COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS

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COMMONWEALTH REGISTER

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NUMBER 02

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HCPLB Case No. 14-0002
Health Care Professions Licensing Board 037671

Commonwealth of the Northern Mariana Islands
Office of the Governor - Medical Referral Program
Ronald D. Sablan, Director, Medical Referral Services Office
P.O. Box 5149, CHRB
Saipan, MP 96950

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PUBLIC NOTICE OF PROPOSED RULES AND REGULATIONS
WHICH ARE AMENDMENTS TO THE RULES AND REGULATIONS OF THE OFFICE OF THE GOVERNOR, MEDICAL REFERRAL PROGRAM

INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: The Commonwealth of the Northern Mariana Islands, Office of the Governor, Medical Referral Program intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedures of the Administrative Procedure Act,1 CMC § 9104(a). The Regulations would become effective 10 days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b)).

AUTHORITY: The Director is empowered by the Legislature to adopt rules and regulations for the administration and enforcement of the statute governing his activities. 3 CMC § 2824(v) (adoption of regulations for off-island care); Executive Order 2013-9 (effective May 2, 2013, transferring the Medical Referral Program to the Office of the Governor).

THE TERMS AND SUBSTANCE: The Rules and Regulations provide an edited and expanded version of the previous Rules and Regulations of the Medical Referral Program. Notably, new sections on Exclusions from the Medical Referral Program and Humanitarian and Emergency Provisions have been added. These Rules and Regulations completely supercede all prior Rules and Regulations, including Emergency Rules and Regulations.

THE SUBJECTS AND ISSUES INVOLVED: These rules and regulations do the following:

1. Provide an edited and updated version of the prior Rules and Regulations.

2. Add new sections on Exclusions from the Medical Referral Program and Humanitarian and Emergency Provisions.

DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular. (1 CMC § 9104(a)(1)).

TO PROVIDE COMMENTS: Send or deliver your comments to Ronald D. Sablan, *Attn: New Medical Referral Program Rules and Regulations*, at the above address, fax or email address, with the subject line "New Medical Referral Program Rules and Regulations." Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments. (1 CMC § 9104(a)(2)).

These proposed regulations were approved by the Director on October 23, 2015.

Submitted by: _____ 2/19/16
RONALD D. SABLAN Date
Director, Medical Referral Services Office

Received by: _____ 02/22/16
ESTHER S. FLEMING Date
Governor's Special Assistant for Administration

Filed and
Recorded by: _____ 02.22.16
ESTHER SN. NESBITT Date
Commonwealth Register

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).

Dated the 22nd day of February, 2016.

for _____
EDWARD MANIBUSAN
Attorney General

Commonwealth gi Sangkattan na Islas Marianas
Ufisinan Gubietnu – Prugråman Riniferin Medikåt
Ronald D. Sablan, Direktot, Ufisinan Sitbision Riniferin Medikåt
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NUTISIAN PUPBLIKU GI MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA NI MANMA'AMENDA PARA I AREKLAMENTU YAN REGULASION SIHA GI UFISINAN GUBIETNU, PRUGRÅMAN RINIFERIN MEDIKÅT

I MA'INTENSIONA NA AKSION PARA UMA'ADÅPTA ESTI I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA: I Commonwealth gi Sangkattan na Islas Marianas, Ufisinan Gubietnu, Prugråman Riniferin Medikåt ha intensiona para u adåpta kumu petmanienti na regulasion siha ni mañechettun i Manmaproponi na Regulasion Siha, sigun gi manera siha gi Åktun Administrative Procedure, 1 CMC § 9104(a). I Regulasion siha para u ifektibu gi halum i dies(10)dihas dispues di adåptasion yan pupblikasion gi halum i Rehistran Commonwealth. (1 CMC § 9105(b)).

ÅTURIDÅT: I Direktot nina'i fuetsån-ña ni Leyislatura para u adåpta i areklamentu yan regulasion siha para i atministrasion yan enforcement i estatua ni ginibebietna i aktibidåt-ña siha. 3 CMC § 2824(v) (adåptasion i regulasion siha para i off-island care); Otdin Eksakatibu 2013-9 (ifektibu gi Måyu 2, 2013, ha transfeferi i Prugråman Riniferin Medikåt para i Ufisinan Gubietnu).

I TEMA YAN SUSTÅNSIAN I PALÅBRA SIHA: I Areklamentu yan Regulasion Siha ni mapribeniyi ni marikonosi yan ma'adilånta na version gi ma'pus na Areklamentu yan Regulasion Siha gi Prugråman Riniferin Medikåt. Gef annuk, gi nuebu na seksiona siha gi Exclusions ginin i Prugråman Riniferin Medikåt yan Humanitarian yan Emergency Provisions na mana'fandanña'. Esti na Areklamentu yan Regulasion Siha ha supercede todu atyu siha i fine'na na Areklamentu yan Regulasion Siha, ingklulusu i Areklamentu yan Regulasion Emergency Siha.

I SUHETU YAN MANERA SIHA NI MANTINEKKA: Esti na areklamentu yan regulasion siha manggaigi gi sigienti:

1. U mapribeniyi ni marikonosi yan ma'adilånta na version gi manma'pus na Areklamentu yan Regulasion Siha.

2. Uma'åomenta nuebu na seksiona siha gi Exclusions ginin i Prugråman Riniferin Medikåt yan Humanitarian yan Emergency Provisions.

DIREKSION SIHA PARA U MAPO'LU YAN PUPBLIKASION: Esti i Manmaproponi na Regulasion Siha debi na u mapupblika gi halum i Rehistran Commonwealth gi halum i seksiona gi maproponi yan nuebu na ma'adåpta na regulasion siha (1 CMC § 9102(a)(1)) yan u mapega gi halum todu mangkumbinienti na lugat siha gi halum i civic center yan gi ufisinan gubietnu siha gi halum kada distritun senadot, gi parehu Englis yan i dos na prinsipåt lingguåhin natibu. (1 CMC § 9104(a)(1)).

PARA U MAPRIBENIYI OPIÑON SIHA: Na'hånåo pat intrega i upiñon-mu siha guatu gi as Ronald D. Sablan, *Attn: Nuebu na Areklamentu yan Regulasion Siha gi Prugråman Riniferin Medikåt*, gi sanhilu' na address, fax pat email address, gi masuhetu na råya "Nuebu na Areklamentu yan Regulasion Siha gi Prugråman Riniferin Medikåt." Todu upiñon siha debi na u fanhålum trenta(30) dihas ginin i fetchan pupblikasion esti na nutisia. Put fabot na'hålum i upiñon-mu, infotmasion pat kinentestan kinentra siha. (1 CMC § 9104(a)(2)).

Esti i manmaproponi na regulation siha manma'aprueba ni Direktot gi Oktubri 23, 2015.

Nina'hålum as: _____ 2/19/16

RONALD D. SABLAN — Fetcha

Direktot, Ufisinan Sitbision Riniferin Medikåt Siha

Rinisibi as: _____ 2/22/16

ESTHER S. FLEMING
Espisiåt na Ayudåntin Atministrasion Gubietnu

Fetcha

Pine'lu yan
Ninota as: _____ 2.22.16

ESTHER SN. NESBITT
Rehistran Commonwealth

Fetcha

Sigun i 1 CMC § 2153(e) (Inaprueban regulasion siha ni Abugådu HInerål na para u macho'gui kumu fotma) yan 1 CMC § 9104(a)(3) (hinentan inaprueban Abugådu Hinerål) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan ma'aprueba kumu fotma yan sufisienti ligåt ginin i CNMI Abugådu Hinerål yan debi na u mapupblika, 1 CMC § 2153(f) (pupblikasion areklamentu yan regulasion siha).

Mafetcha gi diha 22nd di Febrero, 2016.

_____

EDWARD MANIBUSAN
Abugådu Hinerål

Commonwealth of the Northern Mariana Islands
Office of the Governor-Medical Referral Program
Ronald D. Sablan, Director, Medical Referral Services Office
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ARONGORONGOL TOWLAP REEL PROCUREMENT EBWE FÉÉRI ALLÉGHÚL AWEEWE REEL MEDICAL REFERRAL PROGRAM

MWÓGHUT IYE REEBWE FÉÉRI NGE REBWE ADÓPTÁLI ALLÉGHÚL AWEEWE TOWLAP REBWE REPIYIYA ME ATTABWEEY: Reel Commonwealth of the Northern Mariana Islands, Office of the Governor, Medical Referral Program re kke féeri mille ebwe adóptáli allégh úl aweewe iye e appasch ngáli Proposed Regulations, sángi allégh kka Administrative Procedure Act, 1 CMC § 9104(a). Alléghúl Regulations nge ebwe bweletá lóll 10 ráál takkal yaar adóptáli me re issóllong lóll Commonwealth Register. (1 CMC § 9105(b))

ATORIDÓD: Direktod nge re ngalley allégh me apélúghúlúgh me reel imwal allégh (legislature) reel meeta emmwál ebwe féeri sángi yaal tarabwaagho. 3CMC § 2824(v) (adóptáali aweewel me alléghúl reel schóó kka re semwaay rebwe féeri ngaliir ngare re salo wóól faley (off-island care)). Executive Order 2013-9 (Ebwele-tá May 2, 2013, re ngalley Medical Referral Program ngáli Office of the Governor).

ÓWTOL APELÚGHÚLÚGH ME AWEEWE: Aweewel me alléghúl (Rules and Regulations) nge re féeri meeta iye ebwe atotoolong lóll Rules and Regulations of the Medical Referral Program. Atotolong kkaal nge e fféélong lóll seksion me lóll Exclusion me reel Medical Referral Program and Emergency Provision. Allégh kkaal nge e amamaawaló me atomwoghaaló meeta ówtol Rules and Regulations me bwal Emergency Rules and Regulations.

ÓWTOL ME LÓLL AWEEWE: Aweweel rules and regulation nge ikkaal:

1. Re féeri me aghatchúló me update ówtol yaal Rules and Regulations.
2. E isiisilong mil ffé lóll ówtol Exclusions sángi Medical Referral Program me Humanitarian and Emergency Provisions.

IYA REBWE AMWÉLALÓ IYE ME ARONGORONG : Proposed Regulations kkaal nge rebwe atoolongol lóll Commonwealth Register lóll section iye re propose me milla efééta me re bwal adóptáli alléghúl (1 CMC § 9102(a)(1)) bwe rebwe apascháátá arongorong igha towlap me bwulasiyol gobietno me lóll kada senatorial district, reel kapasal mwaliyer schóól falúw me English. (1 CMC § 9104(a)(1)).

ISIISILONG AWEEWE: Afanga me bwughiló yóómw meeta ubwe ira me mángámáng reel Ronald D. Sablan, Att: New Medical Referral Program Rules and Regulation, lóll address, fax me ngare email address me yaal subject nge "New Medical Referral Program Rules and Regulations." Milikaal nge eghal due lóll 30 ráál sángi igha re atowowu ngaliir towlap. (1 CMC § 9104(a)(2))

Proposed regulations kkaal nge re aprebáli sángi Director wóól ____ October 23, 2015

Etooto me reel: _____ 2/19/16

RONALD D. SABLAN — Ráál
Director, Medical Referral Services Office

Resibiiy me reel: _____ 2/22/16

ESTHER S. FLEMING — Ráál
Governor's Special Assistant for Administration

Filed and
Recorded sángi: _____ 02.22.16

ESTHER SN. NESBITT — Ráál
Commonwealth Register

Sángi reel 1 CMC § 2153(e) (AG aprebáli alléghul bwe rebwe fééri form) me 1 CMC § 9104(a)(3) (yal AG apreba) rel proposed regulation kka e appasch a areghil me aprebáli rel yal wel me aweewe me lóll CNMI Attorney General reel towlap re bwe reepiya li, 1 CMC § 2153(f) (publication of rules and regulations).

Atol me 22nd ráál ~~Septembwe~~ Febrero, 2015.

_____

EDWARD MANIBUSAN

Attorney General

Dated the _____ day of _____, 2015.

OFFICE OF THE GOVERNOR

Medical Referral Program
Rules and Regulations

Revised: October 2015

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OFFICE OF THE GOVERNOR
MEDICAL REFERRAL PROGRAM
RULES AND REGULATIONS GOVERNING
THE ADMINISTRATION OF MEDICAL REFERRAL SERVICES

INTRODUCTION

The criteria and procedures established in these Rules and Regulations for patient medical referrals are designed to provide residents of the CNMI with a means of receiving medical care and treatment not available in the Commonwealth for conditions that are life threatening, constitute a debilitating illness or an acute neurological problem, or may lead to the permanent loss of vision or other function. By sending approved patients established referral health care facilities, they may obtain extended and/or advanced medical care and procedures unavailable in the CNMI. In establishing a Medical Referral Program, it is incumbent upon the CNMI Government to manage the program's operations to ensure that health care benefits afforded to residents of the CNMI are provided in a cost-efficient and equitable manner. It is therefore an objective of these Rules and Regulations to contain the costs of medical referrals by excluding unnecessary referrals, minimizing inappropriate lengths of stay at referral health care facilities, and establishing cost-sharing mechanisms with patients. The procedures set forth below are essential to the successful operation of a cost-effective health care program.

I. Medical Referral Services Office

There is hereby established a Medical Referral Services Office ("Medical Referral Services" or "MRS") within the Executive Branch of the Commonwealth Government, which shall facilitate the referral of patients to recognized referral health care facilities outside the CNMI for extended medical care as set forth in these Rules and Regulations. A list of recognized "referral health care facilities," as referenced throughout these Rules and Regulations is included as Attachment I hereto. Other medical facilities may be only considered if a patient is referred to such facilities by a recognized facility or if they specialize in medical care of an approved patient condition.

Financial assistance for medical care outside the CNMI, and related costs, shall be available as provided in these Rules and Regulations to the extent that funds for the program are appropriated by the CNMI Legislature. If in any fiscal year, appropriated funding for Medical Referral Services is exhausted prior to the end of the fiscal year, Medical Referral Services shall cease operations until additional funding is appropriated or reprogrammed for its operations by the current administration.

II. Medical Referral Services

Medical Referral Services shall be headed by a Medical Referral Services Director/Administrator appointed by the Governor. The duties and responsibilities of Medical Referral Services shall include the following:

2.1 Assisting patients' primary care physicians to ensure that all necessary non-medical documentation is included with patients' petitions for medical referral prior to cases being submitted to the Medical Referral Committee for review.

2.2. Making all arrangements for patient medical referral including verifying that sufficient funds exist to cover any medical referral costs chargeable to Medical Referral Services, scheduling doctor appointments, and arranging for air and ground transportation and accommodations.

2.3 Communicating with other CNMI or non-CNMI offices to verify and confirm arrangements for patient arrival at, and/or departure from, the city where the patient's referral health care facility is located and obtaining continuous updates on the medical status of referral patients.

2.4 Maintaining records of: the names of patients petitioning for medical referral; the patients' diagnoses; approved and denied medical referral petitions; the names of any escorts accompanying patients; the names of referral health care facility physicians to whom patients are sent; the treatment to be provided to patients and the

costs associated with medical referrals.

2.5. Maintaining additional patient records, including the following: the number of cases considered for medical referral within each fiscal year; the number of cases approved and disapproved; the medical justification for referrals; the medical justification for denied cases and alternatives offered to the patients; the status of patients sent on medical referral; a financial analysis depicting cost based on the medical treatment provided to patients; a summary of the type of cases approved for medical referral and of the treatment and care provided at referral health care facilities.

2.6. Reviewing medical bills from referral health care facility providers, verifying the validity of medical bills and approving payment of medical bills that are the financial responsibility of Medical Referral Services.

2.7. Preparing Medical Referral Services' annual budget for submission to the Office of the Governor.

2.8. Performing other duties and responsibilities as assigned by the Governor.

III. Medical Referral Committee

3.1. Composition. There is hereby established a Medical Referral Committee, which shall be composed of six (6) voting members who are physicians licensed by the CNMI Medical Profession Licensing Board. The voting members will be appointed by the CEO of the Commonwealth Health Corporation for a two year term. Any voting member appointed to fill a vacancy will serve for the remainder of the two year term of the voting member he or she is replacing. A minimum of four (4) of the voting members shall be physicians clinically privileged at the Commonwealth Health Center (CHC). The other voting members may be appointed from private clinics. A representative from the following CHC divisions or units and other government agencies shall serve on the Medical Referral Committee, but shall not vote: Social Services; Utilization Review;

Medical Referral Services; Medicaid Office and Vocational Rehabilitation Services. Such non-voting members will be appointed by, and serve at the pleasure of, the heads of their respective units. The Governor or his designee shall also serve as an ex-officio non-voting member of the Committee. Three (3) voting members must be present to establish a quorum and conduct official business.

3.2. Chairperson. At the beginning of each fiscal year or as required should the position become vacant, the Medical Referral Committee shall elect a Chairperson from amongst its voting members clinically privileged at CHC. The Chairperson shall serve for a one-year term and may serve multiple successive terms. In the event there is a vacancy in the position, the voting members shall elect a new Chairperson to serve the remainder of the former Chairperson's one year term. In the event the Chairperson is unable to attend a meeting, any other voting member may fulfill the Chairperson's duties for that particular meeting with the agreement of a majority of voting members who are present at the meeting. The Chairperson shall schedule regular meetings of the Medical Referral Committee and advise each voting and non-voting member of the date and time of the meeting at least one week prior to its scheduled date. The Chairperson shall also call emergency Medical Referral Committee meetings whenever he or she believes doing so is necessary, or upon the request of a majority of the voting members of the Committee or the Governor or Governor's designee. The Chairperson shall be responsible for presiding over all meetings of the Medical Referral Committee and shall rule on all matters of procedure. A procedural decision by the Chairperson may be overruled by a majority of the voting members of the Committee (including the Chairperson himself or herself.

3.3. Case Review. It shall be the sole responsibility of the Medical Referral Committee to screen and evaluate petitions for medical referral, including requests for additional patient treatment not initially authorized and requests from referral health care facility physicians to refer the patient to a second referral health care facility. After a complete case evaluation, the Medical Referral Committee will determine whether a referral for medical care is warranted. In the event the Medical Referral Committee

approves a referral, it shall issue a Medical Treatment Authorization Form, containing the patient's diagnosis and listing what professional medical services will be authorized for the patient's referral.

3.4. Final Decisions. Decisions of the Medical Referral Committee shall be final, except as provided in Section 6.4 of these Rules and Regulations. This is to ensure that medical referral decisions are only based on patients' medical conditions.

3.5. Review of Emergency Medical Referral Cases. All medical referral cases approved on an emergency basis pursuant to Section 6.2 of these Rules and Regulations shall be reviewed by the Medical Referral Committee at the next regular meeting for assessment of whether the referral was justified. Any referral found to be unjustified by the Medical Referral Committee shall be treated as an unauthorized medical referral and an official notice of the Committee's decision must be sent to the referring physician. Under such circumstances, the emergency approving authority of the approving MRC voting members may be suspended for up to three (3) months at the discretion of the Committee.

3.6. Modifications to These Rules and Regulations. Prior to the end of each fiscal year, or sooner if circumstances dictate, the Medical Referral Committee shall submit a list of recommended changes to the Medical Referral Services Rules and Regulations, if any, to the Governor.

3.7. Approval of Reports. The Medical Referral Committee shall approve all written and financial reports relating to Medical Referral Services before they are submitted to the Governor or the Commonwealth Legislature, when practical.

IV. Program Eligibility

For a patient to be eligible for consideration for medical referral through Medical Referral Services each of the following criteria set forth in Sections 4.1 and 4.2 must be

satisfied:

4.1. Medical Criteria: The patient has a medical condition or conditions that cannot be adequately be treated in the Commonwealth and require that the patient be transferred to a tertiary or other hospital in order to receive a higher level of care. Such conditions include, but are not limited to: acute urgent cardiac conditions, oncology evaluation and treatment, difficulties in access for hemodialysis or peritoneal dialysis including fistula malfunction or acute neurological emergencies, urgent/emergency urological conditions, and urgent pediatric conditions.

a. The patient must be evaluated by a CNMI licensed physician, who is their primary care provider. Medical specialists visiting the CNMI to provide limited term health care services may not initiate, but may recommend, a medical referral through the patient's primary care physician.

b. After a thorough diagnosis of the patient's case and whether the full utilization of the resources available within the CNMI, including consideration of forthcoming visits by medical specialists, would provide adequate care for the patient, the primary care physician must determine that the health care services required to satisfactorily treat the patient's illness or condition cannot adequately be provided within the CNMI.

c. The patient's illness or condition including diagnosis and prognosis must substantiate the need for medical referral. The primary care physician must be prepared to demonstrate to the Medical Referral Committee that medical referral would be likely to significantly benefit the patient's health outcome.

4.2. Residency Criteria:

a. The patient must be a United States citizen or a green card holder residing in the CNMI, the immediate relative of a U.S. citizen, or another individual who

has established legal permanent residence in the CNMI as defined by federal immigration law, including, but not limited to, United States nationals.

b. For purposes of these Rules and Regulations, "residence" shall mean "the place where a person maintains an abode with the intention of remaining permanently or for an indefinite period of time legally." It shall be the responsibility of the patient or the patient's representative to demonstrate residence in the CNMI to the satisfaction of the Medical Referral Services staff. In determining the residence of a patient, the Medical Referral Services staff shall consider the patient's overall situation in the CNMI, including the following, if applicable:

i) Proof of the patient's citizenship and immigration status (e.g.: birth certificate, passport, green card, permanent residence card, marriage or adoption certificate, social security card);

ii) the patient's country of origin and the number of days the patient spends in the CNMI each year;

iii) the patient's CNMI employment history;

iv) whether the patient is enrolled in a CNMI school, college, or other educational institution;

v) whether the patient possesses a valid CNMI driver's license;

vi) whether the patient is a registered voter in the CNMI;

vii) whether the patient has public utilities billings under his or her name in the CNMI;

viii) whether the patient has a CNMI postal address;

ix) whether the patient has made tax filings in the CNMI;

x) the patient's enrollment in CNMI assistance programs such as Medicaid, WIC, food stamps, or Low Income Housing Energy Assistance; and

xi) any other documents indicative of permanent residence in the CNMI.

4.3. Persons Ineligible to Participate in the Program:

The following categories of persons are ineligible for participation in the Medical Referral Program:

a. Common-Law Spouses of United States Citizens;

b. United States Citizens who are not permanent residents of the CNMI;

c. CNMI residents studying abroad;

d. CNMI residents living abroad or in another area of the United States;

e. CNMI residents who are traveling abroad;

f. residents of the CNMI and/or their dependents who exercise their right to obtain medical care outside the CNMI government health care system and obtain medical care which has not been previously authorized by the Medical Referral Committee; and

g. persons who have entered the CNMI or are present in the CNMI in violation of United States immigration laws.

V. Medical Referral Services Covered Benefits

Subject to the payment guidelines set forth in Section 11 of these Rules and Regulations, Medical Referral Services provides the following medical, ancillary, transportation, escort, and maintenance benefits for patients authorized for medical referral:

5.1. Medical Costs.

a. **Inpatient Medical Care.** Inpatient medical care at a referral healthcare facility for the following health care services:

i) necessary admission to special units such as intensive care coronary care;
ii) necessary admissions to the operating room and recovery room;
iii) anesthesia services;
iv) x-rays, radiology services, and other such investigatory services;
v) radiation, chemo, physical, occupational, and speech therapy;
vi) normal blood transfusions;
vii) laboratory tests;
viii) regular nursing care services;
ix) prescribed rehabilitative therapy;
x) medical supplies such as casts, surgical dressings, and splints;

xi) drugs furnished by the health care facility during the hospital stay;

xii) use of appliances and/or equipment such as wheelchairs;

xiii) a semiprivate room (2 to 4 beds to a room) or a non-private room (more than 4 beds to a room);

xiv) all hospital meals, including those which require special preparation for particular diets.

b. **Outpatient Care.** Outpatient medical care at a referral health care facility for the following health care services:

i) services in an emergency room or outpatient clinic, including ambulatory and surgical procedures;

ii) normal blood transfusions furnished to the patient on an out- patient basis;

iii) laboratory tests;

iv) x-rays, radiology services and other such investigatory services;

v) radiation, chemo, physical, occupational, and speech therapy;

vi) medical supplies such as casts, surgical dressings, and splints;

vii) drugs and biological products that cannot be self-administered.

c. **Professional Fees.** Fees for professional health care services specifically authorized by the Medical Referral Committee in the Medical Treatment Authorization Form. Professional fees for health care services beyond those approved by the Medical Referral Committee, or for health care services of medical specialists not related to the original diagnosis in the Medical Treatment Authorization Form are not covered by Medical Referral Services unless authorized by the Director after

consultation with at least two voting members of the Medical Referral Committee, or authorized by at least two voting members of the Medical Referral Committee independently of the Director, prior to the rendering of such additional health care services in non-emergency situations.

5.2. Ancillary Costs.

a. Prescribed Drugs. Drugs prescribed for the cure, mitigation, or prevention of disease, or for health maintenance, if:

i) prescribed in writing by a licensed referral health care facility physician, or other referral health care facility licensed practitioner authorized to prescribe drugs under state, territorial, or relevant national law;

ii) dispensed by a licensed pharmacist or licensed practitioner authorized to dispense drugs who records and maintains the patient's written prescription in the pharmacy's records; and

iii) they cannot be dispensed without a prescription (i.e., over-the-counter drugs are excluded).

b. Durable Medical Equipment. Durable medical equipment provided by the referral health care facility that is essential for the management of the patient's condition during transfer back to the CNMI. Examples of durable medical equipment covered by this subsection include portable oxygen equipment, cardiac monitoring equipment, and mechanical ventilators. Such durable medical equipment provided to patients under Medical Referral Services shall become the property of Medical Referral Services and must be turned over by the patient after it is no longer needed. Patients who fail to give Medical Referral Services any durable medical equipment provided to them by the referral health care facility after they are no longer required, shall be charged the replacement cost of the equipment.

5.3. **Transportation Costs.**

a. **Air Transportation.** Medical Referral Services assists with the least expensive round trip air transportation available on regular commercial airlines (considering the patient's medical condition for travel) to the referral recognized health care facility as follows:

i) if a patient has an individual income over $50,000 per annum or the patient's joint household income exceeds $75,000, the patient must pay 100% of the air transportation cost;

ii) if a patient has an individual income between $25,000-$50,000 per annum or the patient's joint household income is between $37,50 -$62,500, the patient pays 50% and MRS pays 50% of the air transportation cost;

iii) if a patient individually earns below $25,000 per annum or the patient's family unit is falls under the indigent level, MRS pays 100% of the air transportation cost.

Medical Referral Services shall only be responsible for air transportation up to the actual cost or the equivalent cost for a medical referral to the State of Hawaii, whichever is lower.

Air transportation costs for Medicare and Pediatric Medicaid patients are covered up to the costs of transportation to the States of Washington, Oregon, and California.

b. **Ambulance Transportation.** The cost of medically necessary ambulance transportation for medical referral patient from the Commonwealth Health Center to Saipan International Airport; from the designated international airport near where the referral health care facility is located to the referral health care facility, transportation to other health care facilities for special treatment not available at the

designated health care facility, and transportation as otherwise approved by the Medical Referral Committee.

5.4. Patient Escorts. Medical personnel and/or one family member or close friend to serve as a patient escort in the following situations, as authorized by the Medical Referral Committee:

a. Physician, Nurse, or Respiratory Therapist Escort. The Medical Referral Committee, in consultation with the patient's primary care physician, shall determine whether it is necessary for a physician escort, registered nurse escort, respiratory therapist escort or a combination of such escorts (including multiple escorts of the same type), to accompany the patient to the referral health care facility to ensure adequate medical care while in transit. The following guidelines shall be considered by the Medical Referral Committee in deciding whether a medical escort is needed:

i) Physician Escorts. A physician escort should accompany a medical referral patient whenever there is a high likelihood that the patient's medical condition could change during the transport and it may be necessary for the physician to make a diagnosis, stabilize the patient, and/or provide acute treatment for the patient.

ii) Nurse Escorts. Any medical referral that has been approved by the Medical Referral Committee and that requires a nurse escort must utilize a registered nurse who holds a current Advanced Cardiac Life Support (ACLS) certification. Patients requiring medical referrals and a nurse escort are in a medically compromised state and must be escorted by nurses capable of handling their medical needs as apparent at the time of transport. These medical needs may include the insertion of an intravenous line, the addition of medication to an intravenous line, and the administration of narcotics. Per CHC's position descriptions, only registered nurses can perform the aforementioned functions. ACLS certification is required so that, in the event of an emergency, the nurse escort can provide care to any patient experiencing cardiac arrest.

iii) Respiratory Therapist Escort. A respiratory therapist escort should accompany a medical referral patient whenever the patient will require respiratory therapist services (e.g., a patient in respiratory failure who requires a ventilator or other breathing assistance), and the patient is stable and his or her medical condition is unlikely to change.

The Director of Medical Affairs, in consultation with the patient's primary care physician and the appropriate nurse and/or respiratory therapist supervisor(s), shall decide which members of the Commonwealth Health Center medical staff, nursing staff, and/or respiratory therapist staff shall accompany the patient. In those cases where a physician, nurse, and/or respiratory therapist escort accompany the patient, it will be such escort's responsibility to:

(1) assist and attend to the patient during the flight;
(2) ensure that the patient's medical documents are turned over to the appropriate personnel from the referral health care facility; and
(3) ensure that all medical instruments, pillows, sheets, and other hospital supplies used during the medical transport are accounted for and returned to CHC and/or MRS.

iv) Transportation Fees for Physician, Nurse, and Respiratory Therapist Escorts. In addition to the cost of airline tickets, physician, nurse, and/or respiratory therapist escorts accompanying the patient on the medical referral shall each be entitled to receive a lump sum transport fee, in lieu of a per diem allotment, for the first 24 hours of travel, based on the location to which the patient is being medically referred. The transport fee, which is intended to cover payment for any hotel accommodations and food required by the physician, nurse and/or respiratory therapist escorts during the transport, shall be based on the following schedule:

(1) Guam	$175.00*
(2) Philippines	$200.00*
(3) Hawaii	$250.00*
(4) Japan	$275.00*

**Same fees if originating from the above destinations to the CNMI.*

If, because of unavailability of seats on the airline, the physician, nurse and/or respiratory therapist escorts are unable to return to the CNMI within a 24 hour period, they shall then be entitled to receive the standard government per diem allotment for any portion of a day following the first 24 hours of travel.

b. Family or Friend Escorts. Medical Referral Services will pay the least expensive round trip air transportation available on regular commercial airlines for a family or friend escort as described in this section if the patient or intended escort has an annual income of less than $70,000. Such assistance will be used for: the family of friend escort to reach the patient's designated destination for the purpose of meeting and accompanying the patient; medically necessary ambulance transportation in which the family or friend escort accompanies the patient; and/or accommodations for one family or friend escort. A family or friend escort may be a family member or close friend of the patient, as provided by these Rules and Regulations. Unless specifically determined by the Medical Referral Committee to be unnecessary considering the limited resources available for other patients, the Medical Referral Committee must approve for each non-active medical referral patient a medically, physically and mentally fit family or friend escort for the patient in such cases where the patient is unable to travel independently because of:

i) physical disability, frailty, status as a minor, or age;
ii) psychiatric disability or mental deficiency;
iii) full or partial blindness or deafness;

iv) potential or actual language barriers;

v) fecal or urinary incontinence requiring assistance for the patient to use the toilet;

vi) the patient's inability to feed himself or herself or to perform other activities required for daily living; or

vii) a strong possibility that the patient will die at the referral health care facility as a result of the severity of the illness or condition;

viii) admittance as an inpatient who will be undergoing major surgery involving general anesthesia.

It is the prime responsibility of the family or friend escort to assist, monitor and represent the patient at all times, if patient is medically or mentally incapable of making sound and proper judgments. A family or friend escort shall not accept or be burdened with other responsibilities for the duration of the patient's referral, but may request to be relieved of service if a new escort may be put into place. Non-compliant or relieved family or friend escorts will be replaced at the patient's expense (the patient will pay for the replacement's airfare). The non-compliant or relieved family or friend escort must pay for all expenses for their return to the CNMI. Family or friend escorts must agree and acknowledge the above responsibilities that apply for the duration of the referred patient's medical treatment and care.

