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SENATE

S. No. 588

INTRODUCED BY HON. MANUEL B. VILLAR JR.

EXPLANATORY NOTE

There are increasing complaints of medical malpractice. The Professional Regulatory Commission (PRC) says over a hundred have been reported to them as early as 1993. The Center for People's Health Watch, a Cebu-based non-governmental organization has documented 53 cases of medical malpractice from 1992 to 1996 in Visayas alone. The cases include lack of skills, foresight and diligence, misdiagnosis, wrong medication, wrong blood transfusion, adverse effects of anesthesia and medicine prescribed and administered by health care providers. If cases of those injured and denied admission and emergency treatment due to their inability to pay the required deposit in hospitals are to be included, the rate would soar to thousands.

Scores of cases have been filed in the courts, at the Department of Health, and at the PRC. Yet there are still undocumented cases where patients and their families simply accept with resignation the medical tragedy they find themselves in.

There is a need therefore for a law that will protect, promote and defend the rights of patients.

It is imperative that health authorities, hospital owners and health care providers recognize and promote patients rights, among which are: the right to health care and humane treatment; to have access to competent and best treatment regardless of age, sex, ethnic origin, religion, and social class; the right to privacy and to be treated with care, consideration, respect and dignity without discrimination; to be informed of any proposed medical procedure including possible risks and outcomes; the right not to be abandoned and to be provided continuing care; to choose his/her physician; to refuse in medical research; and the right to participate with health care professionals in decision-making affecting their health.

The passage of this bill is earnestly sought.


MANUEL B. VILLAR, JR.
Senator

SENATE

S. No. 588

INTRODUCED BY HON. MANUEL B. VILLAR JR.

AN ACT
DECLARING THE RIGHTS OF PATIENTS AND PRESCRIBING PENALTIES
FOR
VIOLATIONS THEREOF

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

1 **SECTION 1. Short Title** – This Act shall be known as the “Magna Carta of
2 Patients’ Rights.”
3

4 **SECTION 2. Declaration of Policy** – The Philippine Constitution, in Section 1,
5 Article XIII, states that the Congress shall give the highest priority to the enactment of
6 measures that protect and enhance the right of all people to human dignity. Towards this
7 end, it is hereby declared that the policy of the State to ensure and protect the rights of
8 patient to decent, humane and quality health care.
9

10 **SECTION 3. Definition of Terms** – As used in this Act, the following terms are
11 defined as follows:

- 12 (1) **Advance Directive** – a duly notarized document executed by a person of age
13 and of sound mind, upon consultation with a physician and family members,
14 which directs health care providers to refrain from providing prolonged life
15 support when the situation arises that the person who executed such directive
16 suffers a condition with little or no hope of reasonable recovery.
17
- 18 (2) **Communicable Disease** – an illness due to a specific infectious agent or its
19 toxic products, arising through transmission of that agent or its products from
20 reservoir to susceptible host, either directly as from infected person or animal,
21 or indirectly through the agency of an intermediate plant or animal host, a
22 vector, or the inanimate environment.
23
- 24 (3) **Diagnostic Procedure** – any method used to establish the presence of the
25 diseases, and the nature and extent of such disease.
26
- 27 (4) **Emergency** – an unforeseen combination of circumstances which calls for
28 immediate action to preserve the life of a person.
29

- 1 (5) **Health Care** – measures taken by a health care provider or that are taken in a
2 health care institution in order to determine a patient’s state of health or to
3 restore or maintain it.
- 4 (6) **Health Care Institutions** - a site developed primarily to the maintenance and
5 operation of such facilities for the diagnosis, treatment, and care of
6 individuals suffering from illness, disease, injury, or deformity, if in need of
7 obstetrical or other medical and nursing care. It shall also be construed as any
8 institution, building or place where there are installed beds, or cribs, or
9 bassinets for twenty four hour use or longer by patients in the treatment of the
10 diseases, injuries, deformities, or abnormal physical and mental states,
11 maternity cases or sanatorial care, or infirmaries, nurseries, dispensaries, and
12 such other similar names by which they may be designated.
- 13
- 14 (7) **Health Care Professional or Medical Practitioner** – refers to any doctor,
15 dentist, nurse, pharmacist or paramedical and other supporting personnel
16 including medial and dental technician and technologist, nursing aids and
17 therapist who is trained in health care an/or duly licensed to practice in the
18 Philippines.
- 19
- 20
- 21 (8) **Health Maintenance Organization** – an entity that provides, offers, or
22 arranges for coverage or designated health services needed by plan members
23 for a fixed prepaid premium.
- 24
- 25 (9) **Human Experimentation** – the physicians departure from standard medical
26 practice of treatment of the purpose of obtaining new knowledge or testing a
27 scientific hypothesis on human subjects.
- 28
- 29 (10) **Informed Consent** – the voluntary agreement of a person to undergo or be
30 subjected to a procedure based on his understanding of the relevant
31 consequences of receiving a particular treatment, as clearly explained by the
32 health care provider. Such permission may be written, conveyed verbally, or
33 expressed indirectly through an over act.
- 34
- 35 (11) **Medical Necessary** – a service or procedure which is appropriate and
36 consistent with diagnosis and which, using accepted standards or medical
37 practice, could not be omitted without adversely affecting the patient’s
38 condition.
- 39
- 40 (12) **Patient** – a person who avails of health and medical care services or is
41 otherwise the subject of such services.
- 42
- 43 (13) **Public Health and Safety** – the state of well being of the population in
44 general, the protection of which may require the curtailment or suspension of
45 certain rights of patients.
- 46
- 47 (14) **Serious Physical Injury** – a condition which, if left medically unattended,
48 could lead to permanent disability.
- 49
- 50 (15) **Treatment Procedure** – any scientifically accepted method to remove the
51 symptoms and cause of a disease.
- 52

