

But I do agree completely with the doctors that one provision of the medical malpractice bill is clearly unconstitutional. This is the penalty clause, which provides that "medical malpractice and the practice of illegal surgery shall be punished by prison mayor and the cancellation of the license to practice the medical profession and a fine ranging from P500,000 to P1,000,000 in the discretion of the court."

I have no quarrel with prison mayor, which ranges from six years and one day to 12 years, but the fine is another matter. The language of the bill is conjunctive, not disjunctive, which means it must be imposed in every case.

Section 20 of the Bill of Rights clearly and expressly provides that "excessive fines shall not be imposed." Even at the current peso exchange rate, the amount of from P500,000 to P1,000,000 cannot be considered peanuts; it is unquestionably excessive by any standard. Moreover, the due process clause requires an equivalence between the offense and the penalty, unlike under the bill in question, where the fine can be as high as a million pesos. It is like punishing jaywalking with life imprisonment."

Still and further, the bill intends to punish negligent acts with the same penalty as those done deliberately. The bill defines malpractice as referring to any personal injury, including death caused by the negligent or WRONGFUL ACT OR OMISSION of any medical practitioner. Wrongful act may mean an act done with deliberate intent. Under the proposed bill, a doctor who negligently causes a small scar on a patient will suffer the same penalty as a doctor who injures his patient deliberately. Take the following as illustrations of how severe and harsh the house bill proposes as a penalty in comparison with existing crimes. The penalty imposed on a person who commits a malpractice act is equivalent to the penalty imposed on a person who commits the crime of FRUSTRATED HOMICIDE where there is intent to kill. If the Court will follow Article 250 of the Revised Penal Code, the crime of FRUSTRATED HOMICIDE may in some cases be punishable only by *prision correccional* (6 months and one day to 6 years). The penalty imposed for malpractice acts therefore is improper, unfair and preposterous considering that frustrated homicide is a crime committed with intent to kill while malpractice may only involve acts of negligence. The penalty for malpractice will then assume the character of being cruel and inhuman, again violating another constitutional provision.

Some serious crimes are punished with a lighter penalty than that proposed in the bill for malpractice acts. Some of the crimes are as follows:

- a) ESPIONAGE (for private persons) - *prision correccional*

- b) ARBITRARY DETENTION (for detention of less than 15 days) - *prision correccional* in its medium and maximum periods.
- c) CONSPIRACY AND PROPOSAL TO COMMIT REBELLION AND INSURRECTION - *Prision correccional* in its maximum or medium periods, respectively.
- d) INCITING TO SEDITION - *Prision correccional* in its maximum period.
- e) DIRECT ASSAULT - *Prision correccional* in its medium and maximum period
- f) SERIOUS PHYSICAL INJURIES when the victim losses the use of speech, the power to hear and smell, losses an eye, a hand, a foot, an arm or a leg - *Prision correccional* in its medium and maximum period.

The above listed serious crimes are done with intent to commit the crime. Most malpractice acts are done only negligently, without any deliberate intent to commit the act. Yet, the crimes mentioned are punished by lower penalties than a malpractice act. For trying to do his job, a doctor is punished by a penalty greater than a common criminal committing a serious crime.

The Constitution provides that fines imposed shall not be excessive. Under the proposed bill, the fine is FIVE HUNDRED THOUSAND PESOS TO ONE MILLION PESOS. Some major crimes are penalized with fine a lot less. Among these are the following:

- a) TREASON - not exceeding P100,000.00
- b) CONSPIRACY AND PROPOSAL TO COMMIT TREASON not exceeding P10,000.00
- c) CONSPIRACY AND PROPOSAL TO COMMIT REBELLION OR INSURRECTION - not to exceed P5,000.00 and P2,000.00 respectively.
- d) SEDITION - not exceeding P10,000.00

e) ILLEGAL ASSOCIATION - not exceeding P1,000.00

f) DIRECT ASSAULT - P1,000.00

g) RESISTANCE AND DISOBEDIENCE TO A PERSON IN AUTHORITY OR AGENTS OF SUCH PERSON - not exceeding P500.00

h) ACTS TENDING TO PREVENT THE MEETING OF THE ASSEMBLY (CONGRESS) AND SIMILAR BODIES - P200.00 to P2,000.00

i) MAKING AND IMPORTING AND UTTERING FALSE COINS - not to exceed P10,000.00

j) FORGING TREASURY OR BANK NOTES OR OTHER DOCUMENTS PAYABLE TO BEARER; IMPORTING AND UTTERING SUCH FALSE OR FORGED NOTES AND DOCUMENTS - not to exceed P10,000.00

k) FALSIFICATION OF LEGISLATIVE DOCUMENTS - not exceeding P6,000.00

l) FALSE TESTIMONY IN CIVIL CASES - not to exceed P6,000.00

m) SLAVERY - not to exceed P10,000.00

The proposed fine for a so-called malpractice act is so astronomical that it is even more than the fines imposed on some major crimes. Is an alleged negligent or medical malpractice act so abhorrent that it shall be penalized with fine much, much more than an act of treason? Moreover, since the penalty is prison mayor, a doctor convicted pursuant to the bill will surely go to jail since probation is not applicable. Furthermore, a doctor convicted of committing a malpractice act automatically losses his license to practice, even for a single and simple malpractice act.

