

**GUAM BOARD OF ALLIED HEALTH EXAMINERS  
HEALTH PROFESSIONAL LICENSING OFFICE**

Terlaje Professional Bldg., Conference Rm 209, 194 Hernan Cortez Avenue, Hagåtña.

**REGULAR SCHEDULED SESSION**

**AGENDA**

**Friday, December 6, 2019**

- I. **Call to Order**  
Confirmation of Public Notice - Newspaper clippings showing that the subject meeting was advertised in the Guam Daily Post on November 29 and December 4, 2019.
- II. **Adoption of Agenda**
- III. **Minutes of November 8, 2019** - Regular Scheduled Meeting for Review and Approval
- IV. **Treasurer's Report** - Catherine San Nicolas
- V. **HPLO Administrator's Report** - Zennia Pecina
- VI. **Old Business:**
  - A. **Legal Counsel Report** - Robert Weinberg, Assistant Attorney General
  - B. **Attorney General's Opinion on Testimonial Advertisement**
  - C. **Workgroup Meeting**
  - D. **Complaints:**
    1. **No. 2019-01 David Lubofsky against Ethan Snider, PA-C**
  - E. **Application:**
    1. **Joleen Baza, for Licensed Professional Counselor**
  - F. **Application Form for Military Health Provider Volunteers**
- VII. **New Business:**
  - A. **Association of State and Provincial Psychology Boards (ASPPB)**  
**Adoption of Examination for Professional Practice in Psychology 2 (EPPP2 measuring competency)**
- VIII. **Miscellaneous:**
- IX. **Next Meeting** - Friday, January 10, 2020 at 12:00 noon, HPLO Conference Room 209
- IX. **Adjournment**

**HEALTH PROFESSIONAL LICENSING OFFICE**  
 Terfaje Professional Bldg., Conference Rm. 209, 194 Hernan Cortez Ave., Hagatna, Guam 96910  
**GUAM BOARD OF ALLIED HEALTH OF EXAMINERS**  
**MINUTES OF November 8, 2019**

**Present:** Dr. Mammie Balajadia, Chair; Dr. Greg Miller, Vice-Chair; Nadine Cepeda, Secretary; Catherine San Nicolas, Treasurer; Dr. Dennis Triolo, Member; Sibyl Crisostomo, Member; Vince Pereda, Member; Dr. Richard Chong, Member; Dr. Ryan Claros, Member; Alesia Ogo, Member.  
**Absent:** Ray Tajalle, Member; Greg Cruz, Member.

**Others Present:** AAG Rob Weinberg, Legal Counsel; Mae Pangelinan, Staff of HPLO; Zennia Pecina, Administrator of HPLO.

TOPIC		DECISION(S)/ ACTION(S) MADE		RESPONSIBLE PARTY	REPORTING TIMEFRAME	QUORUM MET
I.	Call to Order:	Meeting was called to Order at 12:13 p.m.		Chair		Yes
II.	Proof of Publication:	Subject Meeting was published in the Guam Daily Post on October 31 and November 6, 2019.		HPLO Staff		
III.	Adoption of Agenda:	Motioned by Dr. Miller. Seconded by Ms. Crisostomo.				
IV.	Minutes of: October 4, 2019	Corrections: 1) Sibyl Crisostomo was absent on October 4 <sup>th</sup> Meeting. 2) Under Item V Treasurer's Report, Financial Report was provided to the Board by Treasurer Catherine San Nicolas. 3) Under Item VI Old Business, Legal Counsel Report, a) "RFQ (Request For Quote) was contacting three (3) Lawyers for a price quote." b) That future RFP's (Request For Proposal) should seek for a Primary and "Conflict Counsel." With above Corrections noted, Minutes were approved per Motioned by Dr. Miller. Seconded by Dr. Triolo				
V.	HPLO Administrator's Report:	Ms. Zennia Pecina provided explanation 1) Financial Report of HPLO and GBAHE. 2) Reminded Members of required Financial Discloser for submission to the Guam Election Commission. 3) The last scheduled Boards' Education Class is on November 15 <sup>th</sup> , 11:00 am to 1:00 pm. 4) National Guard's Medical Mission, per Public Law 24-128, along with volunteer military health providers, are scheduled for June 2020, to provide health services off-base. GBAHE are requested to edit the current Application Form for military Volunteers. 5) Nadine Cepeda's term, as a				

