenda: Focus on the impacts of the current law on the practice of health professionals, on whether the law ensures the appropriate standard of care on Guam, and the impacts of the law on the availability of qualified health professionals.

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

Thank you again, and we hope you can share with members of the Guam Medical Association.

Ken Quintanilla,
Communications Director

Office of Senator Therese M. Terlaje

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

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

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

Date: Mon, Sep 16, 2019 at 11:54 AM

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

To: Pram Sullivan <guammedicalassn@gmail.com>



Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåban

35th Guam Legislature

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

SENATOR THERESE TERLAJE BEGINS THE FIRST PART OF A SERIES OF INFORMATIONAL HEARINGS ON GUAM'S MEDICAL MALPRACTICE LAW.

FOR IMMEDIATE RELEASE (September 20, 2019)— Committee on Health Chairperson Senator Therese M. Terlaje commenced the first part of a series of informational hearings on Guam's Medical Malpractice Mandatory Arbitration Act.

Thursday's first informational hearing focused on the basic background of Guam's Medical Malpractice Mandatory Arbitration Act. The Office of the Attorney General of Guam, Attorney Mitch Thompson, and members of the Guam Bar Association, including lawyers who volunteered to assist the Legislature with examining the malpractice law, were invited to attend and shared an overview of the current statute and relevant cases. Patients and members of the public also testified and shared their personal experiences and the impact the malpractice law has had on their families. From our first hearing, we learned that arbitration costs are clearly an issue and more information is needed from providers of arbitration services and those who have engaged in the process.

“Having the input from the legal community, medical professionals, and patients is important as we address the intent of the law, and its impact on the standard of health care on Guam. I'm grateful for the willingness of our legal and health professionals for assisting in this regard. A review is long overdue, and is critical especially for families who have experienced the loss of a loved one. Thank you to Mr. David Lubofsky and Ms. Anelyn Lagrimas for not only having the courage to share your experiences and the impact the medical malpractice law has had on your families, but for the extensive research you have done in the process. I offer my deepest condolences to our families experiencing loss, and remain committed to ensuring fairness in the process and most of all, access to justice,” said Senator Therese Terlaje.

All health professionals are invited to a second informational hearing on Thursday, October 3, 2019 at 5:00 p.m. to focus on the effect of the current law on standards of care. A third informational hearing is scheduled for Thursday, November 7, 2019 at 2:00 p.m. and will focus on recommendations for improvement. All hearings will take place at the Public Hearing Room of the Guam Congress Building. Patients and the public are invited to attend both hearings and provide written testimony.

As the committee receives written testimony, they will be posted on www.senatorterlaje.com for public viewing. The website will provide links to watch the public hearings and other announcements regarding the schedule.

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

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

www.senatorterlaje.com

Re: Some documentation after yesterday's hearing

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Fri, Sep 20, 2019 at 11:53 AM

Hafa Adai Dr. Helm,

Thank you for sharing these documents as we work together with all our stakeholders to examine Guam's Medical Malpractice Mandatory Arbitration Act. We will keep these in our files for further review as we continue our informational hearings.

A friendly reminder, we will hold our second informational hearing on Thursday, October 3, 2019 at 5:00 p.m. in the Public Hearing Room of the Guam Congress Building. We invite you, and all health professionals to attend this hearing to focus on the impacts of the current law on their practice, on whether the law ensures the appropriate standard of care on Guam, and the impacts of the law on the availability of qualified health professions. Patients and members of the public are also invited to this hearing.

As we received them, all written testimonies and a link to Thursday's hearing will also be posted on our website at senatorterlaje.com, along with the public hearing announcements.

On behalf of the Office of Senator Therese Terlaje, thank you again for reaching out and appreciate your input.

Ken Quintanilla,
Communications Director

Office of Senator Therese M. Terlaje

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

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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On Fri, Sep 20, 2019 at 9:53 AM Joey Helm <jhelm920@gmail.com> wrote:

Hafa Adai Senator,

Thank you for your involvement and interest in helping us provide excellent healthcare on Guam. Just a few documents I found after yesterday's hearing that you mentioned you would be interested in seeing.

The first is the AAA Commercial Arbitration fee schedule:

https://www.adr.org/sites/default/files/Commercial_Arbitration_Fee_Schedule_1.pdf

2nd - attached is a document containing all the various state laws regarding malpractice and required mediation/screening panels with the following specifically re: Hawaii's mandatory "conciliation panel".

Hawaii - "Prior to commencement of a medical tort action in court, a claimant must submit the claim to a medical claim conciliation panel which shall facilitate the resolution of inquiries regarding the rendering of professional services by health care providers that involve injury, death or other damages to the patient. The panel shall be comprised of a chairperson/attorney and a physician. (HRS 671-11 through 671-20) The panel was changed to advisory in nature in 2012 (HB 1967)."

<https://legiscan.com/HI/text/HB1967/2012>

Thank you and Si Yu'os Mā'āse'

Dr Joseph Helm
General Surgery
Island Surgical Center

Re: Guam Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Thu, Sep 19, 2019 at 10:18 AM

Dear Attorney Keogh,

This is to confirm that you are invited to speak at any of the hearings we are holding. I agree that your experience and input are valuable to this process. I regret that you will not be on island for the first hearing, and asked my staff to invite you to submit written testimony that can be read at that hearing as well. All testimony received at any time will be forwarded to all senators.

In July, at my request, the Guam Bar Association solicited via email for lawyers that were interested in assisting the Legislature in addressing medical malpractice laws on Guam. Your name was not on the list we received from GBA (see letter attached) but I will add you to our panel and send direct notice to you of any hearings in this regard.

Thank you for your assistance in this process.

Therese Terlaje

--

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

35th Guam Legislature

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On Tue, Sep 17, 2019 at 3:37 PM <rik@guam.net> wrote:

Dear Senator Terlaje,

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

Thank you for your attention to this request.

Sincerely,

Robert L. Keogh

KEOGH LAW OFFICE

247 Martyr Street

Suite 105


Hagatna, GU 96910

Telephone: 1 (671) 472-6895

Facsimile: 1 (671) 472-6929

www.keoghlawoffice.com

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 **email to bar.pdf**
29K

Re: TESTIMONY MANDATORY MALPRACTICE ARBITRATION ACT SEPT. 19, 2019

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Wed, Sep 18, 2019 at 12:28 PM

Hafa Adai Mr. Lubofsky,

I am confirming receipt of your email and testimony. To your inquiry, to accommodate for any differing interpretation or caution regarding the law or the cases, Senator Terlaje also inviting input from those lawyers who affirmatively responded to the Guam Bar Association's call out for lawyers interested in assisting the Legislature with examination of Guam's Medical Malpractice Mandatory Arbitration Act.

Respectfully,
Charissa L. Manibusan
Committee Director

Office of Senator Therese M. Terlaje

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

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On Tue, Sep 17, 2019 at 10:52 PM D [REDACTED] wrote:

Greetings Senator Terlaje,

Attached is my testimony. Its a bit long, but I will go thru it quickly and its a bit hard under the circumstances to just express my concerns in a few minutes.

I see that you have a pro-arbitration attorney, Att Thompson. Do you have a plaintiff attorney to speak? Attorney Keogh is off island.

Please confirm the receipt of my testimony.

Thank you very much for all of your assistance.

David Lubofsky

Re: Guam Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Tue, Sep 17, 2019 at 5:15 PM

Hafa Adai Mr. Keogh,

We are accepting written testimony, which will be included in the Committee Report at the conclusion of the series of hearings, and will be available to the public. Written testimony can be submitted via email here, and can be read into the record if you wish to send a representative to do so. The hearing will also be live streamed on the Legislature's live feed, which can be found here <https://www.youtube.com/channel/UCWGC3ELFerik7HtSuf70tyg>.

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

Séa A.Cruz

Chief of Staff

--

Office of Senator Therese M. Terlaje

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

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On Tue, Sep 17, 2019 at 3:37 PM <rlk@guam.net> wrote:

Dear Senator Terlaje,

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

Thank you for your attention to this request.

Sincerely,

Robert L. Keogh

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

1 message

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

Tue, Sep 17, 2019 at 3:30 PM

Hafa Adai Edgar,

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

Sincerely,

Séa A.Cruz

Chief of Staff

--

Office of Senator Therese M. Terlaje

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

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

Hafa Adai Senator,

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

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

Best Regards,

Edgar Dumlao

*Administrative Support Staff***GUAM BAR ASSOCIATION**

284 West Chalan Santo Papa

Hagåtña, Guam 96910

Telephone: 671.989.4227

Email: info@guambar.orgWeb: guambar.org

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

President: Jacqueline T. Terlaje

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

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

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

Best,
Edgar Dumlao
Administrative Support Staff

GUAM BAR ASSOCIATION

284 West Chalan Santo Papa
Hagåtña, Guam 96910
Telephone: 671.989.4227
Email: info@guambar.org
Web: guambar.org

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

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

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

Transmitted via electronic mail

info@guambar.org

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

Hafa Adai Ms. Terlaje and Guam Bar Association Members,

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

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

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

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

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

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

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

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

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

Sincerely,
Therese M. Terlaje

—

Office of Senator Therese M. Terlaje

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

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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

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


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

website: www.senatorterlaje.com

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

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>


Tue, Sep 17, 2019 at 5:33 AM

Hafa Adai Mr. Lubofsky,

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

Respectfully,
Charissa

--

Office of Senator Therese M. Terlaje

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

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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

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T: (671) 472-3586 F: (671) 989-3590 Email: senatorterlajeguam@gmail.comwebsite: www.senatorterlaje.com

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On Tue, Sep 17, 2019 at 12:22 AM dlubofsky <dlubofsky@yahoo.com> wrote:

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

Get [Outlook for Android](#)

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

Hafa Adai Mr. Lubofsky,

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

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

Therese Terlaje

--

Office of Senator Therese M. Terlaje

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

I
Mina'trentai
Singko na Liheslaturan Guåhan
35th Guam
Legislature

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INFORMATIONAL HEARINGS: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 2:28 PM

September 15, 2019

Transmitted via electronic mail

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

Håfa Adai Ms. Arriola,

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

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

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

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

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

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

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

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

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

Sincerely,
Therese M. Terlaje

Office of Senator Therese M. Terlaje

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

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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website: www.senatorterlaje.com

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TMT- Medical Malpractice Letter- Anita Arriola.pdf

150K



Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåhan

35th Guam Legislature

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

September 15, 2019

Transmitted via electronic mail

[REDACTED]@arriolafirm.com

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

Håfa Adai Ms. Arriola,

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Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guáhan

35th Guam Legislature

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

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

Sincerely,

Therese M. Terlaje

INFORMATIONAL HEARINGS: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 2:23 PM

September 15, 2019

Transmitted via electronic mail

pciville@civilletang.com

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

Håfa Adai Mr. Civille,

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

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

Sincerely,
Therese M. Terlaje

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Office of Senator Therese M. Terlaje

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

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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website: www.senatorterlaje.com

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TMT- Medical Malpractice Letter- Pat Civile.pdf

154K



Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåhan

35th Guam Legislature

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

September 15, 2019

Transmitted via electronic mail

@civilletang.com

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

Håfa Adai Mr. Civile,

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

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Senator

THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guahan

35th Guam Legislature

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

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

Sincerely,

Therese M. Terlaje

INFORMATIONAL HEARINGS: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 2:19 PM

September 15, 2019

Transmitted via electronic mail

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

Håfa Adai Mr. Deinhart,

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

Sincerely,

Therese M. Terlaje

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Office of Senator Therese M. Terlaje

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

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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TMT- Medical Malpractice Letter- Martin Deinhart.pdf

154K



Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåban

35th Guam Legislature

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

September 15, 2019

Transmitted via electronic mail

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

Håfa Adai Mr. Deinhart,

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www.senatorterlaje.com



Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåhan

35th Guam Legislature

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

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

Sincerely,

Therese M. Terlaje

Medical Malpractice Insurance Inquiry

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 2:15 PM


Hafa adai Mr. Paulino,

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

Respectfully,

Séa A.Cruz
Chief of Staff

--

Office of Senator Therese M. Terlaje

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

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 **Cassidy's Letter.docx**
272K

RE: Medical Malpractice Insurance Inquiry

1 message

Victor Paulino <victorp@cassidysguam.com>

Thu, Sep 19, 2019 at 11:26 AM

To: Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Cc: David Lujan <dlujan@cassidysguam.com>, Paulino, Victor Paulino <victorp@cassidysguam.com>

Hafa adai!

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

Again, my sincerest apologies.

Greatly appreciate your understanding with my absence today.

Best regards,

Vic

Vic Paulino**Commercial Sales Executive****Cassidy's Associated Insurers, Inc.**

376 West O'Brien Drive

Hagatna, Guam, U.S.A. 96910

T: 1+ (671)472-8834

F: 1+ (671)477-3127

Email: @cassidysguam.comWebsite: www.cassidysguam.com

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From: Senator Therese Terlaje [mailto:senatorterlajeguam@gmail.com]**Sent:** Monday, September 16, 2019 4:22 PM

To: Victor Paulino [REDACTED]
Subject: Re: Medical Malpractice Insurance Inquiry

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

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

Thursday, September 19th at 2pm

Thursday, October 3rd at 5pm

Thursday, November 7th at 2pm.

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

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

Séa A.Cruz

Chief of Staff

--

Office of Senator Therese M. Terlaje

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

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On Mon, Sep 16, 2019 at 4:06 PM Victor Paulino [REDACTED] wrote:

Buenas yan Hafa adai!

I confirm receipt of this email with attached letter.

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

I'm hoping to provide a response by Thursday.

Greatly appreciate your consideration with this email reply.

Best regards,
Vic

Vic Paulino

Commercial Sales Executive

Cassidy's Associated Insurers, Inc.

376 West O'Brien Drive

Hagatna, Guam, U.S.A. 96910

T: 1+ (671)472-8834

F: 1+ (671)477-3127

Email: [REDACTED]

Website: www.cassidysguam.com

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

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

To: [REDACTED]@cassidysguam.com

Subject: Medical Malpractice Insurance Inquiry

Hafa adai Mr. Paulino,

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

Respectfully,

Séa A.Cruz

Chief of Staff

--

Office of Senator Therese M. Terlaje

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

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35th Guam Legislature

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Senator

TERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåban

35th Guam Legislature

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

September 16, 2019

Transmitted via electronic mail

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

Håfa Adai Mr. Paulino,

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

I am also specifically interested in the following information:

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

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

Thank you for your assistance.

Sincerely,

Therese M. Terlaje

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Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Inquiry

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 11:54 AM

Hafa Adai Ms, Emma,

Good afternoon. As I mentioned in our conversation, we are seeking the following information:

- Do all physicians who are currently licensed have Medical Malpractice Liability Insurance?
- If not, what percentage of licensed physicians do have Medical Malpractice Liability Insurance?

Thank you for your attention to this matter. I await your response.

Si Yu'us Ma'se,

Sea A. Cruz,
Chief of Staff

--

Office of Senator Therese M. Terlaje

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

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INFORMATIONAL HEARINGS: Guam's Medical Malpractice Mandatory Arbitration Law

1 message

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

Mon, Sep 16, 2019 at 2:15 PM

September 15, 2019

Transmitted via electronic mail

[REDACTED]@bsjmlaw.com

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

Håfa Adai Mr. Johnson,

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

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

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

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

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

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

Sincerely,
Therese M. Terlaje

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Office of Senator Therese M. Terlaje

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

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TMT- Medical Malpractice Letter- Mars Johnson.pdf

152K



Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåban

35th Guam Legislature

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

September 15, 2019

Transmitted via electronic mail

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

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INFORMATIONAL HEARINGS: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 2:09 PM

September 15, 2019

Transmitted via electronic mail

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

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Office of Senator Therese M. Terlaje

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

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35th Guam Legislature


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 **TMT- Medical Malpractice Letter- John Bell.pdf**
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Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåhan

35th Guam Legislature

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

September 15, 2019

Transmitted via electronic mail

~~john.r.bell@veroniamail.com~~

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

Håfa Adai Mr. Bell,

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Sincerely,

Therese M. Terlaje

INFORMATIONAL HEARINGS: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 2:05 PM

September 15, 2019

Transmitted via electronic mail

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

Håfa Adai Mr. Vandeveld,

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Office of Senator Therese M. Terlaje

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

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35th Guam Legislature

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website: www.senatorterlaje.com

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INFORMATIONAL HEARINGS: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>


Mon, Sep 16, 2019 at 2:01 PM

September 15, 2019

Transmitted via electronic mail


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

Håfa Adai Mr. Cook,

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

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

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

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

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

Sincerely,
Therese M. Terlaje

--

Office of Senator Therese M. Terlaje

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

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature


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

website: www.senatorterlaje.com

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 **TMT- Medical Malpractice Letter- Jeffrey Cook.pdf**
151K



Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåhan

35th Guam Legislature

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

September 15, 2019

Transmitted via electronic mail

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

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Senator

THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåhan

35th Guam Legislature

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

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Sincerely,

Therese M. Terlaje



Senator Therese Terlaje <senatorterlajeguam@gmail.com>

INFORMATIONAL HEARINGS: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 1:54 PM

September 15, 2019

Transmitted via electronic mail

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

Håfa Adai Ms. Rudolph,

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

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

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Sincerely,
Therese M. Terlaje

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Office of Senator Therese M. Terlaje

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

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature


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



Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåban

35th Guam Legislature

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

September 15, 2019

Transmitted via electronic mail

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

Håfa Adai Ms. Rudolph,

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

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Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåban

35th Guam Legislature

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

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

Sincerely,

Therese M. Terlaje

Medical Malpractice Informational Briefing Invite

1 message

Senator Telo Taitague <senatortelot@gmail.com>

Mon, Sep 16, 2019 at 9:47 AM

To: "Senator Therese M. Terlaje" <senatorterlajeguam@gmail.com>

Cc: Jason Teulau <senatortelot.jason@gmail.com>

Hafa adai Chairwoman Terlaje,

Please see attached letter.

Best regards,
Senator Telo Taitague

Si Yu'os Ma'åse,

Create a Great Day!*Senator Telo T. Taitague**Minority Whip*

35th Guam Legislature

Suite 309 DNA Building

238 Archbishop Flores St.

Hagatna, Guam 96910

Tel: (671) 989-8356

Email: senatortelot@gmail.com**Ltr. to Sen.Terlaje - Medical Malpractice Info Briefings Invite.pdf**

218K

Re: Medical Malpractice Informational Briefing Invite

1 message

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

Mon, Sep 16, 2019 at 1:51 PM

Håfa Adai Senator Taitague,

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

Si Yu'us Ma'åse,

Séa A. Cruz
Chief of Staff

--

Office of Senator Therese M. Terlaje

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

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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On Mon, Sep 16, 2019 at 9:51 AM Senator Telo Taitague <senatortelot@gmail.com> wrote:

Hafa adai Chairwoman Terlaje,

Please see attached letter.

Best regards,
Senator Telo Taitague

Si Yu'os Ma'åse,

Create a Great Day!
Senator Telo T. Taitague

Minority Whip

35th Guam Legislature

Suite 309 DNA Building

238 Archbishop Flores St.

Hagatna, Guam 96910

Tel: (671) 989-8356

Email: senatortelot@gmail.com



OFFICE OF SENATOR
Telo T. Taitague
Minority Whip
I Mina'trentai Singko Na Liheslaturan Guåhan • 35th Guam Legislature

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

September 16, 2019

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

Subject: Medical Malpractice Informational Briefing Invite


Håfa adai Chairwoman Terlaje,

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

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

I appreciate your consideration of this request.