In his column, noted journalist-writer, JOSE C. SISON of the PHILIPPINE STAR, in its issue of August 30, 2002, under his column A LAW EACH DAY, (KEEPS TROUBLE AWAY), and entitled "USELESS AND INVALID HOUSE BILLS", he particularly mentioned the excessive penalty proposed by the house bill and strongly urged our legislators to scrap totally the proposed house bill on medical malpractice, viz:

The fines proposed to be imposed by the bill are likewise clearly excessive and therefore unconstitutional. Actually this idea of penalizing medical malpractice is another imitation from the U.S.A. where people are not only health conscious, but rights conscious. The advances of modern medicine in that country have been so extensive that the margin of error has been greatly reduced thus exposing doctors to liability for the slightest mistake. This is good for the insurance business as doctors are forced to procure insurance bonds to protect them from liability. It is not far fetch to conclude therefore that business may be the main reason for this bill in this country. Why else would a radio and TV commentator be so vocal in advocating passage of this bill and devote unusual air time on it, day in and day out when one simple word of endorsement would have been enough? But at the end of the day, the business being promoted by this bill may be good only in urban areas particularly Metro Manila. It will not click in the rural areas where the people's main concern is not whether the doctor is covered by insurance but whether there are doctors available. Congress should better scrap this bill and look for some other money making activity.

THE BILL VIOLATES THE CONSTITUTIONAL PROVISION ON DOUBLE JEOPARDY

The second paragraph of Section 7 of the proposed malpractice bill provides, **"Any other crime committed by reason or on occasion of malpractice shall be considered as a separate offense and the rules on complex crimes shall not apply"** which means in layman's understanding that a doctor who commits an act of a so-called negligence may be subjected to two criminal prosecutions, one for medical malpractice and another for Reckless Imprudence under Article 365 of the Revised Penal Code. This is against the principle of Double Jeopardy enshrined and protected by the Philippine Constitution that **"No person shall be put twice in jeopardy for the same offense."**

Respectfully, critics say that this proposed house bill provision seems to be born out of emotion against an event and against a particular offender. The provision wanted really to ensure that the so-called erring doctor gets more than just one penalties under two different laws even though there is only one act or one offense. This was referred to in the PHILIPPINE

DAILY INQUIRER under the column, SEPARATE OPINION by JUSTICE ISAGANI A. CRUZ, in the issue of August 24, 2002, to wit:

Only recently, one of them declared on television that he had undergone surgery for the removal of his gallstones, which turned out to be one solitary gallstone about the size of a mongo bean. Worse, the operation caused serious collateral damage to his health, including intense body pain that required his prolonged confinement in the hospital. He says the hospital and its doctors impliedly admitted their fault and negligence in his treatment by not charging him a single centavo for their services."

Well, if that particular offender really deserves it, so be it, but the whole medical profession should not suffer for that, and more importantly the greater number of poor patients, respectfully, must not suffer for the emotions expressed in the house bill. These isolated cases should not be a ticket to deprive the greater number patients benefiting from the present health care system. In his column in the PHILIPPINE DAILY INQUIRER, SCIENCE/ HEALTH SECTION, issue of August 31, 2002, and quoting Dr. Willie T. Ong (author of several textbooks in medicine and an exemplary model to many young cardiologists and involved in community service and a lot of charity work), in an article entitled "MORE THOUGHTS ON MEDICAL MALPRACTICE" RAFAEL R. CASTILLO, M.D., he noted as follows:

"It seems that the proposed bill is just a knee-jerk reaction to several isolated cases. It does not address major factors such as a deficient health care system particularly in government hospitals, and social maladies such as cigarette smoking and alcohol, which are being liberally promoted in our country."