	<p>Board member, expires in December 2019. She was given a new Application Form to complete in order to be re-appointed by the Governor and for Legislative Confirmation. 6) Ms. Pecina provided the Board the funding, thus far, for HPL0 and amount available for each Board. The GBAHE has \$39,033 available. The Board requested that this amount be used to procure an attorney to address outstanding Complaints filed with the Board.</p> <p>HPL0 need a Revolving Fund, per legislation, that can be carried over to the following fiscal year, and not subject to the Governor's Transfer Authority. This is so that the Boards are able to follow their mandates and able to procure an Investigator, Inspector, and legal services as well as for Board training; to pay National Licensing Boards' Dues, subscriptions and journals; and other related Boards' activities.</p>	Ms. Pecina		
<p><b>VI.</b></p> <p><b>Old Business:</b></p>	<p>A) Legal Counsel's Report: None. B) AG's Opinion on Testimonial Advertisement was being finalized. C) Work Group Meeting is on-going. Working on the Rules and Regulations.</p> <p>D) Complaints:</p> <p>1) 2018-01 David Lubofsky against Ethan Snider, PA-C was tabled.</p> <p>2) 2018-03 American Medical Center against Tiffany Troxel, PA-C.</p> <p>The Chair reported on the chronology of communications between Ms. Troxel and AMC Supervisor of Medical Records and Billing Department since 01/04/2019 to 02/07/2019 on the charting of 132 Medical Records, but incomplete as of this reporting date.</p> <p>Mr. Tajalle had multiple email correspondence with Ms. Troxel from 12/05/2018 to 09/30/2019.</p> <p>Given that Ms. Troxel had failed to complete her chartings of Medical Records at AMC despite "her indications that she would do so," the Guam Board of Allied Health Examiners voted on 11/08/2019 to report to the National Practitioner Data Bank on Tiffany Troxel, PA-C that she chose not to renew her Physician Assistant License that expired on December 31, 2018 while she was under investigation by the Board.</p> <p>3) 2019-02 Duenas against Joel Joseph, DVM. Ms. Duenas submitted to HPL0 Medical Records notes made by Dr. Joseph on her pet.</p> <p>4) 2015-06 Bustamante against Joel Joseph, DVM. The case had been on hold due to the absence of an attorney to address the Complaint. HPL0 recently procured the legal services of Attorney Anthony</p>	<p>Ray Tajalle</p> <p>Zennia Pecina to report to NPDB</p>		

		<p>concluded. However, a written appeal was received from Callanovic has been seeing Dr. Joseph for his 2 dogs. According to Legal Counsel, Mr. Bustamonte has been in Arbitration with Dr. Joseph.</p> <p>E) Applications:  1) <b>Rita Jounng Sook Lee</b> for Acupuncture (Reviewed by Dr. Chong) TABLED due to no licenses and transcripts in file.  2) <b>Julius Navarro</b> for Clinical Dietitian (Reviewed by Catherine San Nicolas) Approved for Licensure. Motioned by Ms. San Nicolas. Seconded by Dr. Chong.</p> <p>F) <b>Bill 187-35 Rules and Regulation on Codes of Professional Conduct and Ethics</b> was passed 15-0 on 10/31/19 by the 35<sup>th</sup> Guam Legislature.</p>			
<p><b>VII.</b></p>	<p><b>New Business:</b></p>	<p>A) Dr. Keith Horinouchi was present at the subject meeting to discuss his ordering of laboratory workups. Dr. Horinouchi said that he has been ordering lab workups for 36 years and for the last 26 years of his practice on Guam. According to Legal Counsel, the current law did not state that Dietitians can order laboratory work-ups. Until an amended statute stated that the Dietitian can order labs, the Dietitians are not authorized to do so. The Chair will write a letter to Dr. Horinouchi that ordering labs are not within the Dietitian's scope of practice. Dr. Miller discussed that Chiropractors are considering on ordering labs under their scope of practice.</p> <p>B) Hawaii Diagnostic Laboratory Services (DLS), Compliance Department, via emails, to HPLQ questioned whether Nutritionists are within their scope of practice to order laboratory workups of patients. The question was answered under A).</p> <p>C) Complaints:  1) 2019-04 Emily Brody against Lisa Silk, DVM  2) 2019-05 Robert Hildreth, DVM against Lisa Silk, DVM  Legal Counsel will forward these two (2) complaints to Attorney Anthony Carmacho to address.</p> <p>D) New Application:  1) Gyu Chang Lee for Physical Therapy (reviewed by Claros)  Approved for licensure. Motioned by Dr. Miller. Seconded by Ms. Cepeda.</p>	<p>Dr. Balajadia</p>	<p>AAG Weinberg</p>	
<p><b>VIII.</b></p>	<p><b>Miscellaneous:</b></p>	<p>A) The Guam Medical Malpractice Mandatory Arbitration Act. Chair reported that she attended the Public Hearing on 11/07/2019. The</p>			

		<p>meeting was well attended by members of the Guam Medical Society          B) and the Guam Medical Association.          C) The issue of whether a stateside Licensed Professional Counselor (LPC) working with military families on military base are required to obtain a Guam license while employed under federal contract, off-base. TABLED.</p>	Ms. Cepeda		
IX.	<b>Next Meeting:</b>	Friday, December 6, 2019			
X.	<b>Adjournment:</b>	Motioned to adjourn by Ms. Cepeda. Seconded by Ms. Crisostomo. Meeting Adjourned at 1:49 pm.			

Minutes Approved by: Manue Udalagada 12/06/2019  
 Board Chair or Secretary Date



**EDDIE BAZA CALVO**  
Governor

**RAY TENORIO**  
Lieutenant Governor

*Office of the Governor of Guam*

OCT 17 2018

Vice Speaker Therese M. Terlaje

34GL-18-2465

OCT 23 2018

Time: 10:37am

Received by: *Y*

Honorable Therese M. Terlaje  
Acting Speaker  
*I Mina'trentai Kudttro Na Liheslaturan Gudhan*  
Guam Congress Building  
163 Chalan Santo Papa  
Hagåtña, Guam 96910

Dear Madam Speaker:

Transmitted herewith is Bill No. 129-34 (COR), "AN ACT TO ADD A NEW § 12805(j) TO ARTICLE 8 OF PART 1, CHAPTER 12, TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO THE ESTABLISHMENT OF A MILITARY LIMITED VOLUNTEER MEDICAL LICENSE FOR ALLIED HEALTH PRACTITIONERS LICENSED WITH THE GUAM-BASED MILITARY CREDENTIALING OFFICE TO ENABLE THEM TO VOLUNTEER IN THE CIVILIAN COMMUNITY," which was signed on October 17, 2018, as Public Law 34-128.