53 **SECTION 4. *The Rights of Patients*** - The following rights of the patient shall
54 be respected by all those involved in his care:
55

1 **1. Right to Medical Care and Humane Treatment**

2 Every person has a right to health and medical care corresponding to his state
3 of health, without any discrimination and within the limits of the resources
4 available for health and medical care at the relevant time.

5
6 The patient has the right to health and medical care of good quality. In the
7 course of such care, his human dignity, convictions and integrity shall be
8 respected. His individual needs and culture shall be likewise respected.

9
10 If any person cannot immediately be given treatment that is medically
11 necessary he shall, depending on his state of health, either be directed to wait
12 for care, or be referred or sent for treatment elsewhere, where the appropriate
13 care can be provided. If the patient has to wait for care, he shall be informed
14 of the reason for the delay and the estimated waiting time.

15
16 Patients in emergency who are in danger of dying and/or may have
17 suffered serious physical injuries shall be extended immediate medical care
18 and treatment without any deposit, pledge, or mortgage or any form of
19 advance payment for the confinement of treatment.

20
21 **2. Right to Informed Consent**

22 The patient has a right to clear explanation, in lay person's terms, all
23 proposed procedures, whether diagnostic or therapeutic, including the identity
24 of the person who will perform the said procedure, possibilities of any risk or
25 mortality or serious side effects, problems related to recuperation, and
26 probability of risks involved, and he will not be subjected to any procedure
27 without his informed consent. Provided, That in cases of emergency, when
28 the patient is unconscious and/or incapable of giving consent and there is no
29 one who can give consent in his behalf, then the physician can perform any
30 diagnostic or treatment procedure as good practice of medicine dictates
31 without such consent; Provided further, that when the law makes it
32 compulsory for everyone to submit procedure, a consent is not necessary.

33
34 Informed consent shall be obtained from a patient concerned if he is of
35 legal age and of sound mind, from the next kin in the case the patient is
36 incapable of giving consent, or from the parents or legal guardian in the case
37 of minor or mentally incapacitated individual, Provided, That if his parents or
38 legal guardian refuses to give consent to a medical or surgical procedure
39 necessary to save his life, the court upon petition of the physician or any
40 person interested in the welfare of the child, may issue an order giving such
41 consent.

42
43 **3. The Right of Privacy**

44 The patient has the right to be left alone when this will not prejudice the
45 provision of necessary medical care.

46
47 The patient has the right to be free from unwarranted publicity, except in
48 the following cases; (a) when his mental or physical condition is in
49 controversy and the appropriate court in its discretion orders him to submit to
50 a physical or mental examination by a physician; (b) when the public health
51 and safety so demand; and (c) when the patient waived his right.

52
53 **4. Right to Information**

54 The patient has the right to clear, complete, and accurate evaluation of the
55 nature and extent of his disease, the contemplated medical treatment and

1 surgical procedure including the medicines to be administered and their
2 generic counterparts and its probable outcome, economic costs, impact on
3 lifestyle and work including side effects and after effects of the treatment,
4 possible complications and other pertinent facts regarding his illness.
5 However, if the disclosure of the information to the patient will cause mental
6 suffering and further impair in his health, or cause the patient not to submit to
7 medically necessary treatment, such disclosure may be withheld or deferred to
8 some future opportune time upon due consultation with the patients next of
9 kin.

10
11 The patient has the right to know the name and credentials of the physician
12 responsible for his care or for coordinating such care. He may likewise
13 request for similarly relevant information about any other health care provider
14 directly involved in his care.