Senseramente,



TELO T. TAITAGUE
Senator

INFORMATIONAL HEARINGS: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 1:19 PM

September 15, 2019

Transmitted via electronic mail

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

Håfa Adai Dr. Lizama,

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

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

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I look forward to your presence and participation.

Sincerely,

Therese M. Terlaje

--

Office of Senator Therese M. Terlaje

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

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature


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



Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåban

35th Guam Legislature

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

September 15, 2019

Transmitted via electronic mail

[REDACTED]

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

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Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåban

35th Guam Legislature

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

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I look forward to your presence and participation.

Sincerely,

Therese M. Terlaje

Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Sun, Sep 15, 2019 at 3:07 PM


Hafa Adai Dr. Lizama,

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

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

Thank you,
Therese Terlaje

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

35th Guam Legislature

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

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Informational Hearings: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 12:04 PM

September 15, 2019

Transmitted via electronic mail

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

Håfa Adai Mr. Thompson,

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

Sincerely,

Therese M. Terlaje

--

Office of Senator Therese M. Terlaje

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

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature


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

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

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

website: www.senatorterlaje.com

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



Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåhan

35th Guam Legislature

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

September 15, 2019

Transmitted via electronic mail

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

Håfa Adai Mr. Thompson,

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Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåhan

35th Guam Legislature

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

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Sincerely,

Therese M. Terlaje

Re: Guam arbitration law meetings

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Sun, Sep 15, 2019 at 1:33 PM

[REDACTED]
Hafa Adai Atty Thompson,

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

Thank you,

Therese Terlaje

--

Office of Senator Therese M. Terlaje

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

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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On Fri, Sep 13, 2019 at 2:03 PM Mitch Thompson <MThompson@ttalaw.net> wrote:

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

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

Thank you.

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

Facsimile: (671) 477-5206

Email: Mthompson@ttalaw.net

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Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Informational Hearings: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

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

Mon, Sep 16, 2019 at 1:14 PM

September 15, 2019

Transmitted via electronic mail
info@guambar.orgJacqueline T. Terlaje, Esq.,
President, Guam Bar Association
284 West Chalan Santo Papa, Hagåtña, Guam 96910

Håfa Adai Ms. Terlaje and Guam Bar Association Members,

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

Sincerely,
Therese M. Terlaje

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Office of Senator Therese M. Terlaje

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

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35th Guam Legislature

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TMT- Medical Malpractice Hearings- Guam Bar Association.pdf

156K



Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåban

35th Guam Legislature

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

September 15, 2019

Transmitted via electronic mail

info@guambar.org

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

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Therese M. Terlaje

Informational Hearings: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>


Mon, Sep 16, 2019 at 11:54 AM

September 15, 2019

Transmitted via electronic mail@gmail.com

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

Håfa Adai Dr. Shieh and Guam Medical Association Members,

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Office of Senator Therese M. Terlaje

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

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature


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153K



Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåhan

35th Guam Legislature

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

September 15, 2019

Transmitted via electronic mail

guammedicalassn@gmail.com

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

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Senator
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35th Guam Legislature

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

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Sincerely,

Therese M. Terlaje



Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Informational Hearings: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 11:47 AM

To: Guam Medical Society <theguammedicalsociety@gmail.com>

Transmitted via electronic mail

theguammedicalsociety@gmail.com

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

Håfa Adai Dr. Blounts and Guam Medical Society Members,

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Office of Senator Therese M. Terlaje

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

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature


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Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåhan

35th Guam Legislature

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

September 15, 2019

Transmitted via electronic mail

theguammedicalsociety@gmail.com

~~Or 2019@gmail.com~~

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

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

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

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

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

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

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

www.senatorterlaje.com



Senator

TERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåhan

35th Guam Legislature

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

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

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

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


I look forward to your presence and participation.

Sincerely,

Therese M. Terlaje

Informational Hearings: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

 Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 11:29 AM

Hafa Adai Mr. Lubofsky,

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

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

Therese Terlaje

--

Office of Senator Therese M. Terlaje

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

I Mina'trentai Singko na Liheslaturan Guåhan


35th Guam Legislature

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

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T: (671) 472-3586 F: (671) 989-3590 Email: senatorterlajeguam@gmail.comwebsite: www.senatorterlaje.com

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 **TMT- Medical Malpractice Hearings- Senators.pdf**
152K

Informational Hearings: Guam's Medical Malpractice Mandatory Arbitration Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Mon, Sep 16, 2019 at 11:26 AM

To: Speaker's Office <speaker@guamlegislature.org>, phnotice@guamlegislature.org

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

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

Transmitted via electronic mail
phnotice@guamlegislature.org

Håfa Adai Speaker Muña Barnes and Colleagues,

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

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

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

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Guam, and the impacts of the law on the availability of qualified health professionals. I have invited the heads of the Guam Medical Association and the Guam Medical Society to lead the health professional's panel. The second hearing will also allow limited testimony from patients and the general public.

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Si Yu'os Ma'ase,

Therese Terlaje

--

Office of Senator Therese M. Terlaje

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

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature


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

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Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåban

35th Guam Legislature

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

September 15, 2019

Transmitted via electronic mail

phnotice@guamlegislature.org

Speaker Muña Barnes and Senators, 35th Guam Legislature
Guam Congress Building
Hagåtña, Guam

Håfa Adai Speaker Muña Barnes and Colleagues,

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

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

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Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Libeslaturan Guåhan

35th Guam Legislature

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

appropriate standard of care. The third hearing will also allow testimony from patients and the general public.

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Sincerely,

Therese M. Terlaje

cc: All Media

Invitation to Informational Hearing and Request for Brief Presentation on Government Claims Act

1 message

Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Sun, Sep 15, 2019 at 1:30 PM

Hafa Adai AG Camacho,

The Committee on Health will be holding an informational briefing on September 19, 2019, at 1:00 p.m., as part of a series of informational hearings on Guam's Medical Malpractice Arbitration Law. As part of the first hearing, private lawyers will be presenting on the Mandatory Medical Arbitration Law. I would like to clarify that the Arbitration law does not cover cases against GMH or health professionals employed by the government. Thus, I would like to include a 5-10 minute overview by your office of the law governing claims against health professionals working for the government of Guam (the Government Claims Act) and any cases which have interpreted that Act. Would you or anyone from your office be able to present and answer general questions on this topic? Of course, I do not want to discuss any existing or potential claims, but do want to ensure the senators are apprised of the current state of the law.

I hope you will be able to join us or to send a representative. In this regard, if there are any changes you recommend to the Government Claims Act to facilitate your office's handling of the claims or to clarify the law, please do not hesitate to send those to me or I am available to discuss those.

Sincerely,
Therese Terlaje

--

Office of Senator Therese M. Terlaje

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

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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

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website: www.senatorterlaje.com

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Senator Therese Terlaje <senatorterlajeguam@gmail.com>

Revised PowerPoint Presentation of Mitchell F. Thompson, Esq. for 9/19/19 2:00 p.m. Public Hearing

1 message

Vanessa Santos Pinkney <VSPinkney@ttalaw.net>
To: "senatorterlajeguam@gmail.com" <senatorterlajeguam@gmail.com>

Thu, Sep 19, 2019 at 4:30 PM

Hafa Adai:

Pursuant to the request of Senator Terlaje and her team, please see the attached revised PowerPoint presentation that was presented during today's public hearing. I note that the minor revision is only the slide marked page 5 to add a question mark in the box after the word "liability." We hope this information is helpful and that the presentation in PDF format is something that you can share as was planned.

Additionally, Attorney Thompson asked me to inquire with your team how we might be able to obtain a video recording of today's hearing. Please could you assist me to obtain a copy?

Further, Senator Terlaje requested some additional information about arbitration service providers (their fees and fee waiver options) during the public hearing. Attorney Thompson will be off-island for a few days, however, we will work on gathering the requested information and submit it to your office upon his return and approval.

Thank you for allowing us to be a part of today's hearing. Please feel free to contact me again for any questions or concerns.

Regards,

Vanessa R. Santos-Pinkney

Legal Secretary

THOMPSON THOMPSON & ALCANTARA, P.C.

238 Archbishop Flores Street, Suite 801


Hagåtña, Guam 96910

Telephone: (671) 472 – 2089

Facsimile: (671) 477 – 5206

Email: VSPinkney@ttalaw.net

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 MS193102MFT_9-19-19 Public Hrng Presentation.pdf
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Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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

PUBLIC HEARING AGENDA
Thursday, September 19, 2019

2:00 PM

- 1st Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10): Overview of Current Law and Prior sCase Outcomes; Patient Perspectives



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

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

Date: Thursday, September 19, 2019

Time: 2:00 PM

1st Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10): Overview of Current Law and Prior Case Outcomes; Patient Perspectives

	NAME	ADDRESS	CONTACT NO.	E-MAIL	Type of Testimony		Support	
					WRITTEN	ORAL	Yes	No
1	SHAWUN TATAO	AG'S OFFICE	475-3324 x 3090					
2	Mitch Thompson	238 AB Floor St	472-2889	mthompson@hslaw.net				
3	KEN ORCUTT	AG'S OFFICE	475-3324			✓		
4								
5								
6								
7								
8								
9								
10								



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

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

Date: Thursday, September 19, 2019

Time: 2:00 PM

1st Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10): Overview of Current Law and Prior Case Outcomes; Patient Perspectives

	NAME	ADDRESS	CONTACT NO.	E-MAIL	Type of Testimony		Support	
					WRITTEN	ORAL	Yes	No
1	John R. B. Bell, Esq.				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
2								
3								
4								
5								
6								
7								
8								
9								
10								



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

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

Date: Thursday, September 19, 2019

Time: 2:00 PM

1st Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10): Overview of Current Law and Prior Case Outcomes; Patient Perspectives

	NAME	FIRM OR AGENCY ADDRESS	CONTACT NO.	E-MAIL	Type of Testimony		Support	
					WRITTEN	ORAL	Yes	No
1	Joseph Alcantara	Itagadna, GU						
2		Thompson Thompson	5 Alcantara	477-2089				
3	Todd Thompson	"	"	"				
4	Louie Yanza	Yanza Law	4777059					
5								
6								
7								
8								
9								
10								



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

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

Date: Thursday, September 19, 2019

Time: 2:00 PM

1st Informational Briefing on Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10): Overview of Current Law and Prior Case Outcomes; Patient Perspectives

	NAME	ADDRESS	CONTACT NO.	E-MAIL	Type of Testimony		Support	
					WRITTEN	ORAL	Yes	No
1	David Lubofsky	Upper Tamuning Guam	687-2819	dlubofsky@yahoo.com		✓		
2	Monica Devera	Tigan		mon.devera@yahoo.com				
3	Reachy Piana	Tamuning, GU	649-1001	ppiana@guamradiology.com				
4	Joseph Helms	Tamuning Guam		jhelms920@gmail.com				
5	Erika Alford	Tamuning Gu						
6	Faye Bago Alar	Dededo						
7	David Underwood	Tamuning, GU	988-4093	dallasdku@gmail				
8	Brenda Aguon	Agis ofe	475-3324 x2115	baguon@guamag.org				
9	Lawrence Lee	Tamuning		llee8820@gmail.com				
10	Dana Lee	Tamuning		wkcm101@gmail.com		WFA		



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

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

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	NAME	ADDRESS	CONTACT NO.	E-MAIL	Type of Testimony		Support	
					WRITTEN	ORAL	Yes	No
1	Arelyn Lagrimas					✓		
2	Christian Eusebio							
3	Lhyza Pingol							
4	Ruth Carmel							
5	Beverly Ong							
6								
7								
8								
9								
10								



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

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

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	NAME	ADDRESS	CONTACT NO.	E-MAIL	Type of Testimony		Support	
					WRITTEN	ORAL	Yes	No
1	Ananda del Rosario MD	AMC	480-4263	Ananda.del.rosario@gmail.com				
2	WILLI AMGERM ^M	SPA	727-4897 72	Gervin@williamgerm.com				
3	N. BERBERG	GMC	649-1001	NBERBERG@jw.com				
4	Felix Cabrera	GRMC	929-4340	felix.cabrera@grmc.gu				
5	HVA Navea	GMAA				✓		
6								
7								
8								
9								
10								



Guam's Medical Malpractice Mandatory Arbitration Act

Mitchell F. Thompson, Esq.
Thompson Thompson & Alcantara, P.C.

Why are Claims of Medical Malpractice Treated Differently?

- **To discourage meritless claims.**
 - Medical malpractice claims can be expensive to defend.
 - More claims can lead to higher premiums and/or reduced availability of insurance.

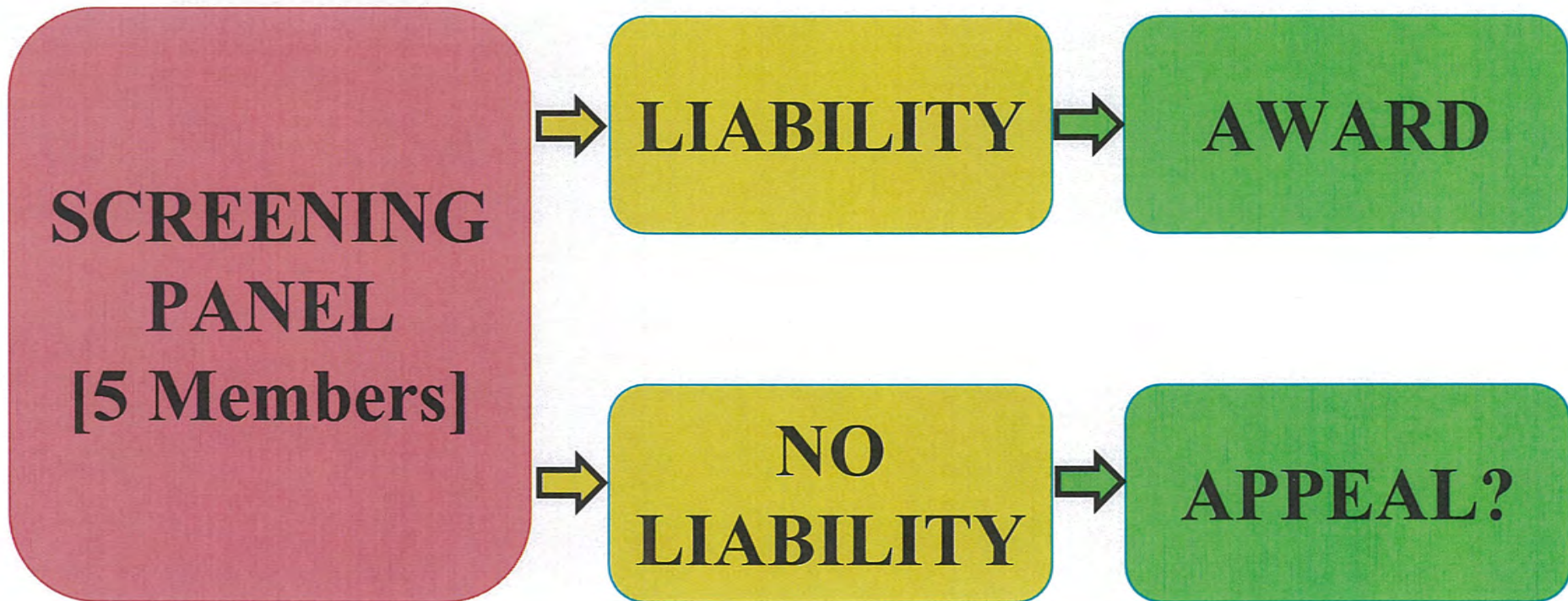
Why are Claims of Medical Malpractice Treated Differently?

- To avoid reduced provision of medical services.
- Guam needs to encourage more doctors to practice here.
- Recruitment decisions can be affected by applicable law.

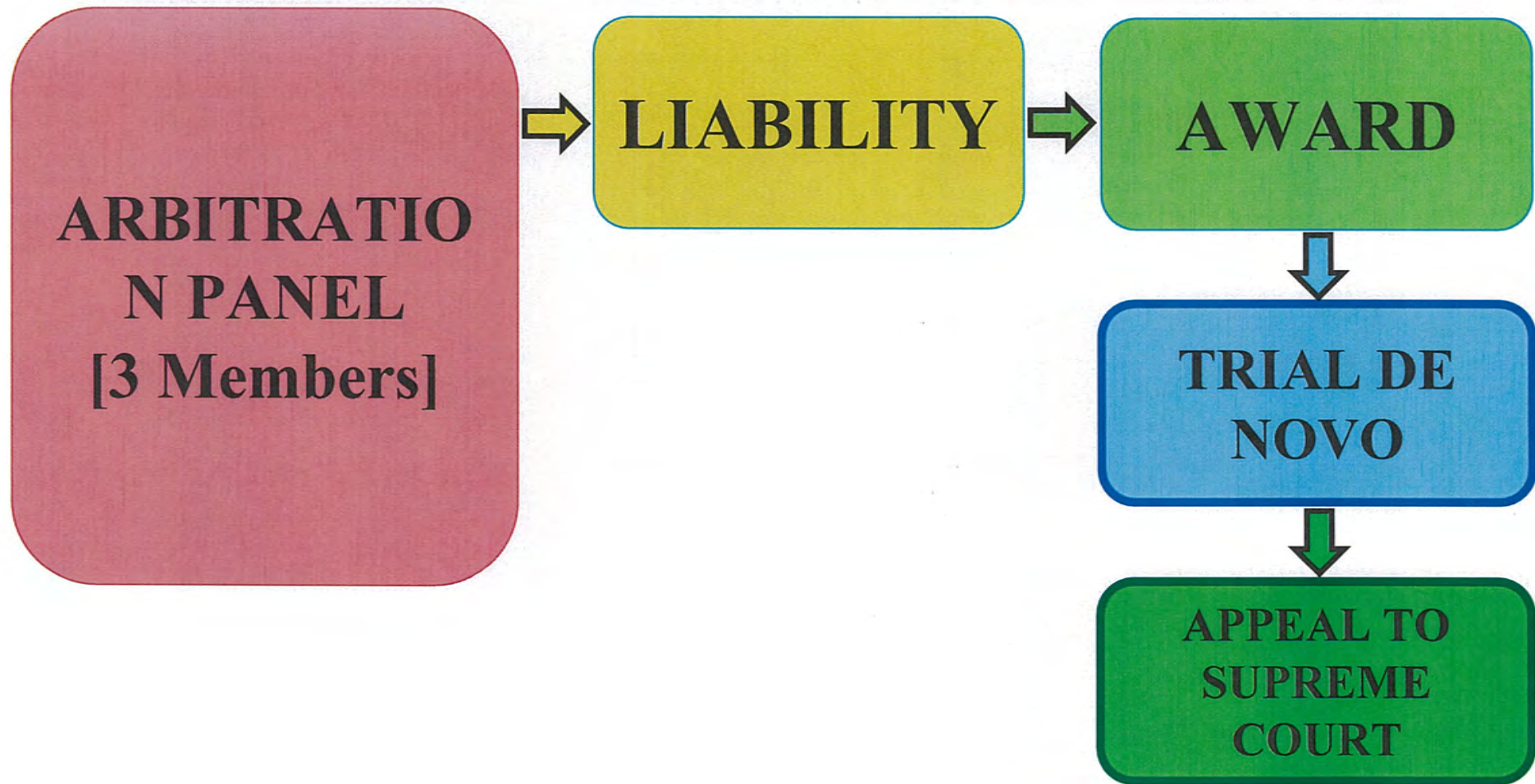
Why are Claims of Medical Malpractice Treated Differently?