*Senseramente,*

  
**EDDIE BAZA CALVO**

2018 OCT 23 PM 12:29



**I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN**  
**2018 (SECOND) Regular Session**

**CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LÁHEN GUÁHAN**


This is to certify that Bill No. 129-34 (COR), "AN ACT TO ADD A NEW § 12805(j) TO ARTICLE 8 OF PART 1, CHAPTER 12, TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO THE ESTABLISHMENT OF A MILITARY LIMITED VOLUNTEER MEDICAL LICENSE FOR ALLIED HEALTH PRACTITIONERS LICENSED WITH THE GUAM-BASED MILITARY CREDENTIALING OFFICE TO ENABLE THEM TO VOLUNTEER IN THE CIVILIAN COMMUNITY," was on the 4<sup>th</sup> day of October 2018, duly and regularly passed.

  
\_\_\_\_\_  
Therese M. Terlaje  
Acting Speaker

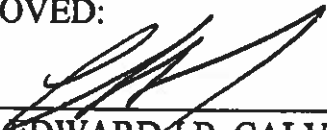
Attested:

  
\_\_\_\_\_  
Régine Biscbe Lee  
Legislative Secretary

-----  
This Act was received by *I Maga'láhen Guáhan* this 17<sup>th</sup> day of OCTOBER,  
2018, at 1:00 o'clock P.M.

  
\_\_\_\_\_  
Assistant Staff Officer  
*Maga'láhi's Office*

APPROVED:

  
\_\_\_\_\_  
EDWARD J.B. CALVO  
*I Maga'láhen Guáhan*

Date: OCT 17 2018

Public Law No. 3A-128

**I MINA'TRENTAI KUÁTTRO NA LIHESLATURAN GUÁHAN  
2017 (FIRST) Regular Session**

**Bill No. 129-34 (COR)**

Introduced by:

Dennis G. Rodriguez, Jr.  
Joe S. San Agustin  
Fernando Barcinas Esteves  
Tommy Morrison  
FRANK B. AGUON, JR.  
William M. Castro  
Telena Cruz Nelson  
Louise B. Muña  
Thomas C. Ada  
James V. Espaldon  
Régine Biscoe Lee  
Michael F.Q. San Nicolas  
Therese M. Terlaje  
Mary Camacho Torres

**AN ACT TO ADD A NEW § 12805(j) TO ARTICLE 8 OF PART 1, CHAPTER 12, TITLE 10, GUAM CODE ANNOTATED, RELATIVE TO THE ESTABLISHMENT OF A MILITARY LIMITED VOLUNTEER MEDICAL LICENSE FOR ALLIED HEALTH PRACTITIONERS LICENSED WITH THE GUAM-BASED MILITARY CREDENTIALING OFFICE TO ENABLE THEM TO VOLUNTEER IN THE CIVILIAN COMMUNITY.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Findings and Intent.** *I Liheslaturan Guáhan*  
3 acknowledges that the military medical community has a long and proud continuing  
4 history on Guam and it is beneficial to continue this tradition of cooperation for the  
5 betterment of our people and the military community. The legacy of military medical



1 personnel working in the Guam community is marked with many significant events  
2 that built the camaraderie we experience today.

3 *I Liheslaturan Guåhan* further acknowledges that the Health Resources and  
4 Services Administration (HRSA) deems Guam as a Health Professional Shortage  
5 Area (HPSA). The shortage of healthcare providers has a significant impact on  
6 patients seeking medical care. Oftentimes, this shortage causes a delay in the  
7 treatment of minor concerns that then exacerbate into greater concerns due to the  
8 lack of timely attention, and thus results in greater anguish and cost for the patient.  
9 The early identification of medical issues is proven time and again to effect the  
10 greatest possible outcome.

11 It is, therefore, the intent of *I Liheslaturan Guåhan*, in recognizing the  
12 invaluable contributions made by our military health care system and the recognized  
13 need to increase our provider base, to establish an expedited Military Limited  
14 Volunteer Medical License within the Guam Board of Allied Health Examiners. This  
15 license is to be made available, at no cost, to a practitioner who is authorized to treat  
16 personnel enlisted in a branch of the United States armed forces or veterans, and is  
17 limited to the practice of medicine for no compensation in clinics and outreach  
18 events that serve indigent populations.

19 **Section 2.** A new § 12805(j) is *added* to Article 8 of Part 1, Chapter 12,  
20 Title 10, Guam Code Annotated, to read:

21 “(j) The Board is authorized to issue a Military Limited Volunteer  
22 Medical License to an applicant who:

23 (1) is licensed and in good standing as an allied healthcare  
24 provider in another state;

25 (2) maintains credentials within the military credentialing  
26 system and authorizes the Guam-based Military Credentialing Office to

1 provide to the Guam Board of Allied Health Examiners the required  
2 verification documents and military commander's approval; and

3 (3) agrees to be subject to Board rules and regulations,  
4 including those regarding disciplinary action, license registration and  
5 renewal, and continuing medical education, throughout the duration of  
6 Military Limited Volunteer Medical licensure.

7 A Military Limited Volunteer Medical License *shall* be issued at no charge to  
8 the applicant, is valid for a period of two (2) years, and may be renewed and  
9 maintained according to registration requirements as prescribed by the Board.