Active medical referral patients are not eligible to a family or friend escort unless declared medically (physically and mentally) fit by a licensed physician and approved by the Medical Referral Committee. Patients are not entitled to financial assistance for a family or friend escort if the patient's or intended escort's income was more than $70,000 in the twelve (12) months immediately preceding the date of approval for medical referral.

5.5. Maintenance Costs.

a. **Accommodations, Ground Transportation, and Subsistence Allowance as follows, if eligible (not to exceed the equivalent value of such referral costs to the State of Hawaii or actual costs, whichever is less);**

i) In-Patient Referrals. Room and board for in-patients provided through the referral health care facility.

ii) Out-Patient Referrals. Out-patients on medical referral shall receive reasonable accommodations not to exceed the contracted rate for the State of Hawaii. Out-patients shall also be provided ground transportation not to exceed $10.00 per day of each medical appointment, where there is no actual city public transportation and ground transportation is not provided by the CNMI government, as well as a subsistence allowance not to exceed $30.00 per day depending on medical facility location.

iii) Patient Escorts. Authorized family or friend escorts shall receive reasonable accommodations at Medical Referral Services' expense. The family or friend escort shall share a room with the medical referral patient. The family or friend escort will be provided daily ground transportation allowance not to exceed $10.00 per day depending on actual distance to the medical facility, if their room accommodation location is outside the medical facility, and only if no city public transport is available and no ground transportation is provided by the CNMI government. The family or friend escort will additionally receive a subsistence allowance not to exceed $30.00 per day depending on medical facility location.

b. **Right To Refuse Government Room and Board.** Medical referral patients and authorized family or friend escorts have the right to refuse accommodations arranged by Medical Referral Services. However, if a patient and/or family or friend escort make independent arrangements for accommodations, Medical Referral Services shall not be liable for any expenses incurred with respect to such accommodations.

VI. Procedures for Medical Referral

6.1. Non-Emergency Referral Cases. The procedures for all non-emergency patient cases that may be appropriate for medical referral shall be as follows:

a. Physician Assessment. Once the patient's primary care physician has made a thorough evaluation of the patient's illness and/or medical condition and determined that the patient satisfies the medical criteria for medical referral as provided in Section 4.1 of these Rules and Regulations, the primary care physician shall discuss the patient's case with the chairperson of the applicable CHC medical department (or, if the primary care physician is the chairperson, then with another physician in the applicable medical department) to obtain a second opinion on whether the patient's case is appropriate for a petition for medical referral. If both physicians agree that the patient's case should be forwarded to the Medical Referral Committee, the primary care physician shall contact the appropriate physician specialist at a referral health care facility to discuss the patient's case and to assess the appropriateness of the treatment available at such facility.

b. Medical Referral Documentation. If, after a complete assessment of the patient's case as specified above in Section 6.1.a, the primary care physician determines that the patient's case is appropriate for a petition for medical referral, the primary care physician shall confirm with the Medical Referral Services staff that the patient satisfies the eligibility criteria for medical referral set forth in Section 4.2 of these Rules and Regulations. If the patient is found to be eligible, the primary care physician shall obtain and attach any relevant laboratory and/or radiology reports, and complete the required forms below and other applicable requirement listed on the medical referral checklist attached to the referral package:

i) Patient Referral Records

ii) Air Travel Medical Form (must be signed by patient)

iii) Patient's History and Referral Note

The primary care physician shall make sure all forms listed above are properly completed with all required signatures, notes are transcribed and signed, other supporting reports, insurance, and patient contact information, films and test results are attached before submitting to Medical Referral Services. Medical Referral Services will return any improperly filled or incomplete referral packages to the referring physician for correction and/or proper completion. No action can be taken until a properly completed application package is submitted.

c. **Case Presentation.** The primary care physician shall present the patient's case to the Medical Referral Committee at the next regular Committee meeting. It shall be the responsibility of the primary care physician to present the prepared documentation, describe the patient's illness or medical condition, explain why medical referral is appropriate, and answer any questions raised by the Medical Referral Committee. The Committee may elect not to review any scheduled cases without the referring physician being present.

d. **Medical Referral Committee Determination.** The Medical Referral Committee shall consider the primary care physician's presentation, review the documentation, assess whether the patient's condition can be adequately treated with the resources available within the Commonwealth and decide whether medical referral of the patient is warranted. The decision of the Medical Referral Committee shall be final, except as provided in Section 6.4. The Director shall promptly advise the primary care physician of the Medical Referral Committee's decision. The Director shall subsequently send written notice of the Committee's decision to the primary care physician for discussion with the patient.

e. **Medical Referral Arrangements.** If medical referral is approved, the primary care physician shall provide the Medical Referral Services staff with the time frame and method for transferring the patient to the referral health care facility. Medical Referral Services, in coordination with other relevant entities, shall make all medical,

travel, and accommodation arrangements in the city where the referral health care facility is located. The patient must have a confirmed appointment with a physician at the referral healthcare facility prior to departing the Commonwealth. Self-arranged referrals by approved medical referral patients in accordance with the Committee's approved conditions are eligible for reimbursement of standard referral benefits upon submission of all original supporting documents to Medical Referral Services.

f. Execution of Medical Referral Authorization Documentation. If the patient's case is approved for medical referral, two voting members of the Medical Referral Committee must sign a Patient Referral Record. After all arrangements are completed and confirmed, a Medical Treatment Authorization Form must be completed, signed by the case worker, and forwarded for approval by the Director before the patient departs. Review by the Director is limited to compliance with procedures and policies.

g. Documents to be Prepared By the Patient. Prior to the patient's departure from the Commonwealth, the Medical Referral Services staff shall require the patient, or patient's representative, to complete or sign the following forms, if applicable:

i) Release(s) of Liability
ii) Medical Treatment Authorization
iii) Promissory Note
iv) Subrogation of Claims Form (see Section 11.1)
v) Power of Attorney (when appropriate)
vi) Affidavit by Recipient of Assistance
vii) Indigent Medical Assistance Application
viii) Authorization for Release of Medical Records
ix) Indigent Eligibility Certification

6.2. Emergency Referral Procedures. In cases where a primary care physician determines that a patient is in a critical or otherwise urgently life-threatening medical condition and must receive emergency medical care that cannot be adequately

provided in the Commonwealth, thereby justifying immediate evacuation of the patient to an off-island referral health care facility, the following procedures shall be followed:

a. **Expedited Approval.** The patient's primary care physician, after consultation and obtaining the approval of two of the voting Medical Referral Committee members, may refer the patient without the case being reviewed by the full Committee. One of the two approving Medical Referral Committee members must notify Medical Referral Services of the emergency situation to allow MRS to coordinate the referral with the patient's primary care physician and other necessary parties.

b. **Notice to Referral Health Care Facility.** The primary care physician shall contact the appropriate physician specialist or another available physician at the referral health care facility to report the imminent patient referral and to discuss the clinical details of the patient's case. When required, the primary physician must also coordinate with Medical Referral Services staff to obtain administrative approval by the referral health care facility.

c. **Medical Referral Documentation.** The primary care physician shall complete and sign all required forms and attach all necessary supporting documents such as films, lab reports, and other items as set forth in Section 6.1.b. If the patient is unable to sign where a patient's signature is required, a legal representative may sign for the patient. If the patient has no legal representative, the primary care physician may sign for the patient. Any signature other than the patient's requires the following to be written next to the signature: the printed name of the person signing; a notation of the signer's relationship to the patient; and a description of the basis for the signer's authority to sign on the patient's behalf.

d. **Medical Referral Arrangements.** Medical Referral Services staff shall immediately contact a commercial airline or a travel agency to make the referral patient's travel arrangements. Copies of the Medical Referral Services travel request and travel authorization shall be delivered to the commercial airline or travel agency as

soon as possible. Medical Referral Services staff shall send a travel advisory to the medical referral services coordinator or representatives and official providers in the city where the referral health care facility is located. This document shall include the following: the patient's name, sex, age, diagnosis, flight number, estimated time of arrival, and whether an ambulance, stretcher, and/or other supportive devices will be required upon arrival. The names of any physician, nurse, or respiratory therapist and/or family or friend escorts must also be included on the travel advisory.

e. **Funding Approval.** Travel authorizations for patient emergency medical referral during non-working hours shall be executed by the MRS Director the next business day following the emergency medical referral.

f. **Medical Evacuation.** If an emergency medical referral is necessary and commercial airline transportation is unavailable, the Medical Referral Services Director or his or her designee may exercise discretion on contacting any of the United States Armed and/or Uniformed Services on the Territory of Guam or the State of Hawaii to seek their assistance in evacuating the patient. However, before contacting any of the Armed or Uniformed Services, the Medical Referral Director or designee must ensure that:

i) the medical case involves an immediate life-threatening situation; and

ii) that there will be no commercial flight available for transport in the time period specified by the primary care physician for medical referral.

Once the Medical Referral Services Director or his or her designee contacts one of the components of the Uniformed Services requesting assistance on a medical referral case, the primary care physician must be available to provide the appropriate officers and other members of the Uniformed Services contacted with the details of the medical case and the requirements for the evacuation. The Medical Referral Services

Director or designee shall, if warranted, advise the Governor on the details of the emergency medical evacuation case at the earliest reasonable time.

6.3. Approval for Medical Referral. All medical referrals to health care facilities outside the CNMI must receive prior approval from the Medical Referral Committee. An otherwise eligible person who is already receiving medical care at a Medical Referral Services approved facility/provider will not be disqualified from prospective or future medical referral benefits simply because he or she does not return to Saipan first. Instead, the Medical Referral Committee will evaluate a patient's request as to prospective or future benefits only. Benefits will not be paid retroactively, i.e. for periods of time prior to application and Medical Referral Committee approval. No other eligibility or Medical Referral Services requirements are affected by this provision of the regulations. Prospective or future limited accommodation benefits may be authorized for self-referred patients who otherwise would be eligible for assistance by Medical Referral Services. The medical care to be delivered must meet all other medical referral standards, including, but not limited to, the requirement that the medical care needed cannot be provided in the CNMI. A patient already on medical referral at a referral health facility may not be transferred to a second referral health care facility without the express authorization of the Medical Referral Committee, except in cases of emergency. In all cases, the attending physician at the approved referral center/provider must communicate directly with the patient's CNMI primary care physician.

6.4. Denial of a Presented Referral Case. If a patient's medical referral petition is denied by the Medical Referral Committee, the Medical Referral Director shall inform the primary care physician of the Committee's decision in writing. If the referring physician is not satisfied with the Committee's decision, he or she may submit the patient's case for reconsideration at the next Committee meeting, provided additional facts are added for discussion.

VII. Emergency Transfers from Rota

7.1. Emergency Evacuation. Notwithstanding Section 6.3 of these Rules and Regulations, and because of Rota's proximity to the Territory of Guam, Rota's resident physician, after consultation with CHC Emergency Department, may request that medical emergency patients from Rota be evacuated directly to a Guam referral health care facility after getting the approval of one (1) voting member of the Medical Referral Committee. Such approval shall be determined by whether the required medical services can be provided at the Commonwealth Health Center. The Rota resident physician must coordinate with a receiving physician at the referral facility regarding the patient's clinical information. The Rota resident physician must also fax or email completed required referral documents to the Medical Referral Services Saipan office. The approving Medical Referral Committee member must notify a member of the Medical Referral Services staff or the Director of the emergency situation, so that they may coordinate the referral with the counterpart to MRS on Guam and the Rota resident physician.

7.2. Authority To Transfer. Aside from the Rota resident physician, only a CNMI licensed physician, or in the absence of a CNMI licensed physician, another licensed medical professional authorized by the Resident Director of the Rota Health Center can make medical transfer decisions after consultation with the CHC Emergency Department. No other individual, regardless of office or title, may authorize the transfer of a patient from Rota.

7.3. Responsibility For Payment of Medical Care. Residents of Rota, Tinian, Saipan, and the Northern Islands are equally responsible for the payment of medical bills they incur for medical services rendered to them. All medical bills incurred while a patient is at a referred emergency facility on Guam that are not covered by health care financial support or a third-party payer, are the financial responsibility of the patient.

VIII. Follow-Up Medical Appointments.

Medical referral patients are not automatically entitled to a follow-up medical appointment at a referral health care facility. Patient petitions for follow-up appointments shall be treated in the same manner as initial petitions for medical referral, and shall be subject to the same standards and procedures as initial medical referrals.

Patients may be allowed one follow up after medical procedures or completion of treatment upon the Committee's review and approval of new petition with updated medical information.

IX. Medical Referral Program Exclusions.

The following charges shall be excluded from coverage under the Medical Referral Program, and shall be the financial responsibility of the patient, unless the Committee confirms the medical condition of the patient is severe and life threatening:

9.1. Any charges related to medical treatment or care that could have been adequately provided at the Commonwealth Health Center.

9.2. Any charges for occupational diseases or injury that are covered by worker's compensation benefits.

9.3. Any charges incurred at a Veterans Administration facility.

9.4. Any charges related to health care services provided by a government-funded public health program.

9.5. Any charges incurred for personal comfort items or medically unnecessary upgrades, including telephone, radios, private housing accommodations, movie and car rentals, hospital room or amenities

upgrades, and special order meals.

9.6. Any charges related to nursing home-type care provided by an institution not qualified as a hospital under federal, state, or territorial law.

9.7. Any charges related to cosmetic surgery, except as required for repair of catastrophic injury or congenital malformation.

9.8. All medical charges related to organ or bone marrow transplant surgery (with or without stem cells). MRS may only assist with maintenance costs in such circumstances if block rooms and ground transportation are available at the referred location.

9.9. Orthopedic procedures including bone extension or other elective procedures. Exceptions may be made at the Medical Referral Committee's discretion.

9.10. Dermatology, rheumatology, and endocrinology evaluation and consultation. Exceptions may be made at the Medical Referral Committee's discretion.

9.11. Any charges relating to a patient obtaining a second opinion on a recommended treatment or procedure.

9.12. Any charges relating to medical treatment rendered for investigatory or experimental purposes, or medical treatment for which there is no established benefit to the patient's health.

9.13. Any charges for medical care not authorized by the Medical Referral Committee or charges for medical care provided by a facility or provider other than a recognized referral health care facility or recognized provider.

9.14. Any charges related to tertiary, palliative care or services that may be identified by the Medical Referral Committee as so expensive as to impact the overall financial integrity of Medical Referral Services.

9.15. Any charges in excess of the lifetime limit specified in Section 11.4.

9.16. Any charges for treatment for persons who refused treatment during a prior referral for the same medical diagnosis. Exceptions may be made at the Medical Referral Committee's discretion.

X. Humanitarian and Emergency Provisions

In the event a person who would be ineligible for medical referral pursuant to Section 4.2 of these Rules and Regulations is found by his or her primary care physician to require an emergency medical referral, the Medical Referral Committee may authorize Medical Referral Services to assist with the arrangements for medical care to be provided outside the CNMI. However, such patient (or responsible party) shall be required to pay a flat fee of $250.00 for logistical or other related costs incurred by Medical Referral Services, plus $25.00 per hour if emergency medical evacuation is required.

XI. Referral Fees

11.1. Payment of Medical Referral Costs. Medical Referral Services is the payer of last resort. Prior to departing the CNMI, every patient approved for medical referral or their representative shall provide the Medical Referral Services staff with proof of any and all health care financial support and/or third-party payers, such as a health insurance identification card, Medicaid identification card, or Medicare claim card, that are responsible for providing financial coverage for the costs associated with the patient's medical referral. Medical referral patients, or their representative, shall also

execute a subrogation of claims form prior to their departure from the CNMI, authorizing Medical Referral Services, through the Office of the Attorney General, to pursue any legal claims on behalf of the patient against third parties who may be liable for payment of medical referral costs.

Medical Referral Services shall presume that the following entities or individuals are responsible for the following costs associated with the patient's medical referral:

a. **Recipients of Benefits from Medicaid, Medicare Vocational Rehabilitation or Other Government Assistance Programs:** 100% of the program costs for medical, ancillary, transportation, escort, and maintenance costs incurred in connection with a patient's medical referral shall be paid by the appropriate federal and/or CNMI government program(s). Any amount not covered by the government program(s) or another third party payer shall be the patient's financial responsibility, except as provided in Section 11.1.f.

b. **Health Care Insurance:** 100% of policy limit coverage for medical, ancillary, transportation, escort, and maintenance costs incurred in connection with a patient's medical referral pursuant to the terms and conditions of the patient's health care insurance policy shall be paid by the insurance company (including HMOs and PPOs). If a patient's health care insurance policy does not cover air transportation costs to a referral health care facility and maintenance costs, Medical Referral Services shall pay these costs as provided in Sections 5.3 and 5.5 of these Rules and Regulations. However, in cases where an insurance company prefers to make independent arrangements for its members' medical referral, Medical Referral Services shall only be responsible for air transportation and maintenance costs up to the equivalent level of such costs for a medical referral to the State of Hawaii. Any amount not covered by the patient's health care insurance policy or another third-party payer shall be the patient's financial responsibility, except as provided in Section 11.1.f.

c. **Nonresident Worker Health Medical Coverage:** The patient,

employer on record, or other responsible party shall be 100% responsible for all expenses incurred in connection with the patient's medical referral. Medical Referral Services will assist only with coordination and logistical support at a flat fee of $250.00 plus $25.00 per hour if emergency medical evacuation is required.

d. Third Party Acts Against A Patient: Medical Referral Services, with the assistance of the medical referral patient, shall use its best efforts to collect the costs incurred in connection with the patient's medical referral from any or all of the following:

i) any third-party found guilty of a physical crime against the patient which resulted in the patient's need for medical referral;

ii) any third-party tortfeasor whose actions injured the patient and resulted in the patient's need for medical referral; and/or

iii) such third-parties' insurance companies.

e. No Responsible Third-Party Payer: In the absence of a responsible third-party payer, 100% of the medical, ancillary and escort costs incurred in connection with the patient's medical referral shall be the patient's financial responsibility, or, if the patient is a minor, then the financial responsibility of a chargeable adult, except as provided in Section 11.1.f.

Medical Referral Services will pay air transportation costs to a referral health care facility and maintenance costs, as provided in Sections 5.3 and 5.5 of these Rules and Regulations.

f. **Exceptions For Indigent Patients.** Medical Referral Services shall pay the applicable percentage of the medical referral costs for which an indigent patient is personally liable whenever the patient is able to establish to the satisfaction of the Medical Referral Services staff that he or she falls within the indigent standards set forth below:

i) Medical Referral Services shall pay 100% of the medical and ancillary costs, transportation, official escort and maintenance costs associated with the medical referral of those patients whose family household gross income from all sources falls within the following levels:

Family Size*	Maximum Annual Income[1]
1	$18,021
2	$24,378
3	$30,736
4	$37,093
5	$43,451
6	$49,808
7	$56,165
8	$62,523

*For family units of more than 8 members, add $4,780 for each additional member.

ii) Medical Referral Services shall pay 75% of patients' medical and ancillary costs, and 100% of transportation costs, including those of an official escort, as well as maintenance costs associated with the medical referral, for patients whose family gross income from all sources falls within the following levels:

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[1] Maximum annual income levels are based on 133% and 150% respectively of the 2015 Poverty Level Guidelines for the State of Hawaii as measured by the Consumer Price Index, and are the levels published in the Federal Register on January 26, 2012 (volume 77, number 17) by the Secretary of the United States Department of Health & Human Services, Centers for Medicaid and Medicare Services, pursuant to the Omnibus Budget Reconciliation Act (OBRA) of 1981, §§ 652, 673(2).

Family Size*	Maximum Annual Income[1]
1	$20,325
2	$27,495
3	$34,665
4	$41,835
5	$49,005
6	$56,175
7	$63,345
8	$70,515

*For family units of more than 8 members, add $5,592 for each additional member.

Any amount not covered by the Medical Referral Program shall be the financial responsibility of the patient or the responsible party for a minor patient.

The patient or patient's representative shall have the burden of providing the Medical Referral Services staff with verifiable documentation regarding the patient and the patient's family unit (such as filed family income tax returns, wage and salary forms for employed family members, and applications for family enrollment in public assistance programs) that establish that the patient and the patient's family unit fall within the indigent levels set forth above, and that the patient is thus eligible for financial assistance through Medical Referral Services. The Medical Referral Services staff shall include the documentation provided by the patient to establish indigent eligibility in the patient's medical referral file. Medical Referral Services shall be prepared to demonstrate to the Governor, upon request, that the patient satisfactorily established that he or she was indigent and required financial support to pay the medical referral cost. In doing so, no information beyond the patient and patient's family unit's financial information shall be shared outside Medical Referral Services. While the Governor may review the case, the decision on the patient's indigent status may not be changed by the Governor or at the Governor's direction upon such review.

11.2. Assignment of Rights. Every patient approved for medical referral must assign any and all rights he or she may have to health care financial support or other third-party payments to Medical Referral Services up to the entire costs of the medical referral, and shall use his or her best efforts to secure such financial assistance for the entire medical referral cost. If, at any time, a medical referral patient receives a direct reimbursement from an insurance company or other third-party payer for medical bills arising from an authorized medical referral, such patient shall immediately endorse such payment to Medical Referral Services for deposit in the Medical Referral Services account.

11.3. Utilization Review. All medical bills incurred by a patient at the referral health care facility shall be subject to utilization review by the appropriate Medical Referral Services staff or contracted personnel. In those cases where a patient is referred to a referral health care facility in the State of Hawaii, it shall be the primary responsibility of the utilization review personnel employed by Medical Referral Services to review the medical treatment and care provided to the patient, and to audit the medical bills prior to their payment by Medical Referral Services. If, during a utilization review, it is determined that:

a. a patient is receiving, or has received, health care services that are unnecessary or unauthorized by the Medical Referral Committee;

b. the patient's stay in the hospital has been unnecessarily extended;

c. irregularities or inconsistencies exist in the patient's medical bills; and/or

d. there are other factors regarding patient care which may compromise the financial integrity or managed health care policy of Medical Referral Services, such personnel performing the utilization review shall immediately notify the Director of Medical Referral

Services in writing of the situation.

The Medical Referral Services Director shall promptly notify the referral health care facility in writing about the conclusions reached in the utilization review report regarding the specific charges for unauthorized or inappropriate services and advise the facility that Medical Referral Services will not be responsible for such charges. In the event of an emergency that requires additional medical services after a patient has been referred, emergency referral procedures must be followed, although approval may be sought retrospectively (also using emergency referral procedures) if the patient is in clear danger of death if immediate action is not taken.

11.4. Lifetime Limit. Medical Referral Services shall pay medical expenses incurred for medical referral up to a lifetime limit of eighty thousand dollars ($80,000) per eligible patient. Transportation and maintenance costs for the referral patient and their escort(s) shall not be included in the calculation of a patient's lifetime limit. Any medical expense in excess of the lifetime limit shall be the patient's full responsibility. Medical Referral Services shall only assist with applicable air transportation and maintenance costs for future referrals of patients who have reached or exceeded the lifetime limit. Any medical estimate or expense shall solely be the patient's responsibility. MRS must verify patients' abilities to pay estimated medical expenses prior to the issuance of a Medical Treatment Authorization Form and travel authorization.

XII. Limited Government Liability

12.1. Statutory Exemption. As provided in Section 2204(d) of Title 7 of the Commonwealth Code, the CNMI Government shall not be liable for any claim arising from the Medical Referral Committee's denial of, or failure to make, a medical referral to a medical facility outside the CNMI.

12.2. Medical Referral Services Not Responsible For Unauthorized

Services. Medical Referral Services shall not be responsible for the medical, ancillary, transportation, escort, or maintenance costs incurred by a patient whose off-island medical care was not authorized by the Medical Referral Committee. Similarly, Medical Referral Services shall not be responsible for the cost of medical or health care services rendered to a patient at a health care facility or by a health care provider not recognized by the Medical Referral Committee.

XIII. Penalties for Violations of These Rules and Regulations

Any person found by Medical Referral Services to have violated these Rules and Regulations shall be liable for either:

a. a civil penalty of up to $ 1,000.00; or

b. the costs incurred by Medical Referral Services as a result of the violation, whichever is greater;

and court costs and attorneys' fees incurred by the CNMI government in collecting such penalty or incurred costs, for each violation. Such determination shall be made by the Director. In the event the person who is the subject of such a finding wishes to appeal, he or she shall be entitled to an administrative hearing conducted by Medical Referral Services. Furthermore, where such violations appear to constitute a crime, the matter may be referred to the Attorney General's Office and/or the United States Attorney's Office for possible prosecution.

XIV. Severability

If any provision of these Rules and Regulations or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of these Rules and Regulations, or the application of their provisions to persons or circumstances other than those to which they are held invalid, shall not be affected thereby.

Attachment I

For purposes of these Rules and Regulations, the following health care facilities, and those health care providers and ancillary care providers associated with these facilities, shall be considered to be recognized referral health care facilities for medical referral patients from the CNMI:

TERRITORY OF GUAM

Cancer Center of Guam
Dr. Byungsoo Kim
Dr. Raymond M. Taniguchi
Dr. Young Chang
Dr. David Parks
Dr. Pierre Pang
Dr. Ruben Arafiles
ENT and Neurology Clinic
FHP Health Center
Good Samaritan Clinic
Guam Memorial Hospital
Guam Pacific Medical Clinic
Guam Seventh Day Adventist Clinic
Guam Eye Clinic
Guam Orthopedic Associates
Guam Public Medical Clinic
Guam Radiology Consultants
Guam Pacific Medical Group
Guam Regional Medical City
Guam Surgicenter
Guam Surgical Group
Hafa Adai Specialist Group
Health Partners
IHP
Island Eye Center
Island Surgical Center
Island Cancer Center
Latte Stone Cancer Center
Naval Hospital Guam
Pacific Cardiology Consultants
Pacific Medical Group
Pacific Hand Surgery
Pacific Surgical Arts
Pacific Urology Consultants
St. Lucy's Eye Clinic
U.S. Renal Care

STATE OF CALIFORNIA
Anaheim Memorial Hospital
California Pacific Medical Center
Children's Hospital of LA.
Good Samaritan Hospital, LA
Rady Children's Hospital (San Diego)
UCSD
UCSF
UCLA

STATE OF HAWAII
Cancer Institute of Maui
Cancer Center of Hawaii
Castle Medical Center
DSI Renal Clinic
Kahi Mohala Center (Mental Health)
Kapiolani Children/Women Hospital (PIMS)
Kaukini Medical Center
Liberty Dialysis Center
Pali Momi Medical Center (PIMS)
Pacific Cardiology
Queens Medical Center
Renal Treatment Center
Rehabilitation Hospital of the Pacific
Shriners Hospitals for Children -- Honolulu
Straub Clinic and Hospital (PIMS)
St. Francis Hospital
Tripler Army Medical Center
Waikiki Health Center

REPUBLIC OF THE PHILIPPINES
Asian Hospital and Medical Center
Makati Medical Center
The Medical City Hospital
Philippine General Hospital
St. Luke's Medical Center (both)

STATE OF TEXAS
The Brown Schools of Central Texas
(San Marcos Treatment Center,
Health Care Rehabilitation Center, etc.)
MD Anderson Cancer Center

JAPAN
Aichi Children's Hospital
Fukushima Memorial Hospital
Nagoya City University Hospital

Commonwealth of the Northern Mariana Islands
OFFICE OF THE GOVERNOR
Bureau of Environmental and Coastal Quality
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www.deq.gov.mp and www.crm.gov.mp

Ralph DLG. Torres
Governor

Victor B. Hocog
Lt. Governor

Frank M. Rabauliman
Administrator

PUBLIC NOTICE OF PROPOSED REGULATIONS

INTENDED ACTION TO ADOPT THESE PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Office of the Governor, Bureau of Environmental and Coastal Quality (BECQ) intends to adopt new Underground Storage Tank Regulation, pursuant to the procedures of the Administrative Procedure Act,1 CMC § 9104(a). The Regulations would become effective 10 days after compliance with 1 CMC §§ 9102 and 9104 (a) or (b). (1 CMC § 9105(b))

AUTHORITY: The Administrator of BECQ is empowered by the Legislature to adopt rules and regulations for the administration and enforcement of the Commonwealth Environmental Protection Act. 2 CMC § 3122.

THE TERMS AND SUBSTANCE: The proposed regulation ensure that underground storage tanks (USTs) are constructed, maintained and operated in a manner that petroleum and other regulated substances are stored safely. The proposed regulations requires owners and operators of USTs to prevent release from USTs, detect releases from USTs, and correct the problems created by releases from USTs. The proposed regulation, once adopted, shall supersede and repeal the existing Underground Storage Tank Regulation, which were adopted in 1992.

THE SUBJECTS AND ISSUES INVOLVED:

1. The UST regulation adopts the new Federal Underground Storage Tank regulation by reference; and
2. The UST regulation revises the existing requirements and new requirements for secondary containment with interstitial monitoring, which shall include under dispenser containment for new dispensers, as required by the Energy Policy Act of 2005; and
3. The UST regulation requires Class A, B and C operators for each UST facility, as required by the Energy Policy Act of 2005; and
4. The UST regulation addresses UST systems deferred in the federal 1988 UST regulation by removing the deferral and regulating UST systems with field constructed tanks, airport hydrant fuel distribution systems that meet the UST definition, and UST systems storing fuel solely for use by emergency power generators; and
5. The UST regulation requires testing of spill buckets every three years and inspecting of overfill prevention equipment every years; and
6. The UST regulation requires the testing of containment sumps used for both pressurized and suction piping interstitial monitoring every three years; and
7. The UST regulation increases the emphasis on properly operating and maintaining equipment to prevent releases and detect releases, which includes requiring facilities to conduct a 30 day and annual walkthrough inspections; and
8. The UST regulation requires that all ports, vents, or other apparatuses that could in anyway be construed as a fill port must be properly identified and locked; a BECQ UST inspector be present during all pressure testing of USTs and the associated piping; UST

permit to operate be kept at the UST facility and be readily available at all times for inspection; and

9. The UST regulation requires that no tanks be installed within wetland or within five hundred feet of a wetland boundary, or within five hundred feet of surface water bodies or any sensitive environmental feature determined as unsuitable by the Administrator of BECQ.

DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular. (1 CMC § 9104(a)(1))

TO PROVIDE COMMENTS: Send or deliver your comments to Reina C. Camacho, Pesticide & Storage Tank Branch Manager, *Re: Underground Storage Tank Regulations*, at the above address or to the above fax number or email storagetankspesticides@becq.gov.mp. Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments. (1 CMC § 9104(a)(2))

These proposed regulations were approved by the Administrator on February 3rd, 2016.

Submitted by: _____ 2/3/16
Frank M. Rabauliman — Date
Administrator
CNMI Bureau of Environmental & Coastal Quality

Received by: _____ 2/26/16
ESTHER S. FLEMING — Date
Governor's Special Assistant
for Administration

Filed and
Recorded by: _____ 2.26.16
ESTHER SN. NESBITT — Date
Commonwealth Register

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).

Dated this 29th day of February ____, 2016.

_____
EDWARD MANIBUSAN
Attorney General

Commonwealth gi Sangkattan na Islan Marianas
Ufisinan Gubietnu
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storagetankspesticides@becq.gov.mp

Ralph DLG. Torres
Governor

Victor B. Hocog
Lt. Governor

Frank M. Rabauliman
Administrator

NUTISIAN PUPBLIKU NI MANMAPROPONI NA AREKGLAMENTU SIHA

MA INTENSIONA NA AKSION PARA U MA ADÅPTA OSINO U MA APRUEBA ESTI SIHA I MANMAPROPONI NA AREKGLAMENTU SIHA: I Commonwealth gi Sangkattan na Islan Mariånas, Ufisinan Gubietnu, Bureau of Environmental yan Coastal Quality (BECQ), ha intensiona para u ma adåpta osino u ma aprueba kumu petmanienti na arekglamentu osino regulasion i manmahåfut na tångki siha ("Underground Storage Tanks" or UST), sigun i ginagagåo gi "Administrative Procedure Act, 1 CMC § 9104 (a)". I regulasion siha para u ifektibu dies (10) dihas dispues di makumpli i 1 CMC § 9102 yan i 9104 (a) pat (b). (1 CMC § 9105 (b)).