15
16 The patient has the right to examine and be given an itemized bill for
17 services rendered in the facility or by his physician and by other health care
18 providers, regardless of the manner and source of payment. He is entitled to a
19 thorough explanation of such bill should he find this incomprehensible.
20

21 **5. Right of Privileged Communication**

22 The patient has the right to demand that all information, communication
23 and records pertaining to his care be treated as confidential. A physician is not
24 authorized to divulge any information to a third party who has no concern with
25 the care and welfare of the patient, except; (a) when such disclosure will
26 benefit public health and safety; (b) when it is in the interest of justice; and (c)
27 when the patients waives the confidential nature of such information.
28

29 **6. Right to Choose Physician**

30 The patient is free to choose the physician to serve him except when; (a)
31 he is confined in a charity ward; and (b) he has entered into a contract with a
32 health maintenance organization or any other health insurance organization
33 which stipulates that the patient can only be served by a physician affiliated
34 with the organization.
35

36 **7. Right to Self-Determination**

37 The patient has the right to refuse diagnostic and treatment procedures.
38 Provided, That (a) he is of age and of sound mind; (b) he is informed of the
39 medical consequences of his refusal; (c) he releases those involved in his care
40 from any obligation relative to the consequences of his decision; and (d) his
41 refusal will not jeopardize public health and safety.
42

43 An adult with a sound mind may execute an advance directive for
44 physicians not to put him on prolonged life support if, in the future, his
45 condition is such that there is little or no hope of reasonable recovery. The
46 qualifications listed as a, b, and c of the preceding paragraph shall be
47 considered as satisfied if a patient whose condition makes him unable to
48 express his will has executed an advance directive.
49

50 **8. The Right to Religious Belief**

51 The patient has the right to refuse medical treatment which may be
52 contrary to his religious beliefs, subject to the limitations described in the
53 preceding subsection. Provided, that such a right shall not be imposed by
54 parents upon their children who have not reached the age of legal discretion.
55

1 **9. Right to Medical Records**

2 The patient is entitled to a summary of his medical history condition which
3 shall be accomplished by the attending physician. He has the right to view the
4 content of his medical records with the attending physician explaining
5 contents thereof. At his expense and upon discharge of patient, he may obtain
6 from the health care institution a reproduction of the same record, whether or
7 not he has fully settled his financial obligations with the physician or
8 institution concerned.

9
10 The health care institution shall ensure and safeguard the integrity and
11 authenticity of then medical records.

12
13 The health care institution shall issue medical certificate, free of charge, to
14 the patient upon discharge from the institution. Any other document that the
15 patient may require for insurance claims shall also be made available to him
16 within reasonable period of time.

17
18 **10. The Right to Leave**

19 The patient has the right to leave the hospital or any other health care
20 institution regardless of his physical condition, Provided, That the
21 qualifications listed in the first paragraph of Subsection 7 hereof are satisfied.

22
23 No patient shall be detained against his will in any health care institution
24 on the sole basis of his failure to fully settle his financial obligations with the
25 physician or the health care institution.

26
27 **11. The Right to Refuse Participation in Medical Research**

28 The patient has the right to be advised if the health care provider plans to
29 involve him in medical research, including but not limited to human
30 experimentation that may affect his care or treatment. Such human
31 experimentation may be performed only with the written informed consent of
32 the patient.

33
34 **12. The Right to Correspondence and Receive Visitors**

35 The patient has the right to communicate with relatives and other persons
36 and to receive visitors subject to reasonable limits prescribed the rules and
37 regulations of the health care institution.

38
39 **13. Right to Express Grievances**

40 The patient has the right to express the grievances about the care and
41 services received. The Secretary of Health, in consultation with health care
42 providers, consumer groups and other concerned agencies, shall establish a
43 grievance system wherein a patient may seek redress of their grievances. Such
44 a system shall afford all parties concerned with the opportunity to settle
45 amicably all grievances.

46
47 **14. Right to be Informed of His Rights and Obligations as a Patient**

48 Every person has the right to be informed of his rights and obligations as a
49 patient. The Department of Health, in coordination with health care providers,
50 professional and civic groups, the media, health insurance corporations,
51 people's organizations, local government units and other government agencies
52 and non-government organizations, shall launch and sustain a nationwide
53 information and education campaign to make to people their rights as patients,
54 as declared in this Act.

1 It shall be the duty of health care institutions to inform patients of their
2 rights as well of the institutions rules and regulations that apply to the product
3 of the patient while in the care of such an institution
4

5 The provision of this Act shall be incorporated in medical and medical-
6 related (e..g. nursing, dentistry, dental technology, medical technology,
7 physical therapy) school curriculum and licensure examinations.
8

9 **SECTION 5. Penalties** – Any person found guilty violating this rights shall be
10 punished by a fine not less than Ten Thousand Pesos (P10,000.00) but not more than
11 Fifty Thousand Pesos (50,000.00), and/or by imprisonment, at the discretion of the court.
12 Administrative sanctions, including the suspension or revocation of the violator’s license
13 to practice his profession, shall be imposed in addition to the penalties provided herein.
14

15 If the punishable act or omission is committed by an association, partnership,
16 corporation, or any other institution, its managing directors, partners, president, general
17 manager, or other persons responsible for the offense shall be liable for penalties
18 provided for in this Act.
19

20 **SECTION 6. Rules and Regulations** – The Secretary of Health, in consultation
21 with the Philippine Medical Association, the Philippine Hospital Association, and
22 concerned private agencies, non-governmental organizations and people’s organizations
23 shall promulgate within 180 days from the effectivity of this Act such rules and
24 regulations as may be necessary for its implementation.
25

