

TESTIMONY:

Guam Medical Malpractice Mandatory Arbitration Act, Informational Hearing

Senator Therese Terlaje, Chairperson,
Committee on Health, Tourism, Historic Preservation, Land and Justice

October 3, 2019, 2nd Meeting

From: David Lubofsky

(Speaking for Asher Dean Lubofsky)



I am David Lubofsky, the father of Asher Dean Lubofsky, who at age 5 passed away at the Guam Memorial Hospital on October 31st, 2018, almost one year ago.

As I stated last meeting, I would prefer to be anywhere else besides here dealing with the blatant medical negligence and apathy that took Asher's life with NO accountability or even a public record of what the doctor did, then knowing the same doctor will be able to go off to see and endanger others on Guam, thanks to the **Arbitration Act**. Isn't it true that doctors under this ARBITRATION (APATHY) act could kill or injure many and we will never know it with all the protection it offers to doctors, with the built in secrecy and privacy including being covered for by their colleagues? Then we hear the tragedies rationalized as Standard of Care issues to get doctors to Guam?

We are not here for the doctors. **This meeting is about real people, THE VICTIMS it's about our kids, our family and out of respect for some of these VICTIMS it's about the death of Asher Dean, Baby Faith, Jqry-Wakyn, Aiden, Charlie, it's about Anelyn Lagrimas' father who we heard about his mistreatment at the last meeting at GRMC and the list goes on and on of our injured and dead relatives and friends due to negligence and a legal cover up with the Arbitration "APATHY" Act. LOOK AROUND DOCTORS; YOUR VICTIMS HAVE REAL FACES.**

To be clear, what we are discussing here today does not have to do with all GUAM doctors. **Guam has some great doctors**. I have seen many, including being treated by the same

dentist for 25 years. I have 6 kids who have been at one time or the other in the Guam medical system over the past 45 years, yes 45 years. Standard of care or standard of treatment for all of them was fine, that is until Asher entered the Seventh Day Adventist Clinic and saw Mr. Shishin Miyagi.

Isn't this what we are talking about really, not the good doctor, not even the average doctor, but **just that DOCTOR who makes NEGLIGENT mistakes** and should be held accountable to protect all of us? All Guam doctors meet the so called standard of care until they INJURE OR KILL SOMEONE NEGLIGENTLY.. It's not about the islands standard of care; it's about negligence by a few that the medical community as a whole want to protect, in order to maintain their own personal interests.

During the last meeting we heard from **Attorney Mitch Thompson and Attorney Bell**, who practice on both sides of the aisle with claimants and defendants, both agreeing that the cost of Arbitration is extremely high, TENS OF THOUSANDS OF DOLLARS, making it near impossible to bring these cases to Arbitration and to hold these negligent doctors responsible.

I was astonished last meeting to hear **Dr. Hoa Nguyen, Acting President of the Guam Medical Association** state that we are "confused" about the Arbitration law. "CONFUSED," my gosh! He said the act isn't to protect the doctors; it's about the overall quality of care on Guam and he implied it helps to bring doctors to the island. I am wondering if Dr. Nguyen has read the act. If the Act is supposed to improve medical care or bring doctors to Guam and the concern is the standard of care, why is the Arbitration process as secretive as we heard last meeting? The doctors are already on Guam, it has nothing to do with bringing doctors here. Isn't that SECRECY to protect the doctor, not our families and community, to hide who did what? Name any other investigative hearing or accusation of negligence on Guam that affords such secrecy? WHY DO WE LOSE OUR FREEDOM OF SPEECH FORCIBLY WHEN WE AGREE TO THE FORCED ARBITRATION? THE PROCEEDINGS PREVENT US FROM SPEAKING ABOUT THE ISSUES. Why are we threatened, if we do not like the outcome of Arbitration that we are forced into with no choice that we have to pay the doctors legal fees if we go to court?