10 The applicant who practices in the allied health fields on Guam under a license  
11 issued under this Subsection may only practice at a clinic or outreach event  
12 that primarily provides services for indigent populations, and the practitioner  
13 *shall not* receive direct or indirect compensation or payment of anything of  
14 monetary value in exchange for the medical services rendered by the  
15 practitioner to the indigent patients at the clinic or outreach event. The license  
16 *shall* be in effect upon receipt of the application packet by the Guam Board of  
17 Allied Health Examiners, subject to final review. This presumptive eligibility  
18 for licensure is contingent upon the appropriate military commander's  
19 authorization allowing the practitioner to practice in the community and the  
20 appropriate collaborative sharing of information between the Military  
21 Credentialing Office and the Guam Board of Allied Health Examiners."

22 **Section 3. Severability.** If any provision of this Act or its application to  
23 any person or circumstance is found to be invalid or contrary to law, such invalidity  
24 *shall not* affect other provisions or applications of this Act that can be given effect  
25 without the invalid provisions or application, and to this end the provisions of this  
26 Act are severable.

1           **Section 4. Effective Date.** This Act *shall* become immediately effective  
2 upon enactment.

Medical - Allied Health

Bill No.	Author	Title	Date Introduced	Date Reported	Date Received	Public Law	Committee	Fiscal Notes	Notes
125-24 (CON)	Donald C. Rindge, Jr. Fernando B. Estro Tommy A. Morrison Robert B. Aguirre, Jr. William M. Gallo Thomas C. Nelson Loren B. Miller	AN ACT TO ADD A NEW SECTION TO CHAPTER 12, PART 1, ARTICLE 8 OF TITLE 10, GUAM CODE, CONCERNING REGULATIONS RELATIVE TO THE ESTABLISHMENT OF A LIMITED LICENSE VOLUNTEER MEDICAL LICENSE FOR ALLIED HEALTH PRACTITIONER LICENSE WITH THE GUAM BOARD OF ALLIED HEALTH CARE/REGULATING OFFICE TO EMERITUS VOLUNTEERS IN THE CRUISE COMMUNITY	02/21/17 4:33 pm	7/20/17	Committee on Health Services, Tourism, Hospitality and Culture 10/17/18	02/21/17 4:00 pm	Health Services 11/08/18	Fiscal Note None Filled Note None 07/26/17	Received 10/21/18 Health and Comm. Doc. No. JAGC 17-2445
	SESSION DATE	TITLE	DATE PASSED	TRANSMITTED	DATE	PUBLIC LAW	DATE		
	10/07/18		10/04/18	10/05/18 1:00 pm	10/17/18	NA	02/17/18		



# Office of the Attorney General of Guam

590 S. Marine Corps Drive, Suite 901 ♦ Tamuning, GU 96911

Phone: 671.475.3324 extension 5015 ♦ Fax: 671.477-4703 ♦ Email: law@guamg.org

Hon. Leevin Taitano Camacho  
Attorney General of Guam

November 26, 2019

OPINION MEMORANDUM

Ref: DPHSS 19-0317

TO: Chair, Guam Board of Allied Health Examiners

FROM: Attorney General <sup>LC</sup>

SUBJECT: Enforceability of Prohibitions on Patient Testimonials.

---

We have received your request for a legal opinion concerning the enforceability of statutory prohibitions on advertising by health professionals licensed by the Guam Board of Allied Health Examiners (“GBAHE”) which contain testimonials from patients or other persons.

### Question Presented

Does the statutory prohibition on testimonials from patients or others in advertising impermissibly infringe on speech protected by the First Amendment? We believe so.

### Discussion

Guam law provides that health professionals licensed by the GBAHE are “prohibited from advertisements, which include . . . testimonials from patients or other persons.” 10 GCA § 12816(b)(10). The Guam Board of Dental Examiners has a practically identical restriction in its administrative rules and regulations that prohibits advertising which contains “testimonials from patients or other persons.” 25 GAR § 8103(n)(1)(x). The restriction on testimonials in advertising by health professionals first appeared in the *Guam Allied Health Practice Act of 1999*, P.L. 24–32, signed into law December 31, 1999. Since then, similar restrictions on the use of patient testimonials in advertising by licensed professionals have been held unconstitutional by federal and state courts in other jurisdictions.

The United States Supreme Court has held that advertising is commercial speech protected by the First Amendment. *See Virginia State Board of Pharmacy v.*

*Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976); *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977); *Ohralik v. Ohio State Bar Assoc.*, 436 U.S. 447 (1978); *Florida Bar v. Went For It, Inc.*, 515 U.S. 618 (1995). The fact that speech involves a commercial transaction does not lessen its value or its protection under the First Amendment. “[T]he extension of First Amendment protection to commercial speech is justified principally by the value to consumers of the information such speech provides.” *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 651 (1985) (citing *Virginia Pharmacy Board*). Commercial speech “not only serves the economic interest of the speaker, but also assists consumers and furthers the societal interest in the fullest possible dissemination of information.” *Central Hudson Gas & Electric Corp. v. Public Service Comm’n of New York*, 447 U.S. 557, 561–62 (1980) (citing *Virginia Pharmacy Board*, 425 U.S. at 761–762). “Even when advertising communicates only an incomplete version of the relevant facts, the First Amendment presumes that some accurate information is better than no information at all.” *Id.* 447 U.S. at 562 (citing *Bates*, 433 U.S. at 374).