26 The Implementing Rules and Regulations of this Act shall identify specific
27 conditions under which the individual rights of patients, as stipulated in Subsections
28 3,5,7, and 8 of Section 4 hereof, may be curtailed or suspended in the interest of public
29 health and safety.
30

31 **SECTION 7. Repealing Clause** – All acts, executive orders, rules and
32 regulations, or parts thereof that are inconsistent with the provisions of this Act are
33 hereby repealed or modified accordingly.
34

35 **SECTION 8. Effectivity** – This Act shall take effect after fifteen (15) days
36 following its publication in the least two (2) major newspapers of national circulation.
37

38 Approved,

THIRTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session

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SENATE

S. No. 743

INTRODUCED BY HON. MANUEL B. VILLAR JR.

EXPLANATORY NOTE

Gross ignorance and negligence on the part of some medical practitioners have caused injuries and needless deaths of patients. There is a need to rid the medical profession of incompetent individuals and provide patients with quality medical care.

This bill seeks to build a progressive health care system by penalizing medical malpractice and/or the practice of illegal surgery by *prision mayor* and the cancellation of the license to practice the medical profession. A fine of one hundred thousand pesos (P100,000) to five hundred thousand pesos (P500,000) will also be slapped against incompetent medical professionals.

The safety and welfare of a patient is of paramount importance to the nation. It is only proper that the most competent individuals be permitted to practice medicine.

The passage of this measure will, in the end, provide greater prestige to the medical profession.

Approval of this bill is fervently called for.


MANUEL B. VILLAR, JR.
Senator

THIRTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session

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SENATE

S. No. 743

INTRODUCED BY HON. MANUEL B. VILLAR JR.

AN ACT
PUNISHING THE MALPRACTICE OF ANY MEDICAL PRACTITIONER
IN THE PHILIPPINES AND FOR OTHER PURPOSES

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

- 1 **SECTION 1. *Short Title.*** – This Act shall be known as the “Medical Malpractice
2 Act of 2004.”
3
- 4 **SECTION 2. *Declaration of Policy.*** – It is the policy of the State to ensure the safety
5 and well being of patients by providing them with professional medical care.
6
- 7 **SECTION 3. *Definition of Terms*** – Unless the context otherwise requires, the
8 following terms shall have the following meanings:
9
- 10 (1) *Medical Practitioner* shall refer to any physician, dentist, nurse, pharmacist or
11 paramedical or other supporting personnel (including medical and dental
12 technicians, nursing assistants and therapists);
13
- 14 (2) *Illegal Surgery* shall refer to surgeries performed to remove healthy human
15 organ/s without the consent of the patient, with intent to gain on the part of the
16 person or persons responsible for such surgery.
17
- 18 (3) *Malpractice* shall refer to any personal injury, including death, caused by the
19 negligent or wrongful act or omission of any medical practitioner;
20
- 21 (4) *Physicians* shall refer to Doctors of Medicine, duly certified by the Professional
22 Regulatory Commission who are in the active practice of medicine;
23
- 24 (5) *Dentists* shall refer to Doctors of Dental Medicine, duly certified by the by the
25 Professional Regulatory Commission who are in the active practice of medicine;
26

1 (6) *Patients* shall refer to people requiring attention from any medical practitioner.
2

3 **SECTION 4. *The Anti-Malpractice Act.*** – Any medical practitioner who performs
4 any act constituting medical malpractice or the illegal practice of surgery shall be punishable
5 by imprisonment or fine or both and, in all instances, the cancellation of license to practice
6 medicine.
7

8 **SECTION 5. *The Complainant.*** – The crime of malpractice shall be prosecuted
9 upon the filing of a complaint by any of the following individuals:
10

- 11 1. the patient;
- 12
- 13 2. parents or legal guardians of the patient;
- 14
- 15 3. grandparents or collateral relatives;
- 16
- 17 4. an officer or social worker of the Department of Social Welfare and Development
18 or of a duly licensed child caring institution, orphanage, home for the aged, mental
19 hospital, or other similar institutions under whose care or custody the patient is
20 committed;
- 21
- 22 5. a concerned, responsible hospital employee where the crime is committed but only
23 if any of the persons mentioned in the four preceding paragraphs have expressly
24 given their consent to the filing thereof.
25

26 **SECTION 6. *Effect of Pardon.*** – The express or implied pardon of the patient,
27 his/her parents, grandparents or guardian shall not bar the prosecution of the crime nor
28 extinguish the criminal action pending, nor constitute a ground for remitting the penalty
29 already imposed.
30

31 **SECTION 7. *Penalties.*** – Medical malpractice and/or the practice of illegal surgery
32 shall be punished by *prison mayor* and the cancellation of the license to practice the medical
33 profession and a fine ranging from One Hundred Thousand Pesos (P100,000.00) to Five
34 Hundred Thousand Pesos (P500,000.00) in the discretion of the court taking into
35 consideration all attending circumstances.
36