ACTS OF NEGLIGENCE ARE ALREADY AMPLY COVERED BY EXISTING LAWS

Under existing laws, any medical practitioner, or any professional for that matter, is vulnerable to incur three kinds of liabilities. Any negligent doctor, for example, may be criminally liable under Article 365 of the Revised Penal Code and may be charged with physical injuries or even homicide resulting from reckless imprudence and/or negligence. Any aggrieved patient may also file a separate civil case for damages under the Civil Code of the Philippines on Negligence and Damages and may claim for such amount as he may deem reasonable under the circumstances. Still, another separate administrative case, on several grounds (Medical Act of 1959, Section 24 thereof), may be filed by the patient with the Professional Regulation Commission-Board of Medicine for purposes of suspending or revoking the license of the doctor to practice medicine. With these existing legal remedies what is there more to add? They are

effective and the system of remedies is already in place. The Philippine Daily Inquirer, in its 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, described that the rights of patients are already amply protected, *viz*:

In the first place, we already have existing laws and regulations that address malpractices by doctors and hospitals. An aggrieved patient can sue them and they can be punished under the Revised Penal Code. There is the Professional Regulation Commission (PRC) that metes out appropriate punishments against erring physicians. The Philippine Medical Association (PMA) has an internal mechanism to police its ranks. It has a Commission on Ethics that investigates wrongdoings by any doctor. Moreover, there is the Oath of Hippocrates and the Code of Ethics of the profession that are impressed on the doctor and reinforced regularly at medical conferences. Periodically, the World Medical Association (WMA) issues declarations and policies on ethics pertinent to rights of patients and duties and obligations of doctors to patients, colleagues and society. The rights of patients are enshrined in the Declaration of Lisbon in 1981 and recently updated in 1995 in the WMA Assembly in Bali, Indonesia. In short, there is no need for another law to protect the rights of patients and punish erring physicians. The patient is already amply protected.

Still, under the existing laws, the patient is with the option to choose whether or not to file separate cases, administrative, civil and/or criminal. But the better thing under the existing laws, equally applicable even in some other criminal offenses, is that there is always that possibility that both the court adversarial may come into an amicable settlement, unlike under the proposed bill where that possibility is not made available. It deprives therefore even the patients of their right to seek peace through amicable settlement. Again, this was amply described by Dr. Menguita Padilla in her article published in the Philippine Daily Inquirer, to wit:

"The Bill infringes even on the right of the patient or patient's family to truly forgive the medical practitioner and move on with their lives since even if the litigants want to withdraw the case they can no longer do so. Section 6 states that "the express or implied pardon of the patient, his/her parents, grandparents or guardian shall not be a legal impediment to the prosecution of the crime nor will it extinguish the criminal action still pending, nor will it constitute a ground for remitting the penalty already imposed." Even murderers are entitled to forgiveness! Are medical practitioners, whose main purpose is to heal and serve, not even entitled to this?"

THE BILL VIOLATES THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION OF THE PHILIPPINES

The proposed bill proposes to cover only medical practitioners (doctors, nurses, dentists, etc) or practitioners involved in the health care. It must be well emphasized that the medical

profession is not the only profession practiced in the Philippines. Further, it is not only the medical profession where there could be malpractice. In fact, this may even be rampant in professions other than in the medical profession. Consider, for example, the hundreds of casualties in the sea mishaps and where there are inquiries still going on. Or, the number of casualties in buildings razed by fire and found to be operating but not in compliance with the building codes. This brings to fore the issue of the Equal Protection Clause of the Constitution that requires that all persons be treated alike under like circumstances or conditions, both in the privileges conferred and the liabilities imposed. The term malpractice is said to be generic and applicable to all professions i.e. medical, legal, engineering, marine, and so many others. It must have been the foresight of our previous legislators to pass a generic law (the Revised Penal Code, Civil Code, etc) applicable to all professions and not only centering on the medical profession for otherwise there would have been passed long time ago, a so-called "Medical Practice Law".

Some proponents of the house bill may argue that the bill is not violative of the equal protection clause of the Constitution because those in the medical profession are concerned with the health and, sometimes, the lives of patients. This argument is untenable. Other professionals are equally concerned with lives of other persons. Lawyers represent clients who may be facing the death penalty. Engineers construct big buildings so that their negligence may lead to the collapse of those buildings, wholly or partially, endangering the lives of the occupants or the construction is such that fire may easily start as what had already happened in the past. Why then pass a bill to the exclusive detriment of the medical practitioners? Dr. Menguita Padilla, amply put it when she said in the Philippine Daily Inquirer, to wit:

"The Bill is blatantly unconstitutional as it seeks to deprive medical practitioners of their constitutional right of equal protection under the law and also violates the Provision on Double Jeopardy"

THE BILL ADDRESSES A SMALL HEALTH PROBLEM, IGNORING THE BIGGER PROBLEM OF LACK OF ADEQUATE AND READILY AVAILABLE MEDICAL SERVICES