Not all commercial speech is entitled to the same level of protection. “Misleading advertising may be prohibited entirely. But the States may not place an absolute prohibition on certain types of potentially misleading information . . . if the information also may be presented in a way that is not deceptive.” *In re R.M.J.*, 455 U.S. 191, 203 (1982). “A regulation that restricts potentially misleading commercial speech will pass constitutional muster if ‘the regulation directly advances a substantial government interest’ and ‘is not more extensive than is necessary to serve that interest.’” *Public Citizen Inc. v. Louisiana Attorney Disciplinary Bd.*, 632 F.3d 212, 218 (5th Cir. 2011) (quoting *Central Hudson*, 447 U.S. at 566).

Thus, although commercial speech may be protected by the First Amendment, not all regulation of it is unconstitutional. *Thompson v. Western States Medical Center.*, 535 U.S. 357, 367 (2002) (citing *Virginia Bd. of Pharmacy*, 425 U.S. at 770). But a restriction on commercial speech will survive First Amendment scrutiny only if it can satisfy the Supreme Court’s test articulated in *Central Hudson*:

Under that test [the courts ask] as a threshold matter whether the commercial speech concerns unlawful activity or is misleading. If so, then the speech is not protected by the First Amendment. If the speech concerns lawful activity and is not misleading, however, [the courts] next ask “whether the asserted governmental interest is substantial.” If it is, [the courts must] “determine whether the regulation directly advances the governmental interest asserted,” and, finally, “whether it is not more extensive than is necessary to serve that interest.” Each of these latter three inquiries must be answered in the affirmative for the regulation to be found constitutional.”

*Thompson*, 535 U.S. at 367 (quoting *Central Hudson*, 447 U.S. at 566). “This test is motivated by the principle that ‘people will perceive their own best interests if only they are well enough informed, and . . . the best means to that end is to open the channels of communication rather than to close them.’” *Public Citizen Inc.*, 632 F.3d at 219 (quoting *Va. Bd. of Pharmacy*, 425 U.S. at 770).

Applying *Central Hudson* to Guam’s allied health professions licensing law we first ask whether the restriction on commercial speech advances a substantial government interest. Here, we may presume that it does. The Legislature’s intent is “to protect the public against unprofessional, improper, incompetent, unlawful, fraudulent or deceptive practices by persons who practice the healing arts.” 10 GCA § 12801(b). The government has a substantial interest in “ensuring the accuracy of commercial information in the marketplace” and “maintaining standards of ethical conduct in the licensed profession.” *Edenfield v. Fane*, 507 U.S. 761, 769–70 (1993). We believe that courts would agree the government of Guam’s interest in protecting the public is substantial.

The next question is whether the prohibition on “testimonials from patients or other persons” found in § 12816(b)(10) restricts speech that is inherently misleading or speech that is only potentially misleading. *Central Hudson*, 447 U.S. at 563–64. It has been argued, unsuccessfully, “that testimonials can be misleading because they may suggest that past results indicate future performance.” *Alexander v. Cahill*, 598 F.3d 79, 92 (2d Cir. 2010). But even if *some* testimonials may have the potential to mislead by suggesting that past performance predicts future results, testimonials are not, in and of themselves, inherently misleading. *Id.* “Even if . . . the prohibited speech has the potential for fostering unrealistic expectations in consumers, the First Amendment does not tolerate speech restrictions that are based only on a ‘fear that people would make bad decisions if given truthful information.’” *Public Citizen Inc.*, 632 F.3d at 222 (quoting *Thompson*, 535 U.S. at 359). The government’s “paternalistic assumption that the public will use truthful, nonmisleading commercial information unwisely cannot justify a decision to suppress it.” 44 *Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 497 (1996) (discussing *Va. Bd. of Pharmacy*, 425 U.S. at 765). Here the law becomes more difficult to defend.

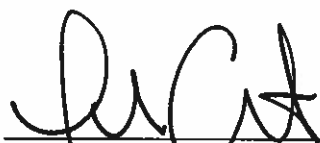
Even if we presume that the government’s interest in protecting the public against unprofessional or unscrupulous healthcare professionals is substantial, we must be able to demonstrate to the courts that a wholesale prohibition on all patient testimonials “directly advances” that interest. The government’s burden “is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.” *Edenfield v. Fane*, 507 U.S. 761, 770–71 (1993). We do not believe we will be able to meet this burden.

“Under *Central Hudson*, a restriction of speech must serve ‘a substantial interest,’ and it must be ‘narrowly drawn.’ This means, among other things, that ‘[t]he regulatory technique may extend only as far as the interest it serves.’” *Matal v. Tam*, 582 U.S. \_\_\_, \_\_\_, 137 S. Ct. 1744, 1764 (2017) (quoting *Central Hudson*, 447 U.S. at 564–565). Guam’s restriction on commercial speech by healthcare professionals is not narrowly drawn. Compare, *Snell v. Dept. of Professional Regulation*, 318 Ill. App. 3d 972, 980, 742 N.E.2d 1282, 1287 (2001) (“we fail to see any commonsense link between a categorical ban on testimonials, which . . . are not inherently misleading, and the purported harms the State seeks to prevent. In our judgment, such an outright ban does not directly and materially advance the State’s substantial interests.”). Accordingly, we do not believe that Guam’s absolute prohibition on the use of patient testimonials by licensed healthcare professionals will withstand a constitutional challenge.

#### Conclusion

It is our opinion that the Guam Allied Health Practice Act’s prohibition on “testimonials from patients or other persons,” 10 GCA § 12816(b)(10), if challenged in court, would be found unconstitutional. The same is also true of the Guam Board of Dental Examiners’ administrative rules and regulations found at 25 GAR § 8103(n)(1)(x). The courts are likely to find them both unconstitutional and therefore unenforceable.