ATTURIDÅT: I Lehislatura ha nå'i Administradot i BECQ pudet ni para u aprueba i arekglamentu yan regulasion siha para i atministrasion yan i maenfuetsan i "Commonwealth Environmental Protection Act", 2 CMC § 3122".

I ALIMENTU YAN I SUSTÅNSIAN PALÅBRA SIHA:
I manmaproponi na regulasion siha para umana'siguru na i manmahåfut na tångki (Underground Storage Tanks osino "UST") ufanmafa'tinas, ufanma'adahi, yan ufanmana'setbi gi manera anai umaasigura dibuenamenti na manmagofadahi i pittoliu yan enteru manpiligru na binenu siha. I manmaproponi na arekglu ha månda i mandueñun manmahåfut na tånki na umaespiha empeñu na umapruhibi sumi', umaatåhå amånu i siña yanggen guaha' sumi', yan umakurihi hafa na prupblema ensankåsu yanggen guaha' sumi'. Esti manmaproponi na arekglamentu, yanggen ma aprueba, debi na u niega i alacha na aregklamentun manmahåfut na tångki ni ma aplika gi 1992.

I Ginagagåo yan Asuntu Siha:
1. I arekglamentun manmahåfut na tånki u adåpta i nuebu na "Federal Underground Storage Tank" na arekglu sigun i ginagagåo;
2. I UST na arekglamentu ha tulaika i presenti na arekglu yan nuebu na arekglu pot asuntun masahguan yan machåhlåo pittoliu yan binenu gi manmahåfut na tångki siha gi anai debi na umana'guaha' mås sahguan para u chåhlåo i simi' sigun i "Energy Policy Act of 2005"; and
3. I UST na arekglamentu ha månda i dueñun "Class A, B, and C" para kada' fasilidåt manmahåfut na tångki siha (UST), sigun i ginagagåo gi "Energy Policy Act of 205;
4. I UST na arekglamentu ha kubri enteru i sisteman "UST" ni manmåhñåo osino mana'fanatrasåo manaplikåo gi 1988 anai hana'suha manaplikåpbli ya ha tutuhun gumubietna sisteman UST ni manmafa'tinas gi hilu' tånu', sisteman manrikohi yan mannå'i pittoliu gi plåsan batkun airi sigun i UST, yan sisteman UST ni sumasahguan pittoliu para solamenti gotpi na usun måkinan eliktrisidå gi tiempun achåki;
5. I UST na arekglamentu ha månda ma rikunosi i manmahåfut na tånki siha kada' tres åñus yan munga na umachuda' osino sumi' kada' såkkan;
6. I UST na arekglamentu ha månda kada' tres åñus na u ma rikunosin manmafa'tinas na kanoa para u pruhibi sumi';
7. I UST na arekglamentu hana'yahululu' na debi na uguaha' empeñu anai maasigura namachocho'chu' yan sigurão i måkina yan ramenta siha anai ki siña umapruhibi sumi' yan umaatåhå yanggen guaha' sumi' yan lokkui' umånda enteru fasilidåt UST na u cho'gui' rinikunosin trenta (30) dihas yan tolasåkkan;
8. I UST na arekglamentu ha månda na todu sagan båtkun airi yan bantalån, sagan humågung gi

tångki siha, pat sino otru siha na makineria yan ramenta ni lå'yiyi ha sahguaniniyi pittoliu debi na ufanmaindika yan ufanmakandålu sigidu; debi na u gaigi i empliåon "BECQ" para urikunosi todu esti na kosas siha; i settifikun UST debi na u gaigi todu i tiempu para u marikunosi;

9. I UST na arekglamentu ha månda na tåya' tångki umafa'tinas gi hålum sisonyan osino sagan hånum gi låkngayåo pat sino gi hålum kinientus pihe na linderun sisonyan yan sagan hånum gi låkngayåo; gi hålum kinientus pihe na sagan hånum maskiseha amånu sigun i dinititminan i kabisånti osino administradot i BECQ.

DIRIKSION PARA U'MA POLU YAN MAPUPBLIKA: Esti i manmaproponi na arekglamentu debi na uma'pupblika gi hålum i "Commonwealth Register" gi i seksiona ni manmapropoponi yan i nuebu na ma'adåpta na regulasion (1 CMC § 9102 (a) (1)) yan ufanmapega gi hålum i mangkumbinienti na lugåt siha gi kumunidåt tåtkumu gi Ufisinan Atkådi yan gi ufisinan gubietnamentu siha gi kada' Isla pat distritun Sinadot parehu gi finu' Inglatera (English) yan gi finu' CHamoru yan Refaluwaasch. (1 CMC § 9104 (a) (2)).

PARA UNFANNA'HALUM FINIHU SIHA: Na'hålum finihu osino upiñon-mu guattu gi as Siñora **Reina C. Camacho, Pesticide & Storage Tank Branch Manager**, ***RE: regulasion i Underground Storage Tank*** *siha*, gi sanhilu' na "address" pat gi sanhilu' na numirun "Fax" pat gi "email" storagetankspesticides@becq.gov.mp. I nina'halommu na finihu osino upiñon debi na u hålum gi hålum trenta (30) dihas ginen i fetchan ma pupblikan esti na nutisia. Pot fabot na'hålum infutmasion, rinibisa, hinassu, pat ådgumentu siha. (1 CMC § 9104 (a) (2).

Esti i manmaproponi na arekglamentu osino regulasion ma aprueba nu i Administradot gi Febreru 3, 2016.

Nina'hålum as:

FRANK M. RABAULIMAN
Administradot
CNMI Bureau of Environmental & Coastal Quality

2/22/16
Fecha

Rinisibi as:

ESTHER S. FLEMING
Espisiåt na Ayudåntin i Gubietnu
para i Administrasion (Special Asst. for Admin – SAA)

2/20/16
Fecha

Pine'lu yan
Rinihistra as:

ESTHER SN. NESBITT
Rehistradoran i Commonwealth
(Commonwealth Register)

2.26.16
Fecha

Sigun i 1 CMC § 2153 (e) (inaprueban Abugådu Hineråt ni regulasion siha na para u macho'gui kumu fotma) yan 1 CMC § 9104 (a) (3) (inahentan maprueban Abugådu Hineråt) i manmaproponi na regulasion siha guini ni mantinilaika yan manmaaprueba kumu futmåt yan sufisiente ligåt ginin i CNMI Abugådu Hineråt yan debi na umapupblika, 1 CMC § 2153 (f) (pupblikasion arekglamentu yan regulasion siha).

Ma fecha gi 29th Febreru na diha, 2016.

for

EDWARD MANIBUSAN
Abugåo Hineråt (Attorney General)

Commonwealth of the Northern Mariana Islands
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Bureau of Environmental and Coastal Quality
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Ralph DLG. Torres
Governor

Victor B. Hocog
Lt. Governor

Frank M. Rabauliman
Administrator

ARONGORONGOL TOULAP REEL POMMWOL ALLÉGH

MÁNGEMÁNGIL MWÓGHUT YEEL BWE EBWE ADAPTÁÁLI POMMWOL KKAL: Commonwealth mellól Téél falúw kka faluwasch, Bwulasiyol Sóulem, Bureau of Environmental me Coastal Quality e tipáli ebwe adaptááli allégh bwe ebwe llégh lló bwe allégh ikka e appaaschlong bwe pommwol liwil sángi UNDERGROUND STORAGE TANK Regulations, arongowoowul mwóghutughutúl Administrative Procedure Act, 1 CMC § 9104(a). Allégh kkaal ebwe bwunguló llól seigh (10) ráll mwiril yal llégh ló rel 1 CMC §§ 9102 me 9104 (a) me ngare (b). (1 CMC § 9105 (b)).

BWÁNGIL: Sángi Legislature re ayoora ngáli bwángil Administrator BECQ bwe ebwe adaptááli allégh me mwóghutughút ngáli Administration me Enforcement rel Commonwealth Environmental Protection Act. 2 CMC §3122.

TOOL ME AFFATAL ÓWTOL AWEEWE: Reel proposed regulation fééril aweewe kkaal nge rebwe apelúghúw underground storage tank (UST) tanki kka e libwilibw fáál ppwel nge rebwe fééril me rebwe aghatchúw me atemáleghuw bwe petroleum me akkáw gas ikka rebwe isáli long faal nge ebwe ghatch leeliyel bwe e safe. Fééril aweewe kkaal nge malle yaal me malle eghal ópereedáli USTs nge ebwe amwala sángi USTs, me ebwe aghatchú USTs bwe ete suumi me llésch sángi me reel USTs. Fééril aweewe kkaal nge ngare re adóptáli nge ebwe liweli me amamaawa ló sángi aweewel Underground Storage Tank Regulation ila re adóptáli sángi wóól 1992.

ÓWTOL AWEEWE KKA EMWÁL EBWE YOOR:

1. Mille aweewel UST iye re adóptáli sángi Federal Underground Storage Tank regulation me reference, me ngare
2. Mille aweewel UST e liweli aweel ighiwe ngáli mille ighila iye e ffétá aweewe sángi secondary containment fengál me interstitial monitoring, igha ebwe bwal toolong faal dispenser containment ngáli dispensers iye e ffé tá, me igha re bwe attabwey bwe elo lóll Energy Policy Act of 2005, me ngare
3. Mille aweewel USTnge rebwe attabweey Class A, B me C ópereeda ghal efósch UST fasiliti rebwe attabweey igha ebwal lo lóll Energy Policy Act of 2005; me ngare
4. Mille aweewel UST nge e mwetto me UST system sángi lóll federal 1988 UST regulationg rebwe asúweló ówtol aweewe UST system me reel tanki kka e lo lúghúl, me airport hydrant fuel distribution system bwe e attabwey UST yaal aweewe, me UST system ebwe isólló iya gas me fuel reel ngare eghal yoo emergency power generators, me ngare
5. Mille aweewel UST nge e bwe ayoora bwáddi rebwe fééri test lóll (testing of spill buckets) ngare ghal kkada iluuw (3) ráágh me rebwe inspectáli me ngáre eteghal uuló me lóll leliyel alongal ráágh; me ngare
6. Mille aweewel UST igha rebwe ghal fééri testing of containment sumps nge re yááli fengali me pressurized and suction piping interstitial nge re ghal monitorli ghal kkada eluuw (3) ráágh; me ngare

7. Mille aweewel UST nge ebwal ghal alangátá yaal emphasis ngáli properly operating and maintaining equipment bwe rebwe piley me ete sálátágh me rebwe afálliiy bwe ete sálátágh sángi mille e ebwe lo bwe leeliyel nge rebwe inspeksion li lóll 30 rál; me ngare
8. Mille aweewel UST nge rebwe pipiiy me rebwe fééri alongal lóóngol, elal yááng ebwe toolong me iye me alongal peirághil mili kka re atameleghúw bwe rebwe tiiló me kkóndóluwló; bwe inspekktal BECQ UST igha ebwe lo me ebwe weril ngare re fééri test of UST me alongal yaal pipe; UST nge petmitiy ebwe operadali UST me ebwele reedi ngare inspekkta a tooto; me ngare
9. Mille aweewel UST nge ebwal ayoora ammwel iye esóbw yoor tanki iye re ayúútal me lóll igha emmeschór (leebwel) me ngare sángi limabweghúw feet sángi igha emmeschór iye, me bwal lóll limabweghúw feet sángi weilángil schaal me ngare léélé reel alongal igha eghi sensitive environmental feature bwe rebwe schóól Administrator of BECQ e detenminali bwe ese ghatch.

AFALAFAL REEL AMWELIL ME AKKATÉÉL: Pomwol Allégh kkaal ebwe akkatéélong llól Commonwealth Registar llól tálil ye pommwol me allégh ffé kka aa adaptáali (1 CMC §9102(a)(1)) nge ebwe bwal appasch fetal llól bwuley kka elo *civic center* me bwal llól bwulasiyo kka llól *senatorial district* rel kkasal *English,* Remeraalis me Refaluwasch. (1 CMC § 9104(a)(1))

ISIISILONGOL MWÁLILI: Afanga ngáre bwughiló yóómw mwáliili rel *Reina C. Camacho, Pesticide & Storage Tank Branch Manager, Re: Underground Storage Tank Regulations*, rel *Address* ie elo weiláng ngáre *fax* li lló rel numiiro ie e lo weiláng. Mwáliili kkaal nge ebwe attotoolong llól eliigh (30) ráll mwirilól akkatééwowul arongorong yeel. Ów issislong yáámi aghiyágh, mángemáng me ngare angiingi. (1CMC §9104 (a)(2)).

Alongal fééril aweewe (proposed regulations) kkaal nge re aprebáli sángi Administrator wóól Febrero 3, 2016.

Isáliiyallong: _____ 2/22/16
Frank M. Rabauliman — Ráll
Administrator
CNMI Bureau of Environmental and Coastal Quality

Mwiir Sángi: _____ 2/26/16
Esther S. Fleming — Ráll
Governor's Special Assistant
For Administration

File me
Rekoodliiyal: _____ 2.26.16
Esther SN. Nesbitt — Ráll
Commonwealth Register

Sángi 1 CMC § 2153(e) (Allégh kkaal ebwe llégh ló sángi AG bwe ebwe akkatééwow reel fféérúl) me 1 CMC § 9104 (a)(3) (aa bweibwogh sángi AG) rel pomwol allégh ie e appaschllong, bwe a ttakkal amweeri fiischiy, me angúúngú ló ffféérúl me *legal sufficiency* sángi CNMI Sówbwungúl Allégh Lapalap me ebwele akkatééwow 1 CMC § 2153(f) (akkatéél allégh kkaal).

Ráll iye 29th Febrero 2016

for _____
EDWARD MANIBUSAN
Sóubwungúl Allégh Lapalap

Part 1 GENERAL PROVISIONS

A. Authority

The regulations in this chapter have been promulgated by the Bureau of Environmental and Coastal Quality in accordance with the Commonwealth of the Northern Mariana Islands Public Law 3-23, the Commonwealth Environmental Protection Act, 2 CMC §§ 3101 to 3134. The regulations in this chapter and technical provisions shall have the force and effect of law and shall be binding on all persons and other legal entities subject to the jurisdiction of the Commonwealth of the Northern Mariana Islands.

The Bureau of Environmental and Coastal Quality (BECQ) shall serve as the official representative for all purposes of Subtitle I of the Resource Conservation and Recovery Act of 1976, 42 USC §§ 6901 to 6992K (Public Law 94-580) as amended, and for the purpose of such other federal or local legislation as may hereafter be enacted to assist in the management of underground storage tanks in the Commonwealth of the Northern Mariana Islands.

B. Purpose

The purpose of the regulations in this chapter is to establish a system of control and enforcement over the permitting, installation, compliance, use and monitoring of all underground storage tanks (USTs) containing regulated substances and prohibit the storage of hazardous substances or wastes in UST systems by persons within the CNMI as necessary to conserve the land and water resources of the CNMI, protect public health, and prevent environmental pollution, resource degradation and public nuisances.

The regulations in this chapter provide a means to protect the CNMI surface and groundwater resources, as stated in the Commonwealth Groundwater Management and Protection Act of 1988, 2 CMC §§ 3311 to 3333 (PL 6-12). Since the CNMI is dependent on groundwater for its drinking water supply, this chapter establishes a mechanism to protect this limited resource from contamination from petroleum products contained in underground storage tanks. Thus, the purpose of this chapter is to also establish leak detection, leak prevention, financial responsibility, and corrective action requirements for all UST containing regulated substances.

The regulations in this chapter provide a means to protect marine resources and coastal areas under the Coastal Resources Management (CRM) Act, 2 CMC §§ 1501 to 1543 (PL 3-47). These UST regulations provide a mechanism to prevent the degradation or pollution of, or damage to the marine resources of the CNMI from underground storage tanks. The provisions stated in this chapter are consistent with the purpose and objective of the CRM Act.

The Bureau of Environmental and Coastal Quality shall have primary jurisdiction to enforce this chapter in the CNMI. Additionally, the Environmental Protection Agency (EPA) Region IX Office, may independently enforce the regulations in this chapter without requiring BECQ action.

C. Administration

The Administrator is authorized to take such action as may be necessary in the administration and enforcement of the Underground Storage Tank Regulations for the CNMI.

The Bureau of Environmental and Coastal Quality shall be responsible to prepare, adopt, promulgate, modify, update, repeal, and enforce rules and regulations governing underground storage tank design, construction, permitting, installation, release detection and inventory control, compatibility, record maintenance, reporting, corrective action, closure, and financial responsibility in order to protect human health and environment, and enable BECQ to carry out the purposes and provisions of this chapter.

D. Severability

Should any part, section, paragraph, sentence, clause, phrase, or application of the rules and regulations in this chapter be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder or any other application of these rules and regulations shall not be affected in any way thereby, and shall remain in full force and effect.

E. Supersedure

The rules and regulations in this chapter supersede all CNMI Division of Environmental Quality Underground Storage Tank Regulations in effect prior to the effective date of these rules and regulations.

Part 2 ADOPTION BY REFERENCE

The provisions of 40 CFR Part 280 - UNDERGROUND STORAGE TANKS (UST) REGULATIONS are hereby adopted by reference, as published in the 2015 Federal Register 15914 (July 15, 2015; Volume 80, Number 135).

Part 3 DEFINITIONS

A. "Act" means the Commonwealth Environmental Protection Act, 2 CMC §§ 3101 to 3134 (Public Law 3-23).

B. "Administrator" means the Administrator of the CNMI Bureau of Environmental & Coastal Quality.
C. "Agency" means the Bureau of Environmental and Coastal Quality.
D. "Commonwealth" means the Commonwealth of the Northern Mariana Islands (CNMI).
E. "BECQ" means the Bureau of Environmental and Coastal Quality.
F. All other terms shall have the same meaning as set forth in the federal regulations referred to in Part 2.

Part 5 PERMITS

A. Permit Required
   1) No person shall install or operate an UST system, without first obtaining a permit from the Administrator.
   2) The Administrator shall approve an application for a permit to install or operate only if the applicant has submitted sufficient information to the satisfaction of the Administrator that the technical, financial, and other requirements of this chapter are or can be met and the installation and operation of the UST system will be done in a manner that is protective of human health and the environment.
   3) A permit shall be issued by BECQ only in accordance with this chapter, and it shall be the duty of the owner to ensure compliance with the law in the installation and operation of the UST system.
   4) Issuance of a permit shall not relieve any person of the responsibility to comply fully with all applicable laws.

B. Application for a Permit
   1) Every application for a permit to install or operate shall be submitted to the BECQ on forms prescribed by the BECQ.
   2) A permit fee shall accompany each application for a permit.
   3) The applicant shall submit sufficient information to enable the Administrator to make a decision on the application. Information submitted shall include but not be limited to the following:
      a. General information on involved parties, including the landowner, owner, and operator; identification of location of the tanks, piping, and other components that comprise the UST system; and basic description of the UST system;
      b. Age, size, location, and uses of the UST system;
      c. Other information required in forms prescribed by the BECQ for the application for a permit; and
      d. Other information as determined by the Administrator.
   4) Every application shall be signed by the owner and the operator and shall constitute an acknowledgement that the owner or operator assumes responsibility for the

installation and operation of the UST system in accordance with this chapter and the conditions of the permit, if issued.

C. Permit

1) Upon approval of an application for a permit to install the owner or operator shall have six months from the issuance of the permit to install an UST system. If the installation is not completed within six months, the permit expires and the owner or operator must apply for a new permit.
2) A permit to operate may be issued by the Administrator for a period of one year.
3) The BECQ, where practicable and appropriate, may issue one permit to the owner or operator of an UST system for the purpose of combining all USTs, piping, and any ancillary equipment constituting that UST system under one permit, irrespective of the number of individual USTs, so long as that UST system is part of one reasonably physical location.
4) BECQ shall inspect and approve all installation procedures and verifies that all federal and local specifications have been met and followed.
5) All ports, vents, or other apparatuses that could in anyway be construed as a fill port must are a) properly identified by labeling which is easily visible and b) locked to prevent accidental spills due to human error.
6) There will be a twenty-one (21) day processing period for any permit to be issued, from the time all requirements in this chapter have been completed and BECQ determines the application complete.
7) All BECQ UST permits shall be kept at the UST site and be readily available at all times for inspection by the Administrator or BECQ UST inspector.
8) The Administrator may set permitting fees as appropriate. Fees shall be specified in writing and published in the Commonwealth Register.

D. Permit to Operate (Renewals)

1) A permit to operate may be renewed for a term of one year.
2) A renewal fee shall accompany each application for renewal of a permit.
3) An application for a renewal shall be received by the BECQ at least 30 days prior to the expiration of the existing permit and shall be submitted on forms prescribed by the Agency.
4) Failure to submit a renewal application more than 30 days after the date of expiration may result in penalty.

E. Permit Conditions

The Administrator may impose conditions on a permit that the Administrator deems reasonably necessary to ensure compliance with this chapter and any other relevant requirement, including conditions relating to equipment, work practice, or operation. Conditions may include, but not be limited to, the requirement that devices for measurement or monitoring of regulated substances be installed and maintained and

the results reported to the Administrator. All costs and expenses related to any permit condition imposed by the Administrator shall be borne by the applicant.

F. Permit Transfers
1) No permit shall be transferred, unless approved by the Agency. Request for approval to transfer a permit from one owner to another owner must be made by the new owner. Request for approval to transfer a permit from one operator to another operator must be made by the new owner.
2) An application for the transfer shall be received by the BECQ at least 60 days prior to the proposed effective date of the transfer and shall be submitted on forms prescribed by the Agency.
3) The approval of transfer is dependent upon meeting all technical, financial, and other requirements of this chapter.
4) The transferred permit will be effective for the remaining life of the original permit.

Part 6 - RECORDS AND PUBLIC INFORMATION

A. All records must be kept in accordance with federal regulations pursuant to part 2.

B. Records Available to DEQ
1) All records shall be made immediately available to the Administrator or BECQ staff member upon request.
2) Willful withholding of requested information shall be subject to enforcement procedures specified in part 7.

C. Release Information Available
Information regarding the nature and quality of releases from a UST or associated piping otherwise reportable pursuant to this part shall be available to the public.

Part 7 – ENFORCEMENT

A. Civil Actions
The Administrator may institute civil actions through the Commonwealth courts and/or by administrative orders issued by the Administrator.

B. Procedures for Administrative Orders
Procedures for administrative orders shall be conducted as follows:
1) The Administrator may issue an order to enforce compliance with the Act; any regulations adopted pursuant to the Act; any permit or license issued pursuant to the Act or regulations; any order issued pursuant to the Act, permits, or regulations. Such orders may include but are not limited to a payment of a civil fine, take

corrective action, or to cease and desist. The administrative order shall serve as a complaint.

2) The Administrator may suspend, revoke, or modify any permit or license issued by the BECQ for violation of the Act, any regulations adopted pursuant to the Act, any permit or license issued pursuant to the Act and such regulations.
3) Any person who is subject to civil penalties, revocation, or suspension pursuant to Part 7 shall be served an administrative order and may upon written request seek a hearing before the Administrator or his designee. Request for a hearing must be served upon the BECQ within seven calendar days from the receipt of the notice of violation or the right to a hearing is waived.
4) The written request for a hearing shall serve as the answer to the complaint. The request for hearing or "answer" shall clearly and directly admit, deny, or explain each of the factual allegations contained in the complaint with regard to which the alleged violator (respondent) has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state the circumstances or arguments which are alleged to constitute the grounds of defense, the facts which respondent intends to place at issue, and whether a hearing is requested. Failure to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegations.
5) The respondent may also request an informal settlement conference. An informal settlement conference shall not affect the respondent's obligation to file a timely request for hearing.
6) If a hearing is conducted the Administrator or his designee will preside over the hearing. The Administrator shall control the taking of testimony and evidence and shall cause to be made an audio, audio-video, or stenographic record of the hearing. The type of record made shall be the discretion of the Administrator. Evidence presented at such a hearing need not conform with the prescribed rules of evidence, but may be limited by the Administrator in any manner she/he reasonably determines to be just and efficient and promote the ends of justice. The Administrator shall issue a written decision within ten (10) working days of the close of the enforcement hearing. The decision shall include written findings of fact and conclusions of law. The standard of proof for such a hearing and decisions shall be the preponderance of the evidence.
7) For filing deadline purposes counting of the days shall start on the day after issuance or receipt (whichever is specified). If any filing date falls on a Saturday, Sunday, or Commonwealth holiday, the filing date shall be extended to the next working day.
8) The Administrator's decision shall be final. An appeal from the final enforcement decision shall be to the Commonwealth Superior Court under the Commonwealth Administrative Procedure Act within thirty (30) calendar days following service of the final agency decision.

C. Responsibility of Administrator
The Administrator shall have the responsibility to prepare, issue, modify, revoke and enforce orders for compliance with any of the provisions of this chapter or of any rules and regulations issued pursuant thereto and requiring the taking of such remedial measures for underground storage tank management as may be necessary or appropriate to implement or effectuate the provisions and purposes of this chapter.

D. Civil Actions through Commonwealth Courts
Nothing in part 7, Section B above shall limit the remedy of civil actions through the Commonwealth courts. At the request of the Administrator, the Attorney General shall institute a civil action in the Commonwealth Trial Court for a temporary restraining order, injunction, or other appropriate remedy to enforce any provision of the Act; this chapter; any term of a permit issued under the authority of the Act or this chapter; or any order issued to enforce the Act, this chapter, a term of a permit, or prior order.

E. Searches of Property
1) If the Administrator has probable cause to believe there has been a violation of this chapter, upon receipt of an order or warrant from the Commonwealth Trial Court or the District Court, BECQ may enter upon and search any property, take necessary samples or readings therefrom, seize evidence found therein, and examine or impound any book or record found therein or specified in such order or warrant.
2) The Administrator or an authorized representative may enter upon any property for the purposes set forth in 2 CMC 3132(c) without an order or warrant if the chief or authorized representative has probable cause to believe: (1) That a violation described in the subsection has occurred or is imminent, (2) That the violation poses a serious, substantial, and immediate threat to the public health or welfare, and (3) That the delay in obtaining a court order or warrant would prolong or increase the threat, or would prevent, hinder, or delay the discovery of evidence of the violation or the taking of any necessary mitigating or remedial measure.

F. EPA Enforcement
Nothing in this section shall prevent US EPA from enforcing applicable rules and regulations.

G. Penalties and Fines
If any person fails to comply with any provision of this chapter, or any regulation or order issued under this chapter, or any term of a permit granted pursuant to this chapter, after notice of failure and the expiration of any reasonable period allowed for corrective action, the person is liable for a civil penalty of not more than $25,000 for each day of the continuance of the violation. A person is liable for an additional penalty for any amount expended by any agency of the Commonwealth in taking any necessary

action to reverse or reduce any significant adverse effect of the violation when the person is unwilling or unable to do so. If appropriate, any permit granted to a person pursuant to this chapter may be revoked, suspended, or modified for continuing violations or as otherwise deemed necessary. The director may assess, collect, and compromise any penalty. No penalty shall be assessed until the person charged with a violation has been given an opportunity for a hearing before the director or a person designated by the director for that purpose; provided, in emergencies the director may summarily suspend a permit pending proceedings under this subsection.

H. Criminal Prosecutions

Any person who knowingly and willfully makes any false statement, representation, or certification in any application, records, report, plan or other documentation filed or required to be maintained under this chapter, or by any certification, or order issued under this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained pursuant to this chapter or any certification or order of the Administrator pursuant to this chapter shall be subject to criminal prosecution and upon conviction shall be assessed fines not to exceed fifty thousand dollars per day or imprisoned not less than six months and not more than one year or both.

Commonwealth of the Northern Mariana Islands
Commonwealth Public Utilities Commission
Joseph C. Guerrero, Chair
P.O. Box 501219, Saipan, MP 96950
Tel: 235-2782; Email: cpuc.cnmi@gmail.com

PUBLIC NOTICE OF PROPOSED REGULATIONS
WHICH ARE RULES OF PRACTICE AND PROCEDURE BEFORE THE COMMONWEALTH PUBLIC UTILITIES COMMISSION

INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: The Commonwealth of the Northern Mariana Islands, Commonwealth Public Utilities Commission ("CPUC") intends to adopt as permanent regulations the attached Proposed Rules of Practice and Procedure, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Regulations would become effective 10 days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b)).

AUTHORITY: CPUC is empowered by the Legislature to adopt rules and regulations as are necessary for governing its internal operations and for the exercise of its regulatory and enforcement powers. 4 CMC §§ 8411(n) (rules and regulations), 8411(m) (internal operations).

THE TERMS AND SUBSTANCE: The Rules and Regulations provide for rules of practice and procedure in order to secure just, economical, and expeditious determination of matters before the Commission.

THE SUBJECTS AND ISSUES INVOLVED: These rules and regulations:

1. Establish standard rules of practice and procedure for matters before the commission.

DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular. (1 CMC § 9104(a)(1)).

TO PROVIDE COMMENTS: Send or deliver your comments to Joseph C. Guerrero, *Attn: CPUC Procurement and Supply Regulations*, at the above mailing address or email address, with the subject line "CPUC Procurement and Supply Regulations". Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments. (1 CMC § 9104(a)(2))

These proposed regulations were approved by the Commission on October 7, 2008.

Submitted by: _____ 11/10/2015
Joseph C. Guerrero Date
Chair
Commonwealth Public Utilities Commission

Received by: _____ 11/10/15
ESTHER S. FLEMING Date
Governor's Special Assistant for Administration

Filed and
Recorded by: _____ 01.14.2016
ESTHER SN. NESBITT Date
Commonwealth Register

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).

Dated the 26th day of ~~November~~ February 2016.

for _____
Edward E. Manibusan
Attorney General

Commonwealth gi Sangkattan na Islas Marianas
Commonwealth Public Utilities Commission
Joseph C. Guerrero, Kabesiyu
P.O. Box 501219, Saipan, MP 96950
Tilifon: 235-2782; email: cpuc.cnmi@gmail.com

NUTISIAN PUPBLIKU GI MANMAPROPONI NA REGULASION SIHA NI PRINAKTIKAN AREKLAMENTU YAN MANERA GI ME'NAN I COMMONWEALTH PUBLIC UTILITIES COMMISSION

I MA'INTENSIONA NA AKSION PARA UMA'ADÅPTA ESTI I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA: I Commonwealth gi Sangkattan na Islas Marianas, Commonwealth Public Utilities Commission ("CPUC") ha intensiona para u adåpta kumu *petmanienti na regulasion siha ni mañechettun gi Manmaproponi na Areklamentun Prinaktika* yan Manera Siha, sigun gi manera siha gi Åktun Administrative Procedure, 1 CMC 9104(a). I Regulasion siha para u ifektibu gi halum dies(10) dihas na tiempu dispues di adåptasion yan pupblikasion gi halum i Rehistran Commonwealth. (1 CMC § 9105(b)).

ÅTURIDÅT: I CPUC nina'i fuetsa ni Leyislatura para u adåpta i areklamentu yan regulasion siha kumu man nisisisåriu para u ginibebietna i internal operations yan para u eksisiu iyon-ña regulatory yan enforcement powers, 4 CMC §§ 8411(n) (areklamentu yan regulasion siha), 8411(m) (internal operations).

I TEMA YAN SUSTÅNSIAN I PALÅBRA SIHA: I Areklamentu yan Regulasion Siha ha pribeniyi para i prinaktika areklamentu yan manera gi anai para u mana'siguru ha' economical, yan u mana'chaddik i ditetminasion gi manera siha gi me'nan i Kumision.

