

**10 GCA HEALTH AND SAFETY
CH. 11 MEDICAL MALPRACTICE REFORM ACT OF 1975**

**CHAPTER 11
MEDICAL MALPRACTICE REFORM ACT OF 1975**

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§ 11101. Title.

This Act may be cited as the Medical Malpractice Reform Act of 1975.

SOURCE: GC § 9995.

§ 11102. Definitions.

As used in this Chapter:

(a) *Health Professional* means any person licensed or certified to practice the healing of arts within the territory of Guam, to include podiatry, pharmacy, nursing, as defined in §27000 of the Government Code of Guam.

(b) *Health Care Institution* means any health care facility or health maintenance organization operated primarily to provide the service of health professionals.

(c) *Malpractice* means any tort or breach of contract based on health care or professional services rendered or which should have been rendered, by a health professional or health care institution to a patient.

(d) *Benevolent gesture* means any action which conveys a sense of compassion or commiseration emanating from human impulses.

(e) *Family* means the spouse, reciprocal beneficiary, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half brother, half sister, adopted children of parent, *or* spouse's parent of the

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injured party.

SOURCE: GC § 9995.1. Subsections (d) and (e) added by P.L. 29-81:2 (May 9, 2008)

§ 11103. Report and Recommendation.

Within thirty (30) days after the effective date of this Chapter, the Governor of Guam, in cooperation and consultation with appropriate local, state and Federal agencies and representatives of the general public, shall prepare and submit to the Legislature a report of his recommendations along the following goals:

(a) A medical liability insurance which can be operated at reasonable cost for the purpose of providing prompt, equitable compensation to those sustaining injuries from improper medical care.

(b) Primary consideration shall be given, but not limited to establish an insurance system which can be underwritten by private insurers on a self-supporting basis using actuarially sound rates.

(c) If the Governor finds that no insurance system bearing the goal of the plan can be underwritten by private insurers on a self-supporting basis using actuarially sound rates, he shall specify the needed changes in the statutes to create a viable market for medical liability insurance or self-insurance.

(d) The comprehensive report shall include recommendations to the Legislature for:

(1) Reducing the incidents of medical injuries, including establishing standards of care and procedures for peer review;

(2) Reducing the cost of prosecuting and defending claims and administering the insurance mechanism;

(3) Changes in existing law governing the eligibility of injured persons for compensation and the amount of compensation, including limitations on the time within which compensation may be recovered, and redefinition of the doctrine of *informed consent*;

(4) Possible changes in existing law to establish a procedure for deferring payment of malpractice claims in case of permanent disability;

(5) Possible changes in existing law to create a physician's privilege to comment on the work of other physicians in non-judicial

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proceedings to assist in excluding inadequate practitioners from hospital staffs; and

(6) Any other matters or procedures which the Governor considers relevant to the problem of medical malpractice reform in the territory of Guam.

(e) The Governor is authorized and encouraged to make interim reports to the Speaker of the Legislature concerning specific legislative proposals which need immediate consideration.

(f) There is hereby authorized to be appropriated such sums as are necessary to carry out the purposes of the foregoing Section.

SOURCE: GC § 9995.2.

§ 11104. Consent to Surgical or Medical Procedures.

The written consent to a surgical or medical procedure, where the conditions set out in Subsections (a), (b) and (c) below are met, on a course of procedures, shall be presumed to be valid and effective, in the absence of proof by a preponderance of the evidence that the person who sought such consent was not acting in good faith, or that the execution of the consent was induced by fraudulent misrepresentations of material facts, or that the person executing said consent was unable to communicate effectively in the English language or any other language in which the consent is written.

(a) The consent sets forth in general terms the nature and purpose of the procedures, together with the known risks, if any, of death, brain damage, quadriplegia, paraplegia, the loss of function of any organ or limb or disfiguring scars associated with such procedure or procedures, with the probability of each such risk if reasonably determinable.

(b) The person making the consent acknowledges that such disclosure of information has been made and that all questions asked about the procedure or procedures have been answered in a satisfactory manner.

(c) The consent is signed by the patient for whom the procedure is to be performed, or, if the patient for any reason including, but not limited to, competence, infancy or the fact that, at the latest time that the consent is needed, the patient is under the influence of alcohol, hallucinogens or drugs, lacks legal capacity to consent, by a person who has legal authority to consent on behalf of such patient in such circumstances.

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Except as herein provided, no evidence shall be admissible to impeach, modify or limit the authorization for performance of the procedure or procedures set forth in such written consent. This Section shall not effect a physician's right to obtain the oral or implied consent of a patient to a medical procedure.

SOURCE: GC § 9995.3.

§ 11105. Persons Who May Consent to Surgical or Medical Treatment.

In addition to such other persons as may be authorized and empowered, any one of the following persons is authorized and empowered to consent, either orally or otherwise, to any surgical or medical treatment or procedures including autopsy not prohibited by law which may be suggested, recommended, prescribed or directed by a duly licensed physician:

- (a) Any adult, for himself;
- (b) Any parent, whether an adult or a minor, for his minor child;
- (c) Any married person, whether an adult or a minor, for himself, and for his spouse;
- (d) Any person temporarily standing in loco parentis whether formally serving or not, for the minor under his care and any guardian, for his ward;
- (e) Any female regardless of age or marital status, for herself when given in connection with pregnancy or childbirth;
- (f) In the absence of a parent, any adult, for his minor brother or sister;
or
- (g) In the absence of a parent, any grandparent for his minor grandchild.