We trust we have sufficiently addressed your inquiry. For further information concerning this matter, please use the reference number shown above.



---

LEEWIN TAITANO CAMACHO  
Attorney General



---

ROBERT M. WEINBERG  
Assistant Attorney General

cc: Chair, Guam Board of Dental Examiners



# GUAM BOARD OF ALLIED HEALTH EXAMINERS

## Board Meeting Attendance Sheet

194 Hernan Cortez Ave, Hagatna, GU 96910

Health Professional Licensing Office Conference Room 209

Date of Meeting:

December 6, 2019, Friday



Regular Meeting



Special Meeting

Meeting Call to Order

12:07 pm

Time of Adjournment














12:47 pm





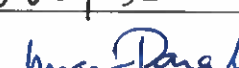
Quorum



No Quorum

BOARD MEMBERS	POSITION	SIGNATURE
Balajadia, Mamie	Chairperson	
Miller, Greg	Vice Chairperson	
Pereda, Vincent	Member	 Absent
Cepeda, Nadine	Secretary	
Claros, Ryan	Member	 Absent
Chong, Richard	Member	
Crisostomo, Sibyl	Member	
Cruz, Greg	Member	
Ogo, Alesia	Member	
San Nicolas, Catherine	Treasurer	
Tajalle, Ray	Member	
Triolo, Dennis	Member	
Rob Weinberg	Legal Counsel	

### OTHERS PRESENT

PRINT NAME	AGENCY	SIGNATURE
Paul Pomes	Self	
Mitch Thompson	ITA	
Mae Pangalina	HPLO	

GUAM DAILY POST • FRIDAY, NOVEMBER 29, 2019

# GMH task force, sex offender registry bills now law

The legislation creating a task force to determine what steps are necessary to build a new public hospital lapsed into law in spite of the governor's concerns that the legislation oversteps the Legislature's authority and contradicts Guam's Organic Act.

Bill 5-35 is now Public Law 35-58, according to a press release from its author Sen. Telo Taitague. All 15 senators voted to pass Bill 5, making it virtually veto proof.

In her transmittal letter to the Speaker on Bill 5 and other bills that deal with public safety and other issues, Gov. Lou Leon Guerrero cited a 2011 Attorney General opinion regarding the inorganic nature of the Guam First Commission, which was fashioned similar to the task force.

"Unfortunately, the Office of the Attorney General opined in February 2011, that a similar action violated the Organic Act of Guam. In attempting to determine the Organicity of a law establishing 'The Guam First Commission,' the AG wrote in relevant part: 'Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint the agents charged with the duty of such enforcement. The latter are executive functions,'" the governor wrote.

### Governor: Intent of Bill 5 is already being met

The governor also noted that she worked to bring the Army Corps of Engineers to the Guam Memorial Hospital. The group has assessed the hospital and is putting together a report on the structural integrity, the cost of



**OUTBRIEFING:** Lt. Gov. Joshua Tenorio, Guam Memorial Hospital Administrator Lillian Perez-Posadas, GMH administrator of operations William Kando and hospital staff listen to a preliminary report from the Army Corps of Engineers, members of which were on Island assessing Guam's only public hospital on Nov. 22. Haruo Simeon/The Guam Daily Post



**Telo Taitague**



**Lou Leon Guerrero**

repairs, and the cost of rebuilding. That report is expected in March.

"The intent of Bill 5 is already being met," the governor wrote. "With the Army Corps of Engineers' pending analysis and actions already taken by the GMHA Board of Trustees, as well expert opinions, the process for evaluating the facility has already begun."

In a press release distributed Wednesday night, Taitague thanked the governor "for agreeing with the legislature's decision to finally prioritize patient and employee safety at GMHA."

Taitague introduced Bill 5 in January but it was months before a public hearing was held to discuss it.

"I look forward to the task force getting things moving in the days and weeks ahead. As in the case of unsafe conditions which led to the recent closure of the central public health facility, time is definitely not on our side," Taitague said. "Perhaps construction of a new



**Amanda Shelton**

public health facility should be considered as the hospital planning task force moves forward. This makes sense with respect to reducing emergency room costs and addressing personnel needs to name a few."

### Leon Guerrero signs public safety bills into law

The governor took a more direct approach with two other bills, including one that would require people convicted of criminal sexual conduct to be placed on the sex offender registry even if they are appealing their conviction.

Bill 157-35, introduced by Sen. Amanda Shelton, was signed into Public Law 35-51. The legislation empowers survivors of sexual assault by closing loopholes in the sex offender registry, according to the press release.

"I especially want to thank the survivors of sexual assault who were brave enough to bring this loophole to my attention so we could fix it together. Studies show registration of sex offenders reduces rapes. The survivors who had the courage to turn their trauma into advocacy for a better community are real heroes," the senator stated.

Bill 13-35, also related to public safety, was signed into law, too.

Public Law 35-50 aims to protect manānko' (the elderly) and people with disabilities from financial exploitation, which the senator said is on the rise on Guam.

"Care for the manānko' is engrained in our culture, and everyone deserves a life of dignity and respect," Shelton said.

She urges anyone with information on financial exploitation of elders or people with special needs to call Adult Protective Services at 735-7382. There is support available for caretakers as well.

### Other new laws

Bill 40-35 - Sen. Telo Taitague - Establishes the Alcoholic Beverage Compliance Fees and Fines Fund. It is now Public Law 35-53.