Shouldn't we know which doctors to avoid; wouldn't that be prudent for improved medical care and choice? Isn't this our right? The whole standard of care that has been mention by Dr. Nugyen and we have heard over and over here is something that is made up with no real proof. It's an excuse. Does Dr. Nguyen tell his patients that, sorry that you are not happy at our clinic but it's about the Guam Standard of Care or does he take responsibility for patients issues or the many complaints.

As I said earlier, I have 5 kids that have had good standard of care on Guam and overall good doctors, ASHER didn't and died. Maybe that's a national average, 17% get deadly lousy

care. You can't sit here and tell us that standard of care is not like California or Texas, as Dr. Nguyen did last week. It's laughable when you consider that Medical Errors, Negligence in the USA, per recent studies is the third leading cause of death.

According to a recent study by Johns Hopkins, more than 250,000 people in the United States die every year because of medical mistakes, making it the third leading cause of death after heart disease and cancer. Feb 22, 2018

Are you saying that our standard of care on Guam is worse than the states as Dr. Nguyen implied and that STATISTICALLY more people die on Guam due to it or WOULD DIE IF WE DID NOT HAVE THE ARBITRATION LAW?

Extrapolating the statistical data for Guam, it would mean that we have around 107 or more deaths per year due to Medical Negligence. I bet no one in this room had heard that projection and never will either as the ARBITRATION ACT prevents these deaths from being reported accurately or covers up the medical negligence we face and die from.

If we follow national averages, on **NEGLIGENT DEATHS BY DOCTORS**, why is it that we have one of the strictest Malpractice Arbitration Policies in the country per a RECENT Guam Post Article? Shouldn't we try to get rid of some of these BAD doctors, rather than exposing them to other children?

The argument that Arbitration or the APATHY act would bring more doctors to Guam has not been proven here today or in the past. **it's a MERITLESS CLAIM**. Attorney Richard Pipes stated that **it's a naked "FINDING" that there is NO crisis in getting doctors and that NO such crises exist.**

So, who do we listen to, AS 100 PEOPLE PER YEAR DIE FROM NEGLIGENCE, doctors with the strictest MALPRACTICE policy of self protection in the country AND who have Arbitration hearings privately THAT CAN NOT BE DISCUSSED PUBLICLY or the Attorneys like Keogh today or PIPES who successfully argued the last Malpractice law in front of the 9th circuit, or what about the national statistics that state Medical Malpractice is at Epidemic concerns and we may be losing over a 100 people or more per year on Guam to death due to Negligence? Do we listen to the families who have lost loved ones due to careless, lazy, apathetic mistakes? Do we look at the danger that is created by doctors who kill or injure and then practice the next day **ON THE NEXT UNSUSPECTING PATIENT due to the protection of Arbitration?**

Under the umbrella of Arbitration, how you can say that you are protecting the people of Guam and want to bring good doctors to Guam and improve Standard of Care? If this is true, why do you bring doctors to Guam who only meet minimal requirements and some have histories of Malpractice already? Some of these doctors may not be able to work in other places. How can you sit there and justify that? Then you bring these people here and give them protection and privacy and put us at risk and act as if you are doing us a favor. This does not improve quality of care on Guam. **ISNT IT TRUE, AMONG SOME OF YOUR COMMUNITY OF**

DOCTORS, THAT SOME SAY GUAM IS KNOWN AS A PLACE TO GO TO WORK AS A DOCTOR IF YOU CAN'T WORK IN OTHER PLACES?

