

SUBJECT : REPORT ON THE PUBLIC HEARING OF THE COMMITTEE ON HEALTH AND DEMOGRAPHY JOINT WITH THE COMMITTEES ON SOCIAL JUSTICE AND FINANCE ON PATIENT'S RIGHTS AND MEDICAL MALPRACTICE ON SEPTEMBER 28, 2004, 10:30 A.M., SEN. TAÑADA ROOM, SENATE OF THE PHILIPPINES

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## I. PRELIMINARY

Sen. Cayetano, Chairperson of the Committee on Health and Demography, called the public hearing to order at 10:30 a.m. In attendance were Senators Flavier and Roxas. The agenda of the hearing are the following bills on patient's rights and medical malpractice:

SBN 3 – *“An Act Declaring the Rights and Obligations of Patients and Establishing a Grievance Mechanism for Violations Thereof and for Other Purposes”* (Sen. Flavier)

SBN 337 – *“An Act Prohibiting the Detention of Patients in Hospitals and Medical Clinics on Grounds of Non-Payment of Hospital Bills or Medical Expenses”* (Sen. Osmeña)

SBN 607 – *“An Act Prohibiting the Detention of Live or Dead Patients in Hospitals and Medical Clinics on Grounds of Non-payment of Hospital Bills or Medical Expenses”* (Sen. Villar, Jr.)

SBN 121 – *“An Act to Reduce Medical Mistakes and Medication-Related Errors”* (Sen. Ejercito Estrada)

SBN 588 – *“An Act Declaring the Rights of Patients and Prescribing Penalties for Violations Thereof”* (Sen. Villar, Jr.)

SBN 1720 – *“An Act to Protect Patients against Medical Malpractice, Punishing the Malpractice of Any Medical Practitioner and Requiring Them to Secure Malpractice Insurance and for Other Purposes”* (Sen. Osmeña III)

### RESOURCE PERSONS:

1. Undersecretary Alexander Padilla – Undersecretary, Department of Health
2. Dr. Eduardo Banzon – Vice-President, Philippine Health Insurance Corporation
3. Korina Sanchez – Lead Convenor, People's Healthwatch
4. Dr. Edelina de la Paz – Executive Director, Health Action Information Information Network
5. Dr. Romeo Encanto – Philippine Medical Association
6. Dr. Bu Castro – President, Philippine Medical Association
7. Dr. Jose Asa Sabili – Philippine Hospital Association
8. Erlinda Ahorro – Philippine Nurses Association
9. Dr. Antonio Baldemor – Philippine Dental Association; Chairman, Board of Dentistry
10. Carlos da Silva – President, Association of Health Maintenance Organization of the Phil.

11. Dr. Guia Abad – President, Association of Municipal Health Officers of the Phil.
12. Dr. Rudyard Avila III – UP College of Law/UP College of Medicine
13. Dr. Renante Basas – Director, Commission on Human Rights
14. Dr. Tomas Maramba – President, Phil. Society for Quality Assurance in Health Care
15. Emma Manuel – Alliance of Health Workers
16. DR. Magdalena Barcelon – Kilosbayan Para Sa Kalusugan

## **II. HIGHLIGHTS**

The resource persons representing the various stakeholders presented their differing positions on the contentious patient's rights issue.

Undersecretary Alexander Padilla of the Department of Health (DOH) stated the Department's position that all patients have the right to access to quality health care. On the proposed measures on medical malpractice, the DOH opined that a litigious practice may result as trust between doctors and patients are put in question. Instead, the government should focus on improving health care system through continuing medical training of health providers. Furthermore, there are existing laws that cover the issue on medical malpractice. No country in the world has made medical malpractice a criminal act. The passage of a Medical Malpractice Act may not be appropriate at this time and may increase the cost of medical care. Rather, the training of medical practitioners should be improved to deliver quality health care services to the patients.

Dr. Bu Castro of the Philippine Medical Association stated that approving the medical malpractice bill into law would increase the health care costs because the medical practitioners will practice their profession in a defensive manner. Because of this bill, the patient will be the recipient of higher medical costs due to excessive requests for laboratory procedures, numerous referrals, "over-treatment" and the premium of medical insurance passed on to the patients. The passage of this bill will also result in the closure of some hospitals and the reluctance of doctors to practice their profession. This measure will leave rural areas without doctors because with a sword hanging in their necks, rural doctors will hesitate to practice because of the lack of medical equipments in the rural areas. Moreover, the penalty imposed may be unconstitutional.