I SUHETU YAN MANERA SIHA NI MANTINEKKA: Esti na areklamentu yan regulasion siha:

1. U estapblesi i prinaktikan areklamentu yan manera siha gi me'nan kumision.

DIREKSION SIHA PARA U MAPO'LU YAN PUPBLIKASION: Esti i Manmaproponi na Regulasion Siha debi na u mapupblika gi halum i Rehistran Commonwealth gi halum i seksiona gi maproponi yan nuebu na ma'adåpta na regulasion siha (1 CMC § 9102(a)(1)) yan u mapega gi halum todu mangkumbinienti na lugåt siha gi halum i civic center yan gi ufisinan gubietnu siha gi halum kada distritun senadot, gi parehu Englis yan i dos na prinsipåt lingguåhin natibu. (1 CMC § 9104(a)(1)).

PARA U MAPRIBENIYI OPIÑON SIHA: Na'hånåo pat intrega i upiñon-mu siha guatu gi as Joseph C. Guerrero, *Attn: CPUC Regulasion Siha gi Procurement yan Supply*, gi sanhilu' na mailing address pat email address, gi råyan suhetu "CPUC Regulasion Siha gi Procurement yan Supply". Todu upiñon siha debi na u fanhålum trenta(30) dihas ginin i fetchan pupblikasion esti na nutisia. Put fabot na'hålum i upiñon-mu, infotmasion pat kinentestan kinentra siha. (1 CMC § 9104(a)(2)).

Esti i manmaproponi na regulation siha manma'aprueba ni Kumision gi Oktubri 7, 2008.

Nina'hålum as: _____ 12/23/15
Joseph C. Guerrero — Fetcha
Kabesiyu
Commonwealth Public Utilities Commission

Rinisibi as: _____ 12/24/15
ESTHER S. FLEMING — Fetcha
Ispisiåt na Ayudåntin Atministrasion Gubietnu

Pine'lu yan Ninota as: _____ 01.14.2015
ESTHER SN. NESBITT — Fetcha
Rehistran Commonwealth

Sigun i 1 CMC § 2153(e) (Inaprueban Abugådu HIneråt ni regulasion siha na para u macho'gui kumu fotma) yan 1 CMC § 9104(a)(3) (hinentan inaprueban Abugådu Hineråt) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan ma'aprueba kumu fotma yan sufisienti ligåt ginin i CNMI Abugådu Hineråt yan debi na u mapupblika, 1 CMC § 2153(f) (pupblikasion areklamentu yan regulasion siha).

Mafetcha gi diha 26th Febrero di ~~Nubembri~~, 2016.

for _____
Edward Manibusan
Abugådu Hineråt

Commonwealth of the Northern Mariana Islands
Commonwealth Public Utilities Commission
Joseph C. Guerrero, Chair
P.O. Box 501219
Saipan, MP 96950
Tel: 235-2782
Email: cpuc.cnmi@gmail.com

ARONGORONGAL TOULAP REEL POMOL ALLEGH
IKKA RE AMALLATA BWE AWEEWEEL (RULES) ME ALLEGH (LEGULATIONS) BWE EBWE LEMELI MWOGHUTTUGHUTTUL REBWE AWEEWEI NGELIIR BWULASIYOL COMMONWEALTH PUBLIC UTILITIES COMMISSION (CPUC).

BWELETAAL AWEEWEEL POMOL AWEEE KKA ME ALLEGH KKA REBWE AYOORA:
Commonwealth Public Utilities Commission e mwuschel ebwe ayoora ALLÉGH kka raa pomol rebwe ayorata bwe ebwe lemeli mwoghuttughuttul bwulasiyoll CPUC. Rebwe arongóór towlap reel ebwe mmwel ebwe toolong allegh kkaal llól Commonwealth Register bwe ebwe toowow bwe eew allégh lapalap ye emmwel rebwe aweewei meeta rebwe fééri ngeliir school bwulasiyo me meeta kka resobw feeri reel mwoghuttughuttul bwulasiyol CPUC ye e tooto mereel Administrative Procedure, 1 CMC SS 9104 (a) nge loll seeigh (10) raal nge aa mmwel rebwe ischilong loll Commonwealth Register mereel (1 CMC SS 9105 (b)).

Bwangiir faal alléghlapalap:
CPUC re mweiti ngeliir mereel kongressiyo bwe emmwel rebwe ayoora aar aweewe me allégh kka ebwe lemeli mwoghuttughuttul loll bwualsiyol CPUC. Iwe reel bwángiir nge e tooto mereel 4 CMC SS 8411 (n) (reel aweeweel me allégh) 8411 (m) (mwóghuttughuttul llol bwulasiyo).

TOOL ME AUTOL MILIKKAAL: Aweewe me allégh kkaal nge e ayoora meeta ye rebwe atabwei me ebwe ghatch aar aweewei weires me meeta ammwelil faluw me soobw ngere meeta ebwe ghatch aweewe ngeliir komission..

Meeta Autol me Weires KKaal:

1. E ngaleer aramasal bwulasiyol meeta ye rebwe ira reel kkapasal Amerikkano be Standard. E ghatch ngere eyoor standard b we ese weires meeta school bwulasiyo rebwe atabwei.

AWEEWEEL EBWE FAISUL UBWE ISISSILONG ME ARONGA TOWLAP:
Alangal aweewe me allégh kkaal nge rebwe atolongei loll Commonwealth Register bwe emmel ebwe tongeliir towlap reel peighil aweewe me allégh kka re laal ayoora nge tipeer rebwe atowowu ngeliir towlap ye allegh yeel eke aweewei loll (1 CMC SS 9102 (a) (1) nge rebwe apaschetá reel bwulei ye e ghatch me civic center me bwulasiyol loll alangal senatorial district loll kkapasal English me kkapasal Falawasch ngere Meraalis (1 CMC SS 9104 (a) (1).

REBWE AYOORA MILLE TOWLAP EBWE ISISSILONG MEETA MENGEMENGIIR:
Afanga ngere isselilong yómw mengemeng reel Joseph C. Guerrero, Attn: CPUC Procurement and Supply Regulations reel address mwu weilang ngere email address ye subject nge ebwe CPUC Procurement & Regulations. Alangal mengemeng ye ubwe ississilong nge ebwe mmwel loll eliigh (30) raal disti igha re ischiwow reel towlap mwette ngeli eliigh RAAL (1 CMC SS 9104) (a) (2)).

Alangal pomol allégh me aweewe kkaal re affataló wool Oktubre 7, 2008.

E atolongei mereel: _____ 12/23/15
Joseph C. Guerrero Râál
Chair,
Commonwealth Public Utlities Commission

E bwughi mereel: _____ 12/24/15
ESTHER S. FLEMING Râál
Governor's Special Assistant for Administration

E File-li me e record-li: _____ 2.26.16
ESTHER SN. NESBITT Râál
Commonwealth Register

+Sengi 1 CMC SS 2153 (e) (AG ebwe bwungiw allegh kkaal ngere e wel alangal) mere; 1 CMC SS 9104 (a) (3) nge AG ebwe amwekki aal iisch bwe aa bwung me ffattela bwe eew allegh nge esoor weires reel allangal pomol allegh kka re amallata nge rebwe arongoor towlap reel 1 CMC SS 2153 (1) (Arongorong ngeli toulap reel alangal allegh re laal pomol rebwe ayorata).

Wool; 26th February 16 ~~Nobembre 2015~~

for _____
Edward E. Manibusan
Attorney Gemera;

BEFORE THE COMMONWEALTHY PUBLIC UTILITIES COMMISSION

RULES OF PRACTICE AND PROCEDURE

PART 1. DEFINITIONS AND GENERAL PROVISIONS

Rule 1. Definitions.

a. "Applicant" or "Petitioner" means a party seeking approval, authority, permit or exemption or other relief.

b. "Complainant" means a party who files a complaint.

c. "Party" to a proceeding before the Commission means a person by or against whom a proceeding is commenced, or a person admitted by the Commission to intervene in a proceeding pursuant to these rules.

d. "Person" means an individual, partnership, corporation, association, body politic, or commonwealth agency.

e. "Respondent" means a party who is complained against, a party investigated or ordered to show cause.

f. "Commission" means the Commonwealth Public Utilities Commission.

g. "Hearing examiner" means the Commission's hearing examiner.

h. "Application for rate change" means an application by a regulated entity to establish, abandon, modify, depart from, or change any rate, charge, tariff, or assessment which is assessed upon a utility customer.

i."Regulated entity" means any person regulated by the Commission, including public utilities, telecommunications companies and cable television companies, as further defined in 4 CMC § 8402.

Rule 2. Applicability and Construction of Rules.

These rules govern practice and procedure in all matters before the Commission and shall be liberally construed to secure just, economical, and expeditious determination of the issues presented.

Rule 3. Information, Documents, and Communications.

a. Information as to established practice or procedure under these rules will be furnished to any person upon application to the Commission.

b. Applications and other documents shall be in writing and shall conform to all requirements of these rules. The Commission upon reasonable request, will advise as to the form of petition, answer or other papers necessary to be filed in any docket and furnish such information from the files of the Commission as will aid in a full presentation of material facts.

c. Documents filed with the Commission shall be printed, typewritten or otherwise mechanically reproduced, shall be upon paper 8½ inches by 11 inches in size, or folded to such size, or on such forms as may be hereafter supplied by the Commission. Documents shall contain a heading with the name of the Commission, the docket number and a descriptive title of the information being filed.

d. Communications and documents shall be addressed and either mailed or hand delivered to the Commission, c/o Governor's Office, Caller Box 1007 Saipan MP or at such other address as the Commission may direct by public notice. In addition, communications and documents may be emailed to the Commission at _____.

e. No party shall have any *ex-parte* communication with either the Hearing Examiner or a commissioner regarding any substantive matter before the Commission.

f. Communications in proceedings under these rules may in the Hearing Examiner's discretion be make via email with copies transmitted to all parties and to the Commission and by telephone conference call.

Rule 4. Service of Papers.

Notices, petitions, answers and other papers or copies thereof required to be served in a proceeding may be served either personally, by mail or by email; and when a person has appeared by attorney, service upon such attorney is deemed proper service. When a paper is served, the person serving the paper shall file with the Commission proof of service, or admission of service, by the person served or his attorney, annexed to a copy of the paper served, so that the Commission may know that the paper in question has been properly served and the date of the service. Any document which is filed with the Commission in a docketed proceeding shall be served upon all parties of record and upon Commission staff.

Rule 5. Proceedings; Participation by Commission Staff.

The Commission staff, including Commission employees and consultants may in the Hearing Examiner's discretion, appear in any proceeding before the Commission and through its witnesses present testimony as to the results of its accounting, engineering and economic investigations, field studies, inspections, other technical investigations and studies. The Commission staff in any proceeding may, with Hearing Examiner's authorization, file briefs, make statements of positions, cross-examine witnesses, or otherwise upon the record make recommendations, as it believes proper and lawful, based upon the evidence presented.

Rule 6. Decisions and Transcripts.

A certified copy of the decision in a proceeding will be furnished free of charge to each party of record. Copies of transcripts and additional copies of decisions shall be furnished at such rates established from time to time by Commission order.

Rule 7. Computation of Time.

In computing a period of time prescribed or allowed by either the Hearing Examiner or the rules of the Commission in which an act is to be performed after a specific date, act or event, the day of the specific date, act or event is not included and the last day of the period is included except when it is a Saturday, Sunday or legal holiday, the period runs until the end of the next day which is neither a Saturday, Sunday or legal holiday.

PART 2. INTERVENTION

Rule 8. Petitions.

a. A person not defined herein as a complainant, respondent, protestant, applicant or petitioner, and who claims an interest in a pending proceeding, may petition in the proceeding for leave to intervene at least 5 days prior to the date set for the hearing, and the petition when filed shall show service of copies thereof upon all parties to the proceeding. A petition to intervene which is not timely filed with the Commission shall not be granted by the Commission unless the denial of the petition is shown to be detrimental to the public interest or to be likely to result in a miscarriage of justice, and unless all parties, excluding intervenors, have an adequate opportunity to file answers as hereinafter set forth and to be heard with respect thereto.

b. A petition to intervene shall set out clearly and concisely the facts supporting the petitioner's alleged right or interest, the grounds of the proposed intervention, and the position of the petitioner in the proceedings, so as fully and completely to advise the

parties and the Commission of the specific issues of fact or law to be raised or controverted.

Rule 9. Answers.

A party and Commission staff may file an answer to a timely petition to intervene on or before the date if any, set for hearing upon the petition or on and before the date set for hearing upon the merits, whichever is earlier. An adequate opportunity to file an answer to a petition to intervene, which is not timely filed, shall be afforded to any such party and the Commission staff.

Rule 10. Action by Commission.

As soon as practicable after expiration of the time for filing answer to a petition for intervention, the Hearing Examiner will grant or deny the petition in whole or in part, or if found to be appropriate may authorize limited participation. A person granted leave to intervene in whole or in part is an intervenor and shall be a party to the proceeding. The granting of a petition to intervene in whole or in part is not recognition that the intervenor may have rights to appeal from any order of the Commission entered in that proceeding, except as otherwise provided by law.

Rule 11. Participation Without Petition for Intervention.

a. A person may appear in a proceeding before the Commission in lieu of a formal petition to intervene, if there is full disclosure of the identity of the person whose appearance is to be entered; the interest of such person in the proceeding and the position intended to be taken are fully and fairly stated; and the contentions of such person will be reasonably pertinent to the issues already presented and any right to broaden the issues unduly is disclaimed.

b. An appearance under this rule entitles the person to make a statement of his position at a time during the hearing designated by the Hearing Examiner, with notice to all parties, and subject to such conditions as may be made by the Hearing Examiner; provided, however, that such person shall not be regarded as a party.

c. In addition to the right to participate under subparagraphs a] and b] above, a person may petition the Commission, not later than five days prior to a noticed hearing under 4 CMC § 8409(j) for leave to present evidence and witnesses at the hearing. Any such petition shall be reviewed, ruled upon and administered by Hearing Examiner under the standards established in said section.

d. In addition to the above participatory rights, the general public will be invited at any public hearing, under such conditions as may be established by the Hearing

Examiner, to present comments regarding the hearing subject matter. Presenters shall have no right to question any witnesses, party or the Commission.

PART 3. COMPLAINTS

Rule 12. Contents and Kinds.

a. A complaint shall be limited to matters involving alleged unlawful, unreasonable acts, practices or acts or omissions by a regulated entity in violation of law or a Commission rule or order. A complaint may be either formal or informal and may be made by a person having good or sufficient reason therefor or by the Commission on its own motion.

b. An informal complaint shall be in writing and signed by complainant, and contain a concise statement of the facts involved and the name and address of the complainant and the party complained against. The Commission will attempt to settle problems arising under an informal complaint without formal action when possible.

Rule 13. Formal Complaints; Copies and Contents.

A formal complaint shall be in writing and shall be filed with the Commission and with as many additional copies as there are parties complained against, and shall contain:

a. The full name and post office address of the complainant.

b. The full name and post office address of each respondent.

c. A full, clear and reasonably certain statement of the alleged unlawful or unreasonable acts, practices or omissions concerning which complaint is made, with reference where practicable to the sections of law, order or rules of which a violation is claimed.

d. The signature of the complainant and the name and post office address of the complainant and his attorney, if any.

Rule 13.1. Formal Complaints; Examination; Dismissal.

a. Upon the filing of a formal complaint, the Hearing Examiner shall immediately examine it to ascertain whether it states a *prima facie* case of an unlawful or unreasonable act, practice or omission of a regulated entity and conforms to these rules. If the Hearing Examiner believes that the complaint does not state a prima facie case or does not conform to these rules, he shall so notify the complainant or his attorney, and opportunity may be given to amend the complaint within such time, or such extension

thereof as the Hearing Examiner for good cause shown may grant, or if the complaint as amended does not state a prima facie case or conform to these rules, it shall be dismissed.

b. Where a complaint is found to have been groundless and filed in bad faith, in whole or in part, the Commission shall assess costs in whole or in part for investigation, defense and other associated costs, including but not limited to reasonable attorney fees borne by the regulated entity and the Commission in the review of the complaint.

Rule 13.2. Formal Complaint; Service of Copies and Notices to Answer.

If the Hearing Examiner believes that the complaint, either as originally filed or as amended, does state a *prima facie* case and conforms to these rules, he shall serve upon each respondent a notice accompanied by a copy of the complaint requiring that the matter complained of be satisfied, or that the complaint be answered, within 20 days from the date of service thereof or within such further time as the Hearing Examiner may fix upon good cause shown. However, if a motion to dismiss a complaint is served as hereinafter permitted, no answer need be made unless the Hearing Examiner denies the motion or postpones its disposition until a hearing on the merits, and in either event the answer shall be made within 20 days after notice to the respondent of the Hearing Examiner's action.

Rule 14. Formal Complaint; Respondent's Offers of Relief.

If a respondent desires to satisfy the complaint, it may submit to the Commission within the time allowed for the satisfaction or answer, a statement of the relief which it is willing to offer. On the acceptance of this offer by the complainant and approval of the Hearing Examiner, no further proceeding need be taken. If the offer of satisfaction is refused by the complainant, an answer shall be filed by the respondent within 20 days from the receipt by respondent from the Commission of notice of the refusal.

Rule 15. Formal Complaints; Motions to Dismiss and Answers.

The defense that the complainant does not have a good or sufficient reason for making a formal complaint, that the complainant is without standing to make the complaint, or that a formal complaint fails to state a prima facie case or otherwise fails to conform to these rules, may be raised by motion to dismiss or answer at the option of the respondent. All other defenses to the complaint shall be raised by answer. The motion to dismiss or answer, accompanied by proof of service of a copy thereof on the complainant shall be filed with the Commission. The answer shall contain a specific denial of the material allegations of the complaint controverted by respondent and also

a statement of new matters constituting an affirmative defense. If the answering party has no information or belief on the subject sufficient to enable it to answer an allegation of the complaint, it may so state in its answer and place its denial upon that ground.

Rule 16. Burden of Evidence and Proof.

In a complaint proceeding, the complainant has the burden of going forward with presentation of evidence unless otherwise ordered by the Hearing Examiner. The complainant has the burden of proof as to factual allegations relied upon as constituting the basis for the complaint and the respondent has the burden of proof with respect to affirmative defense.

Rule 17. Hearing.

The hearing process set forth in Part 7 of these Rules shall apply to complaint proceedings.

Rule 18. Remedies.

If the Commission determines as a result of any hearing under Rule 17 that a regulated entity has violated any provision of the Commonwealth Public Utilities Commission Act of 2006 or any Commission order or rule, it may impose penalties as set forth in 4 CMC § 8435[d], [e] and [f].

PART 4. APPLICATIONS FOR RATE RELIEF

Rule 19. Application.

Part 4 applies to applications by the Commonwealth Utilities Commission [CUC], and to such other regulated entities as the Commission may subsequently identify by order, to establish, abandon, modify, depart from, or change any rate, charge, tariff, or assessment, which is assessed upon a customer *(hereinafter referred to as a "change in rates").*

Rule 20. Standard Filing Requirements ("Requirements")

a. Purpose - The Requirements are designed to assist the Commission in performing a thorough and expeditious review of an application for a change in rates.

b. Applicability - The schedules contained in these Requirements are applicable to CUC and such other regulated entities as the Commission may designate by order. Certain unique aspects of a regulated entity's business may require some schedules to be tailored to a specific type of utility. The Hearing Examiner is authorized, from time

to time, to establish and tailor schedule formats consistent with this purpose.

c. Minimum Requirements - The Requirements contain the minimum information which a regulated entity shall submit with their application for a change in rates. The schedules contained in the Requirements provide the basic information normally required to support a regulated entity's rate request. If the regulated entity believes that additional information is necessary to support its case or is proposing a position which requires a departure from the basic schedules, it should supplement the requirements as required to support its position. In addition, the Hearing Examiner may require a regulated entity to supply information to supplement these requirements during the course of the staff investigation of a specific case.

d. Waiver of Information Requirements - All information required by these requirements must be included with the application at the time of filing. The Hearing Examiner may reject any filing not complying with these requirements and require the regulated entity to refile its application. If any information required by these requirements cannot be provided or is not applicable to a regulated entity, or is considered unnecessary, within the context of the application, a written request for waiver of the specific information requirements must be submitted to the Hearing Examiner. The request for waivers should set forth the specific reasons why relief from the requirements should be granted. Waiver shall be available for a specific service change in rates, under conditions established by Hearing Examiner. The waiver must be obtained prior to filing an application for a change in rates.

e. Written Testimony - A regulated entity shall file with the application, the prepared testimony of its personnel or other expert witnesses in support of its proposal with the application. Prepared testimony should be in question and answer format, should include the qualifications of the person providing the testimony and shall contain an averment of truth and accuracy.

f. Working papers - Working papers and supporting exhibits to support the Requirements shall be available to the Commission staff at the start of the staff investigation. Working papers must be keyed to the appropriate standard filing exhibits, must be indexed, and must contain the name of the person preparing the working paper and date prepared. Working papers should be cross-indexed wherever possible to minimize duplication of data. When assumptions are made of working paper schedule amounts, narrative or other support should be included so that the reasonableness of the work paper can be reviewed. If a schedule contains a "working paper reference number" the work papers must be submitted with the application.

Rule 21. Filing Schedules Instruction.

a. Schedule A - Revenue Requirement.

A rate filing implies that a regulated entity is anticipating either that its current rate structure is insufficient to provide the cash for its operations or that the cash generated from operations will not provide sufficient cash to comply with its indenture requirements. Accordingly, the regulated entity shall summarize on Schedule A, in form as attached as Exhibits 1 (Electric) and 2 (Water and Wastewater) hereto. Schedule A will show the revenue deficiency which it anticipates will occur unless additional revenues are provided by the Commission through an increase (or change) to its rate structure.

Schedule A, and the supporting schedules hereinafter described, shall cover a three-year span, which is important as it will show the financial results under the current rate structure [historic year]; the financial results under the existing rate structure [current and forecast years]; and the financial results of operations under the proposed increase in (or redesign of) existing rates. The historic year shall be fully audited with a copy of the independent audit accompanying the filings. Schedule A shall contain a *proforma* income statement for each year, including the revenues, operating expenses, operating income, interest, depreciation, other revenues and expenses, and net income. These items shall be presented using the Uniform System of Accounts (water and wastewater) or by FERC to the extent possible (electric). In addition to the *proforma* income statements on Schedule A, a derivation of the debt service requirements, if applicable, should be clearly shown and the minimum requirement for these ratios identified.

A cash flow statement shall be provided on Schedule A to show the sources and uses of cash for each schedule year, including the forecasted periods both with and without the additional revenues sought. The cash flow statement shall begin with the cash derived from operations (net income plus depreciation and amortization) and clearly indicate any other sources or uses of cash. *Note: If one of the uses of cash is directly related to a desired level of coverage , the total amount of this cash requirement should be shown on this schedule.* Testimony should be filed in support of the requested level of coverage.

The fourth schedule column shall show the forecasted results of operations and the resultant cash flow items, should the Commission award the regulated entity with its request in full. If the additional revenue shown in this column is not the deficit indicated in the forecast year (third column), a detailed explanation must be provided. Each of the revenue, expense, coverage and cash flow items on Schedule A shall, as discussed in subparagraphs (b) through (m) below, reference a separate schedule which provides further details on these items for the schedule years. Reference to each line shall clearly identify the schedule from which the amount is tied, or reference to work papers or testimony accompanying the filing for those amounts not contained in the filing requirements.

b. Schedule B - Revenues.

The regulated entity shall provide the details deriving each revenue item shown on Schedule A for the three schedule years with the forecast year shown both with and without the requested changes. For base revenues, The regulated entity shall provide the relevant customer and sales data which was used to derive the base revenues shown on Schedule A. The derivation of any forecasted revenues should clearly show the method being used to forecast such revenues. Contained in the derivation of base revenues shall be a sub-schedule showing the sales (in CUC's case $ and Kwh or $ and kGal)) by customer classification. The format for this information is flexible, since the regulated entity may elect to forecast revenues by specifically identifying customer, demand and energy charges (electric) or customer and volume charges (water and wastewater) rather than an average yield per customer. If the sales forecast used in the projection of base revenues has changed from the previous forecasts provided to the Commission, a copy of any new study should accompany the filing. The regulated entity shall provide the details underlying the assumptions contained in the fuel revenues shown on Schedule A, including in the case of CUC the sales and per barrel cost of oil (electric department) assumed within the filing. The regulated entity shall also provide a three-year summary of miscellaneous revenues clearly showing the components of such revenues in order to determine any underlying assumptions for the forecasted year. At the regulated entity's discretion, other revenues may be identified separately or as miscellaneous revenues.

c. Schedule C - Operating Expenses.

The regulated entity shall provide a schedule summary of operating expenses in their particular budget format, i.e., by cost center, object code or internal financial reporting formats, with sufficient detailed information in CUC's case to determine how they were translated into FERC format if required (electric). A complete operating expense budget for the forecast year should accompany the filing. If the current schedule year is being forecasted based on an existing operating budget, a variance report by cost center and object code, shall also be provided.

A separate sub-schedule, showing internal labor costs for the three schedule years shall be filed, showing the components of labor costs: regular pay, overtime, pension (both funded and unfunded), etc. and the number of employees in each schedule year. For the historic year, a utility shall provide the average and year-end number of employees. For the current and forecast schedule year, it shall provide the number of employees assumed in the budgets for those years. A description of any new budgeted (current and forecasted) positions and the total costs associated with those positions should also be provided. A schedule of non-labor O&M costs shall also be provided for each schedule year with a computation of the capitalized portion of operating expenses. For the water operations, budgets for both departments (water and

wastewater) should be provided, if expense can be separately identified. If water purchases are a component of operating costs for the water department, germane information (kGal, rate cost) should be provided on a subsidiary schedule for each contract.

d. Schedule D – Labor Expense and Position.

The regulated entity shall file a separate Schedule D addressing employees, service contracts and overtime covering each schedule year. To the degree there are positions for both the electric and water/wastewater departments, such positions should be identified and highlighted.

e. Schedule E - Debt Service.

The regulated entity shall provide for each schedule year a schedule of the complete details underlying the interest expense assumptions contained in Schedule A, including debt amounts (actual and forecasted) and interest rates. The payment schedules for each schedule year for embedded bonds in the capital structure should also be provided.

f. Schedule F - Internally Funded Construction.

The regulated entity shall provide for each schedule year a prioritized schedule of the capital improvement projects, which were or will be internally funded. For the current year, an updated report showing amounts expended and revision in costs or completion dates should also be provided. For the water and wastewater departments, purchases should be segregated between water, wastewater or common.

g. Schedule G - Working Capital.

The regulated entity shall provide for each schedule year a schedule containing a detailed calculation of working capital. For the forecast year, the computation should include a "with" and "without" rate relief scenario.

h. Schedule H - Other Cash Flow Items.

The regulated entity shall provide for each schedule year a schedule of actual or forecasted additional sources or uses of cash which may affect cash flow, such as insurance, dispute settlements, etc.

i. Schedule I - Proof of Revenues.

The regulated entity shall file a proof of revenues, which demonstrates that the

request rate change will result in the total revenue requirement of the utility, using its assumptions.

j. Schedule J - Externally Funded Construction.

The regulated entity shall provide for each schedule year, a schedule of externally funded projects, including cash flow [current and forecasted] completion dates, and expended and unexpended bond funds or other sources, such as grants.

k. Tariff Revisions.

The regulated entity shall file proposed tariff revisions, which show the requested tariff changes including any new tariffs requested for proposed new services and any textual changes for which the utility seeks Commission approval.

PART 5. CONTRACT REVIEW PROCEDURE

Rule 22. General Provisions.

The Commission shall establish and amend a procedure to review the contracts, obligations and capital divestitures of regulated entities, pursuant to its duty under 4 CMC § 8409[d] by independent order.

PART 6. INVESTIGATION AND INQUIRY

Rule 23. General Provisions.

The Commission on its own motion and in furtherance of its oversight, regulatory and investigative authority under its enabling legislation, may initiate an inquiry or investigation concerning the rates, business or operations of any regulated entity. The provisions of these rules applicable to hearings shall apply to any such investigation or inquiry.

PART 7. HEARINGS.

Rule 24. General Provisions.

a. A public hearing will be granted when required by statute, or when the Hearing Examiner may determine in a specific case.

b. Except as otherwise provided by statute, or waived by the regulated entity,

written notice of a hearing, at least two (2) weeks before the date set therefor shall be served upon all parties and such other persons as the Hearing Examiner directs, unless the Hearing Examiner determines a shorter or longer period of notice for good cause. The notice shall state the time, place and nature of the hearing and a short and simple statement of the matters to be considered. Public hearings on any change in proposed rates or charges of a regulated entity shall comply with the requirements of 4 CMC § 8418.

c. The Hearing Examiner shall conduct the hearings and shall oversee all prehearing activities.

d. A hearing before the Commission shall be made a matter of record. It is not necessary that the record be transcribed in a proceeding unless a request for a transcript be made by a party or by the Commission. A transcript shall be indexed to show the location of the testimony of each witness and the introduction of all exhibits.

Rule 25. Prehearing Conference.

a. On motion of a party or by order of the Hearing Examiner, the Hearing Examiner may conduct one or more prehearing conferences. The Hearing Examiner shall set the time and place for prehearing conferences and give reasonable written notice to all parties.

b. Prehearing conferences may deal with one or more of the following matters:

- Exploration of settlement possibilities.
- Preparation of stipulations.
- Clarification of issues.
- Rulings on identity and limitation of the number of witnesses.
- Objections to proffers of evidence.
- Order of presentation of evidence and cross-examination.
- Rulings regarding issuance of subpoenas and protective orders.
- Schedules for the submission of written briefs and schedules for the commencement and conduct of the hearing.
- Any other matters as shall promote the orderly and prompt conduct of the hearing.

c. The Hearing Examiner shall issue a prehearing order incorporating the matters determined at any prehearing conference.

Rule 26. Conduct of Hearing; Disqualification of Hearing Examiner.

a. Every hearing in a contested case shall be presided over by the Hearing Examiner who shall conduct the hearing, rule on the admission and exclusion of

evidence and advise the Commission on matters of law.

b. The Hearing Examiner or any Commissioner shall voluntarily disqualify himself or herself and withdraw from any proceeding in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of the Hearing Examiner or a Commissioner by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue of whether a disqualification should be ordered shall be determined by the Commission. No Commissioner shall withdraw voluntarily or be subject to disqualification if his or her disqualification would prevent the existence of a quorum qualified to act in the particular docket.

Rule 27. Exhibits

a. Direct testimony of a witness under oath may be offered in exhibit form if 4 copies of the exhibit are filed with the Commission and a copy served upon all parties to the proceeding or their attorney of record at least 5 days in advance of the hearing, unless otherwise scheduled by the Hearing Examiner.

b. When in the circumstances of a particular proceeding it is deemed necessary or desirable, the Hearing Examiner may direct that testimony to be given upon direct examination shall be reduced to exhibit form and be served and offered in the manner hereinbefore described. A reasonable period of time shall be allowed for the preparation of such an exhibit.

c. In any case and upon request therefor, a party shall have the right, notwithstanding any provision of this rule, to have any witness on his behalf present his direct testimony orally before the Commission. In any case, a witness whose testimony is submitted in exhibit form shall be made personally available for cross-examination upon request by a party or the Commission staff. If the witness is not so made available, his testimony shall not be received in evidence.

d. To the extent that it is received in evidence, testimony in exhibit form shall be fully copied into the record and shall be accorded the same weight and sufficiency as testimony adduced through oral examination.

Rule 28. Depositions, Interrogatories, and Discoveries.

The Hearing Examiner at his discretion, either upon his own motion or for good cause shown by Commission staff or by a party to a proceeding, may issue an order to take a deposition, interrogatory or discovery. The taking and use of such deposition, interrogatory or discovery shall be in the same manner as provided by the rules of the

Commonwealth Superior Court, unless otherwise prescribed by the Hearing Examiner.