• Bill 127-35 - Sen. Kelly Marsh (Taitano) - Establishes an Annual Peace Officers Memorial Day on Guam. It is now Public Law 35-54.

• Bill 131-35 - Sen. Telo Taitague - Authorizes proceeds from the Healthy Futures Fund to be used for the Guam Memorial Hospital Authority Line of Credit. It is now Public Law 35-55.

• Bill 150-35 - Sen. Kelly Marsh (Taitano) - Expands the scope of function and membership of the Islandwide Beautification Task Force. It is now Public Law 35-56.

• Bill 172-35 - Sen. Therese Terlaje - Ensures pre-sentence reports and assessments of offenders by the Guam Parole Board prior to release on parole. It is now Public Law 35-57.

• Bill 86-35 - Speaker Tina Muña Barnes - Updates exterior signage laws in Tumon on H resort-hotel zone and defines and regulates digital signs. It is now Public Law 35-52.

"The array of measures presented to me - from public safety, tourism, health care, regulatory and compliance - demonstrates many areas of priority addressed this legislative session. I look forward to working with the Legislature on measures that strengthen our economy for working families and keep our people safe," the governor said.

(Daily Post Staff)

# HAFA' ADAI BINGO

**BLACK FRIDAY SUPER**

**AT THE GUAM GREYHOUND PARK**  
**FRIDAY, NOVEMBER 29, 2019**  
 DOORS OPEN AT 4:00PM, SESSION STARTS AT 7:30PM | TEL. NUMBER: 969-3673  
 ALL MAJOR CREDIT CARDS ACCEPTED

<b>JUNIOR BLACKOUT</b> INCLUDED IN ALL BUY IN'S! <b>\$7,000 GIVEAWAY</b>	<b>INDIAN STAR</b> INCLUDED IN ALL BUY IN'S! <b>\$2,500 GIVEAWAY</b>
<b>LETTER X</b> INCLUDED IN ALL BUY IN'S! <b>\$2,500 GIVEAWAY</b>	<b>7 PACKAGE GAMES</b> <b>\$2,500</b>

**BUY 2 SAME BUNDLE, BUNDLES EXCLUDED: Letter X, Indian Star & Jr. Blackout. GET ONE FREE**

**\*NO SHARING OF LOCATOR # FOUND SHARING. MANAGEMENT WILL FORFEIT PAYOUTS\***

**\*\*MANAGEMENT RESERVES THE RIGHT TO ALTER OR CANCEL ANY EVENT OR PROGRAM WITHOUT PRIOR NOTICE.**

<b>BUNDLE</b> • BUNDLE A (50 PKGS. + 1 SPC. EA.) \$20 • BUNDLE B (70 PKGS. + 4 SPC. EA.) \$25 • BUNDLE C (100 PKGS. + 5 SPC. EA.) \$40 • BUNDLE D (110 PKGS. + 6 SPC. EA.) \$50	<b>SPECIAL PACKAGE (BUY 2 SAME SPECIAL PKG, GET ONE FREE PROMO) ALL IN</b> GOLD PKG (100PKG + 20 FREE) \$60 8 JR. BKOUT, 8 LETTER X, 8 IND. STAR 2 SHEET OF E.B., 2 SHEET HALFTIME WRMUP, 1 BONANZA, HOTBALL A & B DIAMOND PKG (110PKG + 20 FREE) \$75 10 JR. BKOUT, 10 LETTER X, 10 IND. STAR 2 SHEET OF E.B., 2 SHEET HALFTIME WRMUP, 10 BONANZA, HOTBALL A & B
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

## GUAM BOARD OF ALLIED HEALTH EXAMINERS

**Regular Board Meeting, Friday, December 6, 2019 at 12:00 PM**

at the Terlaje Professional Building, 194 Hernan Cortez Avenue, 2<sup>nd</sup> Floor, Suite 209 Health Professional Licensing Office Board Conference Room, Hagåtña, Guam.

For more information please contact the Board office at 735-7405 thru 12. Persons with disabilities needing special accommodations may call 735-7172 or the telecommunication device for the Hearing/Speech Impaired (TDD) at 649-1801.

# Tech war prompts US to consider taxing French products

WASHINGTON (Tribune News Service) - The U.S. proposed tariffs on roughly \$2.4 billion in French products, in response to a tax on digital revenues that hits large American tech companies including Google, Apple Inc., Facebook Inc. and Amazon.com Inc.

"France's digital services tax discriminates against U.S. companies," the office of the U.S. Trade Representative said in a statement Monday.

Trade Representative Robert Lighthizer said the agency is also exploring whether to open investigations into similar digital taxes by Austria, Italy and Turkey. The move comes hours after President Donald Trump announced a barrage of other tariffs on steel and aluminum from Argentina and Brazil.

"USTR's decision today sends a clear signal that the United States will take action against digital tax regimes that discriminate or otherwise impose undue burdens on U.S. companies," Lighthizer said in the statement. "The USTR is focused on countering the growing protectionism of EU member states, which unfairly targets U.S. companies."

The tariffs would be imposed after a public comment period concludes



**TECH TAX:** French President Emmanuel Macron, right, and President Donald Trump shake hands during a joint-press conference in Biarritz, southwest France on Aug. 26, on the third day of the annual G7 Summit. The U.S. has proposed tariffs on roughly \$2.4 billion in French products in response to a tax on digital revenues that hits large American tech companies. Ludovic Marin/AFP/Getty Images/Tribune News Service

in early 2020 and interested parties have a chance to weigh in on the proposed duties.