37 Any other crime committed by reason or occasion of malpractice shall be considered
38 as a separate offense and the rules on complex crimes shall not apply.
39

40 In no case shall malpractice be considered as a mere aggravating circumstance when it
41 is committed by reason or on occasion of the commission of another crime.
42

43 **SECTION 8. *Aggravating Circumstances.*** – The following circumstances shall
44 aggravate the crime malpractice:
45

- 46 (1) permitting motives of profit to influence the free and independent exercise of
47 professional judgment on behalf of patients;
- 48
- 49 (2) conscious infliction of harm to an unknowing patient with the malicious intent of
50 profiting from such act.
51

52 **SECTION 9. *Damages*** – In addition to the changes that may be awarded by the court
53 under existing laws, the following circumstances shall warrant the award of the additional
54 damages:
55

- 1 (1) the patient becomes insane or suffers any psychological damage by reason of
2 malpractice;
3 (2) death of patient by reason or occasion of malpractice;
4
5 (3) physical disfigurement or permanent disability of the patient by reason of
6 malpractice.

7

8 **SECTION 10. *Repealing Claus.*** – All laws, presidential decrees, executive orders,
9 proclamations, and/or administrative regulations, which inconsistent with the provision of
10 this Act, are hereby amended, modified, superseded or repealed accordingly.

11

12 **SECTION 11. *Effectivity*** - This Act shall take effect after fifteen (15) days
13 following its publication in the least two (2) national newspapers of general circulation.

14

15 Approved,

**POSITION PAPER OF THE
PHILIPPINE MEDICAL ASSOCIATION
ON**

S.B. 743 – AN ACT PUNISHING THE MALPRACTICE OF ANY MEDICAL PRACTITIONER IN THE PHILIPPINES AND FOR OTHER PURPOSES, Introduced by Senator Manuel B. Villar;

The Philippine Medical Association cannot but express its concern about the pursuit to pass SENATE BILL 743 entitled **the "Medical Malpractice Act of 2004"** authored by Senator Manuel Villar, without carefully considering its dire consequences if and when the bill is enacted into law. The Philippine Medical Association respectfully, is in strong opposition to the enactment of SENATE BILL 743 or any similar bill for various reasons as follows:

PASSING THE BILL WILL MAKE PRACTICE OF MEDICINE BEYOND REACH BY POOR PATIENTS

The most dreaded effect of passing the bill into law is the inevitable rise in the cost of health care in the country. This is because the medical practitioners are certainly left with no choice but to practice their profession in a defensive manner. It is well to point out that in order to arrive at a diagnosis of a patient's illness, the doctor employs knowledge and skill learned in medical school and during their training, known as clinical diagnosis. In other words, his own eyes, ears, touch and smell is a whole equipment and laboratory that constitutes what is called the clinical diagnosis. More often than not, the doctor arrives at a diagnosis 80 to 90 percent of the most common illnesses complained of by patients. But it is likewise important to tell, that this is as far as how accurate the patient volunteers information to the doctor in that part called history taking of the patient's illness. Imagine then a 9-year old, child who is complaining of headache and brought by the mother to a doctor. During the interview, the doctor asks the child of whether or not there was history of

some kind of a fall or hitting his head against a hard object. Of course the mother could not confirm this because she was in the office all the time. Her child's answers to the doctor's questions were unsure during the taking of the history. This places the doctor in a predicament and left with no choice but to request for a battery of tests especially CT scan to add comfort to his diagnosis. Certainly paying the cost of CT Scan is not a luxury and passing the Senate Bill means doing CT Scan to all of these similar situations confronting the doctor. This makes therefore cost of health care at least double the cost of the present cost of consulting a doctor. Even a 99.9 % clinical diagnosis would still push the doctor to a corner where he is coerced by the Senate Bill to request for a CT Scan thinking that the 0.01% chance of error is still possible and which error may be detrimental to his profession courtesy of a possible medical malpractice lawsuit. This situation is described in the NEW YORK TIMES, issue of AUGUST 25, 2002, RISE IN INSURANCE FORCES HOSPITALS TO SHUTTER WARDS by JOSEPH B. TREASTER, to wit:

"Increasing malpractice costs over the last two years have led doctors to order batteries of costly exams and limit risky procedures; many doctors decided to retire early. Now the costs are directly affecting medical institutions and the care they deliver to patients, according to interviews with hospital administrators in many states."

Secondly, imagine a patient confined in a hospital because she is about to deliver her first baby. At one time during her confinement, she complained of headache. The attending physician is an Obstetrician whose expertise is focused more on the delivery of the mother's baby so that because of the Malpractice Bill she would rather refer the patient's headache to a neurologist when previously she could easily manage the patient's headache. This situation is what is called over referral, and again, this referral to the neurologist, or to some other specialists for small reasons, is an added cost to the patient's hospital bill.

