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**TESTIMONY IN SUPPORT OF BILL 112-36  
MEDICAL MALPRACTICE PRE-TRIAL SCREENING ACT**

JULY 7, 2021

Buenas yan hafa adai, Speaker Terlaje and all esteemed members of this committee:

I am Dr. Lisa Linda Natividad, a licensed clinical social worker (LCSW), licensed professional counselor (LPC), licensed marriage and family therapist (LMFT), and a licensed mental health counselor (LMHC). I am a full professor at the University of Guam in the division of social work who has been a behavioral health provider in private practice for about 20 years. I make this testimony on behalf of myself, as a private practitioner.

**I stand in support of Bill 112-36, known as the Medical Malpractice Pre-Trial Screening Act, which intends to replace the current mandatory arbitration process requiring on average \$45,000 to bring forth allegations of medical malpractice.** Over the past 20 years, I have been in varying private practice models from working in a group behavioral health practice, to working completely independently, to working in the behavioral health unit of a larger medical clinic and most recently, working in telemedicine providing therapy online in adaptation to COVID-19 conditions. In addition, my earlier career path as a social worker entailed working with Sanctuary, Incorporated and I continue to work very closely today with varying non-profit entities that aim to serve our community needs.

I stand in support of Bill 112-36 primarily because of its intent to make ACCESSIBLE the opportunity and pathway of holding medical practitioners accountable for their professional work. The current framework requiring mandatory arbitration and the ballpark figure of \$45,000 to bring forth allegations renders it a structural mechanism of inequality for members of our community. On most quarters (three-month period) of every year, roughly 30% of our island population lives below the federal income poverty level to qualify them for SNAP (formerly known as Food Stamps) benefits. Given this reality, what access does our community have to remedy an experience of medical malpractice if the cost of the current framework requiring mandatory arbitration hovers around \$45,000?

As medical doctors, the dollar amount of \$45,000 may seem relatively small, given the reality that medical doctors comprise one of the highest income brackets on island. But that is not the case for the average person on Guahan who is struggling to feed their families, pay their rent, and raise their babies. With the \$45,000 price tag, the current mandatory arbitration framework is structurally prohibitive of justice for the most vulnerable members of our community- the poor.

In 2013, I decided to take a friend up on his offer and develop a behavioral health unit in his prominent medical clinic. Within three months, we were able to convene seven part-time practitioners to meet the gaping hole of behavioral health services on island. At the end of the year, the clinic hosted a Christmas party at the Hilton Hotel and quite frankly, my visceral reaction to the event was one of disgust. My gut was so unsettled witnessing the lavish nature of the celebration. The clinic shouldered all costs for the scrumptious spread of seafood and the amazing door prizes and staff end of the year bonuses were given out in the hundreds and thousands of dollars- depending on the level of responsibility of the staffer. My reaction was not because I felt that the clinical staff did not deserve it, because they worked hard and definitely earned their reward. My disgust came from contrasting the experience with my time in the non-profit sector working with NGOs such as Sanctuary, Incorporated and Guma Mami, Inc. During the holidays, these organizations were at the mercy of civic clubs to obtain the turkey, Christmas trees, and gifts for our clients partaking of services. The stark contrast of celebrations between the non-profit sector and the for-profit sector was so unsettling for me because it gleaned the larger systemic problems- the structural reality of economic inequality that exists in our community. This bill is a small attempt at leveling the playing field by utilizing a different framework that addresses the issue of accessibility for our poor.

When I first heard resistance to this bill, I was thoroughly confused. I was confused because I did not understand why the medical community was painting an image of the collapse of their medical practices. I was confused because I know firsthand from my own experience that in order to be paneled by any insurance company, malpractice insurance is required as part of the application process. I am currently paneled to the majority of insurance companies on island and in the initial application, as well as every juncture of re-credentialing, I am required to furnish the face sheet of my malpractice insurance policy. My current policy covers \$2M limit liability per claim and \$4M aggregate limit/ year. It also covers related expenses such as deposition and subpoena expenses and the cost for defense in the case of a state licensing board investigation. An allegation of malpractice does not constitute being found guilty of such a claim. The scenario of gloom and doom that is being painted is only applicable in the event that someone is found guilty of a claim, during which time one would be able to make a claim against their malpractice insurance. And so yes- just like when you get into a car accident and it's your fault and your insurance company covers the damages- then your premium goes up. This is a natural consequence for your negligence as a driver. So why would it be any different for medical professionals? Why shouldn't they be held accountable and responsible for their work in their professional capacities?

As a social work educator, professional competency is at the core of what we teach. The National Association of Social Workers (NASW) defines six core values of social work, of which *competence* is one. The NASW Code of Ethics emphasizes the **Ethical Principle of competence as follows:** *Social workers practice within their areas of competence and develop and enhance their professional expertise.* In the discussion of Bill 112-36, there have been threats made that people will have to go off-island for specialty care. My question is, “Why is this not already happening?” In line with the commitment to competency, practitioners should be able to reflect and only practice within their scope of competence. This is a very basic and standard rule in the healing arts. Why would a medical practitioner provide services that are not within the scope of their training and expertise? Doing so would jeopardize and place the patient at great risk- some might even argue that this practice is not only irresponsible and reckless; but unethical. I have had clients request that I provide specific therapeutic approaches that I have not received training in and my response is typically, “I’m sorry, but I do not have that training.” Imagine if I were to say, “OK, let me research it and do my best.” Would you want to receive care under these circumstances? If our medical professionals are saying that this is a condition of practicing on Guahan, then they are consciously taking on increased liability that is irresponsible. That is a personal choice on their part that has the potential to harm their patients.

A modern version of the Hippocratic Oath authored in 1964 by Louis Lasagna from Tufts University states: ***I will not be ashamed to say "I know not," nor will I fail to call in my colleagues when the skills of another are needed for a patient's recovery.*** A summation of the Hippocratic Oath that is often referenced is the call to: “Do no harm.” This rule of thumb has been adopted by other healing practitioners and reminds us all that if our interventions result in harming our patients, then leaving them alone is sometimes the most appropriate approach. And clearly if you lack the training and expertise, there exists the potential to harm your patients.

In closing, I applaud all co-sponsors of this bill for having the courage, the fortitude and the vision to even the economic playing field for the most vulnerable members of our community. While there are specific details within the bill that could be negotiated, I implore you to stay resolutely committed to changing the framework of remedying medical malpractice on island to ensuring its accessibility to all. Your election by the people and for the people requires you now to make these hard decisions in the best interest of the collectivity of the people; and not of the privileged few.

Kon respetu yan guinaiya para I tao'tao'ta (with respect and love for our people).



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