The bill envisions to provide professional medical care to patients as provided for under Section 2 (Declaration of Policy). It is well to point out, however, that the so-called malpractice acts constitute only a very small portion in the context of discussing the country's health

problem. Hundreds of thousands of patients are treated daily by doctors (50-60 thousand doctors are registered with the Professional Regulation Commission) and compare this with only a small number of complaints in connection with the so-called negligent acts of doctors. If we gather all the complaints against all doctors in the country it would not even be 0.002 % of the total number of patients who are benefited by the present health care system. The real and bigger problem confronting the public is the lack of affordable and readily available medical care and services. The Department of Health, when asked, will provide a statistical ratio of 1:25,000 doctor to case ratio. The existing doctor to patient ratio is 1:1,500 compared to the near ideal 1:50. Legislations therefore should instead re-focus its strategy on how to address this bigger problem. In fact, the Philippine Medical Association, suggested to the Congress for the passage of a bill entitled "Doctors For The Doctorless Areas" which is left pending with Congress up to now. There is no question therefore that this bill is directly opposed to the medical malpractice bill even as the doctors would no longer be inclined to practice in the rural areas.

THE DEFINITION OF MALPRACTICE IN THE PROPOSED BILL IS CONFUSING

The bill defines malpractice as referring to **"any personal injury including death, caused by the negligent or wrongful act or omission of any medical practitioner"**. Will a doctor who causes a wound the size of a pinprick be liable under the bill? If we follow the provisions of the house bill, strictly speaking, the answer is in the affirmative. Courts would be deluged with malpractice cases if this will be the case. Instead of attending to their patients, doctors will be attending court cases where they are the defendants.

What about a prophylactic or by-pass surgical procedures where normal organs are involved, will these constitute malpractice as per definition of the house bill. Take, for example, a surgical procedure known as gastrostomy or making an opening in the stomach for tube feeding because of an obstruction of the esophagus, will this be malpractice? Evidently, it is if we read the provision of the house bill! It would seem that bilateral tubal ligation could no longer be done also under the house bill. What about in cases of abdominal trauma where there is peritonitis, will the surgeon still do prophylactic appendectomy where the appendix seems normal but thinking that it might be later on be involved by the peritonitis? There is no need to further enumerate the number of procedures that could no longer be done because of the house bill although indispensable for the health, if not the life, of patients. And once again, Dr.

Menguita Padilla in her article published in the Philippine Daily Inquirer, made emphasis on this point, to wit:

"The Bill is vague in that it does not clearly define malpractice. It gives a sweeping definition of malpractice than can run the gamut from small injuries to negligence that results in the loss of life. No distinction is made among the degrees of malpractice."

THE BILL IF ENACTED INTO LAW MAY PROVIDE FOR A VEHICLE TO EXTORTION AND HARASSMENT LAWSUITS

Among other provisions of the bill, a social worker from the Department of Social Welfare and Development (DSWD) may file a complaint against the doctors and/or nurses. These government employees can and may, under the house bill, file a complaint even if the patient, parents, legal guardians or grandparents of the patient are not willing to do so. A government employee may take advantage of this provision to file a complaint for the sole purpose of profiting from the medical practitioners. The relationship between a doctor and patient is one of utmost trust and confidence and this has always been the environment conducive to good health care both for the patient and for the doctor. The intervention of these government employees in the filing of complaints against medical practitioners will invade and disturb the peace of this relationship. This would be to the detriment of the patient since this situation will place the medical practitioner in such position that he may be reluctant to attend to the patient. What is worse is that everybody will be filing a case against the medical practitioner for an alleged negligent act which it is not clearly understood any complainant. This is very well described as **harassment or nuisance suits** as again described by Dr. Menguita Padilla in her article published in the Philippine Daily Inquirer, to wit:

"The Bill would open doctors up to harassment as even persons not involved in the alleged malpractice incident can initiate a law suit against the medical practitioner even if the patient and/or his/her family does not want to sue. Furthermore, the bill provides no provision to protect medical practitioners from harassment suits."

It is inevitable, that if the bill is passed into a law, medical practitioners may be hailed to more and more court cases. A lot of cases might be filed just for purposes of harassment and sadly, for extortion purposes, or even to evade and avoid the payment of hospital and

professional fees of medical practitioners. The bill does not provide for a protective mechanism in favor of the medical practitioner to prevent these strong possibilities.