Rule 29. Initial Procedures.

a. A hearing will be opened with a concise statement of its nature and purpose. Appearances then will be entered on the record. Parties and the Commission staff may make opening statements or appropriate motions.

b. Changes in the time and place of the first session of the hearing in any proceeding will be granted only for good cause shown. Notices of change in time and place, if granted, will be made only to parties to the proceeding and to persons who have appeared or who have petitions to intervene pending before the Commission in accordance with these rules. After a hearing has been convened, an adjournment shall be in the discretion of the Hearing Examiner. The Hearing Examiner upon his own motion may change the time and place of any session.

Rule 30. Evidence; General Provisions.

a. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule, which might make improper the admission of such evidence over objection in civil actions.

b. Evidence, including records and documents in the possession of the Commission of which it desires to avail itself, shall be offered and made a part of the record in the proceeding and no other factual information or evidence shall be considered in the determination of the case, except as otherwise provided by law. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

c. Each party shall have the right to call and examine witnesses, to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even through that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify, and to rebut the evidence against it. If respondent does not testify in its own behalf it may be called and examined as if under cross-examination.

d. Oral evidence shall be taken only on oath or affirmation.

Rule 31. Evidence; Judicial Notice.

The Commission may take notice of judicially cognizable facts and also of general, technical scientific facts within its specialized knowledge. Parties shall be notified, either before or during the hearing or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The Commission may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.

Rule 32. Evidence; Documents and Exhibits

a. When evidence to be presented consists of technical matter or figures so numerous as to make oral presentation difficult to follow, it shall be presented in exhibit form, supplemented and explained, but not duplicated by oral testimony.

b. Exhibits of documentary character shall be typed on 1 side only on sheets not exceeding 8½ inches by 11 inches or multiples thereof with a sufficient margin for binding, preferable 1/2 inches to be left blank on the left side of each sheet. If an exhibit is in excess of 8½ wide, it shall be folded to be not more than 8 inches by 11 inches, if practicable. It is desirable that an exhibit of two or more sheets be stapled together and notation made at the top of the first sheet as to the number of sheets contained in the exhibit. An exhibit shall show at the top the docket number and provide space for the name of the witness and the number and date of the exhibit. All exhibits offered at a hearing shall be identified in a manner prescribed by the Hearing Examiner.

c. A party introducing documentary exhibits shall be prepared to furnish copies to all parties.

d. Documentary evidence may be submitted subsequent to the closing of the hearing upon stipulation of the parties.

e. Written or printed documents and maps received in evidence will not be returned to the parties except with approval of the Hearing Examiner.

Rule 33 Arguments and Briefs.

a. Oral argument may be given before the Commission at the Hearing Examiner's discretion, but shall be requested before or at the close of the hearing.

b. Briefs may be filed at the discretion of the Hearing Examiner. Briefs which

contain a statement of evidence or facts claimed to be established by evidence shall include a reference to the specific portion of the record in which such evidence may be found.

Rule 33. Subpoenas.

a. At any time in any proceeding, the Commission may order a party or witness to attend and testify orally in open hearing. At the request of the Commission staff or a party, subpoenas for attendance at a hearing shall be issued by any Commissioner. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or tangible things designated therein which shall be specified in sufficient detail.

b. The Commission, upon motion made at or before the time specified in the subpoena for compliance therewith, may:

- Quash or modify a subpoena or subpoena duces tecum if it is unreasonable or oppressive or related to irrelevant or immaterial evidence, or

- Condition denial of the motion, in the case a subpoena duces tecum, upon the advancement by the person in whose behalf the subpoena is issued, of the reasonable cost of producing the books, papers, documents or tangible things, unless otherwise provided by law.

c. A subpoena shall be issued under the seal of the Commission, shall state the title of the proceeding and shall command each person to whom it is directed to attend and comply with the subpoena at a time and place therein specified.

d. The fees and traveling expenses of witnesses shall be the same as allowed witnesses in the Commonwealth Superior Court.

Rule 34. Subpoenas; Service; Default in Compliance.

A subpoena shall be served in the manner prescribed by law for like subpoenas in civil actions in the Commonwealth Superior Court. It may be served at any place within the commonwealth. A subpoena *duces tecum* shall be served at least 4 days before the date specified for compliance. If a person fails to comply with a subpoena served upon him, or fails to attend or refuses to be sworn and testify, the Hearing Examiner may stay further proceedings until the subpoena is obeyed. If a person who so fails to obey the subpoena is a party to the proceeding, or an officer, member or employee of a party, the Hearing Examiner may strike all or any part off any pleading

of such party, or refuse to allow such party to support or oppose designated claims and defenses, or delay the proceeding or any part thereof, or take such further action as the Hearing Examiner deems appropriate under the circumstances. The Commission shall also have the enforcement remedies provided by 4 CMC § 8413.

PART 8. REOPENING AND REHEARING

Rule 36. Reopening of Hearings.

An application for reopening a hearing after final submission and prior to decision or order made by the Commission shall be by verified petition only; and an original and 4 copies shall be filed with the Commission. If the application for reopening is for the purpose of presenting further evidence, the nature and purpose of such evidence shall be briefly stated, the same shall not be merely cumulative, and good cause shall be shown for failure to produce such evidence at the original hearing. The application shall show service thereof on all other parties to the proceeding.

Rule 37. Rehearings

An application for rehearing after a decision or order of the Commission shall be by verified petition only. An original and 4 copies of the application shall be filed with the Commission within 10 days from the issuance of the Commission decision or order and notice thereof. An application for rehearing based upon claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the ground of error. An application for rehearing based upon newly discovered evidence, upon facts and circumstances arising subsequent to the hearing, or upon consequences resulting from compliance with the decision or order, shall set forth fully the matters relied upon. The application shall show service thereof on all the other parties to the proceeding.

Rule 38. Answers to Reopening and Rehearing Applications.

Within 20 days following service of an application for rehearing or for reopening a hearing, any party or Commission staff may file with the Commission an answer thereto, and in default thereof is deemed to have waived his objection to the granting of such application.

Rule 39. Proceedings Regarding Reopening and Rehearing Applications.

After due consideration of the application and answer, the Commission in its discretion, shall determine whether good and sufficient cause has been shown by applicant for rehearing or reopening. Any hearing on such applications shall be conducted in accordance with Part 7 of these Rules.

PART 10. OTHER PROVISIONS

Rule 40. Commission Expenses:

a. A regulated entity shall pay within 30 days of invoice:

- An annual charge, in amount determined by the Commission pursuant to 4 CMC § 8421(c).
- All expenses incurred by the Commission, including, without limitation consultant, counsel hearing examiner and recorder fees and expenses in any Commission docket or proceeding pertaining to the entity, which were not contemplated or considered in determining the annual charge.

b. The Commission shall by order establish a schedule of fees and expenses for proceeding transcripts, document copies and other like charges.

c. The Commission may, by order, establish such uniform penalties, as it may deem appropriate, for a regulated entity's failure to comply with this Rule 40.

Commonwealth of the Northern Mariana Islands
Commonwealth Public Utilities Commission
Joseph C. Guerrero, Chair
P.O. Box 501219, Saipan, MP 96950
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PUBLIC NOTICE OF PROPOSED REGULATIONS
WHICH ARE PROPOSED RULES GOVERNING REVIEW OF CUSTOMER COMPLAINTS BEFORE THE COMMONWEALTH PUBLIC UTILITIES COMMISSION

INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: The Commonwealth of the Northern Mariana Islands, Commonwealth Public Utilities Commission ("CPUC") intends to adopt as permanent regulations the attached Proposed Rules Governing Review of Customer Complaints, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Regulations would become effective 10 days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b)).

AUTHORITY: CPUC is empowered by the Legislature to adopt rules and regulations as are necessary for governing its internal operations and for the exercise of its regulatory and enforcement powers. 4 CMC §§ 8411(n) (rules and regulations), 8411(m) (internal operations).

THE TERMS AND SUBSTANCE: The Rules and Regulations provide for rules of practice and procedure in order to secure just, economical, and expeditious determination of matters before the Commission.

THE SUBJECTS AND ISSUES INVOLVED: These rules and regulations:

1. Establish standard rules of practice and procedure governing CPUC review of customer complaints.

DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular. (1 CMC § 9104(a)(1)).

TO PROVIDE COMMENTS: Send or deliver your comments to Joseph C. Guerrero, *Attn: CPUC Procurement and Supply Regulations*, at the above mailing address or email address, with the subject line "CPUC Procurement and Supply Regulations". Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments. (1 CMC § 9104(a)(2))

These proposed regulations were approved by the Commission on October 7, 2008.

Submitted by: _____ 11/10/2015
Joseph C. Guerrero Date
Chair
Commonwealth Public Utilities Commission

Received by: _____ 11/10/15
ESTHER S. FLEMING Date
Governor's Special Assistant for Administration

Filed and
Recorded by: _____ 12.23.2015
ESTHER SN. NESBITT Date
Commonwealth Register

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).

Dated the 26th day of ~~November~~ February, 2016.

_____
Edward E. Manibusan
Attorney General

Commonwealth gi Sangkattan na Islas Marianas
Commonwealth Public Utilities Commission
Joseph C. Guerrero, Kabesiyu
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NUTISIAN PUPBLIKU GI MANMAPROPONI NA REGULASION SIHA NI MANMAPROPONI NA AREKLAMENTU NI GINIBEBIETNA I RINIBISAN CUSTOMER COMPLIANTS GI ME'NAN I COMMONWEALTH PUBLIC UTILITIES COMMISSION

I MA'INTENSIONA NA AKSION PARA UMA'ADÅPTA ESTI I MANMAPROPONI NA AREKLAMENTU YAN REGULASION SIHA: I Commonwealth gi Sangkattan na Islas Marianas, Commonwealth Public Utilities Commission ("CPUC") ha intensiona para u adåpta kumu petmanienti na regulasion siha ni mañechettun gi Manmaproponi na Areklamentu Siha ni Ginibebietna i Rinibisan Customer Complaints, sigun gi manera siha gi Åktun Administrative Procedure, 1 CMC 9104(a). I Regulasion siha para u ifektibu gi halum dies(10)dihas na tiempu dispues di adåptasion yan pupblikasion gi halum i Rehistran Commonwealth. CMC § 9105(b)).

ÅTURIDÅT: I CPUC nina'i fuetsa ni Leyislatura para u adåpta i areklamentu yan regulasion siha kumu man nisisisåriu para u ginibebietna i internal operations yan para u eksisiu iyon-ña regulatory yan enforcement powers, 4 CMC §§ 8411(n) (areklamentu yan regulasion siha), 8411(m) (internal operations).

I TEMA YAN SUSTÅNSIAN I PALÅBRA SIHA: I Areklamentu yan Regulasion Siha ni ha pribeniyi para i prinaktika yan manera gi anai para u mana'siguru i economical, yan u mana'chaddik i ditetminasion gi manera siha gi me'nan i Kumision.

I SUHETU YAN MANERA SIHA NI MANTINEKKA: Esti na areklamentu yan regulasion siha:

1. U estapblesi standard rules of practice yan manera ni ginibebietna i CPUC review of customer complaints.

DIREKSION SIHA PARA U MAPO'LU YAN PUPBLIKASION: Esti i Manmaproponi na Regulasion Siha debi na u mapupblika gi halum i Rehistran Commonwealth gi halum i seksiona gi maproponi yan nuebu na ma'adåpta na regulasion siha (1 CMC § 9102(a)(1)) yan u mapega gi halum todu mangkumbinienti na lugåt siha gi halum i civic center yan gi ufisinan gubietnu siha gi halum kada distritun senadot, gi parehu Englis yan i dos na prinsipåt lingguåhin natibu. (1 CMC § 9104(a)(1)).

PARA U MAPRIBENIYI OPIÑON SIHA: Na'hånåo pat intrega i upiñon-mu siha guatu gi as Joseph C. Guerrero, *Attn: CPUC Regulasion Siha gi Procurement yan Supply*, gi sanhilu' na mailing address pat email address, gi råyan suhetu "CPUC Regulasion Siha gi Procurement yan Supply". Todu upiñon siha debi na u fanhålum trenta(30) dihas ginin i fetchan pupblikasion esti na nutisia. Put fabot na'hålum i upiñon-mu, infotmasion pat kinentestan kinentra siha. (1 CMC § 9104(a)(2)).
Esti i manmaproponi na regulasion siha manma'aprueba ni Kumision gi Oktubri 7, 2008.

Nina'hålum as: _____ 12/18/2015
Joseph C. Guerrero — Fetcha
Kabesiyu
Commonwealth Public Utilities Commission

Rinisibi as: _____ 12/24/15
ESTHER S. FLEMING — Fetcha
Ispisiåt na Ayudåntin Atministrasion Gubietnu

Pine'lu yan Ninota as: _____ 01.14.2016
ESTHER SN. NESBITT — Fetcha
Rehistran Commonwealth

Sigun i 1 CMC § 2153(e) (Inaprueban Abugådu HInerât ni regulasion siha na para u macho'gui kumu fotma) yan 1 CMC § 9104(a)(3) (hinentan inaprueban Abugådu Hinerât) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan ma'aprueba kumu fotma yan sufisienti ligât ginin i CNMI Abugådu Hinerât yan debi na u mapupblika, 1 CMC § 2153(f) (pupblikasion areklamentu yan regulasion siha).

Mafetcha gi diha 26th di ~~Nubembri~~ Febrero, 2016.

_____
Edward Manibusan
Abugådu Hinerât

Commonwealth of the Northern Mariana Islands
Commonwealth Public Utilities Commission
Joseph C. Guerrero, Chair
P.O. Box 501219
Saipan, MP 96950
Tel: 235-2782
Email: cpuc.cnmi@gmail.com

ARONGORONGAL TOULAP REEL POMOL ALLÉGH

IKKA RE POMOL REBWE AMALATA AWEEWEE ME ALLÉGH KKA REBWE AYOORA IYE EBWE LEMELI AWEEWEEL ARAMAS KKA EYOOR YAAR WEIRES, AIYEGH REEL MEETA LAPAL YAAR MITAAL DENGKKI ME SCHAAL NGERE EYOOR MAAS MILLE RESE METAF REEL BWULASIYOL COMMONWEALTH PUBLIC UTILITIES COMMISSION (CPUC).

ANGAANG YE REBWE FÉÉRI BWE EMMWEL REBWE AMALLALÓ AWEEWEE ME ALLÉGH KKA RAA POMOL REBWE AYOORATA:

Commonwealth Public Utilities Commission e mwuschel ebWE ayorata pomol aweewe me alleghil aramas kka eyoor yaar weires reel aar mital dengkki ngere schaal me ngere meeta ye rese metaf reel aweeweel meeta reel CPUC. Rebwe arongóór towlap reel ebwe mmwel ebwe toolong allegh kkaal llól Commonwealth Register bwe ebwe toowow bwe eew allégh lapalap ye emmwel rebwe aweewei meeta rebwe fééri ngeliir aramas kka eyoor aar weires reel CPUC. Ngere aa ffatteló allégh kka nge aa mmwel rebwe atolongei llél Review of Customer Complaints, ye e mweiti ngeliir reel allégh ye re ghal ira bwe Administrative Procedure, 1 CMC SS 9104 (a) nge loll seeigh (10) ráál nge atowow bwe aa schéschéél allégh nge ebwele toolong loll Commonwealth Register mere; (1 CMC SS 9105 (b).

Bwangiir faal alléghlapalap:

CPUC re mweiti ngeliir mereel kongressiyo bwe emmwel rebwe ayoora aar aweewe me allégh kka ebwe lemeli mwoghuttughuttul loll bwualsiyol CPUC. E bawl mmwel rebwe angeliir aramas kka eyoor aar weires ebwe bwal faisúl aar rebwe isissilong meeta aar weires bwe rebwe afeili. Iwe reel bwángiir nge e tooto mereel 4 CMC SS 8411 (n) (reel aweeweel me allégh) 8411 (m) (mwóghuttughuttul bwulasiyo).

TOOL ME AUTOL MILIKKAAL: Aweewe me allégh kkaal nge 1. E ayoora meeta aweewe ye rebwe atabwei reel allégh me aweeweel meeta CPUC rebwe amwuri allanger aramas kka re lo bwe (customers) bwe ebwe ghatch mwóghuttughuttul bwulasiyo reel ebwe kkeyil atakka meeta weires ulumwer Komission.

AWEEWEEL EBWE FAISUL UBWE ISISSILONG ME ARONGA TOWLAP:

Alangal aweewe me allégh kkaal nge rebwe atolongei loll Commonwealth Register bwe emmel ebwe tongeliir towlap reel peighil aweewe me allégh kka re laal ayoora nge tipeer rebwe atowowu ngeliir towlap ye aliegh yeel eke aweewei loll (1 CMC SS 9102 (a) (1) nge rebwe apaschetá reel bwulei ye e ghatch me civic center me bwulasiyol loll alangal senatorial district loll kkapasal English me kkapasal Falawasch ngere Meraalis (1 CMC SS 9104 (a) (1).

REBWE AYOORA MILLE TOWLAP EBWE ISISSILONG MEETA MENGEMENGIIR:

Afanga ngere isselilong yómw mengemeng reel Joseph C. Guerrero, Attn: CPUC Procurement and Supply Regulations reel address mwu weilang ngere email address ye subject nge ebwe CPUC Procurement & Regulations. Alangal mengemeng ye ubwe isssissilong nge ebwe mmwel loll eliigh (30) raal disti igha re ischiwow reel towlap mwette ngeli eliigh RAAL (1 CMC SS 9104) (A) (2)).

Alangal pomol allégh me aweewe kkaal re affataló wool Oktubre 7, 2008.

E atolongei mereel: _____ 12/23/15
Joseph C. Guerrero
Chair,
Commonwealth Public Utlities Commission
RââL

E bwughi mereel: _____ 12/24/15
ESTHER S. FLEMING
Governor's Special Assistant for Administration
RââL

E File-li me e record-li: _____ 2.26.16
ESTHER SN. NESBITT
Commonwealth Register
RââL

+Sengi 1 CMC SS 2153 (e) (AG ebwe bwungiw allegh kkaal ngere e wel alangal) mere; 1 CMC SS 9104 (a) (3) nge AG ebwe amwekki aal iisch bwe aa bwung me ffattela bwe eew allegh nge esoor weires reel allangal pomol allegh kka re amallata nge rebwe arongoor towlap reel 1 CMC SS 2153 (1) (Arongorong ngeli toulap reel alangal allegh re laal pomol rebwe ayorata).

Wool: 26th February 16 Nobembre 2015

_____
Edward E. Manibusan
Attorney Gemera;

SUPPLEMENT RULES GOVERNING REVIEW OF CUSTOMER COMPLAINTS

Rule 1. Applicability and Construction of Rules.

These rules govern practice and procedure before the Commission regarding customer complaints against a regulated entity. These rules supplement the Commission's General Rules of Procedure and shall be liberally construed to secure just, economical, and expeditious determination of customer complaints. To the extent any conflict exists between these supplemental rules and the general rules in the Commission addressing customer complaints, then these supplement rules control in such matters. Each entity regulated by the Commission must provide a copy of these rules to it customer upon receiving a complaint from the customer.

Rule 2 Procedures For Prior Relief From Regulated Entity

(a) A customer having a dispute with a regulated entity must first seek to resolve the dispute with the regulated entity prior to filing a complaint with the Commission. If the regulated entity denies the customer's claim or fails to resolve the dispute to the customer's satisfaction, then the customer must file a written complaint with the Commission within fifteen (15) days of the customer's receipt of the regulated entity's decision on the claim or proposed resolution of the claim. If the regulated entity fails to decide the customer's claim within thirty (30) days of the customer submitting the claim, then the customer may file a complaint with the Commission within fifteen (15) days after expiration of the thirty (30) day period.

(b) The regulated entity's decision or ruling on the Complaint must be in writing and served on the customer by certified mail to the customer's billing address or by personal delivery. If the Regulated Entity denies the customer's complaint in whole or in part, the written notice must advise the customer of the following:

(i) The right to seek administrative review before the Commission and the procedures for seeking such review as set forth in Rule 3(a) & (b).

(ii) The costs including attorney fees the regulated entity and the Commission incurs in addressing the appeal may be assessed against the customer, if the Commission, in its discretion, determines the complaint is frivolous or being pursed solely for purposes of delaying payment of a billing.

(c) The Commission retains jurisdiction over any current or existing customer complaint submitted to it in which the regulated entity failed to inform the customer of the right to appeal to the Commission.

Rule 3 Initiation of a Customer Complaint

(a) A customer of a regulated entity files a written complaint with the Commission by delivering a copy to the Commission's business office during its business hours, by certified mail addressed to the Commission, or by email to the Commission's email address. The Commissions mailing address is Commonwealth Utilities Commission c/o Governor's Office, Caller Box 1007 Saipan MP or at such other address as the Commission may direct by public notice. The Commission's email address for receiving customer complaints will be provided by public notice upon establishment of the Commission's website.

(b) The customer complaint need not be in any specific form or format but, at a minimum, must contain the following:

1. The complainant's name and the complainant's postal address, email address, and/or telephone number.

2. The identify the regulated entity against whom the complaint is made;

3. The date the claim was filed with the regulated entity and the result, if any, the customer received from the regulated entity; and

4. A clear and concise statement of the facts involved and a request for affirmative relief, such as, but not limited to, requests for refund or that the regulated entity should cease and desist from a practice.

All supporting papers, including, but not limited to, bills, letters, and notices, should be submitted with the complaint.

(d) A complaint is deemed filed on the date it is received by the Commission. Upon receiving a customer complaint, the Commission will assign a number to the complaint and shall transmit a copy of the customer complaint to the regulated entity identified in the complaint and the Consumer Counsel of the Attorney General's Office.

(e) The Consumer Counsel, in his or her sole discretion, may participate in adjudicating the customer complaint by filing a notice with the Commission within ten (10) days after service of the regulated entities response.

Rule 4 Informal Resolution of Complaint

(a) Within seven (7) days of filing a complaint, the Commission will issue notice setting a settlement conference date between the customer and regulated entity. The notice will be served

on the customer and the regulated entity. The settlement conference will seek an informal resolution of the dispute if possible. If the settlement conference does not achieve an informal resolution, then the complaint will proceed to formal resolution by the Commission.

(b) The settlement conference will be held by the Hearing Examiner, a sole Commissioner designated by the Commission or any other person designated by the Commission. The settlement conference shall be attended by the customer and a representative of the regulated entity that possesses the authority to settle the dispute.

Rule 5 Regulated Entity's Response To A Customer Complaint

If the settlement conference fails to resolve the complaint, then the regulated entity shall, within ten (10) days after conclusion of the settlement conference file its response to the complaint with the Commission with proof of service on the Complainant and the Consumer Counsel of the Attorney General's Office. All grounds of defense, both of law and of fact, shall be raised in the answer. The regulated entity shall also submit all documentation in its possession relating to the customer complaint which includes a copy of the recording of any hearing the regulated entity may have held in connection with the complaint.

Rule 6 Ruling on The Customer Complaint

(a) The Commission shall decide and issue a written ruling on the customer complaint without an evidentiary hearing. The decision shall be based on the documentation submitted by the parties and the Consumer Counsel. The Commission shall issue its written decision within thirty (30) days of the regulated entity filing its response or the Consumer Counsel filing its memorandum, whichever is later in time. The Commission's decision shall be served on the complainant, the regulated entity, and the Consumer Counsel.

(b) In deciding a customer complaint, all factual and legal issues shall be reviewed de novo. Provided however, that if the regulated fails to issue a written ruling on the customer complaint within the thirty (30) period as required by Rule 2(a) of these rules then all disputed facts and reason inferences therefrom shall be construed in the light most favorable to the complainant.

Rule 7 Violations and Penalties

(a) The costs, including attorney fees, the Commission incurs in addressing the complaint shall be assessed against the regulated entity unless the Commission determines, in its discretion, that the complaint is frivolous or is pursued by the customer solely to delay paying a billing.

(a) In the event that the Commission determines that a regulated entity has violated any law,

or Commission rule, regulation or order, then in addition to any relief awarded to the complainant, the Commission may, in its discretion, impose penalties, fines or sanctions upon the telecommunications company, or take any other such appropriate action.

Rule 8 Reconsideration of Ruling

(a) Within seven (7) days of the Commission's ruling, a party may request reconsideration of the Commission's ruling.

(b) A request for reconsideration shall be in writing filed with the Commission with proof of service on the opposing party and the Consumer Counsel. The request shall clearly articulate the error of fact or law which justifies reconsidering the ruling. The opposing party shall not respond to the reconsideration request unless directed to do so by the Commission. However, the Commission shall not reconsider its ruling without first directing the opposing party to file a response to the reconsideration request. If the Commission determines the reconsideration request does not justify reconsideration, the Commission may deny the request in writing without the need for any response from the opposing party.

(c) The Commission's ruling on the reconsideration request shall be served on the complainant, the regulated entity and the Consumer Counsel.

Rule 9 Final Action

The Commission's ruling on the customer complaint shall be the final action on the customer complaint unless a party seeks reconsideration pursuant to Rule 8. If reconsideration is requested pursuant to Rule 8, then the ruling on the customer complaint shall not be final until the Commission issues its written ruling on the reconsideration request.

Rule 10 Judicial Review

Any person aggrieved by the Commission's final action on the customer complaint may seek judicial review pursuant to 1 CMC § 9112, et seq. within thirty (30) days of its issuance. Such review shall be limited to questions of law, the record established, and issues raised before the Commission.

Rule 11 Service

Whenever service is required by these rules, service may be effectuated by personal delivery, certified mail or email.

Rule 12 Computation of Time

In computing any period of time prescribed or allowed by these rules, by Commission order or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed hall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. A "legal holiday" is any day declared as a legal holiday by the legislature and any other day designated as a legal holiday by the Commonwealth.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Ralph DLG. Torres
Governor

Victor B. Hocog
Lieutenant Governor

EXECUTIVE ORDER No. 2016-002

RENEWAL OF DECLARATION OF MAJOR DISASTER AND SIGNIFICANT EMERGENCY IN THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

WHEREAS, on August 2, 2015, Typhoon Soudelor struck the Commonwealth of the Northern Mariana Islands;

WHEREAS, Typhoon Soudelor caused significant damage to public and private property;

WHEREAS, on August 3, 2015, Acting Governor Ralph DLG. Torres issued a Declaration of Major Disaster and Significant Emergency;

WHEREAS, on August 5, 2015, President Barack H. Obama issued a major disaster declaration for the Commonwealth under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121 et seq.;

WHEREAS, on September 3, 2015, and October 2, 2015, Governor Eloy S. Inos renewed the August 3, 2015 Declaration of Major Disaster and Significant Emergency;

WHEREAS, on November 1, 2015, November 29, 2015, and December 28, 2015, Acting Governor Ralph DLG. Torres again renewed the August 3, 2015 Declaration of Major Disaster and Significant Emergency;

WHEREAS, all necessary administrative and legal processes necessary to complete the recovery effort have not fully run their course;

NOW, THEREFORE, I, RALPH DLG. TORRES, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution and by the Homeland Security and Emergency Management Act of 2013, 1 CMC §§ 20141-20147, do hereby again renew the August 3, 2015 Declaration of Major Disaster and Significant Emergency in the Commonwealth of the Northern Mariana Islands that was previously renewed on September 3, 2015, October 2, 2015, November 1, 2015, November 29, 2015, and December 28, 2015.

I HEREBY INVOKE MY AUTHORITY under Article III, § 10 of the Northern Mariana Islands Constitution and under 1 CMC § 20144 to protect the health and safety of the people of the Commonwealth. Accordingly, the following is hereby **ORDERED:**

I. RENEWAL OF DECLARATION OF MAJOR DISASTER AND STATE OF SIGNIFICANT EMERGENCY

The August 3, 2015 Declaration of Major Disaster and Significant Emergency issued by Acting Governor Ralph DLG. Torres, and renewed for a first time on September 3, 2015, a second time on October 2, 2015, a third time on November 1, 2015, a fourth time on November 29, 2015, and a fifth time on December 28, 2015, is hereby again renewed in its entirety without change, except that the report from the Homeland Security and Emergency Management Office to the Office of the Governor (as described in Section I of the Declaration) shall be submitted on or about March 15, 2016, and the expiration of the Declaration (as described in Section VII) shall be extended an additional thirty (30) days from the date of this Executive Order.

II. EFFECTIVE DATE

This sixth Renewal of the August 3, 2015 Declaration of Major Disaster and State of Significant Emergency shall take effect immediately and remain in effect for thirty (30) days from the date of this Executive Order. All memoranda, directives, waivers of regulations, and other measures taken in accordance with the August 3, 2015 Declaration shall also remain in effect for thirty (30) days from the date of this Executive Order.

Done this **27th** day of **January**, 201**6**.

RALPH DLG. TORRES
Governor

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Ralph DLG. Torres
Governor

Victor B. Hocog
Lieutenant Governor

EXECUTIVE ORDER NO. 2016-003

SUBJECT: DECLARATION OF A STATE OF SIGNIFICANT EMERGENCY

AUTHORITY: I, VICTOR B. HOCOG, pursuant to the authority vested in me as Acting Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution and P.L. 18-4, § 104 of the Homeland Security and Emergency Management Act of 2013, do hereby declare a State of Significant Emergency for the Commonwealth of the Northern Mariana Islands due to the imminent threat of the inability of the Commonwealth Utilities Corporation ("CUC") to provide critical power generation, water, and wastewater services to the CNMI and considering the harm such condition would pose to the community, environment, and critical infrastructure of the Commonwealth of the Northern Mariana Islands.

WHEREAS, CUC IS THE SOLE ELECTRICITY SUPPLIER to the Government of the CNMI, including all public safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the CNMI's businesses and homes. While some businesses and agencies own backup generators, they are not generally organized to use the backups as permanent power sources and the diesel oil purchased to run these generators is substantially more expensive than that used for CUC power.

WHEREAS, WITHOUT CUC ELECTRICITY:

(1) Most CNMI economic activity would come to a halt, much refrigeration and air conditioning would end, and the airports and ports would be forced to rely on emergency generation on the limited, expensive oil supply for it;

(2) The CNMI's health and safety would immediately be at risk because traffic signals and street lighting would cease to function; emergency, fire, police facilities and their communications systems, and the hospital and island clinics would have to rely on limited fuel supplies for emergency generation and then cease functioning; and much refrigeration of food and medicines would end, as would air conditioning for the elderly and sick;

Caller Box 10007 Saipan, MP 96950 Telephone: (670) 237-2200 Facsimile: (670) 664-2211/2311

(3) The public schools and the Northern Marianas College would close. Other educational institutions would close as their backup fuel supplies for emergency generators were exhausted; and

(4) Water and sewage treatment would soon end. One of CUC's largest electric customers is the combined CUC Water and Wastewater Divisions. CUC is the sole supplier of electricity for these systems. CUC's water system relies on electricity to maintain the system pressure needed to prevent the backflow of pathogens, to chlorinate, and to pump, store, and distribute water supplies. CUC's wastewater system requires electricity to collect, pump, process, treat, and discharge sewage. The lack of electricity could result in sewage overflow, contaminating land and water.

WHEREAS, THERE EXISTS A FINANCIAL CRISIS:

(1) CUC is owed over $20 million by the public school system ("PSS") and the Commonwealth Healthcare Corporation ("CHC") and is owed over millions more by other users;

(2) Although the commonwealth economy has recently improved, the improvement is only marginal and the economy and the government's finances are still fragile. This government strains to meet its obligations.

