

GOVERNMENT OF GUAM
OFFICE OF THE GOVERNOR
AGANA, GUAM

EXECUTIVE ORDER NO. 76-24


MALPRACTICE CLAIMS MANDATORY SCREENING AND
MANDATORY ARBITRATION ACT REGULATIONS

WHEREAS, Section 990.13(a) of the Government Code authorizes the adoption of regulations with respect to the above Act; and

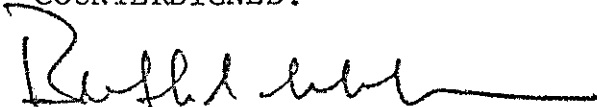
WHEREAS, the "Commission on Licensure to Practice the Healing Art" and the Office of the Attorney General held a public hearing on June 29, 1976 after due notice as required by law to consider the adoption of said regulations;

NOW, THEREFORE, I, RICARDO J. BORDALLO, Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam, do hereby approve and promulgate the regulations entitled "Mandatory Claims Mandatory Screening and Mandatory Arbitration Act Regulations".

Dated at Agana, Guam, this 3rd day of August,
1976.


RICARDO J. BORDALLO
Governor of Guam

COUNTERSIGNED:


RUDOLPH G. SABLAN
Lieutenant Governor

Distributed 8/4

MALPRACTICE CLAIMS MANDATORY SCREENING AND
MANDATORY ARBITRATION ACT REGULATIONS

1.01 As used in these rules and regulations:

(a) "Health Professional" means any person licensed or certified to practice the healing arts within the Territory of Guam.

(b) "Health Care Institution" means any health care facility or health maintenance organization operated primarily to provide the services 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.

1.02 No civil action arising from a claim for damages on account of alleged medical malpractice on the part of any health professional or health care institution shall be commenced in the Superior Court of Guam unless there has been a screening and arbitration of the claim pursuant to Section 9900 et seq. of the Government Code.

1.03 Arbitration may be voluntary or mandatory.

VOLUNTARY ARBITRATION

2.01 Parties may, by agreement in writing, voluntarily submit to arbitration any controversy arising between them.

2.02 An agreement to arbitrate shall be valid, binding, and enforceable as a proper exercise of public policy.

2.03 Nothing in the "Medical Malpractice Claims Mandatory Screening and Mandatory Arbitration Act" shall be construed to impose any limitations on the right of any person to enter into an agreement to arbitrate a dispute or to be bound by the decision thereof.

2.04 Voluntary arbitration shall be initiated by the filing of a petition requesting screening of the claim with the Superior Court of Guam, pursuant to Section 9990.3 et seq. of the Government Code.

2.05 Whenever a petition is filed requesting the convening of the screening panel, such petition shall state the legal basis for the claim, the standard of care allegedly departed from by the defendant, the type of loss sustained, the specific injury and the claimed loss of earnings.

2.06 A screening panel shall be appointed to review the claim and decide the issue of liability.

2.07 The presiding member of the screening panel shall, upon the request of any party, order that a transcript be made of the hearing. The expense of preparing the transcript shall be the responsibility of the requesting party or parties.

2.08 No member of a screening panel shall participate in its decision, unless such member was in attendance during the presentation of all of the evidence.

- 2.09 The decision of the panel shall be final and shall be binding upon the parties.
- 2.10 After a finding of liability, the panel shall continue the proceedings for the purpose of determining damages and assisting the parties in reaching a settlement. Upon the application of a party, the panel may provide for periodic payments of damages rather than by a lump sum payment.
- 2.11 Any party may move to vacate, modify, or confirm the decision of the panel upon the grounds specified in Section 9990.10(i)(k) of the Government Code
- 2.12 Pursuant to Section 9990.13 of the Government Code, no de novo action shall be commenced in the Superior Court if the parties have voluntarily agreed to submit to arbitration.

MANDATORY ARBITRATION

- 3.01 In the event there is no agreement to arbitrate a claim for damages on account of an alleged medical malpractice on the part of any health professional or health care institution, there shall be mandatory screening and arbitration of such claim pursuant to Section 9990.3 et seq. of the Government Code.
- 3.02 Whenever a petition is filed requesting the convening of the screening panel, such petition shall state the legal basis for the claim, the standard of care allegedly departed from by the defendant, the type of loss sustained, the specific injury and the claimed loss of earnings.
- 3.03 A screening panel shall be appointed to review the claim and decide the issue of liability.
- 3.04 The presiding member of the panel shall, upon the request of any party, order that a transcript be made of the hearing. The expense of preparing the transcript shall be the responsibility of the requesting party or parties.
- 3.05 No member of a screening panel shall participate in its decision, unless such member was in attendance during the presentation of all of the evidence.
- 3.06 (a) If there is no finding of liability by the panel, plaintiff may appeal the panel's findings to the Superior Court of Guam.
- (b) In the event the Superior court denies the appeal, plaintiff shall have the right pursuant to Section 9990.13(a) to commence a civil action in the Superior Court for damages on account of the alleged medical malpractice on the part of the health professional or health care institution.
- (c) The panel's findings shall be admissible as evidence.
- 3.07 If there is a finding of liability, the panel shall continue the proceedings for the purpose of determining damages and assisting the parties in reaching a settlement. Upon the application of a party, the panel may provide for periodic payments of damages rather than by a lump sum payment.
- 3.08 Any party may, pursuant to Section 9990.10, petition the Court to confirm, correct, or vacate the award.

- 3.09 In the event the Superior Court denies the petition to vacate, correct, or confirm the award, a party shall have the right pursuant to Section 9990.13(a) to commence a civil action in the Superior Court for damages on account of the alleged malpractice. The panel's findings shall be admissible as evidence.

PROCEDURE FOR CONDUCT OF PANEL HEARINGS

- 4.01 The hearing shall be called to order by the presiding panel member.
- 4.02 (a) The panel members shall be introduced by the presiding member.
(b) All panel members shall then be sworn to hear the claim and render a decision faithfully and fairly by an officer authorized to administer an oath.
- 4.03 (a) All witnesses shall be identified.
(b) They shall be excluded from the hearing room unless good cause can be shown by any party why a witness should not be excluded.
- 4.04 The panel shall permit both parties to make an opening statement.
- 4.05 Upon the request of any party, the testimony of witnesses shall be given under oath.
- 4.06 (a) Technical rules relating to the admissibility of evidence shall not be strictly enforced. Irrelevant and unduly repetitious evidence shall be excluded.
(b) Decisions as to the admissibility of evidence or testimony shall be made by the presiding panel member.
- 4.07 The rules of privilege shall be effective to the same extent they are recognized in civil actions.
- 4.08 Each panel member shall have the right to question any witness.
- 4.09 The plaintiff shall present his case.
- 4.10 The defendant shall have the right to cross-examine plaintiff's witnesses.
- 4.11 The defendant shall present his case.
- 4.12 The plaintiff shall have the right to cross-examine defendant's witnesses.
- 4.13 After conclusion of all the evidence, the panel shall permit the parties to make their closing statements and shall permit the parties to submit a memorandum of law.
- 4.14 The case shall then be taken under advisement and the hearing concluded.