QUACK MEDICAL PRACTICE IS NOT COVERED BY THE BILL

It is interesting to note, that the bill applies only to medical practitioners duly certified by the Professional Regulation Commission. A person who is illegally engaged in medical practice without the necessary license may escape with a lower penalty for violation of Article 365 of the Revised Penal Code while a duly licensed medical practitioner will suffer a higher penalty if convicted of the so-called crime of malpractice. Both persons may be guilty of malpractice but the illegitimate one is made to suffer a lower penalty than the legitimate medical practitioner. It would appear therefore that the house bill is a protector of illegitimate practice of medicine and yet unkind to the legitimate medical practitioners whose only concern is the interest of the patient. Again this was described by Dr. Menguita Padilla in her article published in the Philippine Daily Inquirer, to wit:

"The Bill wishes to severely punish legitimate medical practitioners but provides no punishment for illegitimate practitioners or quacks."

THE BILL PROVIDES AN ENVIRONMENT NOT FAVORABLE TO GOOD HEALTH CARE AND TREATMENT OF THE PATIENT

Since time immemorial, in all places in the world, the relationship between the patient and the physician is that of mutual trust and confidence. It is this rapport that most of the time is the best menu for a successful treatment. This is because the bond is stronger that the patient is free to ask whatever he wants from his doctor. All about the patient's illness are freely discussed by both patient and his relatives and the doctor. With the proposed house bill, there seems to be a wall created between the patient and the medical practitioner. They look at each other as potential court adversaries. In the newspaper PHILIPPINE DAILY INQUIRER, in the column called "OPINION – THERE'S THE RUB", issue of August 26, 2002, by CONRADO DE QUIROS, this situation is described as follows:

"But SB 743 doesn't make things better, it makes things worse. It turns doctors into The Enemy. Indeed, more than doctors the medical profession itself, including dentists, nurses and therapists. They now have to be guarded like prisoners in a stalag x x".

Again in another newspaper, noted journalist-columnist, JOSE C. SISON, in the PHILIPPINE STAR, in its issue of August 30, 2002, A LAW EACH DAY, (KEEPS TROUBLE AWAY), and entitled "USELESS AND INVALID HOUSE BILLS", this environment of mistrust brought about by the proposed house bill was discussed, to wit:

"The proposed bill is not only useless but will inject an element of mistrust and fear between doctor and patient. With such kind of law, every doctor will have a tendency to look at his patients as potential court adversaries. The faith and confidence so necessary in the healing process will be seriously eroded. This atmosphere is certainly not conducive to the promotion of public health. Our country may really become the "sick man" of Asia, figuratively and literally. Besides, in every profession, there is bound to be some undesirable, mischievous, negligent or criminally inclined members. There is no reason to single out the medical profession."

In fact what is there to look for in a medical practitioner except his noble intention to treat his patient. Although there is much that he can offer, only much can only be achieved as medicine is not in reality, as contrary portrayed by others, an exact science. It is only scientific to the extent of how successful the present research studies will be. It must be emphasized that the human body is as mysterious as the galaxies in our universe so that more quest in its probe will lead to more questions. In other words, there might be too much expectations from the doctor as he is looked up to as one having control of the patient's life when in fact everything is still in hands of the Omnipotent. Where the doctor's knowledge and skill becomes limited, GOD takes over. In the Philippine Daily Inquirer, in its issue of August 26, 2002, under the column OPINION – THERE'S THE RUB, popular writer and columnist, CONRADO DE QUIROS, adequately noted in his column, to wit:

"There's one more point, and that is the psychological aspect of it. Where our loved ones are concerned, we will always have the most unreasonable expectations from God and doctors, who are not always one and the same. We will demand nothing less than the restoration to wholeness of those who often cannot be restored to it, and will rail when it doesn't happen. Some of us will rail at God, others will rail at their doctors. You can only raise a fist at heaven, but, with a bill like this, you can always raise a hammer at doctors. x x x"

It is well to emphasize that the expected outcome of a treatment of any disease is never guaranteed to be same in two different individuals. There are various reasons for these and this was well explained by Dr. Ramon Abarquez Jr., M.D. EFACC, FPCC, FPCP, a pioneer and a

pillar of Philippine cardiology, professor emeritus at the University of the Philippines, College of Medicine and a past president of the Philippine College of Physicians and Philippine Heart Association in an article published in the PHILIPPINE DAILY INQUIRER, SCIENCE / HEALTH SECTION, in its August 31, 2002 issue, under the column "MORE THOUGHTS ON MEDICAL MALPRACTICE" by RAFAEL R. CASTILLO, M.D., quoting him as follows:

"Medicine has never been an exact science. Well-meaning friends give medical advice. Print and broadcast media promote medical remedies. Health providers and medical experts or specialists give conflicting if not contradictory medical opinions. Guidelines vary in different advisories, despite evidence-based scientific data that are intended to show overall treatment benefits.

"Why are there different outcomes and responses to treatment among patients with similar complaints? Why does one react differently to the same intervention like surgery, instrumentation or anesthesia and medications? What are the points to ponder before considering that a mistake is due to negligence or incompetence, and not to an unexpected or unintentional event?