The bill may violate the constitutional provision on double jeopardy. The acts of negligence are covered under existing laws and court decisions have been made on this issue. The bill may also transgress the equal protection clause in the Constitution. Since the proposed bill only focused on the medical practitioners, this could be a vehicle for extortion and harassment. The bill does not cover the quack medical practitioners. The bill could be untimely and could give the wrong signal given the fact that many of the doctors now are shifting to nursing to find employment in foreign countries.

On the issue of patient's rights, the PMA opposes the passage of said measure. Dr. Castor noted that the doctors took an oath to be the guardians of the health of the human beings and it is ironic that the guardians of health are being watched. He elucidated the two kinds of rights involved in this issue, namely: (1) social rights of patients to quality health care and; (2) individual rights. The individual rights are already enshrined in existing laws. There are already enough grievance mechanisms provided under existing laws. The patient's rights should be viewed from a macro perspective, which focus on the rights of patients to equal care. On the issue on the right of patient to choose his/her own physician, the PMA is opposed to this proposal. Instead the government should address the societal rights of patients to access quality health care by allocating 5% of its GNP to health care delivery. There is also the issue of obligations of patients that needs to be addressed. It is unfortunate that we punish the health provider for not providing the appropriate diagnosis because the patient did not give the right information on his illness and symptoms.

Another issue is the decreasing enrollment of medical students in medical schools and the increasing trend in nursing courses, and yet nurses are leaving the country. Moreover, the proposed bills single out the doctors, excluding the other health care professionals. A mere violation of the patient's rights can be a ground for punishing the doctors. Dr. Castro reiterated that the focus should be on societal rights, not on individual rights and on the development of health manpower in the country.

Dr. Jose Sabili, representing the Philippine Hospital Association (PHA), spoke on the issue of detention of patients on the grounds of non-payment of hospital bills. According to him, the proposed measures fail to address the issue on the patient's responsibility to settle his hospital bills. Moreover, these might be subject to abuse by patients and must be limited only to indigent patients. He cited cases of a number of patients who insists on private rooms despite their inability to pay. It is common knowledge that a promissory note remains a promissory note unpaid. Some patients even give fictitious addresses to avoid payment of hospital bills. Dr. Sabili stressed that the law should be just and equitable for both patients and medical providers.

The survival of many hospitals in the country depends on the payment of hospital bills by the patients. The proposed measure should contain identification of sources of funds that will pay for the unsettled hospital bills of patients.

According to Ms. Erlinda Ahorro of the Philippine Nurses Association (PNA), the Code of Ethics of Filipino Nurses already identifies and defines the duties and responsibilities of nurses. It is inconceivable that nurses will practice nursing that will jeopardize the health of patients. With the passage of said measure, the nurses will practice defensive nursing. The measure is anti-patient and anti-poor. There is no need for a malpractice law because there are enough laws to cover this issue.

Dr. Eduardo Banzon articulated the Philhealth's support for rational measures that will protect its members. Philhealth is willing to host the center for studies on measures proposed by SBN 121 and supports the provision in SBN 3 on dispute settlement mechanism. In a no fault mediation, issues on medical malpractice will be discussed and solutions to the problem can be formulated to improve the quality of the medical care. Moreover, it should not be a public policy to hold patients in hospitals because patients cannot pay. In addition, there must be clear guidelines on how the hospitals will collect the unpaid medical bills.

On the issue of patient's rights, Dr. Banzon raised the question on how to determine violation of these rights. He pointed out that in the proposed measures the elements of the crime

are vague and that so much discretionary power is given to those who will enforce the law. Philhealth is proposing that the provision in the Revised Penal Code pertaining to medical negligence be clarified and strengthened rather than enact a new legislation.

On hospital deposits, Dr. Banzon informed the Committee of Batas Pambansa 117, as amended by R.A. 8344, which prohibits deposits on emergency cases only. Dr. Rudyard Avila of the UP College of Law and College of Medicine disagreed, pointing out that the said law applies also to non-emergency cases. The Chairperson noted the differing interpretations of the law prohibiting hospital deposit.

Dr. Avila underscored that one of the most common defense articulated about the issue on patients rights is the argument that the laws are adequate to cover the concerns about malpractice of health providers. However, a study of the said laws would indicate that we are far behind in legislation on patient's rights and medical malpractice. On the contrary, these laws are inadequate. For instance, the Supreme Court decision on Ramos versus Court of Appeals where it applied the "captain of the ship" doctrine that holds the surgeon liable for everything that occurs in the operating room including the professional behavior of the other specialists, e.g. anesthesiologist. This doctrine has already been abandoned in the United States and yet, our Supreme Court insisted on applying it, so what we have now is a "judge-made law". This situation underscores the inadequacy of existing legislation such as the Medical Act of 1959, certain provisions of the Revised Penal Code and special laws like the Organ Donation Act. Hence, Dr. Avila said that it is high time that we enact reasonable laws on patient's rights and medical malpractice to benefit the medical profession.