(3) CUC often only has days' worth of purchased diesel fuel to power its system because it lacks the funds to buy oil from its sole, cash-only supplier. CUC has no credit or other means to buy fuel than the revenue it collects from its customers;

WHEREAS, THERE EXISTS A TECHNICAL WORKER CRISIS:

(1) CUC faces a manpower crisis. Skilled worker and a responsive support system are key to the success of the operation, particularly for preventative maintenance. At present, CNMI law at 3 CMC §§ 4531 and 4532 prohibits CUC from hiring any more non-U.S. technical workers;

(2) CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction of the U.S. District Court and the U.S. Environmental Protection Agency ("EPA"), pursuant to two sets of consent, or "Stipulated Orders." Failure to meet the requirements of the federal court orders could subject CUC and the CNMI to substantial fines and charges and, in the extreme, to a federal takeover of their finances;

(3) CUC requires employees with specialized training. There are many non-U.S. citizens whom CUC needs to retain on technical and professional contracts. Without these positions filled, CUC operations would be severely compromised;

(4) The legislature, through P.L. 17-1 (Mar. 22, 2010), has limited CUC's ability to hire technical staff, eliminating prior statutory permission to hire up to nineteen foreign workers and reinstituting a moratorium on the government's hiring of foreign nationals, even if needed for highly technical positions for which no local or mainland citizens are available. The CUC Act, as subsequently reenacted by P.L. 16-17 (Oct. 1, 2008), provides that CUC shall hire such persons as are necessary for operations, *except as otherwise limited by other law.* 4 CMC § 8123(h);

(5) There are not enough U.S. citizen or U.S. resident technical specialists at CUC to perform the power generation work, particularly specialists with experience in the type of engines that CUC uses. U.S. citizens with the necessary skills are not readily available in the CNMI and it is costly to recruit from the United States. CUC believes that the vast majority of skill sets, considering its cash restrictions, must come from non-U.S. personnel. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding enough qualified candidate;

(6) The impact of an inadequate workforce is substantial. First, there would be a direct deterioration of service to existing customers. There would be brownouts or area blackouts with the above-mentioned loss of service. Second, the power plants would again degrade, producing more of these outages. Third, if CUC fails to meet federal court deadlines for the Stipulated Orders, the Court could appoint a federal receiver and its consulting team with all expenses charged to CUC customers.

(7) CUC's renewal of contracts and hiring of foreign expert workers is necessary to sustain the integrity of CUC's systems. Thus, continued relief from the legislative prohibition on hiring foreign national workers is necessary to ensure the delivery of uninterrupted power services to the people of the Commonwealth. The legislature is urged to address this matter by way of amending local law to allow CUC to continue employing the services of foreign workers for such technical positions difficult to fill and to provide for a reasonable transition period.

WHEREAS, BY THIS DECLARATION OF A STATE OF SIGNIFICANT EMERGENCY, I intend to enable CUC to continue to provide necessary services to the people of the Commonwealth. This Declaration is necessary to protect the health and safety of our children, our senior citizens, businesses, and all other CNMI residents and visitors.

NOW, THEREFORE, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and P.L. 18-4 § 104(c), to take all necessary measures to address the threats facing the Commonwealth of the Northern Mariana Islands.

It is hereby **ORDERED** that:

This Declaration of a State of Significant Emergency shall take effect immediately and all memoranda, directives, and other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days from the date of the Executive Order unless I, prior to the end of the thirty (30)-day period, terminate the declaration of a state of significant emergency. P.L. 18-4, § 104(g)

Under authority of this Declaration and the goal of mitigating or ameliorating the above described crises, I immediately direct the following:

DIRECTIVE: Insofar as it applies to CUC, 3 CMC § 4531 is hereby suspended. As a result of the suspension of 3 CMC § 4531, CUC shall have the full power and authority to retain staff which may include employees other than citizens and permanent residents of the United States.

The above described Directive is in no way meant as the limits of my actions or authority under this Declaration. Accordingly, I reserve the right under this Declaration to issue any and all directives necessary to prevent, mitigate or ameliorate the adverse effects of the emergency.

SIGNED AND PROMULGATED on this 16th day of February, 2016.

VICTOR B. HOCOG
Acting Governor

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Ralph DLG. Torres
Governor

Victor B. Hocog
Lieutenant Governor

EXECUTIVE ORDER No. 2016-004

RENEWAL OF DECLARATION OF MAJOR DISASTER AND SIGNIFICANT EMERGENCY IN THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

WHEREAS, on August 2, 2015, Typhoon Soudelor struck the Commonwealth of the Northern Mariana Islands;

WHEREAS, Typhoon Soudelor caused significant damage to public and private property;

WHEREAS, on August 3, 2015, Acting Governor Ralph DLG. Torres issued a Declaration of Major Disaster and Significant Emergency;

WHEREAS, on August 5, 2015, President Barack H. Obama issued a major disaster declaration for the Commonwealth under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121 et seq.;

WHEREAS, on September 3, 2015, and October 2, 2015, Governor Eloy S. Inos renewed the August 3, 2015 Declaration of Major Disaster and Significant Emergency;

WHEREAS, on November 1, 2015, November 29, 2015, and December 28, 2015, Acting Governor Ralph DLG. Torres again renewed the August 3, 2015 Declaration of Major Disaster and Significant Emergency;

WHEREAS, on January 27, 2016, Governor Ralph DLG. Torres again renewed the August 3, 2015 Declaration of Major Disaster and Significant Emergency;

WHEREAS, all necessary administrative and legal processes necessary to complete the recovery effort have not fully run their course;

NOW, THEREFORE, I, VICTOR B. HOCOG, pursuant to the authority vested in me as Acting Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution and by the Homeland Security and Emergency Management Act of 2013, 1 CMC §§ 20141-20147, do hereby again renew the August 3, 2015 Declaration of Major Disaster and Significant Emergency in the Commonwealth of the Northern Mariana Islands that was previously renewed on September 3, 2015, October 2, 2015, November 1, 2015, November 29, 2015, December 28, 2015, and January 27, 2016.

I HEREBY INVOKE MY AUTHORITY under Article III, § 10 of the Northern Mariana Islands Constitution and under 1 CMC § 20144 to protect the health and safety of the people of the Commonwealth. Accordingly, the following is hereby **ORDERED:**

I. RENEWAL OF DECLARATION OF MAJOR DISASTER AND STATE OF SIGNIFICANT EMERGENCY

The August 3, 2015 Declaration of Major Disaster and Significant Emergency issued by Acting Governor Ralph DLG. Torres, and renewed for a first time on September 3, 2015, a second time on October 2, 2015, a third time on November 1, 2015, a fourth time on November 29, 2015, a fifth time on December 28, 2015, and a sixth time on January 27, 2016, is hereby again renewed in its entirety without change, except that the report from the Homeland Security and Emergency Management Office to the Office of the Governor (as described in Section I of the Declaration) shall be submitted on or about April 15, 2016, and the expiration of the Declaration (as described in Section VII) shall be extended an additional thirty (30) days from the date of this Executive Order.

II. EFFECTIVE DATE

This seventh Renewal of the August 3, 2015 Declaration of Major Disaster and State of Significant Emergency shall take effect immediately and remain in effect for thirty (30) days from the date of this Executive Order. All memoranda, directives, waivers of regulations, and other measures taken in accordance with the August 3, 2015 Declaration shall also remain in effect for thirty (30) days from the date of this Executive Order.

Done this **22nd** day of **February, 2016.**

VICTOR B. HOCOG
Acting Governor

HEALTH CARE PROFESSIONS LICENSING BOARD
FOR THE COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS

In the Matter of	
Paul Maria Gahlinger,	HCPLB Case No. 14-0002
Physician's & Surgeon's Certificate No. 541	FINAL DECISION & ORDER
Respondent.	

The Health Care Professions Licensing Board ("the Board") hereby issues its Final Decision in the above-captioned case.

I. ADOPTION OF PROPOSED DECISION AND ORDER WITH AMENDMENTS

The Board adopts the PROPOSED DECISION issued December 10, 2015, attached hereto, with the following amendments to the ORDER found at Pages 21–24:

- Term 5 of the ORDER, "Professionalism Program (Ethics Course)", is amended to read:

  > Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in an American Medical Association Physician's Recognition Award ("AMA PRA") Category 1 Credit approved course in professionalism (ethics), approved in advance by the Board or its designee. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course.

- The second sentence of Term 6 of the ORDER, "Monitoring – Practice" is amended to read:

A monitor shall have no prior or current business, personal or other relationship with Respondent, that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, shall be in Respondent's field of practice, and must agree to serve as the Respondent monitor.

The reasons for adopting some of the amendments requested by Dr. Gahlinger and for the rejection of others, are explained in the following section.

II. REASONING

A. PROCEDURAL HISTORY

The Proposed Decision was issued on December 10, 2015. The Board extended the deadline for the parties' submission of a written response based on the parties' oral stipulation and for good cause shown, namely the holiday season.

Dr. Gahlinger submitted his written response to the Proposed Decision and Order on January 11, 2016.[1] The Response proposed changes to Terms 3, 4, 5, 6, and 9. Dr. Gahlinger withdrew his proposed change to Term 9 in a Supplemental Response dated January 26, 2016.

B. TERMS 3 THROUGH 5

1. Original and Proposed Language

Terms 3 and 4 require Dr. Gahlinger to enroll in and successfully complete a Prescribing Practices Course, and a Medical Record Keeping Course "equivalent to [those courses] at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine, approved in advance by the Board or its designee." (Proposed Decision at 21.) Term 5 requires Dr. Gahlinger to enroll and successfully complete a "professionalism program (ethics course) that is approved by the Board." (*Id.*) Terms 3 through 5 reference a "class room component," indicating that physical attendance is required to ensure that Dr. Gahlinger gives the course his full and undivided attention.

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[1] The Enforcement Section was unable to issue a response in light of the absence of an Executive Director.

Dr. Gahlinger proposed amending Terms 3 and 4 to substitute the courses at the "Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine" with the "an American Medical Association Physician's Recognition Award ('AMA PRA') Category 1 Credit approved course[s]" in Prescribing Practices and a Medical Record Keeping, respectively. (Resp. Mem. at 3.) Dr. Gahlinger proposed amending Term 5 to allow "an American Medical Association Physician's Recognition Award ('AMA PRA') Category 1 Credit approved course in professionalism (ethics)." (Resp. Mem. at 4.)

2. Dr. Gahlinger's Arguments

Dr. Gahlinger essentially argues that Terms 3 through 5 are unduly burdensome in light of the time and expense involved in attending the courses on the Mainland. Gahlinger argues, correctly, that there are no equivalent courses offered in the Commonwealth. Dr. Gahlinger argues further and that the expense of traveling to Hawaii or the Mainland is unduly burdensome. Dr. Gahlinger proposes that the Board instead allow him to take "American Medical Association Physician's Recognition Award ('AMA PRA') Category 1 Credit approved" courses in the subject matter. As explained below, the Board rejects these arguments as to Terms 3 and 4, but accepts these arguments as to Term 5.

3. Reasons for Rejecting Proposed Amendments to Terms 3 and 4.

a. Severity of Misconduct

The Board rejects Dr. Gahlinger's proposed amendments as to Terms 3 and 4 because the severity of Dr. Gahlinger's misconduct with respect to his prescribing practices and poor record keeping justifies the burden of requiring Dr. Gahlinger to physically attend courses on those subjects. (*See* Proposed Decision & Order at 3–5, 10–13.)

The Board finds that Dr. Gahlinger's misconduct was severe. Dr. Gahlinger lived and practiced in Utah before moving to Saipan. (*Id.* at 3.) As part of his practice in Utah, Dr. Gahlinger

founded a MediCruiser Onsite Care, Inc. ("MediCruiser"), which provided healthcare services to rural areas of Utah. A good portion of this practice involved treating opioid addiction by prescribing medications such as Suboxone, which in itself is an opioid albeit one used as a legitimate and effective treatment for "weening" addicts off of more powerful opioids and alleviating symptoms of opioid withdrawal. The provision of medical assistance to areas of a largely rural state such as Utah and the provision of medical assistance to recovering opioid addicts are highly commendable. The misconduct arose when Dr. Gahlinger moved to practice in Saipan in 2013. Despite moving to Saipan, Dr. Gahlinger continued to use MediCruiser to treat individuals for opioid addiction. (*Id.* at 3–4.)

While Dr. Gahlinger was in Saipan, MediCruiser was run by his medical assistant, Kelley Reyes, who was not a member of any healthcare profession qualified to diagnose, evaluate, or treat patients. By his own admission, Dr. Gahlinger continued to prescribe Suboxone to at least three individuals without speaking to or evaluating these individuals every time a prescription was written. (*Id.* at 3.) These occasional meetings with these patients occurred over Skype. (*Id.*) At least one of these patients, AL (full name withheld to protect confidentiality), was pregnant when Dr. Gahlinger prescribed Suboxone. (*Id.*) Furthermore, again by his own admission, Dr. Gahlinger did not hold a valid Drug Enforcement Agency ("DEA") registration to prescribe controlled substances in Utah when he was prescribing Suboxone to patients in Utah. (*Id.* at 4.) Thus, the Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah ("Utah Division") found that Dr. Gahlinger's "internet-based opioid treatment facility, operated out of a private home and administered by an unregulated medical assistant constituted a threat to public safety," and that "the practice of prescribing Suboxone without proper patient assessment puts patients at risk of serious injury." (*Id.* at 10 (quoting the Utah Division's Emergency Order at 4).) In the Proposed Decision & Order, the Hearing Officer found that the

"arrangement—dispensing medication based on sporadic conferences over the internet—is suspect." (Proposed Decision & Order at 10.) The Hearing Officer also found:

> Proper prescribing of a controlled substance should include conducting or reviewing a physical examination of the patient, learning the patient's medical history, having a sufficient dialog with the patient to form a competent treatment plan and continuing to communicate with the patient as that plan was implemented.

(*Id.* at 10.) The Board agrees with the Hearing Officer and the Utah Division that Dr. Gahlinger's action constituted serious unprofessional conduct that endangered public safety, and the health and safety patients of MediCruiser.

The Dr. Gahlinger also failed to keep proper medical records. The Utah Division found that (*Id.* at 10.) Based on the Patient File of AL, the Hearing Officer found that "the records do not identify which, if any, of the 24 visits that AL made to Ms. Reyes house over the course of a 19 months resulted in face-to-face (Skype) conferences with" Dr. Gahlinger and "that every entry for every visit lists both Dr. Gahlinger and Ms. Reyes as 'providers,' there is no way to tell which visits, if any, are visits in which Dr. Gahlinger was actually present (via Skype). (*Id.* at 11.) Furthermore, the Hearing Officer found that each of the entries "consist entirely of boilerplate language with no individualized notes to indicate that any medical assessment was made of this individual patient," and further found that the exact same word-for-word entry was made on all but one of AL's 16 visits over a 13-month period. (*Id.* at 11, 11–12 n.7.) Further, the notes "appear to have been 'electronically signed' *months* after the actual visit. (*Id.* at 12 (emphasis in original).) Finally, the only reference to AL's pregnancy was a one word notation: "pregnant." The Hearing Officer, and the licensing authorities of Utah and California, found the "boilerplate medical entries do not reflect any careful medical consideration or analysis." (*Id.*)

A major component of this enforcement action is reciprocal discipline for these actions. (*Id.* at 4–8 (describing the disciplinary actions in Utah, California, and Hawaii); *Id.* at 8–13 (describing the reasons for finding reciprocal discipline is warranted).) Commonwealth law

empowers the board to reciprocate discipline "from another jurisdiction based upon acts or conduct by the licensee similar to acts or conduct that would support disciplinary action under" 3 CMC §§ 2201–2246. 3 CMC § 2224(b)(22)(1). The Hearing Officer found, and the Board agrees, that Dr. Gahlinger's misconduct and the abysmal record keeping "would be considered unprofessional conduct that is potentially harmful to the public under 3 CMC § 2224(b)(3)." (*Id.* at 11–12.) The Hearing Officer also found that Dr. Gahlinger's conduct would amount to "[a]iding or abetting an unregulated person to practice a health care profession" in violation of 3 CMC § 2224(b)(20) if the same conduct occurred in the Commonwealth. (Proposed Decision & Order at 13.) Indeed, the Order itself is in large part the same as the disciplinary order issued by the Medical Board of California Department of Consumer Affairs. (California Decision & Order at 7–8.) For instance, the language of Terms 3 through 5 are largely identical to the California disciplinary decision and order. (*Compare* California Decision & Order at 7–8 *with* Proposed Decision & Order at 21.) The prescription practice and poor record keeping are so severe that they require Dr. Gahlinger to undergo significant education on those subjects.

b. Current Requirement vs. Proposed Alternative

The proposed alternative does not provide sufficient training to ensure Dr. Gahlinger is properly educated in proper prescribing procedure and record keeping. The current language of Terms 3 and 4, and the burden they impose, must be measured against the proffered alternative. The Physician Assessment and Clinical Education Program, University of California, San Diego's Prescribing Practices is three days long, costs $1,800.00, and is worth 24 Continuing Medical Education ("CME") credits.[2] Univ. of Cal. San Diego Sch. of Med., Physician Assessment and

[2] Dr. Gahlinger's participation in this programs do not count toward his CME requirement. (*See* Proposed Decision & Order at 21–22 (The courses required by Terms 3 through 5 "shall be at [Dr. Gahlinger's] expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.").)

Clinical Educ. Program ("PACE"), PACE Overview Summary at 2 (available at http://www.paceprogram.ucsd.edu/documents/pace_overview_summary.pdf) (last visited Jan. 29, 2016). The Medical Record Keeping is two days long, costs $1,250.00 hours and is worth 17 CME credits. *Id.* The AMA PRA Category 1 Credit courses on prescription practices include "Module 4: Protocols to guide evidence-based prescribing," which is free and worth one AMA PRA Category 1 Credit. Am. Med. Ass'n Physician's Recognition Award, Module 4: Protocols to guide evidence-based prescribing, January 8, 2016, https://cme.ama-assn.org/Activity/3747018/Detail .aspx (last visited January 29, 2016). An example for a course on record keeping includes "Patient Experience: The Physician's Role," which is $20.00 (free for members) and worth 0.75 AMA PRA Category 1 Credits. Am. Med. Ass'n Physician's Recognition Award, Patient Experience: The Physician's Role, https://cme.ama-assn.org/Activity/2586026/Detail.aspx (last visited January 29, 2016) ("Target Audience: This activity is designed for physicians interested in learning about integrated care and specifically as it relates to electronic health records."). Of course, the Board would have to approve the course in advance. (*See* Proposed Decision & Order at 21.)

Courses worth one credit (or less) simply do not address the Board's concerns in light of the severity of Dr. Gahlinger's misconduct. Dr. Gahlinger, by his own admission, did not evaluate patients (including a pregnant woman) every time he prescribed Suboxone (an opioid), did not possess a DEA registration to prescribe controlled substances in Utah at the time he was prescribing Suboxone in Utah, and kept records that were boilerplate and "electronically signed" *months* after the prescription was given. The boilerplate record entries demonstrate that Dr. Gahlinger did not follow up with the course of treatment and patient progress, which is vitally important in treating opioid addiction. The severity of this misconduct justifies the financial and time-consuming burden imposed on Dr. Gahlinger by the requirement that he attend significant courses on prescription practice and record keeping.

Importantly, the burden on Dr. Gahlinger is lessened because the prescription practices and record keeping courses offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine are held consecutively. The Physician Prescribing Course is offered from April 18, 2016 to April 20, 2016,[3] and July 11, 2016 to July 13, 2016. Univ. of Cal. San Diego Sch. of Med., PACE Program, Physician Prescribing Course, http://www.paceprogram.ucsd.edu/CPD/prescribing.aspx (last visited January 28, 2016). In both cases, the Medical Record Keeping Course begins the following day, April 21, 2016 and July 14, 2016. Univ. of Cal. San Diego Sch. of Med., PACE Program, http://www.paceprogram .ucsd.edu/CPD/record.aspx (last visited January 29, 2016). Both of these sets of courses are within the six-month time period required for completion. Dr. Gahlinger can therefore attend both courses in a single trip to the Mainland. In other words, multiple trips to the Mainland are not necessary. Finally, the Board notes that Terms 3 and 4 can be satisfied by courses "*equivalent to* [those courses] at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine." (Proposed Decision & Order at 21 (emphasis added).) If Dr. Gahlinger can find less expensive courses that meet the standards of the courses offered by the Physician Assessment and Clinical Education Program within 60 days of the effective date of this Decision, he is free to submit those courses to the Board for approval.

A final point bears repeating: Dr. Gahlinger's misconduct was a severe departure from the standards of the medical profession and endangered public safety. The Board has a duty to protect the public and uphold the standards of the medical profession by ensuring that Dr. Gahlinger does not repeat his past misconduct. The severity of Dr. Gahlinger's professional misconduct requires intensive education to ensure that it is not repeated.

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[3] The course held in April would simultaneously satisfy Term 2 of the California disciplinary order. (California Decision & Order at 7–8.)

The Board therefore adopts the Proposed Decision and Order's original text for Term 3 and Term 4.

4. Reasons for Accepting Proposed Amendment to Term 5

The Board agrees with Dr. Gahlinger's argument as to Term 5. Term 5 is readily distinguishable from Terms 3 and 4. The Terms 3 and 4 relate to the specific instances of Dr. Gahlinger's severe professional misconduct. Term 5, on the other hand, deals with the professional ethics generally. Furthermore, the Physician Assessment and Clinical Education Program does not offer a general professional medical ethics course, and attending a live ethics seminar would require further travel, and possibly two trips to the Mainland. The Board is less concerned with Dr. Gahlinger's general professional ethics training than it is with training in the specific areas of his misconduct: patient prescribing practices and medical record keeping. The Board is mindful that travelling to the Mainland is a burden involving significant amount of time and money. The Board agrees with Dr. Gahlinger's argument as it relates to the original language of Term 5, and accordingly finds that the further travel and expense required by the original imposes an undue burden on Dr. Gahlinger.

The Board therefore adopts the Dr. Gahlinger's proposed amendment to Term 5.

C. TERM 6

1. Original and Proposed Language

Term 6 involves the monitoring of Dr. Gahlinger's practice by "one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties certified." (Proposed Decision at 22.) Dr. Gahlinger does not dispute this requirement. Rather, Dr. Gahlinger challenges the next sentence, which reads:

> A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could possibly be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, shall be in Respondent's field of practice, and must agree to serve as the Respondent's monitor.

(*Id.*) Dr. Gahlinger proposes the following amendment:

> A monitor shall have no prior or current business, personal or other relationship with Respondent, that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, shall be in Respondent's field of practice, and must agree to serve as the Respondent's monitor.

(Resp. Mem. at 4.)

2. Dr. Gahlinger's Arguments

Dr. Gahlinger argues, quite correctly, that the small size of the medical community makes it "virtually impossible" to find a monitor with whom he has "no prior business or personal relationship." (Resp. Mem. at 4–5.) Dr. Gahlinger argues that the Commonwealth "is an extremely small community, and the *medical* community in the [Commonwealth] is even smaller still." (*Id.* at 5.) Dr. Gahlinger notes there is only one primary care facility, the Commonwealth Healthcare Center ("CHC"), at which Dr. Gahlinger was employed. Any former fellow employee would be automatically excluded under the requirement barring a monitor with whom Dr. Gahlinger has a "prior business . . . relationship." Furthermore, Dr. Gahlinger correctly points out that the small population of the practitioners of various professions practiced in the Commonwealth leads to more "casual, friendly relationships" than one would expect in other jurisdictions. (*Id.*) As a result, Dr. Gahlinger argues, he is almost certain to have some degree of "prior or current . . . personal relationship" with any potential monitor.

3. Reasons for Accepting Proposed Amendment to Term 6

Dr. Gahlinger's arguments are well taken, and the Board agrees that the language of the Proposed Decision would practically prevent him from finding any suitable monitor. The language proposed by Dr. Gahlinger qualifying the nature of the relationship satisfies the Board's need for fair, unbiased reporting from the monitor and alleviates the undue burden the original language imposed on Dr. Gahlinger.

The Board therefore adopts the Dr. Gahlinger's proposed amendment to Term 6.

III. CONCLUSION

The Board adopts the Proposed Decision and Order with the amendments set forth in the first section of this Final Decision.

This Final Decision constitutes a "final decision" for the purposes of 1 CMC § 9113 and 3 CMC § 2229.

This Decision will become effective upon the date it is served on Dr. Gahlinger or his counsel of record.

SIGNED

Theodore R. Parker, R.Ph. MPH
Chairman

1/29/2016
Date

Martin Rohringer, MD
Vice-Chairman

02/02/2016
Date

Tiffany Willis, MD
Member

1-29-16
Date

Warren Creed, DDS, MS
Member

2-2-16
Date

HEALTH CARE PROFESSIONS LICENSING BOARD
FOR THE COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS

In the Matter of	)	HCPLB Case No. 14-0002
	)	
Paul Maria Gahlinger, M.D.,	)	
	)	
Physician's and Surgeon's	)	
Certificate No. 541,	)	
Respondent.	)	
	)	

PROPOSED DECISION

This disciplinary proceeding against Paul Maria Gahlinger, M.D., was heard on November 2, 2015, before designated Presiding Officer Jerry Cody. The Enforcement section of the Health Care Professions Licensing Board ("HCPLB" or "Board") was represented by Asst. Attorney General Michael Witry. Respondent Paul Maria Gahlinger, M.D., appeared and was represented by attorney Jennifer Dockter. Dr. Gahlinger testified as the only witness in the proceeding. Presiding Officer Jerry Cody, presided over the hearing and issues this Proposed Decision.

All references to Exhibits refer to documents entered into evidence at the Hearing, except for certain medical records (Exhibit 3) that were submitted after the hearing and admitted into evidence by stipulation. [See attached Exhibit List.] The record closed and the matter was submitted on November 16, 2015.

The Hearing was conducted according to the Health Care Professions Licensing Act of 2007, 3 CMC §§ 2201 *et seq.* (particularly 3 CMC § 2226), the Health Care Professionals Licensing Rules and Regulations (NMIAC §§ 140-50.3-1115 *et seq.*), and the Commonwealth Administrative Procedure Act (1 CMC § 9101 *et seq.*).

This case is based on the Amended Notice of Disciplinary Proceeding (hereinafter, "Complaint") filed by the Board's Enforcement Section ("Enforcement") against Paul Maria Gahlinger, M.D. ("Respondent") on October 20, 2015. [1]

LEGAL STANDARDS

Jurisdiction: Respondent's medical license in the Commonwealth of the Northern Mariana Islands ("CNMI") is subject to the provisions of the Health Care Provisions Licensing Act of 2007, 3 CMC § 2201, *et seq.* (hereinafter, the "Act"). The Act confers jurisdiction on the Board

[1] The Complaint superseded and, in effect, nullified the letter, dated April 16, 2015, from the Board to Respondent (Exhibit G), in which the Board informed Respondent that his renewal application was being denied. [This position was stated by Mr. Witry during the Hearing on November 2, 2015.]

over persons engaging in the practice of any of the health professions regulated by the Board, including physicians (medical doctors). 3 CMC §§ 2207 and 2212(v). .

Discipline: The Board may discipline a licensee or applicant for licensure in a variety of ways, including by refusing to issue or renew a license, suspending or revoking a license, restricting a license to certain fields or procedures, or conditioning a license in some other manner. 3 CMC § 2226(d)(1). The Act specifies reasons for imposing discipline on licensees or applicants for licenses. 3 CMC § 2224(b). These include, in pertinent part, the following reasons:

3 CMC § 2224(b)(2): Committing a fraud, misrepresentation or deception in applying for, renewing or otherwise securing a health care professional license....

3 CMC § 2224(b)(3): Engaging in dishonorable, unethical or unprofessional conduct of a character likely to mislead, deceive, defraud or harm the public with respect to a health care profession.

3 CMC § 2224(b)(5): Intentionally violating a Commonwealth or federal statute or regulation governing a controlled substance.

3 CMC § 2224(b)(20): Aiding or abetting an unregulated person to practice a health care profession in violation of this Chapter.

3 CMC § 2224(b)(22)(i): With respect to other jurisdictions: (i) Being subject to a health care profession disciplinary action from another jurisdiction based upon acts or conduct by the licensee similar to acts or conduct that would support disciplinary action under this Chapter.

3 CMC § 2224(b)(22)(ii): With respect to other jurisdictions: (ii) Failing to report to the Board an adverse action taken against the person by another jurisdiction's health care profession regulatory agency...."

3 CMC § 2224(b)(28): Failing to cooperate with a lawful investigation conducted by the Board, including lying to a Board investigator or withholding information.

The Complaint against Respondent consists of four basic contentions:

1. Enforcement contends that Respondent is subject to reciprocal discipline under 3 CMC § 2224(b)(22)(i) because he was subject to disciplinary action in Utah based upon conduct by Respondent similar to conduct that would support disciplinary action in the CNMI.

2. Enforcement alleges that Respondent committed multiple acts of fraud, misrepresentation and/or deception in the process of applying to renew his CNMI medical license and therefore, he should be disciplined pursuant to 3 CMC § 2224(b)(2).

3. Enforcement alleges that Respondent failed to report adverse action taken against him by licensing authorities in another jurisdiction and therefore, he should be disciplined pursuant to 3 CMC § 2224(b)(22)(ii).

4. Enforcement contends that Respondent failed to cooperate with a lawful investigation; therefore, he should be disciplined pursuant to 3 CMC § 2224(b)(28).

Enforcement is the moving party with the burden of proving the above legal contentions by a preponderance of the evidence. The standard of proof applied to factual findings is clear and convincing evidence to a reasonable certainty.

FINDINGS OF FACT

Background

Respondent Paul M. Gahlinger, M.D., attended medical school from 1989 to 1993 at the University of California at Davis, California. After receiving a Doctor of Medicine, he served an internship at the University of Hawaii from mid-1993 to mid-1994; then performed his residency at the Mountain Center of Occupational and Environmental Medicine at the University of Utah, School of Medicine, in Salt Lake City, from July 1997 to June 1998. (Exhibit 16 – *Curriculum Vitae*.)

On August 1997, Respondent was first licensed by the state of Utah to practice as a Physician and Surgeon and to administer and prescribe controlled substances.

During the period from 2000 to 2013, Respondent engaged in a multifaceted medical practice in Utah. Respondent served as an adjunct professor and guest lecturer at the University of Utah School of Medicine, Director of Occupational Medicine at a clinic in Layton, Utah (2000-05), Medical Director of a correctional facility (2005-12), and Medical Director of two hospices (2011-13). In 2004, Respondent founded a mobile healthcare service known as MediCruiser Onsite Care, Inc. ("Medicruiser"), which provided healthcare services to certain rural areas in Utah. (Testimony of Dr. Gahlinger.)

In September 2013, Respondent moved to the Northern Mariana Islands and closed his medical practice in Utah, except that he continued to treat a number of persons suffering from opioid addiction by means of his telemedicine service, known as MediCruiser, through an arrangement with his medical assistant, Kelly Reyes, located in Vernal, Utah. (Respondent's opioid addiction treatment practice is described in more detail in the next section.)

Respondent began practicing medicine in the Commonwealth of the Northern Mariana Islands ("CNMI") in September 2013. Respondent has worked as staff physician at CHC (9/2013-10/2014), Medical Director of the Kagman Community Health Center (11/2013-10/2014) and Medical Director of Marianas Health Center (11/2014-10/2015). Currently, Respondent is no longer working at the Marianas Health Center. Respondent says he is now planning to open his own health clinic, based in San Antonio, which would offer certain types of geriatric care, foot care and/or treatment for diabetic conditions. (Exhibit 16 - *Curriculum Vitae*; testimony of Dr. Gahlinger.)

Respondent claims to have no interest in continuing to treat opioid-addicted individuals. He states that his federal DEA application for a license to administer controlled substances is

currently "on hold," and he has no current plans to activate the license to administer and prescribe controlled substances in the CNMI or elsewhere. (Testimony of Dr. Gahlinger.)

Utah Disciplinary Action

After Respondent moved to Saipan in September 2013, he continued treating some opioid-addicted individuals in Utah by means of his telemedicine service, known as MediCruiser. Medicruiser was administered in Utah by Respondent's medical assistant, Kelly Reyes, who resided in a home in Vernal, Utah. Ms. Reyes was not a licensed member of any health care profession, nor was she qualified to diagnose, evaluate or treat patients.