The Guam Medical Board of Examiners licensed a doctor, as an example, in the states with more than one malpractice claim against him, and then brought him out here where he negligently did the same thing to a Guam patient with serious consequences. We have no idea how many times this has happened as it's hidden from us. **IS THIS HOW WE ARE PROTECTED BY MR. NATHANIEL BERG AND THE LICENSING BOARD? IS THIS HOW THAT BOARD AND THE MEDICAL ASSOCIATION AND SOCIETY PROPOSE TO IMPROVE MEDICAL STANDARDS OF CARE, BY BRINGING THESE PEOPLE HERE WHO HURT OR KILL US??**

According to a KUAM interview with Dr. Gill, a Guam Medical Board Member, she said, accessing information about your doctor on Guam is NOT as easy as it is in the states where most Medical Licensing Boards have websites with information available about doctors, so we can make informed choices. **Dr. Gill said the Board is hoping to implement the same thing on GUAM.**

THAT WAS 8 YEARS AGO, BUT STILL NOTHING.

SENATOR TINA MUNA BARNES years ago sponsored and passed the **PATIENT PROTECTION THROUGH INFORMATION ACT**. This is all about a Physicians profile being public information so we can know who these doctors are, complaints against them etc. . . If you go to the **NONFUNCTIONAL website of the Guam Board of Medical Examiners**, there is a dead link for this law. This is another example of how our Medical Examiners Board don't protect us. **THEY HAVE NOT FOLLOWED THIS LAW, HAVE NOT SET UP THE WEBSITE AND ARE TRYING SEEMINGLY TO HIDE THE BAD DOCTORS FROM US, JUST LIKE ARBITRATION. IT'S ALL ABOUT PROTECTING THEMSELVES AT THE PERIL OF THE COMMUNITY, EVEN VIOLATING A LAW.** Do we not deserve the same standard of information as in the states? Isn't this information a factor of standard of care, **INFORMED MEDICAL DECISIONS?** **WHY CAN LAWS BE BROKEN TO PROTECT DOCTORS?**

Dr. Gill also spoke about PEER REVIEWS when the Board receives complaints about doctors. **A Peer Review is a form of self-regulation by qualified members of a profession within the relevant field. It's not a radiologist reviewing a Pediatrician's work, even though our Licensing Board may think that.** PEER REVIEWS RARELY IF EVER HAPPEN and my Asher was never afforded what Dr. Gill said SHOULD HAPPEN, A PEER REVIEW. Again, protection of doctors and apathy is the undercurrent of this, which pretty much again defines The Arbitration Act (Apathy Act), along with arrogance.

It's obvious to us, **not only as parents**, but the community, that the local Medical Association AND Society, and The Guam Licensing Board of Medical examiners is about the

protection of themselves at the peril of the community. The Arbitration Act or Apathy Act is just another tool to silence us.

I am not going to focus on how the ACT **DISCRIMINATES AGAINST ALL OF US, ESPECIALLY THE POOR.** Guam doctors are a protected class that looks down at the rest of us which is evident in how many of them conduct themselves, their testimony; not following the patient protection law and their conflicts of interest to cover for each other proves that, NOT TO MENTION THE ARBITRATION ACT. *This does not necessarily apply to all doctors, but has become part of the overall **Physician Culture on Guam**, in my opinion.*

Mr. James Gillan gave testimony saying that doctors used to practice defensive medicine because they were worried about being sued for malpractice and that this (**APATHY) ARBITRATION ACT** would alleviate that so they did not have to worry about being sued. DEFENSIVE MEDICINE WOULD BE ONE LESS WORRY WHEN THE ACT PASSED. . *Defensive medicine means that they were doing everything they could for their patients, lab tests etc etc. **Defensive medicine means being responsible doctors, STANDARD OF CARE CORRELATES WITH DEFENSIVE MEDICINE.***

How many have died OVER THE YEARS due to APATHETIC MEDICAL CARE ON GUAM, AS A PRODUCT OF ARBITRATION PROTECTION, WHEN APATHY became part of our Guam Physicians culture? **IF THE STATS ARE CORRECT, AS MENTIONED EARLIER, AT LEAST 100 HAVE DIED DUE TO MEDICAL NEGLIGENCE SINCE ASHER LEFT US. HOW MANY IS THAT OVER THE 30 YEARS THAT THIS ACT HAS BEEN LAW.**