Thirdly, the same patient after she delivered her baby was found to be slightly feverish for whatever reason that could be normally treated with tepid sponge bath, is rather prescribed with medicines to cover the fever and even antibiotics just because there is a Medical Malpractice law. This is over treatment as part of defensive practice of medicine and obviously, this is another added expense to the patient's hospital bill.

And because of a medical malpractice law, assuming its passage, doctors are left with no choice but to be covered with medical malpractice insurance and guess who will bear the burden of the cost of the premium, no one but the patient even as the doctor passes on to the patient the cost of the premium of this Medical Malpractice Insurance. Evidently, therefore, the ultimate burden of bearing the effects of this malpractice bill will be the patient. If our patient were presently complaining of higher prices of medicines, then why would it still be necessary for someone to impose even a fourfold increase in the cost of paying the hospital bill of a patient or the cost of consultation. Again, the reasons for, at least, the four-fold increase in the health care are **excessive request for ancillary and laboratory procedures, over referral, over treatment and the premium of insurance passed on to the patient.**

Justice Isagani A. Cruz, a former Supreme Court Justice and a noted constitutionalist, in his column in the The Philippine Daily Inquirer issue of August 24, 2002 wrote on this matter of higher cost of health care once the house bill is passed into law, to wit:

"With all its present inadequacies, the only effect of the bill, if passed, will be to require medical and other allied professionals to take medical insurance for their own protection. They will also require the patient to undergo all kinds of tests, some of them unnecessary, to avoid errors in diagnosing and treating the ailment, if any. The cost of all these precautions will be charged, of course, to the patient."

In the same newspaper in its August 26, 2002 issue, columnist Conrado De Quiros, in his column entitled "There is the Rub", emphasized the high cost of health care that would befall the patient once the house bill is passed into law, to wit:

"You have a bill like this, and you will jack up the cost of medicine. Medical practitioners will be forced to take out medical insurance, and pass the added cost to patients. Only the insurance companies, in fact, who have suspiciously been batting for the bill, gain from it, you have a bill like this, doctors and nurses will stop doing outreach work. If you can be sued while using crude instruments to treat patients in the worst of conditions, you won't bother doing it. And you have a bill like this, you will insist on a barrage of tests before treating a patient to cover your ass. That will make treatment more expensive and less prompt."

Still, in the same newspaper in it is September 13, 2002 issue, noted columnist Neal H. Cruz, in the column entitled, "**The Cure Is Worse Than The Disease**", and quoting Dr. Homobono Calleja, past president of the Philippine Medical Association, he reiterated the

misfortune that the patient would suffer as a result of higher cost of health care once the house bill is passed, to wit:

"SB 743 is supposed to be for the welfare of patients. It would only do the opposite. It would raise the professional fees of doctors. To protect themselves from malpractice suits, they will buy malpractice insurance for which they would have to pay premiums. From whom do you think they will get these premiums? And they will practice defensive medicine." To be absolutely sure of their diagnosis, they would order numerous tests for the patient. These are expensive and would add to quite a big bill for the patient."

In their position paper, the Philippine College of Surgeons reiterated their objection to the passage of the house bill for reasons, among others, that the cost of health care will rise to a sky-high which would be beyond reach by the poor patients, to wit:

"x x x. Enactment of SB 743 will force doctors to practice defensive medicine and skyrocket the cost of medical care. In a country where 40% of our countrymen wallow in poverty, the availability then of affordable and adequate medical attention becomes increasingly remote."

In an article in the Philippine Daily Inquirer, Dr. Menguita Padilla, a prominent Ophthalmologist, founder and president of the Eye Bank Foundation of the Philippines, an officer of the Philippine Academy of Ophthalmology, and a member of the Philippine College of Surgeons under the PMA, and ardent oppositor to the passage of the medical malpractice bill rightly mentioned that the proposed bill might be akin to doing *euthanasia* (mercy killing) to an already dying patient, to wit:

"x x x

While proponents of the bill try to pass it off as something that will protect the citizens, the proposed bill will in fact result in the skyrocketing of the price of medical care. In the context of the Philippines where 40% of the people live in poverty and the most pressing problem is the unavailability of adequate and affordable health care, the passage of this bill will be tantamount to rubbing salt on the country's wounds"

x x x

It is therefore clear that the only intention of this bill is to make the prospect of medical malpractice so horrible for medical practitioners so that they will be forced to take on malpractice insurance. This will lead to a vicious cycle of increased costs of

health care, defensive medicine, and patient dissatisfaction. The one who will bear the greatest brunt of this bill will be the patient. This most pitiful will be the poor patients

x x x

PASSAGE OF THE MALPRACTICE BILL WILL RESULT TO CLOSURE OF HOSPITALS AND CUTTING OF MEDICAL SERVICES

The Philippines should learn from the experience of the United States of America. No less than President George W. Bush is complaining about American doctors becoming reluctant to practice their professions because of the medical malpractice lawsuits in his country. He even proposed to place a cap on how much can be claimed from medical malpractice cases. He also complains of American doctors leaving the place where there is high cost of malpractice insurance. These facts can be read in the LAS VEGAS SUN, issue of JULY 27, 2002, NEVADA FOCUS: EXPECTANT MOTHERS LEFT WITHOUT MEDICAL CARE, to wit:

"x x x.