Monday's report concludes a more than four-month-long probe, known as a Section 301 investigation, into France's tax regime, which Lighthizer in July said "unfairly targets American companies." The same law was used last year to examine China's intel-

lectual property practices that led to tariffs on more than \$360 billion in Chinese goods.

Trump in August suggested tariffs of up to 100% on French wine and told aides that while he's not generally empathetic with U.S. tech companies, he believes it should be the U.S. - not any other country - that taxes them, people familiar with internal deliberations said.

In the statement Monday, USTR said the proposed action includes "additional duties of up to 100% on certain French products."

Sparkling wine, cheeses, handbags and cosmetics are on the list of potential tariff targets, according to the notice. An official at the French Finance Ministry said Minister Bruno Le Maire wouldn't comment on the decision until Tuesday.

The U.S. move is a setback for efforts to stop a conflict over digital tax from intensifying. President Donald Trump and France's Emmanuel Macron agreed in August to try to find a compromise, but a 90-day deadline for talks expired last week without a resolution.

The U.S. tariffs and the French tax are likely to be a priority during a meeting between Trump and Macron on Tuesday, on the sidelines of a NATO conference in London.

Macron argues that moving ahead with a tax on tech companies is

necessary because the structure of the global economy has shifted to one based on data, rendering current systems archaic. His government is trying to use France's national tax as a bargaining chip, saying it would withdraw it if there is agreement on an international solution - in talks under the stewardship of the Organization for Economic Cooperation and Development.

There were signs of progress in recent weeks when the OECD proposed a "unified approach" to merge proposals that differed over whether to single out digital companies or have a broader approach. But French Finance Minister Le Maire said ahead of the USTR announcement that the U.S. has backed off from supporting an OECD compromise.

"They've said they aren't sure they want a solution at the OECD," Le Maire said on radio station France Inter. "We will never abandon our will to tax digital giants in a fair way."

The Internet Association, which represents tech companies, said it welcomed the USTR's decision.

"The French DST is one of a growing number of concerning unilateral tax regimes around the world," Jordan Haas, the IA's director of trade policy, said in a statement. "We encourage all countries that are contemplating passing a go-it-alone tax to focus efforts on the global solution."

DON'T STRESS this

## Holiday Season

Let The Professionals Do The Cleaning For You.

The **ROTOVAC** has dual high torque motors to supply all the cleaning muscle for you. The rotary vacuum heads thoroughly clean the carpet from all directions with hundreds of cleaning passes rather than just back and forth a few times like a manual wand.



Clean concrete, tile and other hard flooring with a **POWR-FLITE AUTOMATIC SCRUBBER**. Machines can be used in buildings that require minimal noise, such as hospitals and schools.



**OPTIMA STEAMER** specializes in deep cleaning, sanitizing, and deodorizing with chemical-free approach, leaving no water residue behind.



### WE ALSO SPECIALIZE IN

- Marble and Granite Crystallization
- Upholstery & Mattress Cleaning
- Vinyl Floor Stripping
- Landscaping
- Post Construction Clean-up
- Pool Cleaning
- Pressure Washing
- Janitorial Services
- Kitchen Hood De-greasing

**15% DISCOUNT FOR MILITARY PERSONNEL & 10% DISCOUNT WITH THIS AD CLIPPING**

**GUAM CLEANING MASTERS**  
Tel: 646-2002 | Fax: 646-4707  
www.guamcleaningmasters.com  
guamcleaningmasters@yahoo.com  
4% Surcharge for Credit Cards

## GUAM BOARD OF NURSE EXAMINERS

**Regular Board Meeting**  
Thursday, December 12, 2019  
at 3:00 PM

at the Health Professional Licensing Office Board Conference Room, Terlaje Professional Bldg., 2<sup>nd</sup> Floor Suite 209 Hagåtña, Guam.

Persons with disabilities needing special accommodations may call the ADA at 735-7172.

## THE EMERGENCY MEDICAL SERVICES

**Commission Meeting,**  
Thursday, December 12, 2019  
at 10:00 AM

at the Terlaje Professional Building, 194 Hernan Cortez Avenue, 2<sup>nd</sup> Floor, Suite 209 Health Professional Licensing Office Board Conference Room, Hagåtña, Guam.

For more information, please contact the Board Office at 735-7405-11. Persons with disabilities needing special accommodations may call the ADA Coordinator at 735-7172.

## GUAM BOARD OF EXAMINERS FOR PHARMACY

**Regular Board Meeting,**  
Thursday, December 12, 2019  
at 7:30 AM

at the Health Professional Licensing Office Board Conference Room, Terlaje Professional Bldg., 2<sup>nd</sup> Floor, Suite 219, Hagåtña.

For more information, please contact the Board office at 735-7408 or 735-7413. Persons with disabilities needing special accommodations may call 735-7408.

## GUAM BOARD OF ALLIED HEALTH EXAMINERS

**Regular Board Meeting,**  
Friday, December 6, 2019  
at 12:00 PM

at the Terlaje Professional Building, 194 Hernan Cortez Avenue, 2<sup>nd</sup> Floor, Suite 209 Health Professional Licensing Office Board Conference Room, Hagåtña, Guam.

For more information please contact the Board office at 735-7405 thru 12. Persons with disabilities needing special accommodations may call 735-7172 or the telecommunication device for the Hearing/Speech Impaired (TDD) at 649-1801.