Under the arrangement established by Respondent, patients visited Kelly Reyes's home and received prescriptions for Suboxone, a controlled substance used to treat opioid addiction. On some of their visits to Reyes's home, the patients talked to Respondent via Skype, but on other visits they were given prescriptions for Suboxone without speaking, or being evaluated by, Respondent or any qualified health professional. (Emergency Order at Exhibit B, Stipulation at Exhibit C, and testimony of Dr. Gahlinger.)

On July 8, 2014, the Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah ("Utah Division") issued an Emergency Order ("Emergency Order"), immediately suspending Respondent's license to administer and prescribe controlled substances in the state of Utah. Among other things, the Utah Division alleged that Respondent had continued prescribing controlled substances to Utah residents for the treatment of opioid addiction even after his Utah license to prescribe controlled substances had expired. (Emergency Order at Exhibit B.)

Respondent waived his right to a hearing and entered into a Stipulation and Order with the Utah Division, effective July 21, 2014. (Stipulation at Exhibit C.) In that Stipulation at paragraph 7, Respondent made the following admissions:

> Between March 2013 and October 2013 SP (name withheld to protect confidentiality) went to Respondent's office at the home of Kelley Reyes in Vernal, Utah, and received prescriptions for Suboxone....SP did not have a face to face meeting with Respondent prior to Respondent prescribing the Suboxone. During this period, SP was pregnant which condition she disclosed to Respondent and SP only had 3-4 video conferences contact \with Respondent in Ms. Reyes' home. After 2013, SP never went to Respondent's office again. Respondent has been prescribing the Suboxone to SP without a valid Utah DEA [Drug Enforcement Administration] registration.
>
> ...Since June of 2012, PG (name withheld to protect confidentiality) has been prescribed Suboxone from the Respondent. PG suffers from high blood pressure and opioid addiction issues. To receive the Suboxone prescriptions, PG visits Kelley Reyes and occasionally teleconferences with the Respondent. PG has been given Suboxone when his blood pressure has been in the 250/140 range. The Respondent does not monitor PG for counseling or with drug testing. Respondent has been prescribing the Suboxone to PG without a valid Utah DEA registration.

> ...Between November 2012 and June 2014, AL (name withheld to protect confidentiality) received prescriptions for Suboxone from Respondent. In March of 2013 AL became pregnant...AL disclosed her condition to Kelly Reyes. During the period of time that AL received the Suboxone prescriptions, AL never saw Respondent either in person or by video conference, but only met Kelley Reyes. Respondent has been prescribing the Suboxone to AL without a valid Utah DEA registration.
>
> Since December 9, 2013, Respondent has not held a valid DEA registration to prescribe controlled substances in the State of Utah or [sic] has he been in Utah to meet face to face with his patients. But, Respondent, either personally or through his assistant Kelley Reyes, continued to prescribe controlled substances to patients in the State of Utah....

Under the terms of the Stipulation and Order, Respondent agreed that the above findings of fact constituted "unprofessional conduct" as defined under Utah statutory law,[2] and that the conduct justified disciplinary action against him. (Stipulation at Exhibit C, ¶ 8.) Respondent thereby surrendered his Utah licenses to practice as a physician and surgeon, and to administer and prescribe controlled substances. *Id.*

CNMI Disciplinary Action

As of August 2014, Respondent's medical license to practice as a Physician and Surgeon in the CNMI (Exhibit A - Physician's and Surgeon's Certificate No. 541.) was valid and in good standing and scheduled to expire in May 2015. [The license has been extended pending the outcome of this disciplinary proceeding.]

On August 8, 2014, the Board learned of the Utah Stipulation and Order when it received a Board Action Disciplinary Alert Report from the Federation of State Medical Boards (FSMB). Upon learning that Respondent had surrendered his medical licenses in a stipulated settlement of the Utah disciplinary action, the Board's (former) Executive Director, Florence Sablan, began an investigation of Respondent.

On August 21, 2014, Respondent sent an email to the Board's former Executive Director. In the email, he stated that he did not agree with the allegations underlying the request to surrender his Utah license. He explained that he had decided to surrender his DEA license and Utah Medical license to avoid a "time-consuming and costly" hearing. He also provided details about his use of Suboxone as a treatment medication and described how he had been under the mistaken impression that his DEA license remained valid in all 50 states, regardless of where he resided. He explained that this oversight led to the revocation of his Utah license to prescribe controlled substances after he changed his residence from Utah to the CNMI. (Exhibit D.)

In a letter dated March 13, 2015, the Board informed Respondent that "HCPLB may not renew your license to practice medicine in the CNMI upon the expiration of your license in May." (See

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[2] For text of specific Utah statutes defining "unprofessional conduct," see footnote 4 on page 9.

letter, dated 3/13/2015, from Board Chairman to Respondent at Exhibit 2.) In the letter, the Board also stated that it had learned the California Attorney General had filed an Accusation against Respondent on behalf of the California Medical Board.[3] It was against this backdrop that on March 25, 2015, Respondent filed a Renewal Application with the Board to request renewal of his CNMI medical license.

Renewal Application: The Renewal Application (Exhibit F) contained several pre-printed questions regarding potential disciplinary matters in other jurisdictions. Respondent answered "yes" to a question of whether any licensing board or disciplinary authority had suspended, revoked or accepted surrender of the applicant's license within the past two years. Respondent answered "yes" to a question of whether the applicant had been the subject of any "ongoing or pending investigation" in the past two years in another jurisdiction. However, Respondent answered "no" to a question of whether the applicant had any "disciplinary action pending against [him]" in the past two years.

Addendum: Respondent attached an Addendum to his Renewal Application, to provide additional details to his answers to the application's pre-printed questions. On the surrender of his Utah medical licenses (Question 12), Respondent stated: "[T]he [Utah] allegation was for a 'non-criminal, administrative' infraction. There was no allegation, at this or any other time, of acts that were dishonorable, ***unprofessional***, negligent, incompetent, misconduct, or any other infraction. My medical practice is, and has always been, held in the highest regard." (Emphasis added) (Testimony of Dr. Gahlinger.)

As to any investigations in other jurisdictions, Respondent stated:

- "My California medical license is scheduled for renewal in August 31, 2015. The Medical Board of California ***has scheduled a hearing*** to review the details of my surrender of the Utah medical license."
- "The Hawaii Medical Board ***held such a hearing*** last fall, and issued a renewal of my Hawaii medical license. My Hawaii medical license is Active, without restrictions." [Emphases added.]

On April 16, 2015, Respondent received a letter from the Board (Exhibit G) notifying him that the Board had decided to deny his application to renew his medical license in the CNMI. [Note: The letter was subsequently nullified and the Board's Enforcement section issued the present Complaint in its place. Respondent's Renewal Application remains pending and shall be subject to the current disciplinary proceeding.]

On May 1, 2015, Respondent submitted a letter to the Board (Exhibit H) requesting a hearing to appeal the Board's denial of his renewal application. In the letter, Respondent admitted that his Medicruiser practice over the internet had been operated below acceptable professional standards. Respondent stated: "I do bear responsibility for what happened. While I disagree

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[3] The Accusation alleged that Respondent's conduct in Utah constituted grounds for disciplinary action against Respondent in California. (Accusation at Exhibit E.)

with the stated allegations, I see that the bigger concerns are correct: I did act unprofessionally...." *Id.*

In October 2015, after a pre-hearing conference held before the Presiding Officer regarding the denial appeal, Enforcement decided to re-frame the case as a disciplinary proceeding conducted to determine whether Respondent should be disciplined under various provisions of the Act. A hearing was held on November 2, 2015. Respondent's testimony and the evidence presented at the hearing shall be referenced throughout this Order under the particular topics addressed.

California Disciplinary Action

On March 17, 2004, the Medical Board of California issued Physican's and Surgeon's Certificate No. G 87166 to Respondent. Subsequently, the license was renewed and the latest California medical license was scheduled to expire on August 31, 2015.

On October 6, 2014, the Executive Director of the Medical Board of California issued an "Accusation" against Respondent. (Accusation at Exhibit E.) The Accusation alleges that Respondent's California certificate is subject to discipline because of actions taken by Utah against Respondent's license to practice medicine in that state.

On May 7, 2015, a hearing was held regarding the Accusation in Oakland, California, before an administrative law judge. The judge issued a Proposed Decision on June 4, 2015, however, the Medical Board of California declined to adopt the Proposed Decision. (Proposed Decision at Exhibit I; Order of Non-Adoption of Proposed Decision at Exhibit J.)

On November 18, 2015, the Medical Board of California issued a Decision and Order adopting a Decision After Non-Adoption. That Decision places Respondent on probation for five years based on a number of terms and conditions. The Decision shall become effective on December 18, 2015.

Hawaii Disciplinary Action

Respondent testified that his most recent Hawaii medical license expired in January 2014. Respondent took no action to renew his Hawaii license between January and November 2014. He believed at that time that his license was no longer active after January 2014 when it expired. Therefore, he believed he had no duty to report the surrender of his Utah medical licenses to the Hawaii Medical Board, and he did not report it. (Testimony of Dr. Gahlinger.)

In November 2014, Respondent changed his mind and applied to renew his Hawaii medical license, and at that time, he informed the Hawaii Medical Board about the Utah Stipulation and Order and the surrender of his medical licenses in Utah. *Id.*

In a letter dated March 5, 2015, Hawaii's Regulated Industries Complaints Office ("RICO") informed Respondent that the Hawaii Medical Board had asked the RICO to investigate the disciplinary action taken against Respondent's medical license in Utah. (Letter at Exhibit R.)

The letter noted that "in the Utah Order, you admit to several violations relating to improperly prescribing controlled substances and/or other medications. Based on the foregoing, Hawaii's RICO is prepared to proceed with formal disciplinary action in this matter." RICO then offered to resolve the matter with a Stipulated Settlement Agreement under which Respondent would voluntarily surrender his Hawaii medical license and be unable to reapply for licensure for five years. *Id.* Respondent later declined the offer. (Testimony of Dr. Gahlinger.)

On September 6, 2015, Hawaii filed a Petition for Disciplinary Action against Respondent. (Exhibit M – First Amended Petition.) The Petition was sent by mail to Respondent, who received it on October 28, 2015, weeks after the present Complaint was filed by Enforcement. A Hearing on the Petition is now scheduled to take place in Hawaii in February 2016. (Testimony of Dr. Gahlinger.)

LEGAL CONCLUSIONS

Enforcement filed its Complaint for disciplinary proceedings against Respondent, asserting four grounds for discipline: (1) reciprocal discipline based on the Utah disciplinary action; (2) multiple counts of fraud, misrepresentation or deception; (3) failure to report a disciplinary action from another jurisdiction; and (4) failure to cooperate with a lawful investigation.

Summary of Legal Conclusions

1. **The evidence establishes that discipline is warranted under the reciprocal discipline provision of the Act. 3 CMC § 2224(b)(22)(i).**

2. **There is insufficient evidence to support any reason for discipline with respect to count nos. 2, 5, 6, 8, 9, and 10; therefore, these counts should be dismissed.**

3. **Respondent's misstatements and omissions amount to negligent misrepresentation; therefore, discipline is warranted under 3 CMC § 2224(b)(2). [Counts 3(a) and 4.]**

4. **Respondent failed to report adverse disciplinary actions against him; therefore, discipline is warranted under 3 CMC § 2224(b)(22)(ii). [Counts 3 and 7.]**

5. **The appropriate discipline in this case should be a stayed revocation of Respondent's CNMI medical license with Respondent placed on five years of probation under the terms set forth below.**

* * * * *

I. The evidence establishes that discipline is warranted under the reciprocal discipline provision of the Act. 3 CMC § 2224(b)(22)(i).

The Utah Stipulation and Order constituted a health profession disciplinary action from another jurisdiction that is based upon acts or conduct by the licensee similar to acts or conduct that would support disciplinary action in the CNMI. 3 CMC § 2224(b)(22)(i). (Complaint, count 1.)

The admitted conduct of Respondent in Utah would have constituted grounds for discipline if undertaken in the CNMI, for the following reasons:

- The acts, as stipulated in the Utah Order, constituted unprofessional conduct of a character likely to mislead, deceive, defraud, or harm the public (3 CMC § 2224(b)(3)).
- The acts, as stipulated in the Utah Order, constituted aiding or abetting an unregulated person to practice a health care profession (3 CMC § 2224(b)(20)).

Respondent agreed in the Utah Stipulation that his conduct, as described therein, constituted "unprofessional conduct" as defined under Utah statutes. (Exhibit C, ¶ 8.) The statutory definition of "unprofessional conduct" in Utah includes, but is not limited to:

- violating any statute, rule, or order requiring [a] profession regulated under this title;
- violating any generally accepted professional or ethical standard applicable to the profession;
- practicing through gross negligence or a pattern of incompetency or negligence; or
- issuing, or aiding and abetting in the issuance of, an order or prescription for a drug…without first obtaining information in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to the proposed treatment. [4]

The conduct in this case involved an unorthodox arrangement established by Respondent to enable him to render long-distance medical treatment of opioid addicted patients over the

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[4] The Stipulation stated: "Respondent admits that the findings of fact described above constitute unprofessional conduct as defined by Utah Code Ann. § 58-1-501(2)(a), (b), (g) and (m) and unprofessional conduct as defined in Utah Admin. Code R156-1-501(6) and (7)." Those statutes read as follows:

Utah Code Ann. § 58-1-501(2)(a): "'Unprofessional conduct' means conduct, by a licensee or applicant, that is defined as unprofessional conduct under this title or under any rule adopted under this title and includes: (a) violating, or aiding or abetting any other person to violate, any statute, rule, or order requiring an occupation or profession under this title; (b) violating or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title;…(g) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence;…(m) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device: (i) without first obtaining information in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to the proposed treatment; or (ii) with prescriptive authority conferred by an exception issued under this title, or a multistate practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment." [Emphases added.]

Utah Admin. Code R156-1-501(6): "'Unprofessional conduct' includes: (6) failing, as a prescribing practitioner, to follow the 'Model Policy for the Use of Controlled Substances for the Treatment of Pain', 2004, established by the Federation of State Medical Boards, which is hereby adopted and incorporated by reference; (7) failing, as a prescribing practitioner, to follow the 'Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain', July 2013, adopted by the Federation of State Medical Boards, which is incorporated by reference…."

internet. The stipulated facts described how patients visited a private home in rural Utah and received prescriptions for Suboxone, a controlled substance, over a period of months, yet had only 2 or 3 face-to-face contacts - or in one case, no contact - (via Skype) with Respondent during that period. Meanwhile, Respondent's Utah license to prescribe controlled substances was revoked in December 2013, thereby causing his subsequent prescriptions of Suboxone to be issued in violation of Utah law.

Such an arrangement - dispensing prescriptions for medication based on sporadic conferences over the internet - is suspect, especially given that this arrangement involved the prescription of potentially dangerous, highly-regulated medications, known as "controlled substances." [5]

The act of dispensing, administering and prescribing controlled substances is a highly regulated activity because of the potential dangers to patients' health and safety if those medications are overprescribed, or prescribed without adequate safeguards. Proper prescribing of a controlled substance should include conducting or reviewing a physical examination of the patient, learning the patient's medical history, having sufficient dialog with the patient to form a competent treatment plan and continuing to communicate with the patient as that plan is implemented. Opioid Treatment Programs typically provide supervised assessment and medication-assisted treatment of patients who are addicted to opioids.[6]

The Utah Division found that Respondent's internet-based opioid treatment facility, operated out a private home and administered by an unregulated medical assistant, constituted a potential threat to public safety. Having examined the situation, the Utah Division concluded that Respondent's "practice of prescribing Suboxone without a proper patient assessment puts patients at risk for serious injury." (Emergency Order at 4.) The Health Care Professions Licensing Board would have likely reached the same conclusion on similar facts in the CNMI.

In the Stipulation he signed in July 2014, Respondent agreed that the facts set forth in the Stipulation constituted "unprofessional conduct." (Exhibit C, ¶ 8.) However, in his various communications with the Board, Respondent has vacillated between contending that his Utah violations were merely "technical" and "administrative" in nature (i.e., having nothing to do with treatment), and admitting that his Medicruiser operation had, indeed, been unprofessional.

In his May 1, 2015 letter to the Board (Exhibit H), Respondent admitted that his Medicruiser arrangement over the internet had been operated below acceptable professional standards. Respondent stated: "I do bear responsibility for what happened. While I disagree with the stated allegations, I see that the bigger concerns are correct: *I did act unprofessionally*...." (Emphasis

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[5] A controlled substance is a drug that is subject to special requirements under the federal "Control Substances Act." See definition at 21 U.S.C. § 802(6).

[6] An Opioid Treatment Program ("OTP") can exist in a number of settings, including intensive outpatient, residential and hospital facilities. Treatment offered by OTPs includes medication-assisted therapy with methadone, buprenorphine or naltrexone, as well as medically supervised withdrawal or detoxification, accompanied by varying levels of medical and psychosocial services and other types of care. Federation of State Medical Boards, Model Policy on DATA 2000 and Treatment of Opioid Addition in the Medical Office (April 2013) (Exhibit P at 18).

added.) Respondent called his inattention to Utah regulations "arrogant and wrong." He also described his pro-bono treatment of opioid addicts as "wrong, on a number of levels" and "unprofessional is some regards." Respondent continued to characterize the Utah action against him as a "non-clinical, administrative infraction," but he admitted that he "did not practice to the expected level of professionalism." (Letter dated 5/01/2015, at Exhibit H.)

At Hearing, Respondent continued to try to draw a distinction between "patient care" and the "legal aspects of [his] practice." Yet, the Stipulation never draws this distinction. (See *infra,* fn 17.) Respondent testified that he believes that the only unprofessional conduct found in the Utah case concerned the fact that his controlled substance license in Utah had expired. This argument is not supported by the plain language of the Stipulation, which describes how Respondent prescribed Suboxone to three individuals over a period of months with almost no face-to-face consultation, supervision or assessment.

The Hearing Officer shall hold Respondent to his admission in the Stipulation that the conduct described therein, constitutes unprofessional conduct. In the Hearing Officer's assessment, such conduct includes not only the fact that Respondent's Utah license to prescribe controlled substances had been invalidated, but also the fact that Respondent's internet-based treatment involved little or no direct doctor-patient consultation, supervision or assessment. Such conduct, if it occurred in the CNMI on similar facts, would be considered unprofessional conduct that is potentially harmful to the public under 3 CMC § 2224(b)(3).

Estoppel: Enforcement argues that Respondent should be estopped from asserting that the facts to which he stipulated, are untrue, unless he manages to have the prior order set aside. *Estate of Leon Guerrero v. Quitugua*, 2000 MP 1 at 3-4. The Hearing Officer agrees that estoppel is appropriate in this case. Nevertheless, the Hearing Officer shall allow the AL patient file into evidence for the purpose of examining what it may reveal about the manner of Respondent's long-distance medical treatment via the internet.

Patient AL's Medical File: Respondent contended that Patient AL's medical file would show that he met on several occasions with the patient, contrary to what was stated in the Stipulation at paragraph 7d. Respondent shall be estopped from contesting that stipulated fact. In any event, the medical file does not prove Respondent's contention, and the file raises troubling questions. First, the records do not ever identify which, if any, of the 24 visits that AL made to Ms. Reyes's house over the course of 19 months resulted in face-to-face (Skype) conferences with Respondent. Given that every entry for every visit lists both Dr. Gahlinger and Ms. Reyes as "providers," there is no way to tell which visits, if any, are visits in which Dr. Gahlinger was actually present (via Skype).

Second, each of the entries consist entirely of boilerplate language with no individualized notes to indicate that any medical assessment was made of this individual patient.[7] Furthermore, many

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[7] For example, during the first 16 visits covering a 13-month period from November 2012 through December 2013, Respondent's electronic notes state: "The current daily dose total is 12 mg. We anticipate a gradual taper to 10 mg in one month, 8 mg in next month, then subsequent monthly reductions to 2 mg and discontinuation in 5 months." With one exception, this entry appears in every visit

visit entries appear to have been "electronically signed" *months* after the actual visit – a fact that raises the question as to whether Respondent monitored the treatment on those visit dates? [8]

Third, the only reference to Patient AL's pregnancy is a one-word notation ("pregnant") that is added to each visit's entry for months. As Enforcement noted in its Argument regarding Al's Patient Chart, none of the notes between May 4, 2013 and January 11, 2014, reflect consultations with other medical providers or any discussion of the effects of Suboxone upon the fetus. The bare mention that the patient is "pregnant" does not establish that AL's pregnancy was taken into account when determining her course of treatment. Respondent testified that he had consulted other health providers, yet there is no notation in the patient's chart to reflect such consultations.

The AL Patient File demonstrates that Respondent used boilerplate medical entries that do not reflect any careful medical consideration or analysis. As a sample of the manner in which telemedicine was administered by Respondent, the patient file raises troubling questions.

Based on the evidence presented, the Hearing Officer concludes that Respondent's stipulated unprofessional conduct applied not only to his invalidated license to prescribe controlled substances in Utah, but also to the manner in which he failed to directly evaluate, consult and advise his patients during the course of their treatment with Suboxone. If this type of long-distance, internet-based treatment with controlled substances occurred in the CNMI, the Board would likely find it to be "unprofessional" conduct of a character likely to harm the public.

Aiding and Abetting: Enforcement's charge is based on the stipulated fact that Patient AL was prescribed Suboxone without ever meeting with Respondent either in person or by video conference. (Stipulation at ¶ 7(d).) As stated above, Respondent is estopped from asserting that the stipulated facts concerning Patient AL are not true. In any event, the boilerplate entries in the patient file for Patient AL (Exhibit 3) do not support a contention that the patient was assessed individually and directly (via face to face contact) by Respondent over a period of months.

It follows that if Respondent was not meeting with and monitoring this patient, his medical assistant was dispensing prescriptions for Suboxone to Patient AL without adequate supervision. In effect, Respondent was aiding and abetting an unregulated person to practice a health care profession (medicine) in violation of the Act. Admittedly, the record is somewhat sparse in the CNMI, where no regulations have been issued with respect to medical assistants. Nevertheless, the evidence supports the charge that Respondent aided an unregulated person to distribute prescriptions for a controlled substance to an opioid addicted person (AL) on many occasions in which no face-to-face contact occurred between doctor and patient. Such conduct would likely be a violation of the Act under 3 CMC § 2224(b)(20), if similar conduct occurred in the CNMI.

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entry for 13 months, yet the file does not state whether any gradual tapering of the Suboxone dose was ever attempted, or describe why it was not attempted, or explain why this entry keeps being repeated, time and time again, when it clearly does not reflect the patient's actual treatment. (See AL Patient File at Exhibit 3.)

[8] For example, the visit dated Sept. 10, 2013, was electronically signed by Dr. Gahlinger months later, on January 3, 2014; the visits on October 8, November 5 and December 28, 2013, were all electronically signed by Dr. Gahlinger on January 21, 2014. (Exhibit 3.)

In conclusion, Respondent's conduct in Utah, as stipulated, constituted unprofessional conduct of a character likely to harm the public; and amounted to aiding and abetting an unregulated person to practice a health care profession. Such conduct would have been grounds for disciplinary action in the CNMI under 3 CMC §§ 2224(b)(3) and 2224(b)(20). Thus, cause exists under 3 CMC § 2224(b)(22)(i) to take disciplinary action against Respondent's medical license.

II. The evidence is insufficient to prove that Respondent committed fraud, misrepresentation or deception with respect to counts 2, 5, 6, 8, 9 and 10. Therefore, these counts should be dismissed.

The Complaint alleges ten separate counts of fraud, misrepresentation and deception against Respondent under 3 CMC § 2224(b)(2). [9] Enforcement contends that these counts, taken together, show a pattern of misinformation and deception. Respondent argues that he tried, albeit imperfectly, to inform the Board of adverse actions against him in other jurisdictions and that he never lied about his prior record or intentionally tried to mislead the Board.

As set forth below, the Hearing Officer concludes that the evidence is insufficient to establish that Respondent committed fraud or deception on any of the counts. However, in two counts (nos. 3[a] and 4), the evidence shows that Respondent committed negligent misrepresentation. In two other counts (nos. 3 and 7), the evidence shows that Respondent failed to report adverse actions against him. 3 CMC § 2224(b)(22)(ii). Respondent is subject to discipline for this conduct. The individual counts are discussed below.

Count 2 charges that Respondent falsely told the Board in an email on August 21, 2014 (Exhibit D) that he did not agree with the facts stated in the Utah Stipulation and Order (Exhibit C) when, in fact, the Stipulation signed by Respondent recites that he agrees that the facts contained therein are true. (Exhibit C, ¶ 7.)

In his August 2014 email to the Board's former Executive Director, Respondent stated that he did not agree with the allegations underlying the request to surrender his Utah license. He discussed the nature of the allegations in the Utah disciplinary action and explained that he had decided to surrender his DEA license and Utah Medical license to avoid a "time-consuming and costly" hearing. He also provided details about his use of Suboxone in treatment and described how he had been under the mistaken impression that his DEA license remained valid in all 50 states, regardless of where he resided, because he was only "prescribing" rather than "dispensing" medication. (Exhibit D.)

Enforcement asserts that Respondent's act of arguing about the facts or meaning of the Utah Stipulation constitutes fraud and misrepresentation under 3 CMC § 2224(b)(2). The Hearing Officer disagrees. Respondent's discussion of the Utah disciplinary case, set forth in his August 21, 2014 email, covers a wide range of topics, from political motivations that he claimed were considered, to his own motivation for offering Suboxone treatment in Utah. In effect, he is

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[9] The Complaint mistakenly includes two counts numbered "3;" therefore, the Hearing Officer has re-numbered the second Count 3 as "3(a)." Counts 2 and 4-10, are numbered as they appear in the Complaint.

advocating on his own behalf; attempting to convince the Board that his medical treatments in Utah were not improper. Respondent continued his efforts to put a positive interpretation on the Utah case through the following months and up until the Hearing. At Hearing, Respondent drew a distinction between his "patient care" and the "legal" or "administrative aspects" of his practice and stated that he believed the disciplinary charges had concerned only the "administrative" aspects of his practice in Utah, rather than his treatment of patients. (See page 17, fn. 17.)

The Board is entitled to treat the facts stated in the Stipulation as admissions, notwithstanding Respondent's arguments to the contrary, but to punish Respondent simply for making an argument on his own behalf, seems to be unduly harsh and contrary to his due process rights. Respondent's statements are advocacy – not fraud or failure to cooperate.

That is not to say there are no bounds to Respondent's advocacy. Respondent cannot simply make up facts, particularly in official documents that are part of the renewal process, such as the Renewal Application. (See discussion of Counts 3(a) and 4, at pages 16-17, for examples of where Respondent crossed the line from advocacy into misrepresentation.)

Count 5: In Respondent's May 1, 2015 letter to the Board (Exhibit H), Respondent stated that his opioid addiction treatment was "a minor practice and pro bono or with minimal fees." Enforcement charged that the statement is fraudulent and deceptive because Suboxone actually was a substantial part of Respondent's practice. As evidence, Enforcement cited the fact that Respondent posted a 14-minute informational video about Suboxone on a YouTube channel, that the subscriber of the posting was labelled "SuboxoneDr.G's channel," and that Suboxone appeared as one of five headings on the cover page of Respondent's Medicruiser website in 2014. (Exhibits N and O.)

The fact that Respondent posted an informational video about Suboxone or that someone attached a colorful title (SuboxoneDr.G's channel) to the post, does not prove that Suboxone was a substantial part of Respondent's medical practice. At the Hearing, Respondent testified credibly that the number of his patients who were in treatment for opioid addition never amounted to more than 5% of his practice. Based on the evidence presented, there is insufficient evidence to prove the allegation.

Count 6: In Respondent's letter to the Board, dated May 1, 2015, Respondent wrote that he planned to set up a Foot Clinic at the Marianas Health Center in Saipan. (Exhibit H at 3.) This statement was contradicted six days later when Respondent testified before a California ALJ that he planned to leave Saipan and move to Imperial County, California, to practice medicine. (Exhibit L at 41.) Citing Respondent's testimony, Enforcement charged that Respondent lied to the Board when he wrote that he planned to start a Foot Clinic in Saipan. 3 CMC § 2224(b)(2).

To be sure, Respondent's testimony in California raises doubts about his credibility, yet it does not constitute clear evidence of fraud. Admittedly, we are left with two different statements of intent – both tailored conveniently to fit into the proceedings in which they arise. [10]

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[10] Respondent's testimony in California seems self-serving. When Respondent told the ALJ under oath that he intended to leave Saipan and move to California's Imperial County, he made no attempt to qualify

In the current Hearing, Respondent testified that his "first choice" is to remain in Saipan to open a new clinic, but he is keeping his options open in the event that his CNMI medical license is not renewed. Respondent testified credibly that he has recently undertaken steps to obtain a specific location for his new clinic in San Antonio, Saipan. Given that Respondent now has other active disciplinary proceedings ongoing in other states, it is reasonable to suppose that he may be awaiting the outcome of these actions before committing to a definite future plan.

Counts 8, 9, and 10 relate to statements made in the Reply Brief drafted by Respondent's counsel as a legal advocate in these proceedings. As to Count 8,[11] Respondent testified credibly that he was not served with the Hawaii Petition until October 28, 2015, and he first learned of the Petition from reading Enforcement's Opposition Brief. (Enforcement obtained a record of the filing of the Petition from a Hawaii database.) There is no evidence that Respondent knew about the Petition or withheld the information from the Board; thus, there is no evidence of fraud or deception based on these facts.

As to count 9,[12] Respondent's counsel's characterization of Suboxone treatment as "short-term treatment" is not accurate as it fails to take into account those cases of Suboxone treatment that stretch into many months or years.[13] However, the statement is advocacy, not a direct statement made by Respondent. As such, it does not rise to the level of fraud or deception.

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his statement. Rather, he spoke as if he had a clear plan of action. Clearly, the testimony was designed to bolster Respondent's case in California. The testimony is contrary to what Respondent was telling the CNMI Board in the same period. This raises the question of whether Respondent is testifying fully and truthfully in the current proceeding, but it does not constitute clear evidence of fraud against the Board.

[11] **Count 8:** The Reply Brief filed by Respondent's counsel on September 21, 2015, noted that "Hawaii renewed [Respondent's] medical license in November, 2014, and he will be up for renewal again in 2016. Hawaii informed him that a hearing would be held at that time, but no further communication has taken place." The Reply Brief did not mention that the Hawaii Medical Board had filed a Petition for disciplinary action against Respondent on September 8, 2015, based on his failure to report the Utah order to the Hawaii office within 30 days. (Petition at Exhibit M.) Enforcement alleged that counsel's failure to mention that Petition constituted fraud, misrepresentation or deception on the part of Respondent in violation of 3 CMC § 2224(b)(2).

[12] **Count 9:** The Reply Brief characterized Respondent's treatment of opioid addicts as "intensive lifestyle counseling and short-term Suboxone management." (Reply Brief at 4.) Enforcement asserts that this statement is contradicted by statements found on the Medicruiser website in 2013, which described Suboxone treatment as possibly long-term treatment with some patients staying on Suboxone "for years." Enforcement alleges that the Reply Brief's reference to "short-term Suboxone management" is misleading and deceptive. 3 CMC § 2224(b)(2).

[13] Describing Suboxone treatment as "short-term" is not accurate for all patients given that treatment times vary from patient to patient. Indeed, two of the three patients cited in the Utah Stipulation were kept on Suboxone medication by Respondent for more than a year. Thus, a more accurate statement about the duration of Suboxone treatment should have noted that the treatment times are variable.

As to count 10,[14] the Hearing Officer agrees with Enforcement that counsel's description of the ALJ's Proposed Decision in California is incorrect, yet again, the statement was made by counsel, not Respondent. Clearly, Dr. Gahlinger did not tell his lawyer how she should interpret legal terms of the Proposed Decision; thus any blame for the inaccuracy should fall on counsel – not on Respondent. These facts do not establish a case for fraud, misrepresentation or deception against Respondent.

III. Respondent's misstatements and omissions amount to negligent misrepresentation; therefore, discipline is warranted under 3 CMC § 2224(b)(2). [Counts 3(a) and 4.]