A medical malpractice crisis that's sweeping Nevada has been felt hardest in the state's southern half and by women who find themselves falling victim to a worsening shortage of obstetricians.

x x x

Las Vegas Dr. Gloria Martin is one of 38 out of Clark Country's 93 obstetricians practicing at the beginning of the year whose medical practice has closed since May.

Certainly this is the scenario that would take place in the Philippines if and when the Malpractice Bill is passed into law. Then childbirth services in the Philippines would suffer because this is the line of practice that is most vulnerable to medical malpractice lawsuits. Even the other vulnerable line of practice, although very substantial, will no longer be offered like neurosurgery. Then who would attend to the vehicular accident patients with head injuries and in need of brain surgery? Certainly, because of the medical malpractice bill, mortalities will be high in these cases because no one would like to do neurosurgery anymore, and the same fate would befall the Philippines as that in the US to wit:

"Our trauma system has basically fallen apart," said Sam Cameron, the chief executive of the Mississippi Hospital Association. "There is a so-called Golden Hour in which a patient with a serious head injury needs to see a specialist like a neurosurgeon, and in some areas of our state that service is no

longer available (NEW YORK TIMES, AUGUST 25, 2002, RISE IN INSURANCE FORCES HOSPITALS TO SHUTTER WARDS by JOSEPH B. TREASTER)."

This is only speaking of trauma patients and what about medical practitioners in childbirth (obstetricians) where there is the most exposure to risk of malpractice lawsuits, the end result would be that patients would have to drive to some other distant hospitals to look for doctors still offering this kind service, if any at all. This is best described in the LAS VEGAS SUN, issue of JULY 27, 2002, NEVADA FOCUS: EXPECTANT MOTHERS LEFT WITHOUT MEDICAL CARE, to wit:

"x x x. A lack of obstetricians means a greater number of women won't receive prenatal care and will appear at the emergency room for delivery, Matheis said.

That's the most dangerous and the highest risk because they (doctors) don't have any (of the patient's) history, " he said. After the obstetricians, the second most at-risk doctors are surgeons and emergency physicians, Matheis said"

x x x

And pregnant women without doctors remain in a difficult spot, said Women's Wellness Center office manager Kirsten Arredondo. "The only alternative right now is to just wait and hope that on July 29, during the special session, changes are made, she said."

Inevitable closure will likewise befall most hospitals, especially the small ones. This is because of various reasons like, for example, doctors are no longer keen to practice in small hospitals because of inadequate equipment or instruments. The cost of the hospital insurance itself that would be paid by the hospitals would be a limiting factor in the operation of the hospital. What about the nurses who at the present are leaving the country in big numbers for greater financial opportunity. It is well to point out that nurses are included in the definition of medical practitioners under the medical malpractice bill and it would seem that the bill would accelerate the nurses' exodus out of the country. Doctors also in big numbers are taking up nursing just to be able to leave the country for better opportunity offered abroad. And yet, the medical malpractice bill would be an added boost for our doctors and nurses to leave their own country. Without doctors and nurses, how can hospitals operate? Again, the NEW YORK TIMES, AUGUST 25, 2002, RISE IN INSURANCE FORCES HOSPITALS TO SHUTTER WARDS by JOSEPH B. TREASTER, to wit:

"Around the country this summer, at least half a dozen hospitals have closed obstetric wards, others have curtailed trauma services, and a string of rural clinics have been temporarily shuttered as a result of soaring costs for medical malpractice insurance.

Mercy Hospital in West Philadelphia closed its maternity ward on Friday, and the Largo Medical Center, near Tampa, Fla., plans to do so in December.

In the last few weeks, the only trauma center in Las Vegas closed for 10 days; the Central Florida Regional Hospital in Sanford, Fla., reduced surgical procedures for five days, and a handful of rural clinics across Mississippi sat empty in the summer heat for part of a week. All the closings were because of problems with malpractice insurance.

x x x

In West Virginia, two hospitals closed maternity wards and several hospitals no longer have either neurosurgeons to treat head injuries or orthopedists to mend broken bones, said Steven Summer, the chief Executive of the West Virginia Hospital Association.

x x x"

As previously mentioned, US President George Bush himself is doing something about the crisis in his own place huddling together with the American Medical Association to remedy the situation as written in the NEW YORK TIMES, AUGUST 25, 2002, RISE IN INSURANCE FORCES HOSPITALS TO SHUTTER WARDS by JOSEPH B. TREASTER, to wit:

The roots of the crisis are complex. The insurance companies, President Bush and the American Medical Association largely fault the rising cost of awards in malpractice lawsuits. x x x"

PASSAGE OF THE BILL WILL LEAVE RURAL AREAS WITHOUT DOCTORS AND WITHOUT THE BENEFIT MEDICAL MISSIONS

With the passage of the house bill, the poor patients in the rural areas will be the ultimate victims. With a sword hanging over their neck, doctors will be reluctant to practice their professions in the rural areas. This is because there are no equipment and instruments that they can use in the diagnosis and treatment of their patients. There are no big hospitals adequately equipped with state-of-the-art technologies to manage difficult cases. They will be reluctant to attend to emergency cases because they might not be able to avail of a simple ECG machine, for example, in the Zambales mountain or Kalinga-Apayao areas.

