

Dear Senator

Greetings, my name is David Lubofsky. I am the father of Asher Dean Lubofsky, the 5 year old boy that died, very unexpectedly on Guam on October 31st, 2018, 2 days after having an annual check up at the Guam Seventh Day Adventist Clinic. His story has been in the news a few times lately.

I am approaching you and other senators to request assistance and to have you hopefully look closer at the outdated and biased medical malpractice law on Guam. I realize that it is too late for our beloved son, Asher, but it's not too late to protect other children and families on Guam. The law has many issues, but the primary problem is that it presents an unfair bias against Guam's families or claimants of limited financial ability. For all practical purposes and to say it more directly, if you are poor or do not have income and get a serious medical injury due to a medical malpractice situation you may be prevented from making a claim or having your day in court.

The law, created many years ago, has an arbitration clause that forces all claims, big or small, into arbitration and prevents a day in court until arbitration is completed. The problem with that, besides the fact that Guam citizens do not initially get into a court and may never get into court, is that arbitration requires the claimant or family to pay for the arbitration process. Individuals who are financially challenged do not have \$20,000 or \$40,000 or more available to enter into this process. Most people, in fact, do not have that much money available on hand. I understand the initial rationale for arbitration, but denying Guam citizens a day in court thru the inherently discriminatory policy of arbitration that pretty much keeps most people out of the system should not be allowed. The doctors know they are protected as people can't afford the process, possibly resulting in a more lax approach to how they do their jobs.

Simple question, if a child becomes disabled due to a medical mistake and the family is not able to pay for arbitration, who will pay for the child's possible life long medical care? Will it be us, the tax payers as that is exactly what will happen while the medical profession will just walk away with no responsibility? The current medical system failed our son, Asher, and has failed other families. Its time to change the law, to make it more compatible to today's needs for all so that those injured or killed due to malpractice at all financial levels, rich and poor, can have their day in court or have access to a fair system based on law, not on an ability to pay for arbitration. The system should be set up so that those with serious injuries be compensated or be able to pay their medical bills, while holding incompetent doctors responsible.

Let's keep one thing in mind, per our Guam Medical licensing Board (I heard this at their February meeting), doctors who only meet minimal licensing requirements can practice on Guam. Even doctors who have a past malpractice case charge against them are practicing on Guam. Imagine that? At the same time, our island doctors pay little if anything for malpractice insurance, which may attract doctors that can not practice in other places in the states. Then, to keep their costs down, they enact the arbitration clause that protects them, the doctors from claims from many who can't afford the process. All of this benefits the doctors on Guam and does not protect our citizens.

The current system, as set up by and promoted by our medical community, has, in effect, the government paying for doctors or clinic mistakes and their malpractice as those who become disabled will end up on public assistance or seeking tax payers funded medical help. Its time for this to stop.

I have attached other materials for your reference.

If interested to read what happened to our son, check out [www.guamopinion.com](http://www.guamopinion.com)

I am hoping that you think that this issue is important enough to address. No one knows how important this is until they have experienced it first hand.

I hope to be able to discuss this with you more. I can be reached at the below contact info.

Thank you,

David Lubofsky