



Speaker Therese M. Terlaje <speaker@guamlegislature.org>

Medical Arbitration reform bill proposal

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To: "speaker@guamlegislature.org" <speaker@guamlegislature.org>, "senatormunabarnes@guamlegislature.org" <senatormunabarnes@guamlegislature.org>, "senatortelot@gmail.com" <senatortelot@gmail.com>

Madam Speaker, Madam Vice Speaker, and Senator Taitague,

Please see my attached response on behalf of the medical staff of GRMC.

Respectfully,

Rebecca Carney Calisch, MD, FAAEM

Chief of Staff

Guam Regional Medical City

 **Rebecca Carney Calisch MD Letter Regarding Guam Medical Arbitration reform.docx**
121K

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4/16/2021

The Honorable Senator Therese M. Terlaje
speaker@guamlegislature.org

The Honorable Senator Tina Muña Barnes
senatormunabarnes@guamlegislature.org

The Honorable Telo T. Taitague
senatortelot@gmail.com

Dear Madam Speaker, Madam Vice Speaker, and Senator Taitague,

I am writing you on behalf of the medical staff of Guam Regional Medical City and our health care provider partners throughout Guam. We are sincerely concerned that the proposed amendments to Guam's Medical Malpractice Mandatory Arbitration Act through Bill No 430-35 and 112-36 will have long term negative impact on the availability of quality medical care for the residents of Guam. We are open to modification of current laws and support victim rights to pursue litigation when mediation or arbitration does not provide a solution.

We attest that non-medical trained laypersons may not have the understanding of elements that constitute medical malpractice by definition of U.S. law. We are also concerned that media and television in the past decades have created a false sense among the public that an adverse outcome after seeing a medical provider constitutes malpractice. This misunderstanding has contributed to destruction of the traditional trust between patient and physician and brewed a discontent leading to a rise in litigation.

We understand that there is a current medial malpractice crisis across the United States, which has had significant impact on accessibility to healthcare and rising healthcare costs. This crisis in Guam has been mitigated by its' arbitration laws.

We recognize the costs of arbitration are significant. The costs are on both the plaintiff and defendant. We recognized through experience the cost to the defendant often outweighs the cost to plaintiff even when a verdict is found in favor

of the defendant. We attest that the average cost of malpractice insurance ranging on average \$25,000 to \$100,000 annually for physicians depending on specialty is also significant and does not entail the inclusive cost financially, emotionally, and physically incurred during malpractice trials.

In the matter of medical malpractice, the definition of medical malpractice in section 10102 (e) should be required to include the four legal elements of required claim by US law including (1) a professional duty owed to the patient; (2) breach of such duty; (3) injury caused by the breach; and (4) resulting damages. Proof of these four elements should be required as a mandate of filing for consideration of Pre-Trial Screening.

In the matter of Standard of Care 10104 we attest that Guam is a unique locality practice environment with limited access to primary care providers as well as specialists. The medical community currently lacks American Board of Medical Specialties (ABMS) residency and fellowship trained in the following specialties:

- Cardiothoracic surgery
- Vascular surgery
- Neonatology
- Pediatric Critical Care
- Pediatric Emergency Medicine
- Plastic Surgery
- Gynecology Oncology
- Pediatric Oncology
- Rheumatology
- Gastroenterology

We have very limited access through often only one provider without backup on island for:

- Pulmonology
- Ear Nose and Throat Surgery
- Oral Maxillofacial Surgery
- Neurosurgery
- Neurointerventional Radiology
- Interventional Cardiology
- Endocrinology

Current physician providers have extended their practice range beyond their usual scope of training practice to accommodate for the severe lack of available subspecialists. This has increased their inherent risks for potential adverse outcomes.

Our providers will no longer be able to accept higher risk practice margins if required to operate within the scope of requirements of medical malpractice policies that limit coverage for acts within strict training guidelines.

This will lead to detrimental delay in care, increase costs to patients and insurers for off island travel and referrals, and the uninsured or financially limited will likely go without treatment at all.