Count 3(a): In his Renewal Addendum (Exhibit F), Respondent discussed the surrender of his Utah medical licenses, stating: "There was no allegation, at this or any other time, of acts that were dishonorable, unprofessional, negligent, incompetent, or any other infraction." [Emphasis added.] This statement was directly contradicted by both the Emergency Order (Exhibit B) and the Utah Stipulation and Order (Exhibit C).

The Emergency Order clearly stated that Respondent's conduct was "unlawful and unprofessional" and that it "posed an immediate and significant danger to the public." (Exhibit B at 4.) The Order stated that Respondent's "practice of prescribing Suboxone without a proper patient assessment puts patients at risk for serious injury." *Id.* The Stipulation stated that Respondent admitted that the facts stipulated therein, constituted "unprofessional conduct" as defined in Utah statutes, and that the "conduct justifie[d] disciplinary action against his license...." (Exh. C, ¶8).

Enforcement alleged that Respondent's statement in the Addendum that there had never been an allegation against him of unprofessional conduct, was false, and that it constitutes evidence of a fraudulent attempt by Respondent to misrepresent the facts and deceive the Board. 3 CMC § 2224(b)(2). Any contention of fraud or deception would suppose a fraudulent intent to mislead the Board, either by intentionally misstating facts or hiding a material fact or circumstance.[15]

In this case, Respondent was aware when he filed the Renewal Application that the Board already had a copy of the Utah Stipulation and Order. Respondent would stand to gain nothing by making a false statement about the contents of the Stipulation, which the Board could readily read on its own. Furthermore, Respondent's testimony on this document did not suggest that he had any improper or fraudulent motive in describing, or attempting to describe, the Stipulation. Accordingly, the Hearing Officer finds insufficient evidence here to establish fraud or deception.

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[14] **Count 10:** The Reply Brief described the Proposed Decision issued by the administrative law judge in California as a "full renewal" of Respondent's license. This statement is incorrect. Under the terms as stated in the Proposed Decision, Respondent's license is revoked, but the revocation is stayed for five years, and Respondent is placed on five years' probation upon 16 conditions. (Exhibit I at 6-13.) Enforcement asserts that Respondent counsel's characterization of the Proposed Decision is misleading and deceptive. 3 CMC § 2224(b)(2).

[15] Such "fraudulent intent" exists where one, either with a view of benefitting oneself or misleading another into a course of action, makes a representation which one knows to be false or which one does not believe to be true. Black's Law Dictionary (6th Ed. 1990).

On the other hand, the statute [3 CMC § 2224(b)(2)] also lists "misrepresentation" as a reason for imposing discipline. A misrepresentation is defined as any assertion of fact that is false or erroneous, i.e., not in accordance with the facts. Black's Law Dictionary 1001 (6th Ed. 1990). A misrepresentation may be intentional or negligent. The statute is silent on whether both fraudulent misrepresentation and negligent representation are grounds for discipline. Given that the plain meaning of "misrepresentation" would encompass both fraudulent and negligent conduct, the Hearing Officer finds that the statute, 3 CMC § 2224(b)(2), should be interpreted as including cases of negligent misrepresentation.[16]

In this case, Respondent has continued to argue about the underlying allegations against him in the Utah disciplinary action, rather than focusing on the actual wording of the Stipulation and Order. Respondent first began trying to present background facts to the disciplinary action in his August 2014 email (Exhibit D). Months later, at the Hearing, he continued presenting his theories about the Utah disciplinary action.[17] Nevertheless, Respondent completely misstated the facts in stating that "there was no allegation of acts that were...unprofessional...or any other infraction." This statement is patently false as shown by the plain language of the Emergency Order and the Stipulation. Respondent could and should have realized that the statement was incorrect simply by reading the text of the Stipulation he had signed in July 2014. Respondent should be disciplined for failing to exercise reasonable care and making such clearly incorrect statements in his application to renew his health care professional license. 3 CMC § 2224(b)(2).

Further grounds for disciplining Respondent is found in the Declaration portion of the Renewal Application which specifically warns that "any falsification or misrepresentation of any item or response in this application or any attachment hereto...is sufficient grounds for denying, revoking or otherwise disciplining a license to practice a health profession in the Commonwealth of the Northern Mariana Islands." (Exhibit F at 5.)

Count 4: In his Renewal Addendum (Exhibit F), Respondent stated, "The Medical Board of California has scheduled a hearing to review the details of my surrender of the Utah medical license. The Hawaii Medical Board *held such a hearing* last fall, and issued a renewal of my Hawaii license." [Emphasis added.] Enforcement correctly alleged that Respondent's statement regarding the Hawaii office holding "such a hearing" was false and deceptive because, in fact, there is no evidence that Hawaii held a hearing or that the Hawaii Medical Board was even aware of the Utah Stipulation and Order at that time.

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[16] Unlike a fraudulent misrepresentation which requires that the person making the representation know it is false or incorrect and intend to deceive or mislead, a negligent misrepresentation merely requires one to fail to exercise reasonable care or competence to obtain or communicate information that is true or correct. 37 Am.Jur.2d, Fraud and Deceit, § 128.

[17] Respondent testified that he continues to draw a distinction between "patient care" and the "legal aspect of his practice." He believes his patient care was never in dispute, or called "unprofessional," by the Utah Medical Board; that only the administrative part of his practice was criticized. (For Respondent's testimony on this issue, listen to testimony at 1 hour, 5-11 minutes.) As stated earlier, Respondent's belief is contrary to the allegations stated in Utah's Emergency Order and contrary to the conclusions and admissions stated in the Stipulation and Order. The Hearing Officer relies on the Stipulation, which has not been overturned and which Respondent signed voluntarily.

In the present Hearing, Respondent was asked to explain why he had stated that Hawaii had held a hearing. He testified that he had received "some information" during a telephone call with "someone" at the Hawaii Medical Board in late 2014 or early 2015. He could not identify the person with whom he spoke and he had only a vague recollection of what was said.[18] The evidence shows that Respondent inserted this statement into his Renewal Application in reckless disregard of the truth. For making such a blatantly incorrect statement of fact – in effect, a negligent misrepresentation - regarding the Hawaii licensing board action, Respondent should be disciplined under 3 CMC § 2224(b)(2), as well as under the above-cited "Declaration" provision of the Renewal Application. (Exhibit F at 5.)

IV. The evidence establishes that Respondent failed to report adverse disciplinary action against him in another jurisdiction; therefore, discipline is warranted under 3 CMC § 2224(b)(22)(ii). [Counts 3 and 7.]

The evidence presented in support of Counts 3 and 7 establishes that Respondent failed to report adverse disciplinary actions against him in other jurisdictions; therefore, discipline is warranted under 2224(b)(22)(ii). However, the evidence does not establish fraud under 3 CMC § 2224(b)(2).

Count 3 charges that Respondent engaged in fraudulent omission and a failure to report an adverse disciplinary action when he answered "no" to Question 14 in the Renewal Application (Exhibit F). That question asked Respondent to identify if, within the past two years, there had been "any disciplinary action against [him]?" He answered "no" even though Respondent knew that in October 2014, the Attorney of California had filed an Accusation before the Medical Board of California seeking an order revoking or suspending Respondent's California medical license. (Exhibit E at 1-3.)

At Hearing, Respondent claimed he had not intentionally tried to mislead the Board. He had already answered "yes" to Question 13 on the Application asking if he had been the subject of an investigation. He testified that in reading Question 14, he had been under the impression that "disciplinary action" meant a "final judgment" or "final order" of discipline, rather than a "disciplinary charge." (Testimony at minutes 54-59.) He noted that he had provided additional information in his Addendum, stating that the Medical Board of California had "scheduled a hearing to review the details of my surrender of [his] Utah medical license." (Exhibit F.)

Respondent's answer to Question 14, taken together with his explanation under oath, seems to be more obtuse and careless than fraudulent. It should be noted that *the Board already knew about the Accusation*, as it had mentioned it in a letter to Respondent, dated March 5, 2015, three weeks before the Renewal Application was filed. (Letter at Exhibit R.) Given that the Board already knew about the Accusation, and that Respondent knew the Board knew about it, he stood

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[18] Respondent testified at Hearing: "I'm not sure if they used the word 'hearing'...I may be using the word 'hearing' not in the strict legal sense....What I mean is – I understand that they had reviewed it and maybe held a hearing, maybe not...." (Testimony of Dr. Gahlinger at 1 hour, 22-24 minutes.)

to gain nothing from withholding that fact from his Renewal Application and Addendum. Therefore, it appears that his failure to check "yes" on Question 14 and to list the Accusation, was not fraudulent.

Nevertheless, Respondent's answers were incorrect. On Question 14, he should have reasonably interpreted the Accusation filed against him in California to constitute a "disciplinary action." In his Addendum, he should have referred to the "Accusation" by its specific name rather than simply making a vague reference to "a hearing."

Based on these facts, the Hearing Officer finds that Respondent should be cited for failing to report a disciplinary action under 3 CMC §§ 2224(b)(22)(ii). However, the facts do not support the charge of fraud or deception.

Count 7: Enforcement asserts that Respondent's failure to report to the Board that his Hawaii license was not in good standing constituted fraud or deception and a failure to report adverse action (3 CMC §§ 2224(b)(2) and 2224(b)(22)(ii)).

In March 2015, Respondent represented to the Board that the Hawaii Medical Board had issued a renewal of his Hawaii medical license and that his medical license was "active, without restrictions." (Addendum at Exhibit F.) Yet, only six weeks later, in early May 2015, Respondent testified in the California disciplinary proceedings that his Hawaii license was "not in good standing." (Exhibit L at 33.)

Respondent never informed the Board after filing his Renewal Application that the status of his Hawaii medical license had changed. It appears that at some point in March or April of 2015, Respondent was informed that the Hawaii Medical Board was prepared to proceed with formal disciplinary action against him for his alleged failure to report the Utah Stipulation and Order to the Hawaii Medical Board within 30 days. (See Letter, dated 3/05/15, at Exhibit R.)[19]

It is not clear whether Respondent received the above-noted letter before or after he submitted his Renewal Application. In any case, Respondent never informed the Board that the Hawaii Medical Board had decided to file a disciplinary action against him. Having told the Board in March 2015 that his Hawaii medical license had been renewed without restrictions and having stated erroneously in his Addendum that a hearing on the matter had already taken place in Hawaii (Count 4), Respondent had a duty to correct the record and to keep the Board informed as to the status of his Hawaii medical license. Failure to do so, at a minimum, constituted the failure to report a disciplinary action (3 CMC § 2224(b)(22)(ii)). Respondent is subject to discipline for this conduct.

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[19] The Hawaii RICO office sent a letter to Respondent, dated March 5, 2015 (Exhibit R), asserting that he had failed to report the Utah Stipulation and Order to the Hawaii Medical Board within 30 days, in violation of Hawaii statutory law. The letter stated that "based on the foregoing, RICO is prepared to proceed with formal disciplinary action in this matter."

V. The appropriate discipline should be a stayed revocation of Respondent's CNMI medical license with Respondent placed on five years of probation under the terms set below.

The Act specifies 3 CMC § 2224(b)(22)(i) as a reason for discipline: "Being subject to a health care profession disciplinary action from another jurisdiction based upon acts or conduct by the licensee similar to acts or conduct that would support disciplinary action under this Chapter."

The conduct to which Respondent stipulated in the Utah proceeding, as set forth on pages 4-5 herein, would have been grounds for disciplinary action in the CNMI under 3 CMC § 2224(b)(3) (engaging in unethical or unprofessional conduct) and 3 CMC § 2224(b)(20) (aiding or abetting an unregulated person to practice a health care profession).

Cause exists under 3 CMC § 2224(b)(22)(i) to take disciplinary action against Respondent's certificate, pursuant to the authority granted in 3 CMC § 2226(d)(1) (authority to take disciplinary action against a licensee or applicant for licensure).

Further cause for discipline is set forth in this Decision's conclusions regarding Counts 3(a) and 4 of the Complaint, wherein it was found that Respondent committed negligent misrepresentation in renewing a health care professional license (3 CMC § 2224(b)(2)); and in Counts 3 and 7, where it was found that Respondent failed to report to the Board adverse action taken in another jurisdiction (3 CMC § 2224(b)(22)(ii)).

Although the conduct is serious and warrants disciplinary action, the Hearing Officer finds that complete revocation of Respondent's certificate and denial of his application to renew the certificate, is not warranted. In particular, the conduct which led to reciprocal discipline involved the treatment of opioid addicted persons and Respondent has stated that he does not intend to treat addiction anymore and he has given up his DEA registration. Under the terms of this Decision, as set forth below, he shall be prohibited from prescribing, administering or possessing any controlled substances in the CNMI for a period of five years.

Respondent's certificate shall be placed on probation for five years based on the terms and conditions set forth below.[20] Respondent will be prohibited from prescribing controlled substances or treating addiction in any manner. He will be monitored by an independent monitor who shall ensure that Respondent is conforming to the standards of practice, and who will make regular reports to the Board. He will be required to complete a prescribing practices course, a professionalism course, and a medical record keeping course. Finally, Respondent will be required to comply with every other condition stated below.

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[20] In this jurisdiction, the Board has not adopted guidelines to assist in evaluating the appropriate level of discipline that should be imposed for asserted conduct. For guidance, the Hearing Officer has reviewed the Medical Board of California Manual of Model Disciplinary Orders and Disciplinary Guidelines (11th Edition). According to that publication, the minimum recommended level of discipline for a violation of this type (e.g., excessive prescribing under Bus. & Prof. Code § 725 or prescribing without an appropriate prior examination under Bus. & Prof. Code § 2242) is a stayed revocation and five years' probation, subject to appropriate terms and conditions. That publication has been used as a model below.

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. 541, issued to Respondent Paul Maria Gahlinger, M.D., is revoked. However, the revocation is STAYED and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **Controlled Substances – Total Restriction:** Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in the "Controlled Substances Act" at 21 U.S.C. § 802(6).

2. **Controlled Substances – Surrender of DEA Permit and Cancellation of Application:** Within 30 calendar days of the effective date of this Decision, Respondent shall provide documentary proof to the Board that Respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation. If Respondent has any application pending for a DEA license as of the effective date of this Decision, Respondent shall cancel such application and provide proof of such cancellation to the Board within 30 calendar days of the effective date of this Decision.

3. **Prescribing Practices Course:** Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in prescribing practices equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course.

4. **Medical Record Keeping Course:** Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

5. **Professionalism Program (Ethics Course):** Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program (ethics course) that is approved by the Board. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of

enrollment. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

6. **Monitoring - Practice:** Within 45 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay for all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision and a proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision, fully understands the role of a monitor, and agrees or disagrees with the monitoring plan. If the monitor disagrees with the monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine, and whether Respondent is practicing medicine safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 10 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. In that event, Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

7. **Prohibited Practice:** During probation, Respondent is prohibited from treating patients for drug addiction. After the effective date of this Decision, all patients being treated by Respondent shall be notified that Respondent is prohibited from treating patients for drug addiction. Any new patients must be provided this notification at the time of their initial appointment.

8. **Notification:** Within 7 calendar days of the effective date of this Decision, Respondent shall provide a true copy of this Decision, or a Notice of Decision that the Board may issue, to the Chief of Staff or the Chief Executive Officer and Medical Director at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 20 calendar days of the effective date of this Decision.

9. **Supervision of Physician Assistants:** During probation, Respondent is prohibited from supervising physician assistants.

10. **Obey All Laws:** Respondent shall obey all federal, Commonwealth and local laws, all rules governing the practice of medicine in the Commonwealth of the Northern Mariana Islands and remain in full compliance with any court ordered criminal probation, payments and other orders.

11. **Quarterly Declarations:** Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

12, **Address Changes and Residence Outside the CNMI:** Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. In the event Respondent should leave the CNMI to reside or to practice in another jurisdiction, Respondent shall notify the Board or its designee in writing 15 calendar days prior to the dates of departure and return.

13. **Interview with the Board or its Designee:** Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the office of the Health Care Professions Licensing Board, with or without prior notice throughout the term of probation.

14. **Non-practice While on Probation:** Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine in the Commonwealth of the Northern Mariana Islands for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-

practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

15. **Completion of Probation:** Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

16. **Violation of Probation:** Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a Complaint, Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

17. **License Surrender:** Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

18. **Probation Monitoring Costs:** Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Health Care Professions Licensing Board and delivered to the Board or its designee no later than January 31 of each calendar year.

19. **Disciplinary Proceeding Costs:** Respondent shall pay the costs associated with adjudicating the current disciplinary proceeding. Within 30 calendar days after a written request is sent by the Board for payment, Respondent shall pay the Board for the expenses it incurred in adjudicating this disciplinary proceeding against Respondent.

20. **Further Submissions:** Pursuant to the Administrative Procedure Act, 1 CMC § 9110(b), the parties are entitled to a reasonable opportunity to submit to the Health Care Professions Licensing Board for its consideration: Proposed Findings and Conclusions; Exceptions to the Proposed Decision; and supporting reasons for the exceptions or proposed findings and conclusions. The parties shall submit any of the above-noted documents to the Health Care Professions Licensing Board no later than **twenty (20) calendar days** after the date of issuance of this Proposed Decision.

DATED: December 10, 2015

Jerry Cody
Presiding Officer

EXHIBIT LIST

A. Medical License (Physician's and Surgeon's Certificate No. 541 for Paul M. Gahlinger, M.D. (issued on 5/28/2013)
B. Utah Emergency Order – (7/08/2014)
C. Utah Stipulation and Order – (7/21/2014)
D. Email (8/14/2014) from Gahlinger to Board (Florence Sablan)
E. California – Accusation (filed on 10/06/2014)
F. CNMI Renewal Application with Addendum – (filed on 3/25/2015)
G. Letter (4/16/2015) from Board to Gahlinger re denial of renewal
H. Letter (5/01/2015) from Gahlinger to Board requesting appeal
I. California – Proposed Decision of California Medical Bd. (6/04/2014)
J. California – Order of Non-Adoption of Proposed Decision (6/__/2014)
K. Hawaii – Printout showing Complaint History Report for Dr. Gahlinger
L. California – Transcript of Disciplinary Proceedings (5/07/2015)
M. Hawaii – First Amended Petition For Disciplinary Action (9/08/2015)
N. Web Page for Medicruiser.com (as it appeared on 5/17/2014)
O. YouTube Pages – cover page for video posted by "SuboxoneDr.G's channel"
P. Model Policy on DATA 2000 and Treatment of Opioid Addiction
Q. Letter (2/18/2015) from Board to Gahlinger
R. Hawaii - Letter (4/07/2015) from Hawaii Medical Board to Gahlinger.

16. Curriculum Vitae for Paul M. Gahlinger, M.D.
1. Printout from American Association of Medical Assistants
2. Letter (3/13/2015) from Board to Gahlinger
3. Medicruiser Medical File for Patient AL (name withheld to protect confidentiality)

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
	)	
	)	
PAUL MARIA GAHLINGER, M.D.	)	**Case No. 8002014007185**
	)	
Physician's and Surgeon's Certificate No. G 87166	)	
	)	
Respondent	)	
	)	

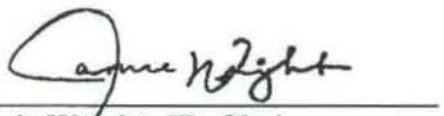
DECISION AND ORDER

The attached Decision After Non-Adoption is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on December 18, 2015.

IT IS SO ORDERED: November 18, 2015.

MEDICAL BOARD OF CALIFORNIA



Jamie Wright, JD, Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. 800-2014-007185
PAUL MARIA GAHLINGER, M.D.,	OAH No. 2015031038
Physician's and Surgeon's Certificate No. G 87166	
Respondent.	

DECISION AFTER NON-ADOPTION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on May 7, 2015, in Oakland, California.

Supervising Deputy Attorney General Jane Zack Simon represented Complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California(Board), Department of Consumer Affairs.

Respondent Paul Maria Gahlinger, M.D. was present. He was not represented by an attorney.

The record closed and the matter was submitted on May 7, 2015.

A Proposed Decision was issued on June 4, 2015. Panel A of the Board issued an Order of Non-Adoption of Proposed Decision on August 6, 2015. On September 29, 2015, the Board issued a Notice of Hearing for Oral Argument, and fixed the date for argument on October 29, 2015. The parties waived oral argument. The Panel, having read and considered the entire record, including the transcripts and the exhibits, and having considered the written arguments presented by both parties, hereby makes and enters this decision on the matter.

FACTUAL FINDINGS

1. On March 17, 2004, the Board issued Physician's and Surgeon's Certificate No. G 87166 to Respondent Paul Maria Gahlinger, M.D. The license is renewed and current with an expiration date of August 31, 2017.

2. On October 6, 2014, Complainant Kimberly Kirchmeyer, acting in her official capacity as the Executive Director of the Board, issued an accusation against Respondent. The accusation alleges that Respondent's California certificate is subject to discipline because of actions taken by the State of Utah against Respondent's license to practice medicine in that state. Although he did not file a formal notice of defense, Complainant acknowledges that Respondent requested a hearing, and this hearing followed.

Action by the State of Utah

3. On July 8, 2014, the Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah (Utah Division) issued an emergency order, immediately suspending Respondent's license to administer or prescribe controlled substances in the State of Utah. In its emergency order, the Utah Division found that Respondent, who was physically located in Saipan, had prescribed a controlled substance (Suboxone) to two female patients in Utah, both of whom were pregnant. The Division found that Respondent had never examined either patient. The patients went to the home of Kelly Reyes, an unlicensed individual, who told the patients she worked for Respondent. On some of their visits to Reyes's home, the patients had talked to Respondent via Skype, but on most visits they were given prescriptions for Suboxone without speaking to anyone but Reyes. The emergency order informed Respondent that he was entitled to a prompt administrative hearing, upon his written request.

4. Respondent waived his right to a hearing and entered into a Stipulation and Order with the Utah Division, effective July 21, 2014. In that Stipulation, Respondent made the following admissions:

> . . . Between March 2013 and October 2013 SP (name withheld to protect confidentiality) went to Respondent's office at the home of Kelley Reyes in Vernal, Utah and received prescriptions for Suboxone . . . . SP did not have a face to face meeting with Respondent prior to Respondent prescribing the Suboxone. During this period, SP was pregnant which condition she disclosed to Respondent and SP only had 3-4 video conferences contact with Respondent in Ms. Reyes' home. After 2013, SP never went to Respondent's office again. Respondent has been prescribing the Suboxone to SP without a valid Utah DEA [Drug Enforcement Administration] registration.
>
> . . . Since June of 2012, PG . . . has been prescribed Suboxone from the Respondent. PG suffers from high blood pressure and opioid addiction issues. To receive the Suboxone prescriptions, PG visits with Kelley Reyes and occasionally teleconferences with the Respondent. PG has been given Suboxone when his blood pressure has been in the 250/140 range. The Respondent does not monitor PG for counseling or with drug testing. Respondent has been prescribing the Suboxone to PG without a valid Utah DEA registration.
>
> . . . Between November 2012 and June 2014, AL . . . received prescriptions for

> Suboxone from Respondent. In March of 2013 AL became pregnant . . . . AL disclosed her condition to Kelley Reyes. During the period of time that AL received the Suboxone prescriptions, AL never saw Respondent either in person or by video conference, but only met with Kelley Reyes. Respondent has been prescribing the Suboxone to AL without a valid Utah DEA registration.
>
> . . . Since December 9, 2013, Respondent has not held a valid DEA registration to prescribe controlled substances in the State of Utah or [*sic*] has he been in Utah to meet face to face with his patients. But, Respondent, either personally or through his assistant Kelley Reyes, continued to prescribe controlled substances to patients in the State of Utah. . . .

Pursuant to the terms of the Stipulation and Order, Respondent surrendered his Utah licenses to practice as a physician and surgeon, and to administer and prescribe controlled substances.

Respondent's evidence

5. Medicine is Respondent's second career. Before he became a physician, Respondent was an epidemiologist; he holds a doctorate, and a master's degree in public health. For most of his career, Respondent has worked overseas in remote rural areas of Mongolia, Haiti, Saipan and other countries. Working in these areas, Respondent was an early developer telemedicine.

6. In 1997, Respondent accepted a faculty position in the School of Medicine at the University of Utah, and moved from Johnson Atoll in the Pacific to Utah. There, he became interested in the subject of drug abuse and the treatment of addiction. He wrote textbooks on the subject and became, in his words, an outspoken critic of how drug addiction was treated in Utah. Although he was a professor and an author, not a clinician, Respondent was moved by the many requests he received to treat patients with a history of opioid dependence, and he began to do so.

7. In 2013, Respondent moved to Saipan to take over a struggling clinic. He continued to treat his Utah patients from Saipan, on a pro bono basis.

8. Respondent testified that, when he moved to Saipan, he changed his address on his DEA registration to prescribe controlled substances, not realizing that it would invalidate his right to prescribe controlled substances in Utah. It had been Respondent's understanding that the DEA registration was valid nationally, without regard to where his own residence was. Respondent feels that this was an administrative oversight on his part, unrelated to any issue as to his clinical judgment or his patient care. He acknowledges that he bears responsibility for this error, and that he should have realized his DEA registration was no longer valid.

9. Respondent testified that, after the emergency suspension was imposed in July 2014, he could not go to Utah for a hearing without abandoning his practice in Saipan. When Utah offered him the opportunity to surrender his license, he did so with the understanding that it was a "non-clinical administrative infraction," not disciplinary action. Respondent testified that he has been surprised by the repercussions. In addition to this action, the State of Hawaii is considering disciplinary action against his medical license in that state.

Respondent's characterization of the Utah action as a "non-clinical administrative infraction," not license discipline, is not accurate. While the Stipulation and Order recites that it is the final resolution of "this non-criminal administrative matter," it includes admissions by Respondent that his treatment of SP, PG and AL constituted unprofessional conduct, and that the issuance of the Stipulation and Order constitutes disciplinary action. It also goes on to state the Utah disciplinary action may "adversely affect any license that Respondent may possess in another state . . . ." When he signed the Stipulation and Order, Respondent acknowledged in writing that he had read it, that he understood it, and that he had no questions about it.

10. With respect to the admissions in the Stipulation and Order concerning his treatment of SP, PG and AL, Respondent now repudiates them. Looking back, he feels that he signed the Stipulation and Order hastily, and that he made a mistake when he signed it without the benefit of legal counsel. Nevertheless, Respondent understands that Utah was concerned about his prescribing for patients who were addicted to opioids, and he has come to believe that his treatment of opioid addiction with Suboxone may have been incorrect.

11. Respondent is still practicing in Saipan. When that contract expires in the fall of 2015, Respondent plans to relocate to Imperial County, where he will specialize in geriatrics and the treatment of diabetes; he has not identified a practice setting. Respondent wants to continue to practice in underserved areas. He would be willing to accept a practice restriction that precludes him from prescribing controlled substances. Respondent does not now possess a current DEA registration. Since his Utah discipline, he has not treated anyone outside of Saipan, nor has he prescribed medications for anyone outside of Saipan. He has not taken any courses in prescribing practices.

LEGAL CONCLUSIONS

1. The standard of proof applied in making the factual findings set forth above is clear and convincing evidence to a reasonable certainty.

2. Business and Professions Code section 141, subdivision (a), applies generally to licenses issued by agencies that are part of the Department of Consumer Affairs, such as the Board. It provides, in relevant part, as follows:

> For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action by another state . . . for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board.

The disciplinary action of the Utah Division was based on acts substantially related to the practice of medicine. Cause exists under section 141 to take disciplinary action against Respondent's certificate, by reason of the matters set forth in Findings 3 and 4.

3. Business and Professions Code section 2305, which applies specifically to licenses issued by the Board, provides in relevant part as follows:

> The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state . . . that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

4. The conduct to which Respondent stipulated in the Utah proceeding, as set forth in Finding 4, would have been grounds for disciplinary action in California under Business and Professions Code sections 2242 (prescribing dangerous drugs without prior examination and medical indication) and 2052 (aiding and abetting the unlicensed practice of medicine), as those sections interact with section 2234 (authority to take disciplinary action for unprofessional conduct). Cause exists under section 2305 to take disciplinary action against Respondent's certificate.

5. Cause for discipline having been established, the issue is the appropriate level of discipline to impose. The Board has adopted guidelines to assist in the evaluation of that issue. (Manual of Model Disciplinary Orders and Disciplinary Guidelines, 11th Edition.) The guidelines state that, in out-of-state discipline cases, the minimum level of discipline should be the same as that for a similar violation in California, and that the maximum disciplinary action is revocation. The minimum recommended level of discipline for a violation of section 2264 or a violation of section 2052 is a stayed revocation and five years' probation, subject to appropriate terms and conditions.

It is troubling that Respondent initially downplayed the seriousness of the Utah action, characterizing it as a non-disciplinary matter, and that he then recanted the admissions he made in that case. His testimony on these points raises the concern of whether he can be trusted to comply with the many obligations that California imposes on a probationer. But outright revocation is not justified. While it took intervention by the Utah Division to bring the matter to his attention, Respondent has ceased his telemedicine practice, he does not intend to treat addiction anymore, and it appears he no longer prescribes controlled substances as he has given up his DEA registration. A substantial period of probation is necessary, however, to insure that Respondent corrects the deficiencies that the Utah case brought to light, and to monitor his practice to insure that he is conforming to the standards of practice. Therefore, Respondent's certificate will be placed on probation for five years. In addition to the Board's standard conditions of probation, Respondent will be required to complete a prescribing practices course and a professionalism course; he will not

be allowed to prescribe controlled substances; he will be prohibited from treating addiction; and his practice will be monitored.

ORDER

Physician's and Surgeon's Certificate No. G 87166 issued to Respondent Paul Maria Gahlinger, M.D., is revoked. However, the revocation is stayed and Respondent is placed on probation for five years upon the following terms and conditions:

1. Controlled Substances - Total Restriction

   Respondent shall not order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined in the California Uniform Controlled Substances Act.

   Respondent shall not issue an oral or written recommendation or approval to a patient or a patient's primary caregiver for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5.

   If Respondent forms the medical opinion, after an appropriate prior examination and a medical indication, that a patient's medical condition may benefit from the use of marijuana, Respondent shall so inform the patient and shall refer the patient to another physician who, following an appropriate prior examination and a medical indication, may independently issue a medically appropriate recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5. In addition, Respondent shall inform the patient or the patient's primary caregiver that Respondent is prohibited from issuing a recommendation or approval for the possession or cultivation of marijuana for the personal medical purposes of the patient and that the patient or the patient's primary caregiver may not rely on Respondent's statements to legally possess or cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully document in the patient's chart that the patient or the patient's primary caregiver was so informed. Nothing in this condition prohibits Respondent from providing the patient or the patient's primary caregiver information about the possible medical benefits resulting from the use of marijuana.

2. Prescribing Practices Course

   Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), approved in advance by the Board or its designee. Respondent shall provide the program with any information and documents that the Program may deem pertinent. Respondent shall participate in and

successfully complete the classroom component of the course not later than six months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

3. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of title 16, California Code of Regulations, section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the CME requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

4. Monitoring - Practice

Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor, the name and

qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine, and whether Respondent is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within five calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified

Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

5. Prohibited Practice

During probation, Respondent is prohibited from treating patients for drug addiction. After the effective date of this Decision, all patients being treated by Respondent shall be notified that Respondent is prohibited from treating patients for drug addiction. Any new patients must be provided this notification at the time of their initial appointment.

Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

6. Notification

Within seven days of the effective date of this Decision, Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

7. Supervision of Physician Assistants

During probation, Respondent is prohibited from supervising physician assistants.

8. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

9. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

10. General Probation Requirements

Compliance with Probation Unit
Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes
Respondent shall, at all times, keep the Board informed of

Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice
Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal
Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California
Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

In the event Respondent should leave the State of California to reside or to practice Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

11. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

12. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not

be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice. In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

13. Completion of Probation

Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

14. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

15. License Surrender

Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining

whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

16. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

DATED: November 18, 2015

JAMIE WRIGHT, JD, CHAIR
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