- To see that claims are resolved dispassionately on the facts and law rather than on sympathy.
- Perception: bad outcome = bad care
- Injured patient can be a very sympathetic claimant, unlike claimant against other professionals.

FORMER GUAM LAW



CURRENT GUAM LAW



LIMITATIONS ON DAMAGES

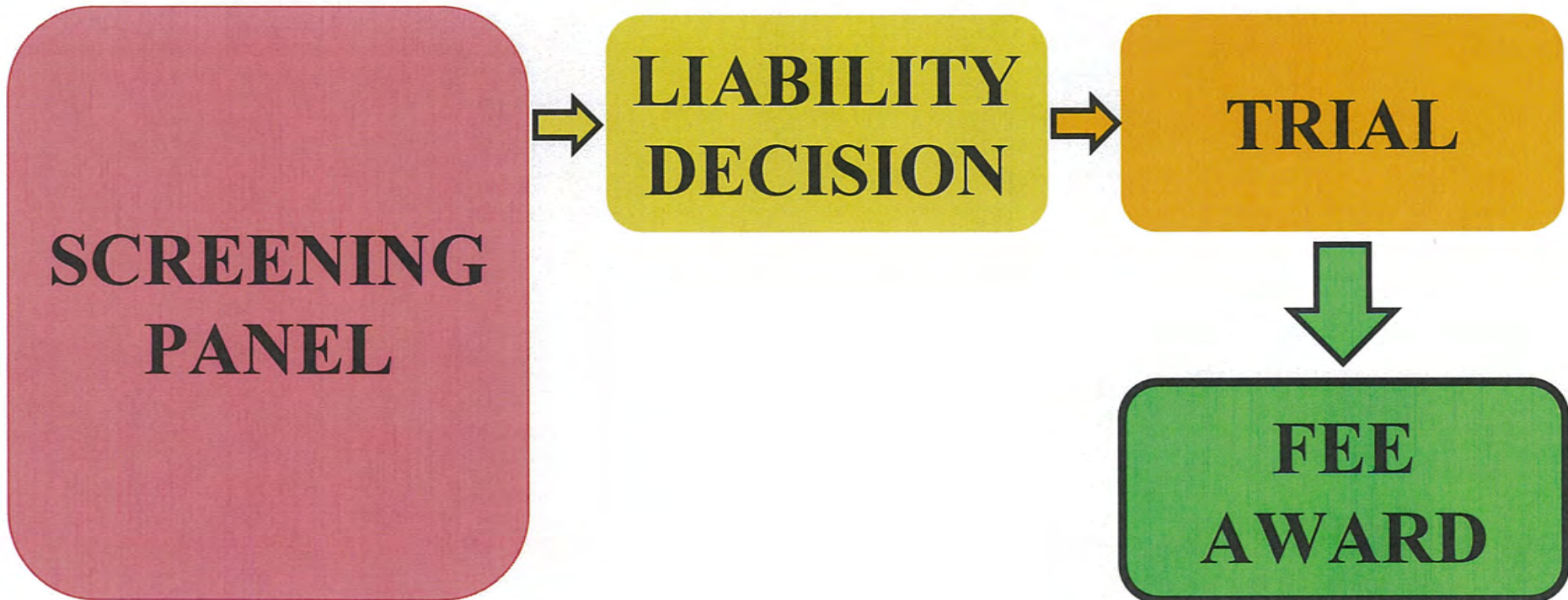
Hypothetical: \$300,000 Cap on Non-economic Damages

Jury Verdict: \$50,000 – Economic Damages
\$1,000,000 – Non-economic Damages

Actual Award:




SCREENING PANEL PROPOSAL






Thank You

Mitchell F. Thompson 

(671) 472-2089 

MThompson@ttalaw.net 

www.ttalaw.net 

*The Law Office of
John Richard Bordallo Bell*

157 Veronica Way, Tamuning, Guam 96913
Tel: (671) 646-5722 (JRBB) Fax: (671) 646-5721
Cell: (671) 488-1159/www.johnbellguam.com/Email: john.r.b.bell@gmail.com

September 19, 2019

Honorable Therese M. Terlaje
35th Guam Legislature
Hagåtña, Guam 96910

Re: Testimony regarding Mandatory Medical Malpractice.

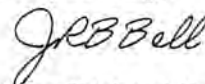
Dear Senator,

Thank you for addressing this issue and inviting my comments. Because I was only notified about today's hearing a couple of days ago and there is no specific bill being considered, my comments are fairly general at this point. I have some personal injury and medical malpractice experience on Guam since 2012. I did defend one high profile medical malpractice case successfully, but really, the Plaintiff claimed to have given up and walked away with nothing, not on the merits, but because of the very high costs of arbitrating claims. Her attorney at the time was a very prestigious attorney and I was surprised that they gave up due to the extreme costs of arbitration.

I am far from a constitutional scholar, but I am generally aware that some laws might be facially constitutional (in theory; on paper) but struck down as unconstitutional (and perhaps inorganic) *as applied*. In plain English, laws that don't help everyday citizens meaningfully address their claims and seek adequate recourse are meaningless if there are in fact and in reality impossible hurdles for most people to overcome. Our workers compensation systems is one such scenario. On paper, the law looks fine. In reality, there is no law and no adjudication on the merits. Based on my albeit limited experience with Guam's medical malpractice law, I fear that may be the reality for most patients – that they have no meaningful or adequate recourse *in fact*.

While I realize this is a tangential issue, I am deeply concerned about the exorbitant rates GMH is charging patients (and their attorneys) for copies of medical records. Not even the private clinics charge the sometimes hundreds of dollars in fees GMH attempts to charge patients for their own records. Often times, the request for records is pursuant to a personal injury case that has nothing to do with GMH. But because this may be an attempt by GMH to limit legal exposure, I hope that you will address that as well.

Respectfully,



John Richard Bordallo Bell, Esq.

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

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

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

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

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

to seek assistance with the current process. This could be expanded if Government of Guam sets up a fund to assist those in need obtain arbitration services. Several steps could be taken to continue the arbitration process and protect physicians while driving the costs down and improving access.

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

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

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



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

TESTIMONY:

Guam Medical Malpractice Mandatory Arbitration Act

Senator Therese Terlaje, Chairperson,
Committee on Health, Tourism, Historic Preservation, Land and Justice

September 19, 2019

From: David Lubofsky (Speaking for Asher Dean Lubofsky)

I am David Lubofsky, the father of Asher Dean Lubofsky, who at age 5 passed away at the Guam Memorial Hospital on October 31st, 2018, almost one year ago.

Let me first start off by saying that I would prefer to be anywhere else on the planet besides here at this moment, as what has brought me here is the worst nightmare that a parent can face. The death of a child is an unrelenting nonstop painful nightmare. To make it more painful and the reason that we are all here is about how our children and family members die due to medical negligence or malpractice needlessly and those negligent doctors who then walk away with no accountability or even a record of what they did to then see and endanger others on Guam. When Asher entered the Guam Seventh Day Adventist Clinic on October 29th for his annual wellness exam, while also sick with symptoms, and saw Shishin Miyagi or when he ended up at The Guam Memorial Hospital the next day, I had no idea that he would die and I had never heard of The Malpractice Arbitration Act. I will not get into my anger over how Asher was treated, **or better said, NOT TREATED**, you can read that online.

This meeting is about what happened to Asher and many other children and people on Guam after their death, injury etc due to negligent medical care. This meeting is about the discriminatory Medical Malpractice Mandatory Arbitration Act that lets doctors walk away with little or no accountability after our children or family members are injured or killed by their blatant malpractice negligence. **This meeting is about real people, it's about our kids, it's about the death of Asher, Baby Faith, Jqry-Wakyn, Aiden, Charlie and the list goes on and on of our dead kids due to negligence and a legal cover up with the Arbitration**

Act then the doctors who treated or mistreated these kids go on and treat your kids as if nothing happened. With Arbitration, they could kill many kids and no one would even know. IS THERE EVEN RECORDS OF THESE INCIDENTS?

With ASHER's death, when it became time to hold Shishin Miyagi, Ethan Snider, Seventh Day Adventist Clinic and Guam Memorial Hospital responsible, we, like many others on Guam ran into the ARBITRATION Act. We heard "**I AM SORRY, IF YOU WANT TO HOLD THESE PEOPLE ACCOUNTABLE IN THE DEATH OF ASHER; YOU FIRST HAVE TO ENTER ARBITRATION AND PAY THE HUGE EXPENSES OF IT.**" We heard this over and over. So, I kept asking, the obvious question, "**Can these doctors kill us, kill our kids and then walk away with no accountability as few can afford the process?**" The killers of our family are protected by a legislative supported law, THE ARBITRATION ACT. **How many families have buried loves ones due to negligence and were told the same thing, sorry, nothing can be done; THERE IS NO ACCOUNTABILITY FOR DOCTORS?**

The Act makes it so people of average or low income cannot afford to seek justice. The Act prevents due process or going to court unless you go thru the expensive, drawn out arbitration process first. **IT DISCRIMINATES AGAINST ALL OF US, ESPECIALLY THE POOR.** When I walked into this second nightmare with the Arbitration Act, it angered me much and still does beyond words, as Guam doctors are a protected class, an elitist group that looks down at the rest of us which is evident in how many of them conduct themselves and how we are treated by this Arbitration Act, AND HOW THEY HAVE discriminated against us, especially the poor on Guam. This does not necessarily apply to all doctors, but has become part of the overall **Physician Culture on Guam**, in my opinion. The Guam Doctors know there is no accountability to the poor (or all of us) as they and we can never afford the Arbitration process. Does this play into how doctors treat us daily?

I had a parent this week message me over and over about how they cannot even get a referral for off island for a very sick 6 month old baby as the doctor seems to be full of excuses for the mother why he cannot do it. The mother is on Public Assistance. The Doctor told her to go see someone else, even though the child has been hospitalized with this same doctor at GMH multiple times and she was at GMH requesting a referral during the last hospitalization with her 6 month old baby. **Is he waiting for the baby to die? The parent is frantic, the doctor is**

indifferent. My opinion, that is what lack of accountability does, makes doctors apathetic and they ignore the plight of our kids This is what happened to Asher, no doctors saw him for his last 12 hours alive, left him without checking him. . APATHY breded by the ARBITRATION ACT.

The lack of accountability should anger everyone. Name any other profession on Guam that has no accountability as afforded to doctors due to the Arbitration Act? The difference is that our kids our dying. The law discriminates against the poor and that was my biggest issue initially, but as time passed and after talking to many parents and other people on Guam it's evident beyond the discrimination, that the law creates apathy among doctors as I referred to already. A better name for this Act is the **APATHY ACT**. People who are not accountable for their actions and are protected, no matter what they do wrong become apathetic. **We, AS PARENTS, will never allow our kids to be NOT accountable and we want our children to be responsible for their actions, but the people who take care of our kids medically, we do NOT hold them to the same basic standards of accountability that we hold our kids to. IT DOES NOT MAKE SENSE.**

Actually, looking back to when the Arbitration Act was enacted and supportive testimony by Mr. James Gillan, who was the administrator of the Guam Memorial Health plan at the time, lays out the true intent of the Arbitration Act. He said at that time, prior to the Act being passed into law, that doctors were practicing defensive medicine because they were worried about being sued for malpractice. In my opinion, **Defensive medicine means that they were doing everything they could for their patients, lab tests etc etc. Defensive medicine means being responsible doctors.**

Even though there were few if any malpractice cases at that time, 30 years ago, when Gillan gave his testimony, he was making the point that the doctors do too many lab tests etc back then because they feared being sued. In my opinion, he was saying **they were being TOO ACCOUNTABLE** as they worried about malpractice or being sued and that this **APATHY ARBITRATION LAW** would

alleviate that so they did not have to worry about being sued and could do less diagnostics with our kids.

LET ME TRANSLATE FOR YOU, JIM GILAN WAS SAYING THAT WHEN DOCTORS PRACTICE DEFENSIVE MEDICINE AND DO EVERY TEST ETC BECAUSE THEY WERE WORRIED TO BE SUED, HE MEANT THE ARBITRATION ACT WILL MAKE IT SO INSURANCE COMPANIES WILL SAVE AND PAY LESS AS DOCTORS CAN DO LESS TESTS ETC. HE WAS SAYING THE LAW WOULD MAKE IT SO THE DOCTORS DO NOT HAVE TO PRACTICE DEFENSIVE MEDICINE.DO NOT HAVE TO BE ACCOUNTABLE, INSURANCE COMPANIES WOULD SAVE MONEY. DOCTORS WOULD HAVE LOWER OR NO MALPRACTICE INSURANCE AND THE STAGE WAS SET FOR APATHETIC MEDICAL CARE ON GUAM UNDER ARBITRRATION. ITS HARD FOR ME TO FATHOM,THE RATIONALE OF PRETTY MUCH TELLING DOCTORS THRU THIS LAW THAT THEY DO NOT HAVE TO PRACTICE DEFENSIVE MEDICINE, WHICH PROTECTED US UP TO THAT TIME, IF THE ARBITRATION ACT WAS PASSED, WHICH IT WAS.

How many have died OVER THE YEARS as this APATHETIC MEDDICAL CARE, A PRODUCT OF ARBITRATION PROTECTION, became part of our Guam Physicians culture? Baby Faith, who passed at GRMC, never got simple lab tests as that doctor seemed to not care and was not practicing defensive medicine. Asher Dean Lubofsky went into the SDA clinic with symptoms, etc but never got a simple CBC blood test, or even the wellness exam that we were there for and paid for, which may have saved his life if that doctor was practicing defensive medicine. Hey Jim Gillan, you did save money on these two dead kids and others. How many other people have died in the same situation on Guam, I would venture to say hundreds over the years? I would venture to guess that this Arbitration Act has "dumbed down" medical care on Guam so much that no matter how much money that you spend of our taxes on GMH will not fix the problems, short of making doctors accountable. **BRING BACK DEFENSIVE MEDICAL CARE.**

I think it's important to note that The Arbitration Act is being questioned if it's organic or constitutional. There is a current LEGAL challenge to it in court. The law in the past, as previously written, was deemed to be unconstitutional, and

according to a Guam POST story, Attorney Pipes implied that this current law we are discussing TODAY is also not constitutional. It deprives us the right of due process to bring those who kill or injure our family members to court. Also, an interesting law is being discussed in Washington and it is said that it will pass. **THE FORCED ARBITRATION INJUSTICE REPEAL ACT, HR 1423 OR THE FAIR ACT**, will ban all forced arbitration in contracts, INCLUDING HEALTH CARE, and I would expect also legislatively enacted FORCED ARBITRATION like our Mandatory Arbitration Act. The reason for this federal law is clear, people were getting their rights violated, were robbed of due process and sold inferior goods, and services, including health care issues, and had to deal with apathy and had no rights when these contracts were in place and enforced. The **FAIR law** has implications for Guam and should be the writing on the wall, if for no other reason that the Arbitration law needs to be repealed.

Let's just step back for a minute and ask who protects us as citizens on Guam from medical negligence, malpractice etc. **With this Arbitration Act, what options exist for the average person with a valid complaint against a doctor?** What do we do, where do we go? Every system of medical care should have a check and balance system with protections for the citizens. What protections do we currently have on Guam? What recourse do we have? **Let me outline them for you briefly.**

When we have a problem with a medical person, we have the Guam Board of Allied Health Examiners and we have the Guam Board of Medical Examiners. We can file complaints with them, but this has been proven to be useless. The Guam Board of Medical Examiners gives off island doctors licenses to practice on Guam to those applicants who only meet minimal qualifications and they have licensed doctors who have malpractice histories. They bring these new doctors here, put us at risk, while offering them low malpractice insurance due to the Arbitration Act, with protection from law suits. Some of these doctors may not be able to work anywhere else, but the Board led by Dr. Nathaniel Berg does not seem to be worried about that. Then when we complain about a doctor, or the death of a child, this Board that has major conflicts of interest, including financial, will investigate and make decisions, not mitigating their own serious conflicts of interest, not interviewing the complaining parties, as in our case, the parents of a dead child, then release the results of their so called investigation to the media before talking to the family or informing the family. In my opinion, there should be an oversight hearing of the Medical Examiners Board, and the law that created it. **They were recently described as corrupt on a local news media. How many**

doctors on Guam have a history or claims against them for MALPRACTICE and they were then licensed by the Board? How many doctors on Guam have complaints against them for malpractice or investigations of complaints for the public to be aware of? ASK THE BOARD THIS? It should be public record. A doctor can kill our kids and go on to the next child and this Board does not have a public record, which is our right. OVERSIGHT HEARING TIME.

The Guam Board of Allied Health Examiners is another place that takes complaints against Physician Assistants, as we filed, but they do not take complaints seriously and do not do what they are mandated to do. A dead 5 year old child, Allied Board gets a complaint regarding a Physician Assistant who denied my son to see a doctor 20 hours before Asher died, among other things. Nine months later, The Allied Board has not done anything with the complaint. It just sits there. They never even communicated with the family. When they are faced with complaints, they do NOT care obviously by their actions. Are they waiting for another child to die before they act on a complaint? Total apathy by this Board, still boggles my mind how they can see themselves as professionals who have the community's best interest in mind.

IT'S CLEAR, we as consumers of health care, families, parents etc. have no protection, not from the politically appointed governing Boards who are apparently self serving, not from the courts due to the Arbitration Act and up to now not from our elected leaders who have allowed us to suffer and die due to these problems with the Boards and Arbitration.

It is too late for my son Asher Dean; nothing you can do will benefit him or us. Our suffering will not be alleviated by a repeal of this Apathy Arbitration Act, but we can take some solace to know that other families will not suffer as we and others have by making doctors responsible for destroying lives. Asher was taught the difference between right and wrong and to be responsible, sadly and obviously his doctor and others were not.

IMPROVE MEDICAL CARE ON GUAM, SAVE LIVES, REPEAL THE MALPRACTICE ARBITRATION LAW.


DAVID LUBOFSKY, FATHER OF ASHER LUBOFSKY who was robbed of his life by the people that this Arbitration ACT protects.