"A simplistic answer would be that medical science and practice are complex. Often, medicine is an art and not a precise science. Despite the extensive advances in science and the conveniences of modern living, life is still full of mystery. Current knowledge imparts the influence and interplay of genetic misfortunes, a behavioral gamble to an adverse environment. Individual idiosyncrasies exist in addition to the protective check and balance and resistance and sensitivity that regulate body mechanisms.

From womb to tomb, multifactorial interaction produces varying individualized responses and reactions on patients which doctors cannot predict.

Multifactorial influences - Despite the miniscule risk, and unintentional mistake that causes unexpected adverse events remains a major concern for the general public. An appreciation of the multifactorial influences of genetics, behavior, environment and the human body's protective resistance and sensitivities and regulatory check and balance mechanisms, aside from wear and tear, will probably reduce apprehensions related to undesirable events that affect quality and longevity of life.

As long as life remains a mystery and the fountain of youth is still a lifetime quest, clinical practice will remain an art and a fallible science."

The predicament of the doctor is such that oftentimes he is placed in a situation of **"damn it if you do and damn it if you don't!"** best described in the Philippine Daily Inquirer by Dr. Menguita Padilla, to wit:

"And just as we know that it is our duty to do our best to alleviate suffering and save lives, we also humbly acknowledge that there is only so much our best can achieve. And when these failures come, we agonize. We are but human although forced to play God. It is a great privilege but an even greater burden."

It is therefore prayed of the Honorable Members of both Houses of Congress to set aside the bill for the reasons aforestated. It can only be said that the Philippines is not yet ready for the consequences offered by the medical malpractice bill. It is best to quote from the MANILA BULLETIN in its September 2, 2002, in its column entitled "MINDANAO BULLETIN SECTION, MEDICAL MALPRACTICE BILL, UNTIMELY – SOLON" quoting a statement from Representative Nograles, to wit:

"Davao City (PNA) - Rep. Nograles of Davao City's first district expressed belief that the time for the Medical Malpractice Act has not yet come.

The country is just not ready for this at the moment. For one thing, the cost of a malpractice insurance policy, about P50,000 per million peso-coverage, will be passed on to the patients who are now reeling under the high costs of medical fees, Nograles said.

He added that at present, we already have remedies available to the public that should keep doctors on their toes.

Nograles said medical practitioners can be subjected to one or all of three actions for malpractice.

He cited the civil case where doctors may be used for damages arising from malpractice, that is, a preponderance of evidence is all that is needed to prove the guilt of the physician.

Next is the criminal case where the litigant must prove the negligence of the attending physician beyond reasonable doubt.

Nograles said the last is the revocation of license to practice by the Professional Regulatory Commission (PRC).

He disclosed that there is heavy opposition to the measure in Congress and he tends to agree with most of the arguments. Many believe that a malpractice insurance can lead to an increase in negligence as the fear of a crippling damage suit will no

longer be one of the motivations for diligence in the practice of medical doctors police their own ranks - he said."

RECOMMENDATION

There are 50-60 thousand registered doctors in the country and only about 30-40 thousand are members of the Philippine Medical Association (PMA for short). Under the Philippine Medical Association are at least 8 specialty societies (Philippine College of Surgeons, Philippine Obstetrics and Gynecological Society, Philippine Pediatric Society, Philippine Society of Pathologists, Philippine College of Radiology, Philippine College of Physicians, Philippine Society of Anesthesiologists, Philippine Academy of Family Physicians) and under them are several subspecialty societies or associations recognized only after their members shall have attained the required, rigid training in their respective specialties and subspecialties. They are also recognized as specialist only after they shall have passed a specialty certifying board examination conducted by the respective specialties. The PMA, however, has no jurisdiction over those non-members despite the fact they can, and are in fact, engaged in practice of specialties not recognized by the PMA. By way of recommendation therefore, it is proposed that membership with the PMA be mandatory as what was proposed, but unfortunately deleted, in the proposed Physicians Act of 2000 under the House of Representative's Committee on Civil Service, sponsored by Congressman Butz Aquino. Mandate must be given to the PMA to strengthen its peer review system and police its own ranks. The mission and vision of the PMA on Quality Assurance Programs will be expanded and, to the extent possible, it will adopt and promulgate a standard for practice of medicine in the country in close coordination with the different specialties.

As a non-governmental organization (NGO), it must be represented and be given authority in government agencies engaged in the monitoring of the operation of hospitals and medical schools and their curricula to ensure compliance with subjects relevant to physician-patient relationship and see to it that the rights of the patient are well inculcated into the veins of future doctors.

The PMA finally shall undertake to strengthen further its system of redress of grievances by patients in case of gross negligence by its member medical practitioners and shall formulate simple and understandable procedures for this system.

Further, the Senate Bills would be untimely as it would send a wrong signal to those doctors still contemplating to join the exodus by finally deciding to take up nursing and leave the country. The bill certainly will be received adversely as hostile to medical practice in the Philippines giving them no more choice but to take up other professions like nursing.

THE PHILIPPINE MEDICAL ASSOCIATION

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PHILIPPINE MEDICAL ASSOCIATION

PHILIPPINE MEDICAL ASSOCIATION POSITION PAPER ON
An Act Declaring the right of Patients and Prescribing Penalties for
Violations Thereof, SBN 588 - Bill introduced by Sen. Manuel B. Villar
An Act Declaring the Right and Obligations of Patients and Establishing Grievance Mechanism for Violation thereof
and for other Purposes and
SBN 3 -Bill introduced by Sen. Juan M. Flavie

The Philippine Medical Association/Philippine College of Surgeons
strongly oppose en toto the passage of these Senate Bills.

I. BACKGROUND

- A. The human rights movement gained importance in 1945 when member states of the United Nations reaffirmed their faith in the fundamental human rights.
- B. The social, economics, cultural ethical and political developments have given rise to a movement towards a fuller elaboration and fulfillment of the rights of patient.
- C. The World Medical Association Resolution on Human Rights in Lisbon, Portugal in 1981 and amended in Bali, Indonesia in 1995 having regard to the fact that:
 1. " The World Medical Association and its member associations have always sought to advance the cause of human rights for all people and have frequently taken actions, endeavoring to alleviate violations on human rights. "
 2. Members of the medical profession are often among the first to be aware of violations of human rights.
 3. Member associations have an essential role to play in calling attention to such violations in their countries."
- D. The World Medical Association calls for its member associations to:
 1. Request strict observance of civil and human rights in their countries.
 2. Provide clear ethical advice to doctors working in the prison system.
 3. Investigate unethical practices and decisions in the field of human rights.
 4. Use their best endeavors to ensure that adequate health care is available to all.
 5. Protest alleged human rights violations.
 6. Support individual physicians who call attention to human rights violations.

Hence, physicians are tasked to be the guardians of human rights and ensure the delivery quality medical services in the member states .It is, therefore, ironic and unfortunate that this Bill reverses the basic concept of the Resolution of the World Medical Association. The Bill now seeks to watch the designated Guardians. The explanatory note of the author is predicated on the alleged malpractice of the health providers, which is not addressed in this Bill.

- E. World Health Assembly Resolution (HFA WHA 30.43, 19 May 1977 and the Declaration of Alma-Ata, 12 September 1978) emphasizes two rights of patients.
 1. Social Rights - societal obligation undertaken by the government for the whole population of the country.
 2. Individual Rights
 - a. These are covered by existing statutes and law of each country
 - b. The intention is not to create new laws
 - c. Restricted by an overriding interest of the third party (conflict of duties doctrine) or to avoid serious

harm to the patient (therapeutic exception)

d. Complimentary nature of rights and responsibility to themselves (patients) and to the health care provider.

d. Health care providers must enjoy the same protection of human rights as all other people.

e. Ensure that patient-provider relationships are marked by mutual support and respect.

II. PMA STAND

- A. Agrees with the World Medical Association Resolution on Rights of Patient in Lisbon , Portugal in 1981 and Amended in Bali , Indonesia in 1995.
- B. Magna Carta of Patients Rights must be viewed not in a microscopic Patient-Doctor Relationship but on a macroscopic perspective consistent with the provisions of the World Medical Association and in furtherance of the Constitutional mandate of Section II Article XIII. It must focus primarily on the right of patients to have equal access to quality health care without any discrimination.
- C. The Bills ignore the bigger problem of lack of adequate and readily available medical services and manpower of health provider.
- D. Basically , the Bills erode the patient-physician relationship, which is based on trust, confidence and respect (fiduciary). This is contrary to the World Medical Association Resolution.
- E. The real intention of the Bills, as clearly manifested in the explanatory note of SB 588, is on malpractice of the medical profession. It masquerades itself as a good, well-meaning declaration of patient's rights to make it appear pleasant and acceptable to everyone. The Bill, if approved, will cause a cascading effect leading ultimately to a malpractice bill.
- F. The Bill will commercialize the patient-physician relationship. The practice of the medical profession is not a trade of money-getting but on a calling of public service to the people and community.
- G. Physicians are oriented to serve the best interest of patients guided by the Hippocratic Oath, Code of Ethics and Guidelines of the Professional Regulatory Commission. Further, they are subject to the Penal and Civil Code of the Country. Administrative sanctions can also be imposed.
- H. Physicians are trained to save lives to the highest standards of medical care with self regulating and monitoring provisions of the National Professional Organization (Philippine Medical Association) and its affiliated Specialty Divisions and Component Societies.
- I. Physicians continue to pursue a never-ending, continuing medical education with a lot of self sacrifice.
- J. There is no need to legislate what is already part of the medical practice. Let the medical profession, through the PMA and its Component and Specialty Societies, monitor , evaluate, improve or amend their practice guidelines to make it dynamic and progressive, responsive to the evolving disease processes and their similarity evolving diagnostic modalities and therapeutic regimen. Legislation of these medical practices will make medicine static
- K. The Bills will force physicians to practice defensive medicine and magnify the cost of medical health care delivery system in the country. Further, it will:
 - 1. Force physicians to secure malpractice insurance and pass the cost to patients.
 - 2. Lead to a malpractice crisis, which is being experienced in the United States .
- L. Physicians may concentrate in the urban areas or may no longer be interested to continue their profession . Many will leave the country for employment abroad. As of now there is an exodus of health workers of both Physicians & Nurses to foreign lands.
- M. Physicians will be discouraged to perform humanitarian tasks, serve in charity wards, volunteer in government hospitals or attend to medical missions, where there is the barest of ancillary facilities.
- N. The Bills are adverse to physicians

1. SB 588 criminalizes even petty demeanors.
Encourage patients to file lawsuits against physicians even without knowing the full knowledge of the complexity of the medical management. This may cause physicians to attend court cases rather than attend to patients. Harassment cases will be abundant.
 2. complexity of the medical management. This may cause physicians to attend court cases rather than attend to patients. Harassment cases will be abundant.
- O. The Bills fail to address the patient's societal rights from the government, mainly the right to have equal access to quality medical care.
- P. The Bills are adverse to the patients and may start a self-destructive process resulting into an unavailing quality medical care.
- Q. The Bill fails to address the patient's obligations and responsibility to, among others:
1. Self
 2. Health Care Providers
 3. Other People and other institutions
 4. Provide adequate and accurate information
 5. Actively participate in his treatment
 6. The training of future competent physicians
- R. Similarly, physicians will seek passage of a Bill for the Magna Carta of Physician's Rights. This relationship will cause the degradation of Fiduciary relationship to a litigious and commercialized contract.
- S. Section 4.1 of the Bill of both SB 588 & 3 on the right to medical care and humane treatment are very vague and wide in scope. This is very broad and some provisions of the malpractice law may be introduced, in the Bill itself or in the implementing rules and regulations. This was explicitly expressed by the author in the House of Representative Version. The specific provisions of patient's rights must center on provisions of equal access to quality healthcare without discrimination and be cared for by physicians who is free to make clinical and ethical judgment without outside interference.
- T. Section 4.6 & 4.7 of the SB 3 & SB 588 respectively, on the right to self-determination must be properly defined. Some may interpret it as euthanasia. The Position Paper of the Commission of Human Rights dated 7 November 1997 states, "The question, therefore, is whether any mortal is competent to make that decision even for himself. Even assuming that he is, does he have the right to employ another mortal (physician) to carry out that act?"
- U. Section 4.9 & 4.10 of the SB 3 & SB 588 respectively, on the right to leave the hospital even without fulfilling his/her financial obligation may lead to the collapse of the hospital and health industry. This will result to a locality with no available health care facilities and providers.
- V. Section 5 of SB 588 of the Bill on penalties providers for a grossly inappropriate, harsh and cruel penalty even for light offenses
- W. The Position Paper of the Commission on Human Rights on 14 September 1999 states, " The International Covenant on Economic, Social and Cultural Rights (ICESCR) Mandates that the state parties recognize the right of everyone to enjoyment of the highest attainable standard of physical and mental health." And "...state parties are mandated to create conditions which would assure to all medical service and medical attention in the event of sickness".
- X. Considering the alarming number of physicians to include Specialist, Nurses and other Caregivers leaving the country, the lowering of enrolment of medical schools, lowering of application in the RESIDENCY TRAINING PROGRAM and other similar situation there is now a serious depletion of health workers to deliver the healthcare needs of the country. The next decades may see a situation of almost complete absences of Specialists, Physicians, Nurses and other Health Care Practitioners. It is this manpower development that we in both government and private sectors must focus and address immediately. This is a shared responsibility that we must act now before it's too late.
- Y. Rights of patients are best achieved in an environmental milieu where the essential foods, health and other social services are available of the people at affordable cost through an integrated and comprehensive approach to health development.

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Noted:

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