Dr. Antonio Baldemor from the Philippine Dental Association (PDA) and the Board of Dentistry of the Professional Regulation Commission (PRC) believes that the proponents of the malpractice bills have good intentions but other important matters need to be addressed at this time. Echoing the other resource persons' opinions, there are enough laws already in place, citing

the Code of Ethics for dentists. The PDA also monitors their own ranks and PRC revokes or suspends professionals found guilty of violating the law.

The People's Health Watch, an organization of victims of medical malpractice, through their spokesperson Ms. Korina Sanchez, urged the immediate passage of the patient's rights bill in the light of the many cases of medical negligence that their organization has documented. Ms. Sanchez lamented that everyone is mired in the discussion of financing as if this alone will reform health care instead of talking about the type and quality of care that will be delivered. Moreover, she urged the immediate passage of SBN 3 (The Magna Carta for Patient's Rights), which was a product of several TWG meetings in the 12<sup>th</sup> Congress but with penalties for medical malpractice because without these penalties the law will not have any teeth. While People's Health Watch does not intend to send doctors to jail, they want to protect people from more suffering due to medical malpractice.

Mr. Carlos da Silva of the Association of Health Maintenance Organizations of the Philippines warned about the increase in health care costs if the malpractice bill is passed into law due to the practice of defensive medicine. While their organization would like to make health care affordable to the people, they cannot stop the inevitable effect of escalating medical costs once a malpractice law is implemented.

The Association of Municipal Health Officers of the Philippines, the Alliance of Health Workers, Kilosbayan Para sa Kalusugan and the Health Action Information Network, which are all organizations composed of health workers were united in demanding for a higher budget for health. They acknowledged that incidents of medical negligence do happen and patients have rights but they insisted that it is equally important to examine the factors that contribute to this situation. These factors include lack of equipment in hospitals, inadequate hospital staff resulting in overworked doctors and nurses. The health workers added that more often than not, they as frontliners in health care delivery are blamed for patients' death, which happens because their

hospitals do not have oxygen or ventilator. The Chairperson agreed and exhorted these groups to help her advocate for increase in the health budget.

Dr. Tomas Maramba of the Philippine Society for Quality Health Care pointed out the need to provide an operational definition of medical malpractice because its definition in the proposed bills may be different from the definition in the current laws. Dr. Maramba emphasized that medical service is the provision of service and medical providers are not guarantors for the delivery of health services. He added that there are factors in a disease that are not in the control of the health provider. Medicine is an art and a science but it is not an exact science. While there are clinical practice guidelines for many diseases, there are factors and circumstances that make it necessary to modify guidelines in treatment of a particular disease. Since doctors are humans, honest mistakes can happen due to incomplete information given by the patient to the doctor at the time the decision was made. The issue at hand is should honest mistakes be punished. While Dr. Maramba agrees that problems exist, the proposed measures are not the appropriate solutions. If this bill becomes a law, it will stifle the advancement of medical technology, which is developed over many years through trying out new and better treatment and management procedures.

Dr. Maramba believes that problems and errors in medical practice are opportunities for improvement and adverse mistakes are opportunities to improve the delivery of health services to the patients. If the malpractice bill is passed, no health care professional will report adverse events. They will hide them for fear of legal penalties. He proposed that government should support initiatives of adverse reporting of medical mistakes such as SBN 121, but these measures can be done through the professional organizations. A law should be passed for the protection of documents on quality improvement to encourage discussion of mistakes, adverse events and outcomes similar to the laws passed in several states in the US. Such a law will foster improvement in health care management, benefiting the patients. Without such a law, doctors are inhibited from reporting these cases.

Dr. Renante Basas of the Commission on Human Rights (CHR) cited an international covenant on civil and political rights relevant to patient's rights such as the conduct of medical experiments without the patient's consent. Even the detention of patients for their inability to pay for hospital bills is a violation of these international agreements to which the Philippines is a signatory. Despite the existence of these legally binding human rights instruments, there is rampant violation in the country. Therefore, the state should carry out its international covenant through domestic legislation and the state has to exercise its political will to implement these international agreements.

The hearing was adjourned at 1:44 p.m.

Respectfully submitted,

**BEATRIZ B. TIONGCO**