Copy of testimony 9/19/19

1 message

Anelyn Lagrimas 
To: senatorterlajeguam@gmail.com

Thu, Sep 19, 2019 at 4:35 PM

Anelyn Lagrimas


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On July 1st, my dad was admitted in GRMC ER, conscious and complaining of a headache(the week prior he was working in construction at the new tsubaki tower). While in the ER, he went into septic shock. A couple days later, he recovered and was conscious again with suspected multiple organ failure. His kidneys shut down so he would now be on dialysis. His liver, although in bad condition was improving. He was expected to be discharged as I was contacted by an outpatient dialysis clinic about his transfer in mid July. However mishap happened, after multiple concerns brought forward about his fear of hospitals and not wanting to be here and actively trying to climb out the bed rails, he had pulled out his dialysis portal and bled out till he was barely conscious and was transferred to the ICU. Before then he was on restraints, but that day, it wasn't ordered for him, leading to the unfortunate event. The ICU doctor at the time, Dr. Agustin said it's likely he would not make it and specifically said that "He is currently like a car that is not working only being moved by a tow truck" as he compared it to the life support as the one keeping him alive. Two weeks later, and off of life support, he made it. He had fought to stay alive, however due to negligence during his stay he had developed a bed sore that they had allowed to progress into a Stage 4, in a critical state where the bed sore was now a giant crater like wound that had reached the bone and is now the cause of his new infection that would most likely lead him back into septic shock where he most likely will not survive the second time around. Had I not done the research myself and file a formal complaint, they would not have attended to it or make me aware of his Hospital Acquired Stage 4 bed sore.

Because of my dad's critical state, I took it upon myself to research how my dad got a crater like wound on his butt, when he had never had one before. I learned that a bed sore doesn't progress into Stage 4 overnight. It goes through stages 1, 2, and 3 and that with national standards are preventable at the early stage of 1 and 2, which I later found out started to occur in July 9, yet nothing was being done to treat it at the most basic level of care, he wasn't being turned every 2 hours, or cleaned dry. Neither did the doctor or nurses inform us nor address it.

As I have seen it, visiting my dad every day for the past 2 months and a half, especially during the first couple weeks, doctors and nurses had rarely came to check on him or clean him, leaving him to lay down soaked in his feces for long periods of time unturned for at the most 12-8 hours while other times it would be 4-6 hours. How would I know, you ask? Of course (they ask? Of course) I was there to witness it, every single day when my work schedule permitted and had I known what was happening at the time, had I been informed in the beginning stages I would have pushed for everything to be done to prevent it, which means getting something as simple as turning him every 2 hours to be done, constantly ringing them to check on him, all the things they are doing now, after a complaint was made, and after I started to keep tabs on them, tracking them and putting in a time log! Everything that they have started to do now (which technically is there job), they should've done so in the early stages, before skin breakdown. Complete skin and muscle breakdown should have been out of the question. Only now that a complaint was filed that all the Doctors started attending to him. I even had to personally request for the GRMC Wound Care doctor myself, because they had not told me or informed me that they had one! And only now that it is too late, the wound has reached the bone and is infected that they're doing the best they can, but that's the thing, now they are telling me it's too late. GRMC boasts high quality care and quotes patients as partners, charging \$3000 a day in Telemetry and close to \$5000 a day in the ICU

yet they couldn't give him the simplest care to prevent something ultimately preventable! The wound developed to such a stage due to negligence (@GRMC as a whole entity). A wound that massive doesn't develop from his kidney failure condition, it develops out of negligence, when the most basics of care was not provided to him on time, and in a timely matter (and only now, when it's too late having let skin breakdown occur due to negligence are they trying the best they can, and the most frustrating part, is that they only did so because a complaint was brought forward) It makes me think, had I not said anything, would they have just left him there to rot, unturned. (Leaving a bedbound person to lay hours left unturned

My dad is suffering, in pain and at risk of dying over something as small as a bed sore that they let progress for weeks (4 weeks) before even doing anything, letting it develop to a deadly Stage 4 Hospital Acquired bed sore wound with no viable options left here on island to treat it. Attempts to contain it, have been insufficient and he is also now in isolation. Surgery with a diverting colostomy is also not a viable option due to his health condition, making it very high risk of not making it past the operation. Also the surgeon himself not only does not recommend it, but mentioned that there is no guarantee that even if he were to survive the operation, that the wound would be able to completely heal, so he suggested that I just spend as much time with him as possible. My dad's slowly dying from a hospital acquired stage 4 bed sore, that was clearly preventable.

The worst feeling is to feel helpless, knowing more could have been done to prevent my dad's suffering.

Who is currently defenseless and at the complete mercy of GRMC, who has verbally acknowledged their mistake and is covering the cost of his prolonged hospital stay

But who's to say that because they are no longer profiting from my dad, that they can discharged him anytime (as another form of malpractice)

Having GRMC cover the costs of treatment to his wound makes him vulnerable, the trust is no longer there. He's in the state of suffering because he was neglected

How can you let a stage 1 bed sore (treated with the most basic care of cleaning him and turning him every 2 hours) turn into a huge stage 4 crater like wound deep to the bone in a matter of 4 weeks, left uncared for

If you compare the difference to the standard of care their giving him now, the surrounding areas are healing, because now they are turning him, now they are attending to him every 2 hours prior to the past 4 weeks when they let the ulcer develop (when the care right now directly proves that it was preventable, Centers for Medicaid Services determines it that way, thus making it a 'Never Event')

The MMMA encourages the lowest quality of care because these hospital entities and health professionals are protected by this law. I want to make sure no one, no patient, no family member should ever go through the suffering my family is going through. Mandatory Arbitration Is not even an option



Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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

COMMITTEE REPORT DIGEST

I. OVERVIEW

The **Committee on Health, Tourism, Historic Preservation, Land and Justice** convened a public hearing on **Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10)**: on **Thursday, September 19, 2019** at **2:00 PM** in *I Liheslatura's* Public Hearing Room to discuss **Overview of Current Law and Prior Case Outcomes; Patient Perspectives.**

Public Notice Requirements

Public Hearing notices were disseminated via email to all senators and all main media broadcasting outlets on Thursday, September 12, 2019 and again on Monday, September 16, 2019. The notice was also published in the Guam Daily Post on September 12 & September 17, 2019.

Senators Present

Senator Therese M. Terlaje, Chairperson
Senator Sabina Perez, Vice-Chairperson
Senator Kelly Marsh Taitano, Committee Member
Senator Amanda Shelton, Committee Member
Speaker Tina Muna Barnes
Senator Telo Taitague

Appearing Before the Committee:

Ken Orcutt, Deputy of the Litigation Division, Office of the Attorney General of Guam
Shannon Taitano, Chief Deputy, Office of the Attorney General of Guam
Mitch Thompson, Attorney
John Bell, Attorney
David Lubofsky
Anelyn Lagrimas
Dr. Hoa V. Nguyen, Guam Medical Association

II. SUMMARY OF TESTIMONY & DISCUSSION

The informational hearing was Called-to-Order at 2:00 PM.

*(Proceedings are informally transcribed below. For an official record of hearing please go to:
<https://www.youtube.com/watch?v=HwcPPG11ZEJ>)*



Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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

Chairperson Therese M. Terlaje:

Hafa adai! Welcome everyone to the Guam Congress Building.

So, the Committee on Health, Tourism, Historic Preservation, Land and Justice is now called to order.

This is an informational hearing. The date is Thursday, September 19, 2019, at 2:00 P.M.

I'd like to recognize the presence of the Speaker Tina Muna Barnes, Senator Kelly Marsh Taitano and Senator Telo Taitague.

Thank you, senators for being here and thank you all for being here.

So, the Public Notices for this Public Hearing were disseminated via email to all senators and all main media broadcasting outlets on Thursday, September 12, 2019 and again on Monday, September 16, 2019. The notice was also published in the Guam Daily Post on September 12 & September 17, 2019.

An invitation was sent to the Guam Bar Association on September 16th, and subsequently disseminated to all members of the Guam Bar Association.

The agenda items that will be heard today, it's just one. It's the Guam Medical Malpractice Mandatory Arbitration Act; an overview of current law and prior case outcomes and patient perspectives.

So, the goal of today's hearing is to present senators and the public with a basic background of the malpractice law, and prior cases interpreting said law. I have invited the Attorney General of Guam's office to briefly discuss and distinguish the law governing claims and against the government and government health professionals.

I have invited Attorney Mitch Thompson, who represents the Seventh-Day Adventist Clinic and other providers, to begin the discussion with an overview of the law and a few of the medical arbitration law and a few of the relevant past cases.



Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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

I've also invited members of the Guam Bar who volunteered to assist the legislature in reviewing the medical malpractice law to also be present today and, of course, all members of the Guam Bar Association.

Senators will be allowed to ask questions with the panel following the presentation or any testimony and following information from the lawyers. All others will be allowed to testify. So, if any of you would like to testify, please sign up on the table back there. We ask that testimony be limited to five minutes, but anything submitted in writing will be distributed to all senators and posted on our website, and included in the Committee Report.

There will be a second hearing. We have invited all health professionals to attend that hearing on October 3, 2019 at 5:00 P.M., to focus on the impacts of the current law on their practices, on whether the law ensures the appropriate standard of care on Guam, and the impacts of the law availability of qualified health professionals on Guam.

I've invited the heads of the Guam Medical Association and the Guam Medical Society to lead the health professional's panel and, of course, all other members of their organizations. Members I see many of these members here today.

The second hearing will also allow limited testimony from patients and the general public. There will be a third hearing on November 7, 2019 at 2:00 P.M. At that hearing, the senators would like to consider any suggestions that have been made up until that time as to any amendments that are being proposed for the Medical Arbitration Act or arguments against any amendments.

And so, we're particularly interested in your input as to whether the law can be improved to better protect patients and to ensure an appropriate standard of care. These hearings are for informational purposes only, to allow senators to hear suggestions and make inquiry towards formulation of legislation. Testimony from the patients and the general public is welcomed at all the hearings.

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

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Senator
THERESE M. TERLAJE

I Mina'trentai Singko na Liheslaturan Guåhan

35th Guam Legislature

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

So, we will now hear from the Attorney General of Guam's Office, who will provide testimony on claims against the government and this is to distinguish that we have two systems going on.

One is claims against the government or government health providers and one is against private providers.

So, if you could introduce yourselves and please proceed.

Oh, I'm sorry, Mr. Orcutt—I'd just like to also introduce, welcome Senator Amanda Shelton and thank you for being present.

Mr. Orcutt, please proceed.

Ken Orcutt:

Thank you, senator. My name is Ken Orcutt, I'm the Deputy of the Litigation Division at the Office of the Attorney General of Guam. To my right is Shannon Taitano, who is the Chief Deputy for the Office of the Attorney General of Guam.

Thank you for giving us the opportunity to make this presentation today to this panel. To give this panel an overview of the Government Claims Act. The Government Claims Act was enacted in 1968.

It's actually based upon a draft legislation that was done by Harvard University back in 1960 and the act has several purposes but one of the main purposes is that it allows private citizens to sue the Government of Guam under tort law for personal injury or under contracts.

Prior to 1968, throughout the United States, there was concern about the sovereign immunity that such causes of action were not allowed. So, that's the main purpose of the act, was to allow suits against the Government of Guam.

The Organic Act was amended in 1959 to actually specifically allow such suits with the consent of the Guam Legislature. So, the Guam Legislature is the body that has the authority to allow personal suits by people who've been injured against the Government of Guam.

The Government Claims Act sets up an administrative procedure. If you're a person who has been injured, you have eighteen months from the time that you were injured or if it's a



Senator
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contract suit from the time of the breach of the contract to file a claim against the Government of Guam.

And once that—the form itself to make a government claim is fairly straightforward. You just have to say who you are, who was the responsible agency that is that you contracted with or that was responsible for, you know, causing you, personal injury.

You have to say whether there's insurance. You sign it under oath and verify it and file it with the Office of the Attorney General. Once the claim is filed, the Attorney General's Office has six months in which to investigate the claim and make a determination of whether it's a good claim, a valid claim, such that the government should pay the money. If it's not a good claim at all whether it should be denied or whether there should be some kind of negotiation and compromise worked out.

There are exceptions to that for claims involving automobile accidents. You only have like thirty...the government only has—AG's Office who only has like thirty days to make an investigation.

But once that six months' period expires for most claims, then the Office of the Attorney General sends a notice to the claimant, you know, saying you know either deny the claim or yes, it's valid.

And then the receipt of that notice by the claimant that their claim has been rejected in those cases. Then that starts another limitations period. The claimant has then eighteen months from that date that the claim was denied to file an action in the Guam Superior Court.

In situations where the Attorney General's Office does not deny the claim at all which is fairly unusual or does not deal with the claim at all, I should say—and doesn't do anything, doesn't accept it or reject it.

In those situations' there's a twenty-four months' time period to file a lawsuit in Superior Court of Guam and that would run from the date that the claim was filed with the Attorney General's Office.

Once—now that...so that's kind of how the procedural works. There's also within the Government Claims Act limitations on damages. For personal injury suits, it's \$300,000 is the maximum award that could be made. For wrongful death actions, it's \$100,000. And, of course,



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when we're talking about the Government Claims Act, we're talking about suits against the Government of Guam itself.

But there's also implications under the act in terms of how that affects individuals who are being sued. You know, if it's a government employee that runs a red light and hit somebody;

And you know, somebody that's injured out of that, sometimes they can sue the Government of Guam but they can also sue the person who committed the wrongful act, the government employee.

And so, the filing of a suit a lawsuit against the Government of Guam suspends any legal action against the individual government employee. And so, the litigation has to proceed against the Government of Guam first.

Now if—once that litigation is terminated, the litigation against the government employee can resume under two circumstances. One is if the judge certifies that, you know, except for these damage limitations I've mentioned of the \$100,000, \$300,000.

If the judge certifies that, you know, this case was worth more than that, I would have awarded more damages and fit against the Government of Guam except for those limitations, then the lawsuit can continue against the government employee and for determination.

And the government employee, you know, theoretically or you may have to pay you know more damages out of his own pocket out of that claim.

Second circumstance, under which the lawsuit would continuous is if there's a determination made that the government employee was acting outside the scope of his employment at the time of the alleged wrongful action, you know, at the time the personal injury occurred.

And in those circumstances, the lawsuit can continue against the individual. There's also limitations in the Government Claims Act on attorney fees. Generally, you did not get attorney fees if you prevail against the Government of Guam.

There's one exception to that within the act and that is where the government fails to investigate the claim and fails to respond to the claimant. And in those circumstances, the door is left for the possibility if the government would have to pay attorney fees.



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But otherwise, no attorney fees. And so, that's basically how the Government Claims Act works, and I don't know if you have any questions for me or Ms. Taitano would be glad to answer those.

Chairperson Therese M. Terlaje:

In regards to medical professionals on Guam, which entities does that include...Government of Guam?

Ken Orcutt:

Yes, there is a specific—actually there's a provision in the Medical Arbitration Act and also within the Government of Guam, Government Claims Act itself, that places claims made against, you know, Guam Memorial Hospital within the ambit of the Government Claims Act.

So, you know...that it's—you don't go under the Medical Arbitration Act for GMH claims you go into the Government Claims.

Shannon Taitano:

That also includes Public Health and Behavioral Health and Wellness Agency as they have professional...licensed professional health providers there.

Chairperson Therese M. Terlaje:

So can they make a claim against the entity, the hospital and a provider within the hospital?

Ken Orcutt:

Yes...yes, they can.

Chairperson Therese M. Terlaje:

And the provider would covered by the Government Claims Act?

Ken Orcutt:

Yes.

Chairperson Therese M. Terlaje:

All right, okay. Are there any questions for the Attorney General's Office from any of the senators?

Senator Taitague?



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Senator Telo Taitague:

Thank you.

The question with regards to the amount the award amount where it was \$300,00 that you mentioned and then for damages and then a \$100,000 for...

Ken Orcutt:

Wrongful death?

Senator Telo Taitague:

For wrongful death? Okay. In that amount—when was it that amount established? What year?

Ken Orcutt:

I don't recall off the top of my head, Senator. I mean, over the years, it's certainly gone up from what it was initially enacted in '68. I don't recall it's been I would say—you know, I first started with the office back in 1988, I believe those were the limitation back in 1988 when I started.

Senator Telo Taitague:

1988? Since then? Okay, thank you.

Chairperson Therese M. Terlaje:

All right. So, thank you again to the Attorney General's Office for that explanation.

Si yu'os ma'åse'

All right. We're going to, now, hear from Attorney Thompson. I understand you have a PowerPoint. So, the audio could please get the PowerPoint ready.

Speaker Tina Muna Barnes:

Madame Chair, if I may? I know the presentation was done by the Attorney General's Office but they're going to go ahead and leave? That's okay.

I'll ask her, we have to follow up.

Chairperson Therese M. Terlaje:



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Right. Please proceed. And the senators have been provided copies of your PowerPoint. Okay and anyone who would like a copy, you can request one at the back table. Thank you. And this would also be uploaded on my website. Thank you.

Attorney Mitch Thompson:

All right. Thank you, Madame Chair and the Committee for inviting me to make this presentation this afternoon.

Guam, like most other U.S. States and territories, treats claims of alleged medical malpractice differently than other types of claims. For example, there's around thirty-five or so other states that impose caps or limitations on the amount of damages that can be claimed in the medical malpractice cases.

There's also around fifteen or so states that require that claims of alleged medical malpractice must first be reviewed by a screening panel before they can proceed to court.

So, how has—why do legislatures treat claims of alleged medical malpractice differently from other types of claims? And if we look at other states—and we look at Guam for that matter as well.

The legislatures seem to offer up a number of different reasons for this different treatment of claims of alleged medical malpractice compared to other types of claims.

One of the rationales that's often cited by legislatures is the need to deter meritless claims. And the reason for that—one of the reasons for that concern is that defending medical malpractice claims is often an expensive proposition.

This is because regardless of the strength or weakness of the claim, it's often necessary to bring in expert witnesses to help in defending the claim. And these expert witnesses typically are physicians, specialist, usually from the U.S. mainland and as you can imagine, it's expensive to arrange for this kind of testimony.

Another concern is that, if there's—if meritless claims are encouraged rather than discouraged that can have adverse outcomes as far as insurance for providers. The concern is that if there's more and more claims that will cause insurance companies to raise the premiums for medical malpractice insurance and/or it may cause the insurer to just pull up stakes and leave the jurisdiction because it's uneconomic to provide coverage there.



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So, that's one rationale cited by legislatures, the need to deter meritless claims.

A second rationale that legislatures often rely on is the need to encourage, not discourage, more providers of medical services in the jurisdiction. And I think Guam is a good example of that.

We are relatively small island. We're isolated. We're about 7,000 miles from the west coast and recruiting physicians to come to Guam can be an issue. And concerns of potential providers that are looking at coming to Guam often center on what are the applicable medical malpractice laws and what is the availability of malpractice insurance.

And to the extent that the laws of a jurisdiction make it open season on physicians that tends to discourage physicians from wanting to practice in that jurisdiction. So that's a second rationale that's often cited by legislatures in treating claims of alleged medical malpractice differently from other types of claims.

A third rationale that's often used is the intent or desire to see that these types of claims are resolved dispassionately based on the facts and the law rather than on sympathy.

And I think the concern here is that there seems to be a perception that if there's a bad outcome for a patient then it must be a result of bad care. And of course, we all know that's not correct. There's any number of reasons why there can be a bad outcome despite the best possible care.

But the concern is there seems to be a perception that if there's a bad outcome, somehow it must be the result of bad care. So, that's why legislatures in other jurisdictions have tried to make sure that claims of alleged medical malpractice are reviewed dispassionately on the facts of the law rather than sympathy.

Another concern is that injured parties often can present very sympathetic claimants as opposed to other claimants alleging professional malpractice by other professions. I'll offer up an example. Let's say I'm a building owner and I'm upset with the architect or engineer who designed my building and my claim is that, well, he or she didn't do a good job.

It resulted in me having to spend more money to fix my building. I may not be a particularly sympathetic claimant if I go to court. On the other hand, if I come into court and say well, I've suffered a very serious health injury because of alleged malpractice on that part of my doctor. I might be a very much more sympathetic plaintiff to a jury.

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So, I think... there is another reason why legislatures treat claims of alleged medical malpractice differently because they want to try to see that these claims are resolved on the facts, on the law and not based on sympathy.

So, how has Guam treated claims of alleged medical malpractice? I'd like to first speak about the former law...a little bit and then I'll turn to the current law and how it works.

In 1975, this legislature adopted a screening panel type requirement for claims of alleged medical malpractice. And under this former law, any claim of medical malpractice had to be submitted to a screening panel and the screening panel consisted of five members.

There was a doctor, a lawyer, a judge from the Superior Court, a layperson and then a representative from the Medical Licensing Board. And the parties, the claimant and then the physician, would present their evidence or materials supporting their respective positions to the screening panel.

And the screening panel would make a determination as far liability. In other words, was— did the physicians' treatment fall below the applicable standard of care. And under the old law if the screening panel found that the doctors' treatment fell below the standard of care, such that the doctor was liable for malpractice.

The screening panel could then go ahead and award compensatory damages to the claimant and there was not limit on the amount of damages that could be awarded by the screening panel.

On the other hand, the former law provided that if the screening panel decided that there was no liability that the doctors' treatment did not fall below the standard of care. That was kind of the end of it as far as the screening panels role in the process.

But the former law stated that the claimant if the screening panel said no liability; the doctors' treatment did not fall below the standard of care, the old law said that the claimant could then appeal that screening panel decision to the Superior Court.

But the old law didn't specify how that appeal was supposed to be processed, how the Superior Court was supposed to handle that appeal. There were some challenges to the old law and by 1984, the courts had thrown out the old law.

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The Ninth Circuit, which at that time, was in effect. Our Supreme Court in 1984 held that the former Guam law regarding medical malpractice claims was unintelligible not—it wasn't that it was unconstitutional, it was unintelligible.

And what did the Ninth Circuit mean by unintelligible. Well, what the courts was saying is that we can't figure out how this old law to work. And this is what the court meant; the law didn't specify how this appeal to the Superior Court was supposed to work.

Was it a do over? In other words, the parties just presented whatever evidence they had to the court. Was the court a judge to make the decision on this appeal? Was a jury to make a decision on this appeal?

The old law didn't say. There was another issue with the old law as well. It expressly stated that the claimants right to a jury trial was expressly preserved. Well, what did that mean? Did that mean that after the screening panel made its decision, that the claimant could then get a do over in front of the jury.

The law didn't say. And the Ninth Circuit said we can't figure out how this law supposed to work. And therefore, we're going to strike it or throw it out.

So, that was in 1984. About seven years later, in 1991, this legislature adopted the current law, the Mandatory Medical Malpractice Arbitration Act. And it's a different system than the old law that was thrown out but the court previously.

Under the current law, claims of medical malpractice are not to go to the court first. Instead they must first be submitted to an arbitration panel and the arbitration panel is to be made up of three members.

There's to be a lawyer, a doctor, and then a third member, who's none of the above. Typically, this third member is another professional; often an architect, an engineer, an accountant, sometimes construction professionals. It just depends on the particular case.

But that's the composition of this arbitration panel. And under the current law, the parties are required to exchange any expert witness reports that they may have. They have to exchange witness lists, exhibit lists and such.



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And then there is a hearing in front of this arbitration panel. And the hearing is similar to a trial. Each side gets to call witnesses that support their respective positions. Each side can cross examine the other side's witnesses.

And they can, of course, submit documents or exhibits that support their respective positions. And at the end of this hearing, which in my experience can run anywhere from a day to a week—just depending on the complexity of the case.

The arbitrators will meet and then deliberate and make a decision as far as who wins. Whether or not the claimant proved that the doctors' treatment in that particular case fell below the standard of care or not.

And the arbitrator's then issue a written award and the award will indicate either the claimant has won the case. And then the arbitrators can go ahead and award however much damages they think is appropriate.

Under the current law, there's no cap on the amount of damages that can be awarded. On the other hand, if the arbitrator's if the arbitrators believe that the claimant failed, his or her burden to prove that the doctor's treatment fell below the standard of care, then they just say sorry, claimant you don't get anything.

Under the current law if one of the parties is unhappy with the award of the arbitrator's, that party can ask for a Trial De Novo in the Superior Court or basically do over. And under this Trial De Novo, it's like the slate is wiped clean. The arbitrator's award cannot be used as evidence in the Trial De Novo and it's basically like any other trial.

Again, each side can call witnesses that can cross examine the other side's witnesses, introduce documents and the jury makes a decision. Now, you might be thinking well, what's why wouldn't the party that loses in front of the arbitrators say hey, I want a trial in front of a jury; a second bite at the apple.

Well, there is a significant disincentive to that under the current law. The current law if a party loses in front of the arbitrator's and then they do not perform substantially better in front of the jury rather.

They will have to pay the other side's legal fees and expert witness fees. And from my experience in medical malpractice cases, these expert witness fees, these legal fees can run anywhere from \$50,000; \$100,000; \$150,000, just depending on the complexity of the case.

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So, that's a significant disincentive; Because ordinarily the general rule that win, lose or draw in a court case, you do not have to pay the other side's attorney fees. There are exceptions to that, but the general rule is you're only responsible for your own lawyer's fee.

Under the current law, if for example, I'm the claimant and I prosecute my claim in front of the arbitrator's. They say no liability. I'm unhappy about that. I say, you know what, I want a trial in front of a jury and then we go in front of a jury and the jury rules against me.

Not only do I not recover anything from my doctor, I have to pay my doctor's legal fees and exert witness fees. And so, the current law acts as a disincentive for people to try to take a second bite of the apple.

Now this current law has been in effect for almost thirty years now. And as far as I'm aware there's been only one Trial De Novo in the Superior Court, in this all the time that the current law has been in effect. Now, I can't state that with certainty because arbitration proceedings unlike court cases are generally private and confidential.

In other words, a court trial anybody can go down to the courthouse and sit in the trial, look at the filings in that case. Arbitration is different. It's usually held in maybe a lawyer's office, maybe at a conference room at a hotel. It's not open to the public, it's a private proceeding.

And so, I can't say that I...you know, with a 100% certainty whether or not there's been another Trial De Novo following an arbitration award. But as best I can tell, there's been only one case.

And so, if the goal of the current law is to resolve cases through arbitration, it seems to be working. One side note to this fact that arbitration is private. I think it should be noted that it's easy to make a claim, it's harder to prove one.

And you know it's the newspapers are quick to pick up a story that so and so has been sued for \$10 million dollars—that might be a big banner headline. But let's say the case is dismissed, a lot of times the newspaper doesn't report that at all or maybe it's a teeny little story on page 10.

So, I think from the doctor's perspective its they prefer that these claims be resolved through arbitration because especially if the arbitrator's say no there's no liability, that way the



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physician doesn't have to worry about his reputation being damaged because there's been some big headline story in the newspaper.

So, that's the current law. And over the years, there have been challenges in court attacking the current law on various grounds. In 1997, the Guam Supreme Court in the Villagomez case ruled on a challenge that was based on the argument that the current law violated what's known as the Separation of Powers doctrine.

This is a constitutional law issue. It's a little arcane but just to try to summarize it briefly, the argument, as I understand it was that the current law took away the courts power to decide claims of medical malpractice and therefore, it violated the Separation of Powers doctrine.

Our Supreme Court rejected that argument. They said no there is no violation of the Separation of Powers doctrine and the courts rationale was something like this. They said look, even though the claim was initially decided by arbitrators, if the party really wants a jury trial, he or she can have a jury trial and have the claim ultimately decided by a court. And so, based on that the Supreme Court here said no, the Guam law is not unconstitutional.

Over the years there have been other challenges in court to the current law. There have been challenges arguing that the current Guam law violates the Due Process Clause, violates the Equal Protection Clause.

And these arguments are typically based on the argument that it's unfair and or unconstitutional that claims of medical malpractice are treated differently than other types of claims.

And these challenges to the current Guam law while the Guam Supreme Court has not yet ruled on those, they have been rejected by the Superior Court. Federal courts have held that the right to pursue a claim of medical malpractice is not a fundamental right. And therefore, it's not subject to what's known as strict scrutiny.

For example, a fundamental right would be the right to vote, the right to get married. When a legislature affects those rights, the courts will look at that very closely and require a very strong reason for the legislature to tinker with those rights.

On the other hand, if it's—if the right in question is not a fundamental right, such as the right to pursue a claim of medical malpractice, the courts say that all that's required is a rational relationship between the legislature's intent and then the law.

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And so, typically when these challenges are made on due process and equal protection grounds to laws treating claims of medical malpractice differently, the courts say there is a rational relationship between the rationales that I mentioned earlier, the goal to deter meritless claims, to encourage physicians to practice in the jurisdiction.

To make sure that these claims are handled in a dispassionate manner and laws. The courts have generally rejected due process and equal protection claims on similar laws treating claims of medical malpractice differently from other types of claims.

I think I would like to add just a few comments about some of the possible options that other states have adopted in treating medical malpractice claims. As I mentioned earlier, many states have imposed caps or limitations on the award of non-economic damages.

And to explain that concept, I think...I'd first like to back up and define economic damages and, in my mind, economic damages are out-of-pocket expenses. For example, let's say I'm a medical malpractice claimant and I'm saying my doctor didn't treat me properly and because of his bad treatment, I had to go see another doctor and incur a lot more medical expenses that I shouldn't have had to do. I had to buy a lot of other medicine. I was out of work for two months and I lost my wages for those two months.

These types of damages or claims are quantifiable. In other words, I can collect my receipts for my medical treatment, my medication. I can take my paycheck and...or pay stub and figure out what two months pay is.

And these can be quantified and calculated. These are economic damages. Non-economic damages are basically pain and suffering. And pain and suffering is obviously much harder to quantify.

How do we put a dollar value on somebody's pain and suffering? And so, typically, states will limit the recovery of non-economic damages such as pain and suffering but not limit the recovery of out-of-pocket expenses.

And to explain this concept, I have a little hypothetical. Let's say that we're up in CNMI. The CNMI has a cap of \$300,000 on non-economic damages. And let's say, I'm suing my doctor. I'm claiming that she committed malpractice on me, and the jury agrees with me. And they say okay, Mr. Thompson we're going to award you. \$50,000 in economic damages; your out-of-pocket expenses, your extra medical bills, your lost wages and so forth.

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And then the jury says you know what and we're going to give you a million dollars for your pain and suffering. Now, again the CNMI has a law that caps the award of non-economic damages at \$300,000 dollars.

So, how much do I actually get to recover from my doctor? Well, \$350,000. I get \$50,000 because there's no limit on the amount of out-of-pocket expenses that I can recover if I can prove malpractice. But even though the jury said you should get a million dollars, Mr. Thompson. I only get \$300,000 because the legislature put a cap on the amount of non-economic damages a claimant can recover.

And the way this works is after the jury issues its verdict, the judge will go back and basically correct the award and issue a judgment saying you recover \$350,000 even though the jury said I should get a million and fifty.

One thing I'd like to note, earlier during the Attorney General's Office presentation, they noted that there already are caps on claims against government health providers. And under the current arbitration law claims against the government, as you heard from the AG's Office, they are treated as government claims.

And so those claims already have a cap on the amount of damages that can be recovered. And so, it's an interesting distinction under Guam law; there is caps if you're suing the government, if you're suing a private provider currently no caps.

I'd like to, now, just talk a little bit about screening panels because again a number of other states have adopted screening panels as a different way of treating medical malpractice claims. In these other states typically it works like this.

Before a claim can be submitted at courts it has to go in front of a screening panel. Now this vary state by state, but typically the screening panel is made up of a lawyer, a doctor, maybe a layperson.

Again, varies state by state and typically the screening panel will make a decision as to liability. In other words, they'll decide if, in their opinion, the doctor's treatment fell below the standard of care or it met the standard of care. And if the—well...so, the screening panel makes its decision as far as liability, yes or no.



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It's up to the parties then to decide if they still want to pursue a court case. So, let's by example let's say that I'm the claimant and I submit my claim of alleged medical malpractice to the screening panel and the screening panel says no, sorry you did not persuade us that the doctor is liable here. And I say, you know what? I don't—I'm not happy about that result.

I want a jury trial well again typically under these state laws if I go forward with my claim in front of a jury and lose, I have to pay the doctor's legal fees and expert witness fees. Similarly if the screening panel decides that the doctor is liable, that the doctor's treatment fell below the standard of care and the doctor doesn't settle the claim...

If there is a jury trial and the doctor loses' again. Typically, the doctor will have to pay the patients legal fees and expert witness fees. Usually, under the state laws, the screening panels determination of liability or no liability is admissible in evidence.

And so, the jury will have the screening panel's decision and my suspicion is the jury probably—that that screening panel's decision might be persuasive because again, it's an independent factfinder or independent determination.

I—of course, it's up to this legislature to determine if the law current law needs to be changed and if so, what changes need to be made.

I appreciate you inviting me here to make this presentation and I'd be happy to answer any questions the members might have.

Please see attached presentation slides.

Chairperson Therese M. Terlaje:

Thank you very much, Attorney Thompson.

I'd like to recognize my colleague, Senator Sabina Perez. Thank you, senator, for being here. Is there—actually if you wouldn't mind taking a seat, I'm going to invite Attorney Bell and if there's any other members of the Guam Bar Association to present testimony today.

So, Attorney Bell and then we'll take questions from the senators. Thank you.



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Attorney John Bell:

Thank you. Good afternoon. My name is John Bell, I'm a private practice attorney on Guam. We're always taught in law schools to never read from something, but this was kind of you know short notice.

I was only notified a couple of days ago although I certainly appreciate being here. So, I did provide some written testimony that I submitted. I will read a bit but I will also provide some comments and will be happy to answer any questions that you might have.

I do have some personal injury medical malpractice experience on Guam since about 2012. In fact, I did actually defend a pretty high-profile medical malpractice case which was all over the papers.

I felt like I did a good job. I, honestly, do feel that we would have won on the merits. However, one thing that really took away from that case was that... this was—I don't want to name names because of confidentiality but the attorney that was suing the doctor that I represented it was you know a pretty high-profile attorney, this guy knows what he's doing and they basically just gave up and went away.

And of course, I'm feeling great and I felt like I did a good job but certainly—at least what he claimed was not because of the merits but because just the high cost of arbitration. It was a long process on paper. I don't pretend, by any means, to be an expert on the current law but we did apply that law and it cost, you know, several several thousand dollars just to go through the mechanics of the law.

At the time, from what I recall, I think it's called using the American Arbitration Association which like doesn't exist on Guam. It's actually pretty hard to find arbitrators on Guam, at least in my experience. You know, I haven't been—I've only been practicing for about seven years now but finding an arbitrator on Guam that is not biased—it doesn't have conflict of interest is pretty pretty difficult.

And so, you know, I'm far from a constitutional scholar but I am generally aware that some laws might be facially constitutional that is in theory on paper but struck down as unconstitutional and perhaps inorganic as applied.

In plain English, laws that don't help everyday citizens meaningfully address their claims and seek adequate recourse, at least in my opinion are meaningless if there are in fact in reality and possible hurdles for everyday people to overcome.

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I'm not going to digress, but I just want to use it as an example of what doesn't work. Our workers' compensation system is one of those scenarios, right? On paper the law looks fine in reality there's really no application of law, at all, that goes on and there's no adjudication on the merits. Based on, albeit, limited experience with Guam's medical malpractice law, I feel that may be the reality for a lot of patients.

They have no actual meaningful or adequate recourse. In fact, many of the potential clients who have come to me in fact are dissuaded from pursuing the claim, not necessarily on the merit but just because of the high cost of litigation.

And I want to clarify I'm not talking about attorney fees. You know, if I—even if I was willing to take the case on the contingency, we're talking, you know, tens of thousands of dollars in expert fees; the actual cost of paying the arbitrator's, it can get extremely expensive. While I recognize this is sort of a tangential issue. I am deeply concerned about the rates that GMH is charging patients and their attorneys for their medical records.

Not even private clinics try to do this thing where they're charging sometimes \$800 for medical records. I only bring that up because I think I get that GMH needs money. I want GMH to— I'm a client of GMH and my family is, of course, like everyone else.

I want them to succeed but I feel like GMH—I got this suspicion that they're doing this not only to make money, but to make it harder to sue GMH. You know, if you make it difficult for patients to get their own medical records then maybe the thought is, we won't get sued as often.

And so, I don't think that's a good basis. I'm hoping, at some point, the legislature can address that. A lot of times the requests you know I do a lot of personal injury work or at least one of my second most common practice.

And a lot of times, it's just to me....we're just requesting medical records. I do want to add—I don't claim to speak for Attorney Robert Keogh but he's been...he's—from my perspective as a younger attorney, kind of a big deal; he's been around for a long time. He's sort of the personal injury, sort of the go to guy.

And I've had these exact same discussions with him long before this and frankly mostly about workers' comp, but it's the same basic issue where there's no adequate recourse. You know, the costs of to the claimant is simply too much to bear.

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And you know, it's a problem. I do want to say, you know, this is nothing about any particular attorneys but, of course, civil litigation defense attorneys are always going to, you know, of course their always gonna be in favor of anything that makes it more difficult for the plaintiff to sue.

That's sort of—you know, it's expected; I mean, what else are they going to say. I submit that the issue is what really whether the legislature ought to make it to tinker around with, what's really a historical, you know, right that's been around for hundreds of years for plaintiffs to sue in civil court for their injuries.

I mean, its basic medical malpractice is really just a species of personal injury. I get that there are reasons to want to treat medical malpractice claims differently but I do that's... it's a public policy issue at the end of the day.

I mean, obviously, you know, that we wouldn't be here if you didn't know that. But my point would be should the legislature, you know, already did obviously. But should the legislature really be restricting the patient's right to the courthouse when we don't do that in other areas.

I think that's...especially when you just make it impossible really for a family, you know, your standard working family on Guam. For example, the tragic happens and there is somebody dies, or somebody gets severely injured at the hospital or another clinic.

Oftentimes they can't do anything not because of the merits of the case, but just because of the high costs; again not attorney fees but just the cost of pursuing a claim through arbitration. Simply put, I believe that the claims ought to be decided on the merits and rather than the plaintiffs' ability to go toe to toe both financially with, you know, medical clinics insurance companies and doctors.

I, thank you, for letting me speak. And if there's any questions, I would be happy to answer them.

Please see attached testimony.

Chairperson Therese M. Terlaje:

Thank you, Attorney Bell.



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Once again, is there any other members of the Guam Bar Association who would like to testify. If not, then we've—if you don't mind, I'd like to ask you a couple of questions.

First of all, if you could just state for the record since we've taken your testimony. Could you state for the record whether you've represented a patient or a health care provider in an arbitration or a court case, Mr. Bell?

Attorney John Bell:

Me? Yes, I actually understandably I hate to be—not trying to be coy. It would be... I think improper for me to name the doctor or anything.

Chairperson Therese M. Terlaje:

You don't need to name. I just want to know whether, yeah, which side were you on?

Attorney John Bell:

Yes. We actually got very far through the arbitration process. So, that was the thing. As I actually granted as years ago and I'm young as far as attorneys go. But wouldn't—it was me directly applying that medical malpractice case and, on this side, to keep in mind.

I'm on the doctor's side and this is very—this law was obviously designed for and by you know the... to help the medical community and make it harder for plaintiffs. But even me, as representing the doctor, it was pretty difficult to navigate through just in the sense that what...you know, let's good on paper.

But then in practice, you know, how do you find arbitrators'? I think we ended up trying to go through the Triple A process. And it was based...as a practical matter, it was impossible. We did actually—you can waive the right at least as I recalled it.

We interpreted that way to waive the right to a doctor, lawyer and a neither and we did find a local. I don't think that matters I think, we picked Pat Wolf—you know, he's a pretty neutral guy.

So, we did get through all the several hurdles to even get to not even to the arbitration but to just choosing the arbitrator and by the time that we got there, it had—you know, tens of thousands of dollars in attorney fees on both sides.

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The plaintiff, in fact, gave up and I was told from the attorney of—from her attorney, that not on the merits but just because by then, you know, they're just tapped out. And so, attorneys' oftentimes you're willing to be you know to do the case on contingency. That's a whole other issue right there.

So, I'm assuming the personal injury cap applied. We have a very unusual cap on personal injuries that doesn't exist in other jurisdictions, where essentially the more valuable the case, the less the attorney gets paid.

It's kind of an odd law but assuming it applies the medical malpractice case whether that combination of that. And then the extraordinary costs again not attorneys' fees but the cost of having to as we talked about right. I mean, you don't necessarily have to have experts.

I would imagine before filing the demand for arbitration frankly that's a whole other can of worms, right there. There has been lots of fights over how to begin the arbitration process, that have court, you know, gone through the courts. But the short version is just that I've seen its very expensive. It's very expensive even for the defense side.

For the plaintiff side, it's...unless the plaintiff happens to be very wealthy or something or the attorney is very wealthy and can float, you know, thousands of dollars and maybe even tens of thousands of dollars in costs on the front end. It's basically just a giant wall for the patient and patients' family to overcome.

Chairperson Therese M. Terlaje:

All right. So, you represented a health care provider in arbitration?

Attorney John Bell:

Correct, yes.

Chairperson Therese M. Terlaje:

Okay. And Mr. Thompson, did you just state that for the record also. Press the button on that microphone. Thank you.

Attorney Mitch Thompson:

There that's better. Yes, my office currently represents health care providers in medical malpractice cases, and we have so in the past.



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Chairperson Therese M. Terlaje:

In arbitration?

Attorney Mitch Thompson:

In arbitration and in court; in both.

Chairperson Therese M. Terlaje:

Thank you. I just wanted to make sure that's clear. So, the other questions I have are — so we talked about the cost but could any of you provide exactly what the costs are or how they are calculated?

Attorney Mitch Thompson:

Well yeah, I've been involved in medical malpractice arbitrations under the current Guam law both as an arbitrator representing claimant and then also representing providers; probably over the years somewhere between five and ten cases.

I think it's important to first note that, under the current Guam law, all expenses of arbitration are to be split evenly between the parties. So, that fact shouldn't be overlooked. The other point, I think to note, is that under the current law, it's not required to use the American Arbitration Association or the Triple A as the provider of arbitration services or the administrator of the arbitration.

It's not uncommon to do so but there are other providers; for example, there is a firm in Honolulu, dispute prevention and resolution. They've been administering arbitrations for 20-some years. They do not charge a filing fee.

And so, I just wanted to clarify that point, that under the current law it is not required to use the Triple A but going back, Madame Chair, to your specific question.

Chairperson Therese M. Terlaje:

Cost, yes.

Attorney Mitch Thompson:

Typically, let's assume we are in the... Triple A is administering the claim. There would be a filing fee which is based on the amount of the claim. So, for example, if the claim is relatively modest, the filing fee is relatively modest.

On the other hand, if you're demanding 10 million dollars, the filing fee goes up significantly.



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Chairperson Therese M. Terlaje:

Is there a formula?

Attorney Mitch Thompson:

Yes, the Triple A has a set fee schedule and again it's a sliding scale, the higher the amount of the claim, the higher the filing fee. Triple A does have fee waiver provisions and also reduced fee provisions for individuals that cannot afford to pay their filing fee.

So, that's something else to keep in mind.

Chairperson Therese M. Terlaje:

Could you just clarify that point? When you say who cannot afford, how do they define that?

Attorney Mitch Thompson:

You know, Madame Chair, I can't recall the specific formula that the Triple A may use but if...and typically it's the claimant. If the claimant is unable to pay his or her share of the filing fees, the Triple A does have provisions for reduction of the filing fee or a waiver of the filing fee.

I don't know specifically as I sit here what their exact determination, how that determination is made but they do have that option. The other expense of arbitration is that the arbitrator's and again, they're professionals;

Typically, a doctor, a lawyer and then maybe an engineer and accountant depending, their fees have to be paid. And so, the arbitrator's fees if you have three arbitrators, they have to be compensated for their time.

Chairperson Therese M. Terlaje:

What are the costs?

Attorney Mitch Thompson:

Well, it's really hard to generalize because it depends on whether or not it's a complicated case maybe it's a straightforward case.

Chairperson Therese M. Terlaje:

So, the arbitrator's set fees differently in different cases.



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Attorney Mitch Thompson:

Well, typically, the arbitrators are compensated based on an hourly rate. You know, for example, lawyers typically charge a certain amount as an hourly rate for their services. Similar with accountants; other professionals, you know they maybe it's not so commonly uses hourly fees.

But for the arbitration process, the arbitrator's typically set an hourly fee. I've occasionally... sometimes arbitrators will work on a flat fee basis but usually it's not an hourly basis.

And again, if it's a professional, it probably will be you know anywhere from \$200 an hour, \$300 an hour or something like that depending. But it's very hard to generalize as far as what the total fee charged by the arbitrators might be.

A while back, I was an arbitrator on a medical malpractice claim and we resolved the claim fairly quickly. Basically, on a summary judgement motion because the claim was untimely, and that process didn't take very long.

On the other hand, if you have a complicated case where there's a number of issues, you know, it might be substantially more expensive. So, it's just hard to generalize.

Chairperson Therese M. Terlaje:

Is there a deposit required for the arbitrator's fee?

Attorney Mitch Thompson:

Yes, Triple A does require a deposit from both sides.

Chairperson Therese M. Terlaje:

What is that amount? So, we have a filing fee.

Attorney Mitch Thompson:

Yep.

Chairperson Therese M. Terlaje:

That might be waived if you're unable to pay under the American Arbitration Association that's what we mean by Triple A.

Attorney Mitch Thompson:

Yep.



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Chairperson Therese M. Terlaje:

And for that organization, there's an arbitrator's fee also and we may need to make a deposit in advance and it's an hourly rate. So, we're making like a portion of that.

Attorney Mitch Thompson:

Right.

Chairperson Therese M. Terlaje:

What are the deposits normally?

Attorney Mitch Thompson:

I'm trying to recall it you know it would be thousands of dollars. I mean, I think depending again on the nature of the case. Anywhere couple of thousand dollars to maybe more you know maybe ten thousand dollars. It's hard for me to generalize.

Chairperson Therese M. Terlaje:

Have you seen deposits required that are in the range of thirty thousand dollars or are they ten or less?

Attorney Mitch Thompson:

For arbitrator's fees?

Chairperson Therese M. Terlaje:

Yes.

Attorney Mitch Thompson:

I don't think I've seen anything that high. Again, the arbitrator's fee are split equally between the two sides. And I think the highest deposit towards arbitrator's fees that I've seen maybe about fifteen or sixteen thousand per side and that was kind of a complicated case.

Chairperson Therese M. Terlaje:

Thirty total and fifteen per side.

Attorney Mitch Thompson:

Right.

Chairperson Therese M. Terlaje:

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And you pay that before you begin.

Attorney Mitch Thompson:

That's correct.

Chairperson Therese M. Terlaje:

All right. And filing fee is based on the amount of claims. So, there's a formula for that and if you're unable to pay now... I've been unable to find their definition of unable to pay or any type of waiver. But if anyone had any evidence about that, I'd like to see that, how they can go around the filing fee.

And Mr. Bell?

Attorney John Bell:

Yes, sorry, I did want to comment a little bit about the costs.

Chairperson Therese M. Terlaje:

Costs?

Attorney John Bell:

Yeah, just for comparison right. This is because you're—if we're—the issue is, I'm not saying that that's what the legislature is doing but just to give the legislature a sense of what's that cost to go to court? What's the cost to go to arbitration?

Chairperson Therese M. Terlaje:

I just want to know the arbitration cost right now.

Attorney John Bell:

Absolutely. So, Superior Court, you know \$300 for a complaint; a few hundred dollars maybe for jury fee. Federal court? \$400.

Chairperson Therese M. Terlaje:

Arbitration cost?

Attorney John Bell:

Sorry, just arbitration... about—from what I recall, it was \$5,000. So, \$5,000 each party and that was just to deposit to the Triple A, that did not include the arbitrator fees not for the medical malpractice but I've been shopping around.



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In fact, right now even, I'm shopping around for arbitrator's on Guam. I certainly don't know any arbitrator's that would charge only \$200 an hour. But Inafa Maolek is pretty cheap. I don't know even know is they do arbitration per se. PAMs, Pacific Arbitration and Mediation Services is pretty well known on Guam.

But again, it's a small list. I think I could be wrong but I believe, Mr. Thompson on PAMS and is affiliated with PAMS and I don't know there's—I'm not saying nobody else does arbitration. PAMS is the only active arbitration organization on Guam that I'm aware of.

There are a few private practice attorneys. I think the last time in fact I just did one and I might do one now it's \$1,500. Sometimes, they just charge a flat rate to do arbitration.

But, suffice to say, regardless of where you go, it's at least a few thousand and sometimes depending on how you want to count the cost it could be up to tens of thousands of dollars to start arbitration.

Chairperson Therese M. Terlaje:

All right. I would really like the senators to have available to them something concrete as to how costs are charged. And, if particular, the statute does mention the American Arbitration Association. So, for them I tried to look on their website as to fees.

It's just not clear to me so, if you could help. And then, when you're talking about other companies yeah, I would also like to create a list of companies that have been used in medical arbitration only.

All right. So, we're limiting this discussion only to medical arbitration and so, we know about the American Arbitration Association. The dispute resolution...say that one more time.

Attorney Mitch Thompson:

Sorry, Madame Chair. It's Dispute Prevention and Resolution, DPR.

Chairperson Therese M. Terlaje:

DPR and that's based in Hawaii.

Attorney Mitch Thompson:

Yes.



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Chairperson Therese M. Terlaje:

And you're saying PAMS?

Attorney John Bell:

Pacific Arbitration and Mediation Services.

Chairperson Therese M. Terlaje:

PAMS on Guam.

Attorney John Bell:

Correct.

Chairperson Therese M. Terlaje:

All right. Yeah, any others that you're aware of that have provided arbitration services for medical arbitration?

Attorney Mitch Thompson:

At least, in the medical malpractice arbitrations that I participated in either as an attorney or an arbitrator, they've all been administered by the Triple A. So, I think that's been the most common provider to date.

Chairperson Therese M. Terlaje:

All right. If it's administered by the Triple A, do they hire the arbitrators or do you select?

Attorney Mitch Thompson:

That's a good question. Let's talk about the process. When a demand for arbitration is submitted and again, we'll assume the administrator of the Triple A here, the Triple A will give each side a list of potential arbitrators.

And each side is allowed to scratch out anybody they think for whatever reason is unacceptable and as to the remaining names on the list, the party's number them in preference and then they exchange.

And then they look at it and see if there's any mutually acceptable arbitrators and they kind of narrow the process down and go through that. And from my experience, if the parties are willing to be reasonable and flexible, you can put a panel together.



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I mean, it may take some time because it's true. On Guam, we have a small medical community. It's pretty close knit and from my experience it's hard to find a medical provider on Guam who wants to participate in this arbitration process because they don't want to be judging one of their colleagues.

So, typically what we do is, we'll bring in a provider from Hawaii, if possible, but otherwise from California. I'm trying to think in the arbitrations I've been involved in; in one case we had a doctor from Hawaii.

In one case, I have right now, we have a doctor from Tennessee but that's a little unusual case. We've had a doctor from California in another case I was involved in. So, it varies case by case but that's been my experience.

Attorney John Bell:

I just wanted to kind of illustrate and I don't think there's a disagreement there that if we're talking about flying out experts or arbitrators from the mainland. I mean that's, you know, \$2,500 for a round trip ticket and then you know assume the cost would be hotel. You know travel costs and those kinds of things. So, I apologize I'm not—I know you want concrete numbers and you want us to stop guessing but I think that's pretty undisputed that's about \$10,000.

Chairperson Therese M. Terlaje:

Airfare, sorry, we have to charge airfare as well. All right. All costs again divide it between the parties. The parties agree in the arbitrators and then do they how long does it take?

Well, how would you describe—how long it...I know that process that you described is outlined in this statute. So, for my colleagues that's all outlined just the statute how you're going to select which arbitrators among the panel that's been provided but what about length of arbitration from beginning to end.

Attorney Mitch Thompson:

Madame Chair, actually under the way the statute is written, it's something of a rocket docket. Once the arbitration panel is in place, the claimant has thirty days to submit his or her expert witness report.

The defense has thirty days from that date to submit their expert witness report. And then thirty days from that date, both sides have to exchange their witness lists and exhibit lists. And then there's supposed to be a prehearing meeting between the parties and the arbitrator.



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And the arbitration is to be had within ninety days of that prehearing conference. And so, if we add up those dates, you know, if the statute is followed, you'll have an award in six months or no.

Now, usually, it does take longer than that just because you have conflicting schedules and so you know, you have to make allowances such that the hearing conforms to everybody's different schedules.

But as written under the statute, it's a pretty fast process. It's designed to be a fairly fast process in contrast to court. It's generally not so fast, I mean they're in court. The goal is to get a civil case to resolve within eighteen months.

And from experience, if it's a complicated case, it's probably not going to be resolved in eighteen months. It's going to probably take significantly longer.

Attorney John Bell:

I just wanted to briefly comment. I know you don't want us to compare court to arbitration. That's not why we're here but that was in fact was my experience in the arbitration that I did. That actually sort of answers my question where I was wondering you know the plaintiff had already had her experts.

Those experts reports which of course cost thousands of dollars to get those and that would be the reason because in court you don't need to worry about that for maybe a year. Maybe you're into the case it depends on if and when you want to hire your experts obviously, you know, medical malpractice; you're going to need experts. So, the cost itself might be the same when you need to pay that though and if you need to pay that though.

What arbitration does, is it basically guarantees that you're going to have to hire experts and quickly that's how. So, you can't even start the process really until you've come up with them and you paid the experts, which is, you know, the obviously depends on depending on what you need several thousand...usually tens of thousands of dollars' worth of medical or up to tens of thousands of dollars' worth of medical experts.

It's accelerated and certainly essential.

Chairperson Therese M. Terlaje:

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All right. Is there any way for us in the legislature to know the arbitration awards that have been awarded?

Attorney Mitch Thompson:

You know, as I mentioned earlier the arbitration process one of the big differences between arbitration and court case is that it's pretty much private and confidential. And I...as I sit here, I'm not sure what the Triple A's policy on that is.

In other words, could the legislature contact the Triple A and say, give us a list of all of the arbitration cases you've administered over the past X years, I don't honestly don't know what the Triple A's response to that would be but normally arbitration proceedings are private and they're not matters of public record.

Chairperson Therese M. Terlaje:

All right. I'm going to open questioning up for the panel. Senator Perez?

Senator Sabina Perez:

Thank you, Madame Chair. I'm just kind of curious about the standard of care. Is that pretty consistent with the cases or how's that determined?

Attorney Mitch Thompson:

Under the current law, it is the standard of care applicable in the community. So, it's...there can be arguments about that. You know, again because we are relatively small, we're relatively isolated. It's been my experience that what might be standard of practice in Los Angeles may not be the same as here. And the way the statute is written is that it's the standard of care applicable in this community.

Chairperson Therese M. Terlaje:

Isn't it more specific like the standard of care for person practicing in that particular field?

Attorney John Bell:

Correct, I agree with Mr. Thompson. I remember that from the law it's that sort of the national standard as I've learned it, you know, in TORTS. Frankly, it's you do localize the standard of care because it's arguably, at least the policy would be it's unfair to compare, say a small-town doctor to a doctor from Manhattan you know what I mean. So, the standard of care is localized.

Chairperson Therese M. Terlaje:

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Yeah. It's in the statute 10106?

Attorney John Bell:

Yep.

Attorney Mitch Thompson:

Yeah. Section 10106 provides the prevailing standard of duty practice or care by a reasonable physician in the same field practicing medicine in the community at the time of the alleged malpractice.

Senator Sabina Perez:

In your experience, is the arbitration usually satisfactory or how what percentage of those go on to being court cases?

Attorney John Bell:

If you're asking me, I'm going to be honest and say, I don't have as much nearly as much experience as Mr. Thompson would have. I did actually sit through a full arbitration in law school.

Actually, there was pretty sizable arbitration award and our clients favor actually as a plaintiff. But I would definitely defer to Mr. Thompson on that. Part of why I don't know is because they're confidential.

Attorney Mitch Thompson:

So, yeah, and again I can't say with a 100% certainty how many Trial De Novo there have been over the years. I'm only aware of one and I think that may be the only one. Normally, the parties...from my experience, normally the parties accept the arbitrator's award and everybody moves on.

Chairperson Therese M. Terlaje:

It's just to clarify so the court cases regarding medical malpractice are to challenge the statute and not the arbitration awards necessarily except for that one case.

Attorney Mitch Thompson:

Yes, and that's a good question, Madame Chair. It's pretty common for a claimant in a medical malpractice claim to do two things at the same time; file the demand for arbitration with the Triple A and then file a court case at the same time.



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Now, what always happens is that the court case is stayed because under the current law it states expressly that if until the arbitration proceeding has run its course, any lawsuit filed in court must be stayed. And so that's what the court typically does sometimes in these lawsuits that are filed, there's a challenge made to the current law.

And again, as of today, all of those challenges have been rebuffed by the court. But that's an important distinction because there have been a number of lawsuits filed but those have not been seeking a trial de novo and again as far as I'm aware, there's just been one case asking for trial de novo.

Senator Sabina Perez:

Thank you, Madame Chair.

Chairperson Therese M. Terlaje:

Senator Shelton?

Senator Amanda Shelton:

Thank you very much. Thank you for being here for your time today. I know you said that you can't give us what the outcomes of these cases have been and Mr. Bell you said you handled one arbitration case and you mentioned a couple.

Can you give us an idea of how many cases we've looked at in the last maybe ten years for a frame of reference?

Attorney Mitch Thompson:

Well, the only thing I can suggest is really would have—I think would have to be a poll of lawyers that typically handle these types of cases. Again, I think over the years, I've been involved in somewhere between five and ten claims of medical malpractice, probably closer to ten rather than five.

But it's been a long time and I don't want to misstate the number of cases I've been involved in. but I am at the—our bar is small enough and that you could probably ask the attorneys that typically handle these claims.

From my experience, there's a couple of lawyers that represent claimants. There's a couple of lawyers that represent defendants or respondents in these cases. And if you got everybody in a room together, you could probably get a pretty good idea how many total cases have been pursued. That's the only method I can suggest.

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Attorney John Bell:

I just wanted to briefly comment if I could. Granted it was just law school, but I did a one semester internship for a guy who did nothing but personal injury and medical malpractice.

So, that was the specialty in his expertise which he'd done for about fourteen years. So, that's sort of my frame of reference that's coming from California to here. I did the one where we got deep into the Triple A process but for the most part, having done that case and learning how expensive it is...

And it's kind of a tall, you know, hill for the plaintiff to overcome. I've had at least—I've probably turned away at least five clients with clients could simply did not want to pursue the medical malpractice claim because of the costs.

And I've been—this is just speaking from experience as a solo practitioner with my own office. At least five clients have wanted to pursue a medical malpractice claim but just because of the costs they just, they could not do it.

Senator Amanda Shelton:

Thank you very much. Thank you, Madame Chair.

Chairperson Therese M. Terlaje:

Senator Taitague?

Senator Telo Taitague:

Thank you, Madame Chair. And thank you gentlemen for being here.

So, Mr. Thompson, I was listening to your presentation thank you for that. I'm a visual kind of person so I appreciate that. As always watching your presentation you were discussing first, you're mentioning the history from 1976 to where we are to 1984 and then 1991.

If I'm not mistaken, there was a U.S. court appeals...the Ninth Circuit Court that appealed the medical malpractice mandatory screening—an arbitration act actually was a combination of the two that it was inconsistent to the provisions and that in...

And because of that in 1991, when the law passed Public Law 2143 was passed, Bill No. 325, they incorporated to adjust to that court ruling, the Trial De Novo. So, you know when you



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brought that up and you keep bringing about the Trial De Novo, it gives the opportunity for individuals to go further...pass because... if you maybe answer a question.

Is the Arbitration Act when the process is going through and a judgement is rendered, a decision is rendered at the end, is that considered binding?

Attorney Mitch Thompson:

Well, it's the... our current law it's binding that the award of the arbitrators is binding unless one of the parties asks for a Trial De Novo. And then in that situation actually the arbitrators award kind of becomes a moot point because it can't be admitted in the Trail De Novo. And the only importance that it has is that the party that asks for the new trial in front of a jury has to do substantially better than they did in front of the arbitrators.

Otherwise, they're going to have to pay the other sides legal fees and expert witness fees. So, it's a little hard to answer your question but if neither party asks for Trial De Novo then the arbitrator's decision is binding, yes.

Senator Telo Taitague:

Okay. When you were talking about screening panels, as in such states that utilize this process, there was something you mentioned in the medical malpractice that we practice here on Guam, arbitration that the findings in those hearings through arbitration is inci—it's not admissible versus screening panels if you're going through this process, is admissible, is that true?

Attorney Mitch Thompson:

Yes. That's an important distinction under our current law. The award by the arbitrators. The arbitrator's decision whether or not the physician is liable is not admissible. The jury never sees that award and it can't be told about the award.

However, in those states that have screening panels, it's typically a different situation. There the screening panels determination of liability; one where the other is admissible and is provided to the jury.

Senator Telo Taitague:

In the event of it goes to jury. So, the cost of going through the mandatory arbitration that we have on Guam. Any kind of records; depositions, what is doctors with their expertise to be provided to the panel. Okay.



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All that work and costs that's incorporated in the beginning part of the mandatory arbitration. That will all be thrown up, thrown out in the event that they want to go further into going to Trial De Novo, in the event that all the findings...are finding no matter what whether it the finding is for the patient or not for the patient.

All that information is inadmissible into court if they should go to Trial De Novo and thus you have to begin all over again with that information and provided. Is that the case? Is that how it goes?

Attorney Mitch Thompson:

Well, actually, that's not quite correct. If we look at the section 10140 B of the current law, it provides that all discovery permitted during the arbitration shall be admissible... shall be admissible in the Trial De Novo.

So, the only thing that cannot be provided to the jury in this Trial De Novo is the arbitrator's award or their decision, but you are expressly allowed by statute to bring in, say a deposition was taken of a doctor in front of the arbitrators. And you can use that deposition transcript in the Trial De Novo.

Senator Telo Taitague:

So, the screening panel, the one that's used in other states not here. So, what's the difference then when it's admissible?

Attorney Mitch Thompson:

Because they're... and again, it varies state by state, so, I'm just generalizing here but my read of the state statutes is that the point of having the screening panel's decision as to liability one way or the other, presented to the jury is to discourage the party that lost in front of the screening panel from going forward with either making the claim or defending the claim.

Because again, I think the idea is that when the jury hears that a screening panel made up of independent persons that have no particular ax to grind, either found liability or found no liability, that might be particularly persuasive to a member of a jury because they're thinking well, look the claimant has hired experts to say malpractice.

The doctor has hired experts to say no malpractice. This independent body who's not aligned with one side or the other, they, you know, either found liability or did not find liability. My census is that the jury might be inclined to find the screening panels determination persuasive and so, I think that's why in those states that have the screening panel system, they make it



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generally admissible in front of the jury. Again, as kind of a disincentive to pursue claims or fail to settle claims. So, I hope that answered your question.

Senator Telo Taitague:

It will but I'll review the tape again and listen to what you have to say a second time because it got kind of muddled there. But, at least, I know where now to look and as I move forward on comparable on both of these, the screening panel versus the mandatory arbitration.

So, you mentioned several states and I've done much research on several states and looking at those states that have quite a bit of law suits. And it's basically states with the lack of TORT reform in most of those states. However, you're still having some suits going through even with a lot of TORT reform impaneled in that state.

Through...and as an attorney—both attorneys and please feel free, I don't mean to leave you out Mr. Bell—but as an attorney, as you review as you're going through these suits, I'm sure that you've looked at case laws and you looked at other states and jurisdictions.

Through your research, of all the types of giving a fair balance to both the doctors, physicians, general practitioners and, you know, individuals who go into hardships through the loss of someone or medical neglect, not neglect but I'm looking for the word without hitting it too hard but having to go through the negligence...there it is, that happened to them. What state do you feel brings more of a balance for both the patient and the physicians? When it comes to suits or medical malpractice suits?

Attorney John Bell:

Mr. Thompson knows far more than I do, I'm sure. But I'll just briefly comment on. Again, at least I can sort of compare California and Guam. In California, I don't remember there being any cap... you just want to know about sort of the fairness or the cost?

Senator Telo Taitague:

The fairness. Fairness for both.

Attorney John Bell:

I'm sure we're going to give different opinions. It's a very subjective thing and that's my point is that that's why it's good to have at least different viewpoints because defense attorneys are



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always going to say, well, you know, we want a TORT reform ...we need a TORT reform. Plaintiffs are always going to say, well, we need to be able to get to trial.

Having said that, of course, there's common ground on both sides. I don't know how much this is important but just because you want to know the costs. I think it's important to talk at least briefly about depositions, when what they cost.

Because that's one...whether it's litigation or arbitration, deposition depending on if it's you know couple hours or all day. You know, maybe a thousand to four thousand dollars. So, depending on which system there is, so depositions are going to be one of the major costs

And that's just to be aware of that as well. My view is that well—admitting my bias as a plaintiffs' attorney but it's more fair to have the more traditional litigation track because then, at least, you can get to the claim on the merits. That can go—the arguments will be on both sides for sure.

I don't think anyone even disputes though that the point of Guam's Medical Malpractice Arbitration Act is very intentionally to make it harder for you —make it easier for doctors; harder for them to get sued.

And generally, because of that because as a reality and that's what I'm sure you understand is that there's...whatever system you have on paper that's going to drive the settlement talk, right? And the court generally want parties to get together and come to a settlement agreement because of the high costs and the difficulty of as it stands today.

It puts a lot of pressure on that you know the patient and their families to kind of settle cheap essentially, if at all; whereas if you were to go to court, that's the thing... it's because if the doctor were, you know if...knowing that the plaintiff has a fair chance to actually get to address the claim on the merits and courts, of course, then the cost of litigation to them, can be very high admittedly so but that's on both sides as well.

So, if you're looking at...its really—absolutely, it's public policy issue for legislators to decide how do we want to allocate those risks on those costs. Should the doctors be able to benefit from, you know, making it harder for patients —you know granted, yeah, their medical malpractice premiums would be cheaper.



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Maybe we'd be able to attract more doctors out here. Those are the arguments for, you know, TORT reform. The counter to that, of course, is well then what about the families whose loved one is deceased. You know or somebody's missing a leg—you know, it's not funny.

I mean it happens right. So, who pays for that because I'll tell you the truth...you know, who pays for that? It's taxpayers, it falls on society...society, our island has to absorb that cost of that person whose, you know, child is disabled or loved one is deceased.

Attorney Mitch Thompson:

Guam has borrowed many laws from California. You know, our Civil Code was essentially the California Civil Code from 1933 and my understanding is that California has caps on the award of non-economic damages. I think it's \$250,000. Up in the CNMI, they have caps; it's \$300,000. I think a problem with the screening panel proposal will be difficulty finding a physician to serve on the panel because again, we're a small island.

I think it'll be tough to find a physician here that wants to sit in judgement of his or her colleagues. Some have suggested well, we'll just bring in a physician from off island to serve on these panels. I think the problem there is it might be easier said than done. Dr. Espinola, for example, resigned nine months ago and we still don't have a new medical examiner. So, I'm not sure that it's going to be easy to find a physician to serve on screening panels if we went that route.

But again, most states have gone with caps. In addition to any, you know, other items of TORT reform they may have adopted. My research indicates that around thirty-five or so states have caps on damages.

Senator Telo Taitague:

Thank you. So, you kept referring to California. So, of all the states, you feel that California may be...of all the states, a more balanced for physicians versus patients for each side.

Attorney Mitch Thompson:

Well, I... again, in the past Guam has often looked to California as a model for its civil laws. I'm a little hesitant to say that California is the best model because honestly, I have not exhaustively looked at every state and territories laws.

Senator Telo Taitague:

How about Hawaii?



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Attorney Mitch Thompson:

I'm not sure as I sit here what process Hawaii follows. I just...you know, I think that...speaking personally here, I think caps is...it seems to be most states have gone that route. And I think that's maybe, especially for Guam, that would be a better route than a screening panel system for the reasons I mentioned.

Senator Telo Taitague:

Thank you, Mr. Thompson.

And the last question I have is on mandatory arbitration with respect to choosing the arbitrator. You know whether it's through the Triple A or most likely from what I gather, there's never been one for medical malpractice that was...that they used an arbitrator here on Guam. It's always been off island because of when, you know, the doctors' situation not wanting to, you know, go against their own fellow doctors and etcetera.

But I think—you can correct me if I'm wrong but the law says that it had to be agreed upon by both parties on the arbitrator who will be representing, coming forward. What happens in the case that they can't agree both the doctor and the patient cannot agree? What does the law say with respect to that?

Attorney Mitch Thompson:

Senator, the law provides in that situation then, the administrator can go ahead and appoint an arbitrator. But from my experience, as long as the parties are being reasonable an agreement can be reached and I'll offer an example. Currently I'm representing a provider who is the subject of a claim of alleged malpractice in under the current law.

And it's being administered by the Triple A and for various reason neither the claimant or the respondent were satisfied with the list of physicians our medical providers offered by the Triple A.

And so, I did some research and I found a provider based in Tennessee. And I suggested the provider to the claimant's counsel, and we had a phone call with her and we both decided yeah, she's a good person to be an arbitrator.

So, just..and the Triple A willing to accommodate that. In other words, just because they have lists of arbitrators. They don't say, you must only pick from our lists. It's not that way at all. They are happy to have the parties agree on arbitrators who are not on the Triple A's list.

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I would note that in the past there were, as far as I know, two Guam physicians that were willing to act as arbitrators and were on the Triple A's list. One was the late Dr. Perez and the other one, I believe, was a Dr. Chen.

But again, I think as a practical matter—it can be difficult having the Guam physician serve because he or she would be judging one of his or her colleagues and it's tough.

Senator Telo Taitague:

So, on the Triple A then you can also, you know, for cost reason you know by bringing a physician in from off island, the other two individuals that would sit on the panel can be chosen on Guam then.

Attorney Mitch Thompson:

That's right and there's...the parties are perfectly able to agree to modify the process. In other words, the current law says that there must be one lawyer, one doctor and one who's none of the above.

But from my experience, depending on the particular situation, we've sometimes agreed no we want to change that composition, or we've considered just having one arbitrator. That's up to the parties; if they decide you know what to expedite the process or maybe to reduce costs, we'll agree to use one arbitrator.

Senator Telo Taitague:

But isn't that against what the law recommends?

Attorney Mitch Thompson:

Well, the current law also states that the parties can, in effect, waive any provisions of that. You'll give me a second, I can cite to the specific section. Yeah, it's section §10129; it says parties can if they can agree to waive strict compliance with a statute. So, that way if the parties decide, you know, what we'd rather just go with one arbitrator, they're completely free to do so under the current law.

And again, from my experience, counsel and the parties, as long as they have some flexibility and are willing to, you know, be reasonable and work with the other side. You can put a panel together and again it...the panel may have one or more members outside of the Triple A's list.



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I had another medical malpractice claim several years ago. And we had trouble finding a panel member who was not a doctor, not a lawyer; the none of the above panel member. And we put on our thinking caps and counsel were able to agree on an individual who was not on the Triple A's list but was a respected Guam professional. And we had him come on the panel.

So again, if people are willing to be reasonable and work with the other side. Panels can be constituted, from my experience.

Senator Telo Taitague:

Mr. Thompson, my last question would be the majority of people you defend, are they usually providers or patients?

Attorney Mitch Thompson:

The first case that I was involved in which involved a claim under the current law. I represented the claimant that was why—I'm revealing my age but that was probably 20-some years ago.

Since that time, there was one case, I acted as one of the arbitrators. Since that time, I've represented physicians or providers, respondents under the act. And again, my memory is not what it used to be but I would say at least five and probably closer to ten cases I've represented a provider in arbitration proceedings under the current law.

Senator Telo Taitague:

About 99% are all providers that you've represented.

Attorney Mitch Thompson:

Yeah...in more recent years, yes, I've represented providers rather than claimants, yes.

Senator Telo Taitague:

Mr. Bell?

Attorney John Bell:

As I did acknowledge admittedly, I've a lot not a lot but medical malpractice and personal injury work perhaps even by Guam standards, kind of a lot but and going back to California but I'm generally a plaintiff's attorney, if that's the question.



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I'm generally a plaintiff's attorney so I would normally be...yeah, I'm the person that the patients come to when they want to file a personal injury compliant or a medical malpractice claim. So, I'm often discussing this law and the realities of medical malpractice.

Senator Telo Taitague:

Thank you so much. Thank you, gentlemen.

Chairperson. Therese M. Terlaje:

Senator Marsh Taitano?

I know that there are some patiently waiting. We'll get to you very soon and the others who've signed up to testify. Thank you.

Senator Kelly Marsh Taitano:

Saina Ma'åse Madame Chair.

So, it's been important to be able to hear about the process how it has evolved to be able to compare it to what is occurring in some of the states. I am somewhat curious as to what is happening in territories or maybe even some of our neighbors. But all in all, it's been very good to get this both specific view and bigger view.

So, I don't believe this was asked, I did miss a couple of the questions there. But if I could get a little bit more of the background and the reasoning for some of the way that our process is set up. Can you explain the reasoning for the even splitting of the costs?

Attorney Mitch Thompson:

I think it's a concern for fairness in the process. I note that the way this works is that by statute each side is responsible for one half of the costs of the proceedings. But the arbitrators are allowed to award a different division of the costs.

So, for example, let's say that initially the claimant and then the doctor both provide half of the cost of the proceedings and then the claimant proves that there was liability.

The arbitrators as part of their award can order that the doctor has to pay the costs of the proceedings. In other words, the claimant would be reimbursed for his or her share of the filing fees and the arbitrators cost. So, that's the arbitrators have the authority to make a differential award of the costs.



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Senator Kelly Marsh Taitano:

Si Yu'os Ma'åse'. That's important to hear because it was running through my mind. I was trying to balance out if there were elements that would be making it more fair or would really be working against the party, that had the least amount of money.

And so, my concern was and perhaps you can weigh in here is that perhaps one side or the other would call for very expensive expert witnesses to just sort of dissuade the whole process or just make it cumbersome or something along those lines. So, if you could speak to your assessment of that.

Attorney Mitch Thompson:

Well, I think regardless whether we're an arbitration or in litigation in court, each side almost always has to retain expert witnesses for these types of cases. And in fact, if the claimant does not have expert testimony to support the claim, typically, the claim would be thrown out on summary judgement early on.

So, it's a requirement either way; if we're an arbitration or we're in court, each side is going to almost always have medical experts that they've got to retain. I think that one other point is important and that is because of the cost of defending these cases, a lot of times the insurers look at this from the perspective of minimize their expense.

And so, from the insurance perspective if the case if the claim is going to cost a \$100,000 to defend and that's just an arbitrary figure and the plaintiff says well, look we'll settle for \$50,000 or \$75,000.

Even if the insurer and the doctor think that claim is it's a meritless claim; its a frivolous claim. But it it's going to cost them that much to fight it and they can get rid of it for \$50,000, the insurer is going to look at this and say well, gee...I can spend \$50,000 and get rid of this claim.

Or we can spend \$100,000 and maybe win, maybe lose and so, the incentive for the insurer is just to pay off the claim. And that was the problem and I think that's what the reason why so many states have adopted TORT reform is that it's very easy to file a claim in court. I mean the filing fee say \$300 and at that point, the doctor's insurer has to look at this and say well, Jesus, this is going to cost us so much money. Let's just get rid of the claim.

And the problem was is that when the insurers start paying out all of these claims when maybe they're not really meritorious but it's just cheaper to do that. The insurers got to raise



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its premiums or it might just say we're not going to issue coverage anymore because we're getting too many claims.

And so, that's kind of the flip side of the concern about costs is that; I think that was one of the reasons why so many states have adopted TORT reform is to try to reduce the problem that I just described with getting medical malpractice insurance.

Senator Kelly Marsh Taitano:

Now, I understand that it seems that the attorney fees are not the highest or the most costly part of this process. Is that a fair assessment? It's looking like maybe it's not a fair assessment on my part.

Attorney Mitch Thompson:

Senator, it's a little hard to generalize because if it's a straightforward case that's resolved before the hearing, the attorney's fees may not be that substantial. On the other hand, if we go to trial or hearing, either way in front of the arbitrators or in front of the court, in front of a jury, the attorney's fees will be substantial.

Now, typically, claimants counsel is handling the case on what's known as a contingency. In other words, the claimants lawyer says okay, I'm not going to charge you any legal fees to his or her client unless we win. And then, I get a percentage of the recovery. Under Guam law, there's a statute that sets out what that fee schedule is. And it works out to be anywhere from twenty-five percent, thirty percent depending on the amount of the claim.

So, it's a little hard because the sides, the two sides, their attorneys are being compensated in a different manner. But I think medical malpractice cases tend to be complicated because often it can turn on very involved in detailed medical issues.