There is significant likelihood this will also cause an exodus of multiple physician specialists on island to seek practice environments where subspecialty backup and thus lower malpractice risk is more feasible. Multiple studies of increased malpractice risk on rural environments are recorded in case law. *ie. Stark Inaccessibility of Medical Care in Rural Indiana: Judicial and Legislative Solutions by Thomas Martin, Indiana Health Law Review Vol 11:2.*

We attest to mitigate malpractice risk, that any claim filed for medical malpractice should not only show a breach in standard of care but should be required to show **gross negligence**, a deliberate act or specific intent to cause harm.

All claims should be accompanied by at least one expert witness affidavit that attests to breach of standard of care to the level of gross negligence. Guam should be held to a strict locality principal. We attest the expert witness must be qualified by holding a Guam medical license based on residency training and ABMS in the same equivalent specialty and/or subspecialty (ie. MD, DO) as defendant and must have been actively practicing within that specialty on Guam within the same time frame as occurrence of event leading to the claim.

We attest it is not lawful that a Magistrate Judge, who is not an actively practicing physician, determines the measure of breach of standard of care or gross negligence. We attest it is not possible that a single Magistrate Judge can be qualified to rule on claims spanning multiple medical specialties.

In the matter of applicability to the Government of Guam and Its Agencies, 10108, we attest there should not be a different standard for medical malpractice claim requirements to be filed against community private practice providers and employees of GRMC from those that are agents of the Government of Guam. This unequal application of protection under the law prevents claimants from having the same measure of legal recourse against any adverse outcome from medical care services across Guam. This creates an undue burden on private physician practices and private hospital entities such as GRMC to maintain and procure costly medical malpractice insurance for its healthcare providers. We are extremely concerned this inequity will lead to targeting of private entities for malpractice lawsuits, thus driving the cost of malpractice insurance cost even further for non-government healthcare providers.

We request that all healthcare entities on Guam including private practice agencies and hospital be included in an established claims cap of \$300,000 as allotted under The Government of Guam Claims Act. GRMC practices under federal laws and requirement of Centers of Medicare and Medicaid Services including the Emergency Medical Treatment and Labor Act. We provide emergency medical services based on need and without regard for patient's ability to pay. We support the same community of patients that all Government of Guam agencies also treat. This has been especially evident in the Covid-19 pandemic throughout the last year. Every community practice and GRMC came together in a spirit to support all residents of Guam, regardless of insurer, ability to pay, or eligibility for reimbursement through US or Guam government funds. We attest that the medical community of Guam must continue to function as a collaborative unit. Therefore medical malpractice laws and standards of care should apply to all healthcare providers on Guam equally.

In support of modifications to the existing law, we propose the government of Guam commence with the support of a preventive medicine approach. *"An ounce of prevention is worth a pound of cure."*

We propose the following measures:

1. Medical professional recruitment fund
 - a. Government funds should be used to create a medical professional recruitment fund. This fund should support the recruitment and retention of physicians and allied health providers to Guam to fill the shortage of primary care and subspecialty deficits.
 - b. Recognize barriers to practicing in a rural setting as below and create community support to reduce these burdens.
 - i. Call frequency
 - ii. Difficulty taking time off
 - iii. Few opportunities for continuing education
 - iv. Professional isolation
 - v. Challenges in maintaining professional boundaries
 - vi. Limited job for spouses
 - vii. Limited option for childcare, schools for family members
 - c. Guam should expand its definition as a Health Professional Shortage Area to include all primary care and subspecialties. This will encourage recruitment of new graduates and ensure an influx of modern medicine practices in Guam.
2. Medical support staff recruitment
 - a. The ability of care to be provided at and above the standard of care is dependent on the support team of physicians and allied health care providers. We need to recruit and maintain support

staff including RNs, LPNs, respiratory therapist, radiology technicians, pharmacists, scrub techs, etc.

- b. Raise pay standards for these support staff so the medical community of Guam can not only provide the standard of care but exceed it.

If we as a medical community, in coordination with the Government of Guam maintain the highest standards of care by providing all patients access to residency and fellowship trained physicians with appropriate support staff we can greatly reduce adverse outcomes.

This investment in the medical infrastructure of Guam rather than legal system would increase safety for patients and redirect financial resources directly into our communities long term success.

Respectfully,

Rebecca K. Carney Calisch, MD