LET ME **AGAIN** REPEAT A FEW NAMES OUT OF PERHAPS HUNDREDS OR EVEN THOUSANDS WHEN WE LOOK AT STATS. **Asher Dean, Baby Faith, Jqry-Wakyn, Aiden, Charlie and MANY MORE....many. IT'S NOT STANDARD OF CARE OR EVEN ARBITRATION THAT KILLED THEM; IT'S A FEW NEGLIGENT DOCTORS THAT DID IT, THAT SHOULD BE ACCOUNTABLE. With this Arbitration Act, there are no options for the average person with a valid complaint against a doctor?** What do we do, where do we go? Every system of medical care should have a check and balance system with protections for the citizens, that's also a variable of standard of care. I provided INFORMATION last week on how the Guam Board of Medical Examiners has failed us and is rife with conflicts of interest. **They have been referred to as corrupt in a local recent media report. They do not even allow for or follow the law dealing with the PATIENT PROTECTION THROUGH INFORMATION ACT. ASK THEM WHY??**

Also, we have the Guam Board of Allied Health Examiners who do not act on complaints, even the death of a child. My son's one year anniversary of his death is this month and they did nothing so far, had the complaint for 10 months and counting, nothing done.

I AM ASKING THE DOCTORS HERE RIGHT NOW, or those

on Guam, how many doctors on Guam have a history or claims against them for MALPRACTICE and they were then licensed by The Guam Medical Examiners Licensing Board? How many doctors residing on Guam have complaints against them for malpractice or investigations of complaints for the public to be aware of?

WHATS THE SECRET? Dr. Gill said this is known in other places, why do WE NOT KNOW IT HERE? It's our right, which are negated by the Arbitration Act. IT'S THE LAW UNDER THE PATIENT PROTECTION THROUGH INFORMATION ACT.

THE PHYSICIANS WHO SUPPORT THIS ACT should be ashamed of themselves with willful disregard and arrogance to lecture to us, telling us we are confused, talking to us about standard of care and trying to justify a law that kills us and protects them. Your self-serving attitude is now public record. The Arbitration law is just one example, as I have stated, that show true intent of the medical community to protect their own, including not following other laws. It's time to fix things rather than benefiting from this Draconian Arbitration APATHY Act.

As Attorney Mitch Thompson accurately said during the last meeting, doctors do not want to judge their colleagues. There is no protection for us. The Guam Medical Examiners Board and THE ALLIED BOARD have proven that over and over again, as has those who gave testimony here today trying to justify the Act.

ANY CHANGE IN THE LAW SHOULD NOT INCLUDE GUAM DOCTORS TO OVERSEE COMPLAINTS OF OTHER DOCTORS, PER WHAT ATTORNEY MITCH THOMPSON SAID, WHAT WE HAVE EXPERIENCED PERSONALLY AND WHAT WE HAVE SEEN AND HEARD HERE TODAY. THEY ARE NOT IMPARTIAL AND WILL NOT PROTECT OUR INTERESTS OVER THEIR OWN. I think the crux of medical problems on Guam or issues with care come from the Arbitration Act and attitude of those Physicians that try to justify it.

REPEATING MYSELF....

It is too late for my son Asher Dean; nothing you can do will benefit him or us. Our suffering will not be alleviated by a repeal of this Apathy Arbitration Act, but we can take some solace to know that other families will not suffer as we and others have by making doctors responsible for destroying lives

Asher was taught the difference between right and wrong and to be responsible, sadly and obviously his doctors; INCLUDING MANY IN ATTENDANCE TODAY WERE NOT.

GET RID OF THE BAD DOCTORS; DO NOT BRING MORE TO GUAM. IMPROVE MEDICAL CARE ON GUAM, SAVE LIVES, REPEAL THE MALPRACTICE ARBITRATION LAW.

DAVID LUBOFSKY, FATHER OF ASHER LUBOFSKY who was robbed of his life by the people that this Arbitration ACT protects.