Further, doctors and the medical associations of which they are members conduct regular and periodic medical missions in keeping with their charity programs for the poor especially in the rural areas. But with the introduction of the house bill on medical malpractice doctors will be reluctant to join medical missions, again, for lack of equipment and instruments in the remote villages where the medical missions are conducted. They are deterred by the house bill to prescribe medicines again for fear of untoward results. It is in this context that the house bill can be said to be anti-poor. In his column in the Philippine Daily Inquirer, September 13, 2002 issue, and quoting Dr. Homobono Calleja, past president of the Philippine Medical Association, in his thesis "**The Cure Is Worse Than The Disease**", Mr. Neal H. Cruz, amply described it as follows:

"Doctors do a lot of free services in medical missions for indigent patients in poor communities. Since the chances of malpractice suits are proportionate to the number of patients a doctor treats, they will stop giving free services in medical missions. They would no longer volunteer in emergencies, disasters and calamities. They will no longer provide medical assistance in poorly equipped hospitals. Who would be the loser here? The patients."

This concern and observation is shared by noted journalist, DOMINI M. TORREVILLAS, in the newspaper PHILIPPINE STAR issue of SEPTEMBER 14, 2002 in his column FROM THE STANDS and entitled "MALPRACTICE SUITS MAY END UP IN FEW DOCTORS", to wit:

"Have you ever wondered why there are many doctors taking nursing now? So they can leave for abroad because their meager earnings are not enough for food and education for their children. They are the very doctors who are serving our poor countrymen, especially the poorest of the poor. These are the doctors who go on medical missions and offer free clinics. If the malpractice law is enforced, most of them won't be able to afford to pay insurance premiums, especially our doctors in government service. Who will pay their insurance premiums? Our government can't afford to pay them because it is cash-strapped. The government can hardly equip its hospitals. So what will happen? The doctors will just resign and go somewhere else where they can survive. So who will look after the health care of our people?"

PASSAGE OF THE BILL WILL PREVENT DOCTORS TO SERVE IN GOVERNMENT INSTITUTIONS

Doctors in the government hospitals and health institutions are paid by salaries only. Except in few government hospitals, they cannot bill the patients for private professional fees.

Most government hospitals also lack the adequate equipment and instruments to manage the patient's illness. With the proposed law, how then could the government hospitals attract doctors when despite their meager salaries a sword is hanging over their neck that in case of untoward results in the treatment of their patients a malpractice lawsuit is just within reach by the patient. It is of common knowledge that the patients served by government hospitals are the poor patients. It is not difficult to understand therefore that the ultimate casualty of the passage of the medical malpractice bill is the poor patient, and therefore it can be said to be anti-poor.

PENALTY IMPOSED BY THE SENATE BILL 743 IS UNCONSTITUTIONAL

Harsh and severe penalties are not countenanced by the Philippine Constitution that is why if it is against it, the house bill on medical malpractice is said to be unconstitutional and should not be given force and effect. The penalty imposed by the proposed bill, i.e. *prision mayor* and fine of P500,000 to P1,000,000 is very harsh and very severe. A reading of the house bill reveals that it does not distinguish between a doctor and an ordinary criminal. Under the bill there seems to be no difference between someone intentionally putting a bullet between the eyes of his victim and a doctor or a nurse accidentally puncturing a patient's skin in the course of giving a shot of medicine in a patient's arm. In her article published in the Philippine Daily Inquirer in opposing the bill on medical malpractice, Dr. Menguita Padilla, made emphasis on this point, viz:

"It serves to inflict and inhuman punishment on medical practitioners because the prison terms and fines imposed on them will be harsher than those imposed by our penal code on common criminals who commit crimes such as treason, frustrated homicide with intent to kill, and even serious physical injuries where there is mutilation of the victim and even loss of sight, hearing, and limbs. (Section 6 of proposed bill). In other words, if a doctor or a nurse accidentally punctures the arm of a patient and causes a wound, no matter how small, he or she can be sued for malpractice and if found guilty will be meted out a punishments of 6 to 20 years in prison. (Prison major) and a fine of 500,000 to 1,000,000.00. He or she will also loose his or her license to practice. This punishment is far greater than that imposed on common criminals whose intent is to kill and maim."

No less than a former Supreme Court Justice and noted Constitutionalist and now columnist, Justice Isagani A. Cruz, in his column in the Philippine Daily Inquirer, issue of August 24, 2002, he authoritatively explained the unconstitutionality of the proposed bill, as follows: