

10 JUL -7 1975

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SENATE

Senate Bill No. 745

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INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

This bill seeks to institutionalize a grievance machinery in all health institutions providing medical treatment in the Philippines, be it private or public to protect the interest and welfare of patients and to uphold their right to health and to safe, humane, decent and quality health care.

The Constitution, Article II, Section 15, provides that the State shall protect and promote the right to health of the people and instill health consciousness among them.


With the advances in the practice of medicine and the increasing consciousness of people on the value of timely, efficient and appropriate health care, complaints of patient with regard to the way they are treated are increasing in number. Some complaints arise from violations of the fiduciary relationship between the patient and his or her physician, while some arise from the violations on the amount of care that a physician must observe in the treatment of his or her patient, which unfortunately, causes irreparable harm to the latter.

In the Philippines, a patient has the option to file a civil action, a criminal action or an administrative complaint against an erring physician. The basis for filing a civil action is Article 2176 of the Civil Code, when the act or omission causes damage to another, there being fault or negligence, obliges the wrongdoer to pay for the damage done. Damages that may be recovered are actual or compensatory, moral, nominal, temperate or moderate, liquidated, or exemplary or corrective damages. A patient may also avail of provisions under the Revised Penal Code, particularly on physical injuries and other crimes against a person, which are punishable with imprisonment and/or a fine. Finally, a patient may also seek the redress of his or her grievances administratively under the Medical Act of 1959, which reprimands erring physicians or suspends or revokes the registration of physicians found guilty of gross negligence, ignorance or incompetence in the practice of his or her profession resulting in an injury to or death of the patient.

Through the grievance machinery, a patient or his or her representatives has a non-adversarial way of seeking the redress of his or her grievances against a physician and other medical personnel. His or her complaint, which must contain the cause of action, the particular act or omission complained of, and the remedy being sought, will go to a committee created for this purpose by the hospital, composed of hospital officials, doctors, and representatives from the local health unit, and the consumer arbitration office in the place where the hospital is located. Any decision of the committee will not bar the patient from

filing any other action, which is allowed under present laws. Ultimately, the grievance mechanism must seek to arrive at a settlement mutually acceptable to the parties.

In view of the foregoing, the immediate approval of this measure is earnestly requested.



JINGGOY EJERCITO ESTRADA
Senator

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SENATE

Senate Bill No. 745

RECEIVED BY



INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

AN ACT
UPHOLDING THE RIGHT OF PATIENTS TO THE REDRESS OF THEIR
TREATMENT - RELATED GRIEVANCES BY MANDATING THE CREATION
OF GRIEVANCE BOARDS IN ALL PUBLIC AND PRIVATE HOSPITALS TO
BE SUPERVISED BY DEPARTMENT OF HEALTH, AND FOR OTHER
PURPOSES

Be it enacted by the Senate and the House of Representatives in Congress assembled:

SECTION 1. Title - This Act shall be known as "**Patients' Grievance Machinery Act of 2010.**"

SEC. 2. Declaration of Policy. It shall be the policy of the State to protect and promote the right to health of the people and instill health consciousness among them. Likewise, the State values the dignity of every human person and guarantees full respect for human rights. To this end, an efficient, effective and just grievance mechanism must be created to protect the rights of patients to decent, humane and quality health care. This Act aims to establish a reasonable mechanism for resolving problems and complaints in connection with their treatment.

SEC. 3. Definition of Terms. As used in this Act, the following terms are defined as follows:

(1) Grievance - any complaint arising from injury or death by a patient in relation to his or her diagnosis, prognosis and treatment by a physician and/or his or her assistant due to, but not limited to, the following:

a. Gross negligence or gross incompetence in the practice of his or her profession:

b. Aiding or acting as a dummy of an unqualified or unregistered person to practice medicine;

c. Violation of the doctor-patient privilege:

(2) Gross negligence - pursuit of a course of conduct which would naturally and reasonably result in injury. It is characterized by want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected. The existence of negligence in a given case is not determined by reference to the personal

judgment of a person involved in the complaint, but what would be reckless, blameworthy or negligent in the man of ordinary intelligence, and prudence.

(3) *Grievance Board* - the grievance machinery instituted by a hospital that will receive, examine, investigate and resolve all grievances that may fall under its jurisdiction.

(4) *Legal Representative* - the members of the patient's immediate family or his or her guardian or counsel chosen by the patient to represent him or her.

(5) *Health Care Provider*- all medical and health personnel involved in the diagnosis, prognosis and treatment of a patient.

(6) *Hospital* - those health institutions defined as such under Republic Act 4226 or the Hospital Licensure Act of 1965.

(7) *Consumer Arbitration Officer* - persons appointed for the effective and efficient protection of consumer rights under Republic Act No. 7394 of the Consumer Act of the Philippines.

SEC. 5. *Establishment of a Grievance Machinery in all Public and Private Hospitals* - All hospitals are hereby mandated to create a grievance board that will receive, investigate, adjudicate, and recommend actions to arrive at settlement of complaints related to the diagnosis, prognosis and treatment of patients who sought the services of such health institution.

The Hospital-based grievance machinery shall be composed of at least five (5) members:

1. One (1) grievance officer appointed and permanently designated by the hospital with a rank of supervisory or managerial, and who must not be a doctor or a physician, who shall act as the Chairperson;

2. Three (3) doctors from the hospital's pool of physicians, provided that, none of them were part of the team who treated the patient-complainant and, provided finally, that they are recognized experts in the field of medicine which is the subject matter of the grievance;

3. One representative from the Philippine Medical Association

4. The local health officer or his duly authorized representative, provided, that the latter at least be a full-time staff of the local health unit, and at least a college graduate;

5. One (1) consumer arbitration officer exercising jurisdiction over the area where the hospital is located;

Each hospital shall prepare a list of experts for each field who are authorized to sit in the Board.

The Department of Health shall ensure the establishment of and oversee the grievance committees created under this Act.

The successive steps in the procedure, the method of presenting grievances, and the method of taking an appeal should be clearly stated and integrated in the hospital's rules and regulations.

SEC. 5. How grievance is taken; time for filing- A patient desiring to file a grievance under this Act may file a complaint in writing, signed and sworn to by the patient himself or herself, or his or her legal representative with the hospital's grievance board within thirty (30) days from the happening of the event which forms basis of the complaint. The complaint must state the act or omission complained of, the parties against whom the complaint is directed at, the conduct or duty violated, other allegations that the complainant may deem necessary to include.

SEC. 6. Action on the grievance. - Upon receipt of the grievance, the grievance officer shall examine the allegations of the complaint and determine if it falls within the jurisdiction of the Grievance Board. The officer shall give due notice of the respondents. For purposes of determining whether the complaint is actionable or not, the grievance officer may require or allow the parties to submit affidavits, briefs or other documents as it may deem necessary within such periods and under such conditions as it may consider appropriate.

The grievance officer shall have fifteen (15) days from the receipt of the complaint to act on the same. If the complaint is considered not actionable for a valid cause, the grievance officer shall inform the patient, or his or her legal representative, in writing, of the basis of the said dismissal. Should the officer find that the complaint is actionable, he or she shall submit a report to and recommend the case for mediation before the Board.

The Board shall resolve the grievance within thirty (30) days from receipt of the officer's report.

Nothing in this Act shall deprive the patient the right to seek other remedies allowed under the laws, provided that he or she shall not be allowed to recover twice for the same remedy.

SEC. 7. Remedies to be Awarded. Upon finding that the physician and/or his or her assistants are guilty of any of the acts identified herein as grievances, the Board, though a majority vote of all the members of the Board, except the Grievance Officer who endorsed the grievance, may grant the relief prayed for by the complainant, provided, it shall be limited to compensation for actual monetary loss and will not cover "pain and suffering or other explicitly non-monetary losses. The Committee may likewise recommend the respondent for disciplinary action under the civil service rules and regulations in case of public hospitals, and the physician's medical association.

SEC. 8. Rules of Procedure. The hospital shall promulgate rules of procedures governing the resolution of grievances, Provided, it shall not be inconsistent with any of the provisions of this Act, and Provided, Further, that prior to the implementation, the rules of procedure shall be submitted to the Department of Health for the latter's approval. The procedure should be adaptable to the handling of various types of grievances which may be adjudicated under the hospital's grievance machinery and facilitate the settlement of complaints as soon as possible after they arise. It shall also include the rules on taking appeal.

All the records received from the parties and the proceedings of the Board shall be strictly confidential and cannot be disclosed, except upon lawful order of a competent court.

SEC. 9. Appeal. Any party adversely affected by a decision, ruling or inaction by the hospital-based grievance machinery on a patient's grievance,

may file an appeal before the Secretary of the Department of Health, who shall act on the appeal within thirty (30) days from the receipt of the appeal.

SEC. 10. *Prescriptive Period.* The time during which the case is submitted for mediation shall toll the running of the prescriptive period for the filing of a civil or criminal case under the Revised Penal Code or any administrative case under existing laws.

SEC. 11. *Rules and Regulations.* The Secretary of Health, in consultation with the Philippine Medical Association, the Philippine Hospital Association, the Philippine Health Insurance Corporation and concerned private agencies, non-governmental organizations and people's organizations shall promulgate such rules and regulations as may be necessary for its implementation within One Hundred Eighty (180) days from the effectivity of this Act.

SEC. 11. *Separability Clause* - If any provision or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SEC. 12. *Repealing Clause* - All laws, decrees, orders, rules and regulations or parts therefore, inconsistent with this Act are hereby amended or modified accordingly.

SEC 13. *Effectivity Clause* - This act shall take effect fifteen (15) days following its publication in a newspaper of general circulation.

Approved,