And most of us are not medical experts and so, we need to hire expert witnesses to help us and to explain that to either the arbitration panel or to jurors, it can take up a lot of time. So, I think it's a little hard to generalize but I hope that helps.

Attorney John Bell:

If I could briefly comment on that, I think since you do seem to be asking to compare the costs of traditional litigation versus arbitration. I think one of the differences is with, so with traditional litigation again you have to map out a schedule that's about a year and a half; eighteen months standard.



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So, if I'm representing a patient we wouldn't need to come up with that money for an expert until several months easily several months down the road. Typically, I mean it depends on lots of things but that's sort of the standard track; not that you wouldn't necessarily want to.

You could elect to hire that medical expert early which wouldn't have to versus if you do with arbitration, you kind of have to do that. You know it's a sort of a contest of who has \$20,000 right now or \$10,000 or \$20,000 easily.

As far as the attorney's fees, I concur, you know, the defense attorneys gets paid by the hour. I'm not an expert on attorneys' fees on Guam. But I've done a lot of research because I'm a new solo. Nobody I know charges less than \$200 per hour; median is probably in the \$300s.

Some attorneys, I've heard charge close to a \$1,000 but only for extraordinary cases. So, you know several hundred or at least hundreds of dollars per hour for attorney's fees. I concur most plaintiff attorneys would take that on a contingency. Guam is unusual that the legislature has decided to institute a cap that is...that you wouldn't find say in California.

So, the plaintiff attorneys generally get paid relatively little. That's not necessarily complaint but just in terms of the realities of who gets paid; how the defense attorneys get paid hourly. They get paid for their time either way.

So, I only bring that up because as practical reality that what that'll drive the settlement. And whether these cases get one way or another whether they get— you know what I mean, whether they get dealt with at all or if they get dealt with if and when they settle. Is all going to be driven really by the costs and the risks and financial risks on either side.

Senator Kelly Marsh Taitano:

So, you've pointed out that there are attorneys that will work on contingency and that may help address some of at least those charges. Although there are many other very costly charges to consider.

I'm not so familiar with the Micronesian Legal Services. Is this the type of work that they do take on or are there other such entities that are here at a low cost or no cost to be able to help out the community in such instances?

Attorney Mitch Thompson:

Yeah, go ahead.



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Attorney John Bell:

I'm pretty they're pretty new but I've actually been—so for me, and I'm not trying to sell myself here, but I tend to represent people with no money, right? I mean a lot of people come to me. They have a claim and I feel it's a good claim.

You know it's subjective, obviously, but the problem is they don't have any money. They can't afford me even if I were to really discount my rates. So, I'm often trying to direct people to you know whatever free resources are available.

I've actually been literally—we just had this 3-day judicial conference, I spent a lot of my time, you know, trying to get to know Micronesian Legal Services. I can't speak for them but I just talked to their Director and some of their major attorneys.

They won't turn around so like my experience would be San Diego Volunteer Lawyer Program in California. We would not take the case if it was a money, fee generating case. If it was to get money, we can't take it but we'll help you with your will or your probate and those kinds of things or non-money generating issues. Micronesian Legal Services apparently will handle cases that generate money in theory and practice. They really do like domestic cases and those kinds of things.

So, it's difficult. I mean, that's subjective, I'm sure but it's actually very very difficult to find an attorney on Guam that's willing to take on these cases at all. I think some of it is just, you know, it's a relatively small bar. There's a lot of...it requires a lot of expertise and then on top of that there's the costs.

So, I don't know if that helps but I'm pretty sure that nobody's going to be able to go to someone like Micronesian Legal Services or Guam Legal Services that would take on a medical malpractice case, unfortunately.

Senator Kelly Marsh Taitano:

So, it's helpful and it's just important to understand the landscape of, you know, understanding how difficult this may or may not be for the community. And I just think also given, maybe this is true for just about any community, but just the formality of the system. You know, I can understand I can relate to the fact that it can be very daunting. The cost can be very prohibitive and those sorts of elements.

So, just trying to look at the totality of everything that's involved and being able to weigh that so that we can as a body decide what's gonna give our community the most flexibility, the

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most representation, the most towards that idea of justice. And feeling like their concerns and their safety, you know, are paramount. So, thank you very much for your information.

Chairperson Therese M. Terlaje:

Thank you, senator.

Could I just ask one other question? That is so...before this law between 1984 and 1991, when there was no arbitration law what I don't know and I'm wondering if either of you know what damages were awarded by the courts during that period?

Attorney Mitch Thompson:

I'm sorry, Madame Chair, I really have no idea.

Chairperson Therese M. Terlaje:

I just haven't looked at it either but just wondering if you had compiled that.

Attorney John Bell:

I just wanted to comment that for me and I've been making my preference for the courts but one of the reasons is that's the things with court decisions you have, it lays precedent. You have, you know, it guides the future patients and doctors and their attorneys on what do we do going forward because of the nature of arbitration; we kind of don't know.

Chairperson Therese M. Terlaje:

All right. Well, I want to thank you both for your, for Mr. Thompson, for your overview and for your perspectives and for being truthful with us about, you know, where you're coming from and what your experiences are.

I think that's very helpful. I know that you've answered a lot of our questions. There's still some questions that...and I appreciate your advice, that some of these maybe we can ask the American Arbitration Association and or some of the other arbitration associations or organizations for some of their data that's anonymous.

And I also wanted to note that I received a letter from Attorney Keough who has been practicing on Guam in Micronesia for over forty-two years over this period this is his letter.

Attorney Keough:

Please see attached testimony.



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Chairperson Therese M. Terlaje reads testimony into the record.

Chairperson Therese M. Terlaje:

So, I wanted to let my colleagues know that. That's he's also available and that we also have extended earlier, several months ago, an invitation to the Guam Bar Association for any volunteers who are willing to give their input.

And I want to thank you Mr. Bell and Mr. Thompson for putting your names on that list. So, we have a list of a few attorneys who are willing to volunteer and I thank you this is all volunteer time.

I appreciate that and so, I will make that list available but I've also, you know, the Guam Bar Association, I think is also available. Generally, for legal interpretations different if they want a different, you know, interpretations of any of the things that either of you have said. I'm sure that my colleagues are able to obtain those resources as well. But I would welcome anyone who's listening who also wants to submit testimony to please do so. Particular to these legal questions that we've been asking.

So, I want to thank you and I'm going to open it up for other members who would like to testify. Thank you.

All right. So, we have signed up and there are several members who signed up that they are here but to present oral testimony. I have David Lubofsky and Anelyn Lagrimas. If you could please come up to the table, if you want to present testimony and that's all I have right now. So, if there's anyone else who is interested, please sign up and otherwise, we will proceed.

Mr. Lubofsky whenever you're ready, please. You may press the red button on the microphone. They could make sure it's uh---okay, thank you.

Just to let you know I've given copies of your testimony also to my colleagues.

David Lubofsky:

Thank you, senators, for allowing me to come here and provide some information. I'm sorry I have a little bit of a cold.

Please see attached testimony.

Chairperson Therese M. Terlaje:

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Thank you very much, Mr. Lubofsky. I appreciate your testimony and the difficulty of your circumstances to come here to present that.

I ask if any of my colleagues have any questions of Mr. Lubofsky or comment.

All right. Thank you again. Are you Anelyn Lagrimas? All right. You can press the button on your microphone; you may proceed. Thank you.

Anelyn Lagrimas:

So, I didn't come here prepared. I came here straight from the hospital because that's where my dad's at for the past two and a half months at GRMC. I just wanted to get a story out there so that no one has to go through this ever.

On July 1st, my dad was admitted in GRMC ER conscious and complaining of a headache. The week prior, he was working in construction at the new Tsubaki Tower. Well, in the ER, he went into septic shock. A couple of days later, he recovered and was conscious again. We'd suspected multiple organ failure. His kidney's shut down, so he would now be on dialysis. His liver, although in bad condition was improving as the doctors have said.

He was expected to be discharged as I was contacted by an outpatient dialysis clinic referred by the hospital in mid-July. However, mishap happened after multiple concerns brought forward about his fear of hospitals and not wanting to be here. And actively trying to climb out the bed rails, he had pulled out his dialysis portal and bled out. Though he was barely conscious and was transferred to the ICU. Before then he was on restraints but that day it wasn't ordered for him, leading to the unfortunate event.

The ICU doctor at the time, Dr. Augustine, said it's likely he will not make it and specifically said that he is currently like a car that is not working being moved by a tow truck as he compared it to the life support that was keeping him alive. Two weeks later and off of life support, he made it. He had fought to stay alive. However, due to negligence during his stay, he had developed a bedsore that they had allowed to progress into a stage four.

In a critical state with a bed sore that was now a giant crater like wound that had to reach the bone and is now the cause of his new infection that would most likely lead him back into a septic shock, where he most likely will not survive the second time around. Had I not done the research myself and filed formal complaint, they would not have attended to it nor make me aware of his hospital-acquired stage four bedsore.



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Chairperson Therese M. Terlaje:

Sorry, Ms. Lagrimas, can you repeat that last sentence, that last part?

Anelyn Lagrimas:

Had I not done the research myself and filed a formal complaint, they would not have attended to it or make me aware of this hospital-acquired stage four bedsore. Because of my dad's critical state, I took it upon myself to research how my dad got a crater like wound on his butt where he had never had one before. I learned that a bedsore doesn't progress into stage four overnight. It goes through stages one, two, and three and that with national standards are preventable at the early stages of one and two, which I later found out occurred early in July 9 yet nothing was being done to treat it.

At the most basic level of care, he wasn't being turned every two hours or clean dry. Neither did the doctor nor nurses inform us nor address it. I had to look through his medical records just to find that out on July 9. As I have seen it visiting my dad every day for the past two months and a half, especially during the first couple weeks.

Doctors and nurses had rarely come to check on him or clean him. Leaving him to lay down soaked in his feces for long periods of time, unturned for at the most 12 to 8 hours while other times it will be 4 to 6 hours.

How would I know you asked? Of course, because I was there. I was there to witness it every single day when my work schedule permitted. And had I known that was happening at that time, had I been informed in the beginning stages, I would have pushed for everything to be done to prevent it. Which means getting something as simple as turning him every 2 hours to be done.

Constantly ringing them to check on him. All the things that they are doing now after a complaint was made. And after I started to keep tabs on them, tracking them and putting in a time log. Everything that they have started to do now which is technically their job, they should have done in the early stages to prevent it before skin breakdown; complete skin and muscle breakdown should have been out of the question.

Only now that a complaint was filed at the hospital that all the doctors started attending to him. I even had to personally request for the GRMC wound care doctor myself because they had not told me nor informed me that they had word.



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But now, it was too late, the wound has reached the bone and it's infected. And they're doing the best they can but that's the thing. They're telling me it's too late GRMC boast high quality care and quotes patients as partners charging \$3,000 a day in telemetry and close to \$5,000 a day in the ICU. Yet, they couldn't give him the simplest care to prevent something ultimately preventable. The wound developed to such a stage due to negligence.

At GRMC, as a whole entity, a wound that massive doesn't develop from his kidney failure condition. It develops out of negligence. When the most basic of care was not provided to him on time and in a timely manner. And only now when it's too late having led skin breakdown occurred due to negligence. Are they trying the best they can? And the most frustrating part is that they only did so because a complaint was brought forward.

And makes me think had I not said anything, would they have just let him there to rot unturned leaving a bed bound person to lay hours there. My dad is suffering, in pain and at risk of dying over something as small as a bedsore that they let progressed for weeks, four weeks before even doing anything, letting it develop to a deadly stage four hospital acquired bedsore wound with no viable options left on island to treat it.

Attempts to contain it have been insufficient and he is now in isolation. Surgery with a diverting colostomy is also not viable option due to his health condition, making it very high risk of not making past the operation. Also, the surgeon, himself, not only does not recommend it but mentioned that there is no guarantee that even if he were to survive the operation that the wound would not be able to completely heal. So, he just suggested that I spend as much time with him as possible.

My dad's slowly dying from a hospital acquired bedsore that was clearly preventable. The worst feeling is to feel helpless knowing more could have been done to prevent my dad suffering, who is currently defenseless at complete mercy of GRMC; who has verbally acknowledged their mistake and is covering the cost of his prolonged hospital stay, but who's to say that because they are no longer profiting from my dad that they can't discharge him any time as another form of malpractice?

Having GRMC cover the cost of treatment to his wound makes him vulnerable. The trust is no longer there. He's in the state of suffering because he was neglected. How can you let a stage one bedsore treated with the most basic care of cleaning him and turning him turn into a stage four crater like wound deep to the bone in a matter of weeks?

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If you compare the difference to the standard of care, they're giving him now. The surrounding areas are healing because they are turning him. Now, they are attending to him every 2 hours prior to the past four weeks when they let the ulcer develop.

When the right care now directly provides that is was preventable. Centers of Medicaid Services determined that way thus making it a never event. So, he has other bedsores that are healing but then the stage the one that they let develop into a stage four ulcer that should have had been addressed sooner is in serious critical state.

So, a hospital stage four bedsore is classified as a never event. Here in my poster board, I have it defined. Additionally, the financial burden to hospitals will also increase as a Center for Medicaid and Medicare Services, CMS recently classified hospital acquired stage three and four pressure ulcers as a never event and that care for these ulcers will no longer be reimbursed. Appropriate cost-effective treatment modalities are therefore of the utmost importance. Emphasis must be placed on decreasing the incident to minimize morbidity is an ensuing cost.

According to the National Quality Forum, never events are errors in medical care that are clearly identifiable, preventable and serious in their consequences for patients and that indicate a real problem in the safety and credibility of a healthcare facility. Never events that are defined as adverse events that are serious largely preventable and of concern to both the public and healthcare providers for the purpose of public accountability.

They are defined as serious incidents that are wholly preventable because guidance or safety recommendations are available at a national level and should have been implemented by all healthcare providers.

Each never event has the potential to cause serious patient harm or even death. The MMMA encourages the lowest quality of care because these hospital entities and health professionals are protected by this law. I want to make sure no one, no patient, no family member should ever go through the suffering my family is going through. Mandatory Arbitration is not even an option.

That is all. Thank you.

Chairperson Therese M. Terlaje:

Ms. Lagrimas, *Si Yu'os Ma'åse'*

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Thank you for that and I'm very sorry about what you're going through. You and your family and your father especially. I appreciate that...what it has taken for you to come down here and testify while he's still there and the research that you have done is just shocking but I appreciate it all.

Is there any member of the panel here who would like to make a comment or question?
Senator Taitague?

Senator Telo Taitague:

Thank you, Madame Chair.

And I, too, want to thank you for coming down here, taking the time away from you father right now and it's commendable with what you've done on your research for him. And I'm sorry to that you family is going through this as well.

And I'm taking...I'm hoping that—I know you read your testimony and it was hard saying it. So, I really want to get the full grasp of your testimony. So, if you could please provide this copy of what you written, I would really appreciate it.

And again, Mr. Lubofsky, thank you so much for being here today and testifying. I know it's difficult for you as well. And your advocacy to, you know, make people aware of what you went through as well.

Thank you so much.

Chairperson Therese M. Terlaje:

Mr. Lubofsky?

David Lubofsky:

I just want to introduce Ms. Monica; she has a picture of her son. And also, Ms. Faye. They're in the same situation with our children passed away. Doctor said sorry, have a nice day as they walked out of the room. They have pictures of their kids.

Chairperson Therese M. Terlaje:

I appreciate that. Would you like to say the name of your son or your name and I see his picture, that's your son? Charles Blas? My condolences.

My condolences, Zachary Joaquin.

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Thank you.

Again, thank you all and very sorry about the experiences that you've gone through. I'm sure there are many more on Guam who have similar situations. Hard for us to accept this testimony but thank you. I'm sure it's more difficult for you to have to be here and to present it. Thank you, thank you very much. Again, so we have one more sign-in sheet, Dr. Nguyen?

Dr. Nguyen:

Hi, good afternoon. Thank you, Chairman...Senator Terlaje, Senator Taitague, Senator Marsh Taitano.

I'm really sorry for your loss of your son and everyone in this room. I'm speaking on as Acting President for the Guam Medical Association and Dr. Tom Shieh is off-island right now, but you know, as we go to this arbitration legislature hearing...

You know, we learned a lot from the two lawyers—you know, Mr. Thompson and Mr. Bell and also some concern on the arbitration law from the patient. It's a lot of misconception on what the arbitration law that we have in Guam and most of arbitration law that we have in the states.

I think for all of us, you know, we will prepare as a group of physicians to represent the Guam medical community in the next hearing and the following hearing to kind of let everyone know what we have as some...as how we determine the standard of care in Guam versus the rest of the states.

Just like Mr. Thompson said it depends on location that you have. We have to practice some you know, to the location. You know, can't expect the practice what we have in California or in Florida and Texas. It depends on location and the arbitration that we put in place and legislature put in pace is really...

We just want to convey the message is not the protection of the physician. It's the protection of the quality of care that we have for the island or location, where you are. You know it's not for the physician and this is something that...I've been here since 1995.

The quality of care in Guam has improved a lot. We were very successfully recruit a lot of physicians, a lot of specialty that is not here before. It's based on the arbitration law. Okay, so



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in the next two sessions I said we will have testimony and PowerPoint, just to kind of go over the arbitration as what we see and but it's a lot of misconception.

So, again thank you for the opportunity to... for us to have this so everyone can be in the same table for us. Okay and we have more information for you. And you have a lot of questions and I take those questions back and we'll prepare.

I'll talk with you. Thank you.

Chairperson Therese M. Terlaje:

Thank you very much Dr. Nguyen.

I want to thank you all again for being here today. So, this informational hearing will be continued on October 3rd at 5:00 p.m.

We've invited again all the health professionals to submit testimony for that hearing and a panel to begin with the Guam Medical Association and the Guam Medical Society heads and any other medical professionals.

We're also inviting any patients or other public to submit testimony at that time.

There will be a third hearing on November 7, 2019 at 2:00 p.m. We're hoping to discuss options that are being concretely proposed at that time. If there are any and so I'm asking, inviting anyone to submit those in advance.

Again, these hearings are for informational purposes only to allow senators to hear suggestions and make inquiry towards formulation of legislation. As of today, no bill's been introduced. So, there will need to be another hearing if there is a bill introduced and for any particular change. The above described schedule is subject to change if a bill is introduced or if legislation session is scheduled during these times.

So again, from the bottom of my heart, I want to thank all of you and especially those who've suffered these losses with family members. And we're very very sorry and my deepest condolences to you but thank you very much for being here for taking that really extraordinary effort to be here and to testify. And to remember your loved ones and to make an impression on us, senators, as to what we should do as to policy.



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III. FINDINGS & RECOMMENDATIONS

The Committee on Health, Tourism, Historic Preservation, Land and Justice finds the following recommendations based on testimony submitted at the public hearing:

Guam's Medical Malpractice Mandatory Arbitration Act (10 GCA, Chapter 10): Input on Health Professionals on Effect of Current Law on Standard of Care (All health professionals and patients are invited to provide written testimony or attend hearing), was the second hearing of a three-part series on Informational Hearings held. Summaries of issues and suggestions for change from all three hearings will be published in totality on the Committee Report for the final hearing to be held on November 7, 2019.