SOURCE: GC § 9995.4.

§ 11106. Emergencies.

In addition to any other instance in which a consent is excused or implied at law, a consent to surgical or medical treatment or procedures, suggested, recommended, prescribed or directed by a duly licensed physician, will be implied where an emergency exists. For the purposes hereof, an emergency is defined as a situation wherein, (a) in competent medical judgment, the proposed surgical or medical treatment or procedures are reasonably necessary, and (b) a person authorized to consent under this Section is not readily available, and any delay in treatment could reasonably

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be expected to jeopardize the life or health of the person effected, or could reasonably result in disfigurement or impair faculties.

SOURCE: GC § 9995.5.

§ 11107. Construction of Part.

The provisions of this Section shall be liberally construed, and all relationships set forth herein shall include the marital, adoptive, foster and step-relations as well as the natural whole blood. A consent by one person so authorized and empowered shall be sufficient. Any person acting in good faith shall be justified in relying on the representations of any person purporting to give such a consent, including, but not limited to, his identity, his age, his marital status, his emancipation, and his relationship to any other person from whom the consent is purportedly given.

SOURCE: GC § 9995.6.

§ 11108. Right of Adult to Refuse Treatment as to His Own Person Not Abridged.

Nothing contained herein shall be construed to abridge any right of a person eighteen (18) years of age or over to refuse to consent to medical or surgical treatment as to his own person.

SOURCE: GC § 9995.7.

§ 11109. Chapter Not Applicable to Care and Treatment of Mentally Ill.

The provisions of this Chapter shall not apply to the care and treatment of the mentally ill, which subject shall continue to be governed by existing law independently of the terms and provisions of this Act.

SOURCE: GC § 9995.8.

§ 11110. Disciplinary Proceedings.

(a) Investigations. The Commission on Licensure to Practice the Healing Art in Guam, hereinafter referred to as the Licensure Commission, shall employ such qualified investigators and attorneys as are necessary to fully implement their authority to revoke, suspend, limit or otherwise regulate the licenses of physicians; issue reprimands, fines, require refresher educational courses, or require licensees to submit to medical treatment.

(b) Hearings.

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(1) The Licensure Commission shall appoint, with the approval of the Governor, such hearing examiners as shall be necessary to conduct hearings in accordance with § 11110 part (a) of this Chapter.

(2) The Licensure Commission shall have the power to adopt and promulgate rules and regulations setting forth the functions, powers, standards and duties to be followed by any hearing examiners appointed under the provisions of this Section.

(3) Such hearing examiners shall have the power to conduct hearings in accordance with the regulations of the Licensure Commission and its Boards of Examiners, and to issue subpoenas requiring the attendance and testimony of individuals or the production of pertinent books, records, documents and papers by persons whom they believe to have information relevant to any matter pending before the examiner. Such examiner shall also have the power to administer oaths.

(c) Hearing Examiners Decisions. The hearing examiner shall hear evidence submitted and arguments of counsel, if any, with reasonable dispatch, and shall promptly record his decision, supported by findings of fact, and a copy thereof shall immediately be sent to the Licensure Commission and to counsel of record, or the parties, if not represented.

(d) Evidence. In all hearings proof may be made by oral testimony or by deposition or interrogatories. Such depositions shall be taken in the manner and upon the notice required by the rules for taking depositions in civil cases and may be introduced into evidence without regard to the availability of the witness to testify at the time of trial. Any witness, however, may be subpoenaed by any party to the controversy to testify pursuant to the rules appropriate to civil actions and shall be considered to be witness of the party who offered the deposition.

(e) Review of the Licensure Commission.

(1) If application for review is made to the Licensure Commission within twenty (20) days from the date of any decision made as a result of a hearing held by a hearing examiner, the Licensure Commission shall review the evidence, and if deemed advisable by the Board, hear argument and additional evidence.

(2) As soon as practicable, the Licensure Commission shall make a decision and shall file the same with its finding of the facts on which it is based and send a copy thereof to each of the parties in dispute.

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(f) Appeals. Decision by the Licensure Commission shall be conclusive and binding as to all questions of fact, but any medical practitioner may, within thirty (30) days from the date of such decision appeal to the Superior Court of Guam alleging certain error of law under the same terms and conditions as cover appeals in actions involving licensing agencies.

SOURCE: GC § 9995.9.

§ 11111. General Provisions.

(a) There shall be no liability on the part of and no cause of action for libel or slander shall arise against any member of the Licensure Commission, its administrator or any commissioners' representatives for any action taken by any of them in the performance of their respective powers and duties under this Chapter.

SOURCE: GC § 9995.10.

§ 11112. Admissibility of Expressions of Sympathy *or* Benevolence.

(a) In any civil action that is brought against a health professional, as defined in §11102, *or* in any arbitration proceeding that relates to the civil action, a statement, writing *or* benevolent gesture that:

(1) expresses sympathy *or* a general sense of benevolence relating to the pain, suffering *or* death of the patient involved in the incident with the health professional; and

(2) is made to the patient *or* to the family of the patient is inadmissible as evidence of an admission of liability.

A statement of fault, however, which is part of, *or* in addition to, any of the above *shall* be admissible.

SOURCE: Added by P.L. 29-081:3 (May 9, 2008).
