



# Office of the Attorney General of Guam



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Mamie C. Balajadia, Ed.D., Chairperson  
Guam Board of Allied Health Examiners  
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Hafa Adai Dr. Balajadia:

On April 29, 2015, I met with the Guam Board of Allied Health Examiners (Allied Health Board or Board) Vice-Chair, Dr. Gregory Miller, and the Director of the Department of Public Health and Social Services, Mr. James Gillan. The purpose of the meeting was to discuss the nature and scope of the Attorney General's representation of the Allied Health Board in general, and the various cases involving Dr. Joel Joseph, in particular. The following is a summary of the topics of our conversation.

Upon assuming office last January, I undertook an assessment of my Office's legal assistance and resources currently assigned to all government entities including the various regulatory governmental boards and commissions. Through this assessment, I determined that my Office's representation of the Allied Health Board posed particular problems and challenges given that we had found ourselves acting in various legal capacities with respect to the Board.

As I discussed with Dr. Miller and Mr. Gillan, by statute the obligation of the Office of the Attorney General is to assist the Board with legal counsel and advice on legal matters and questions that arise in the course of the Board's administrative duties. The Office also will represent the Allied Health Board and its members in any court action to which the Board or its members have been named as a party. After a thorough review of the various administrative matters to which the OAG has heretofore assisted the Allied Health Board in the execution of its duties and responsibilities, I have determined, however, that our role heretofore cannot and shall not extend to the investigation or prosecution of disciplinary complaints before the Allied Health Board.

I am hereby providing notice to the Allied Health Board that in its pending disciplinary proceeding against veterinarian, Dr. Joel Joseph, the Office of the Attorney General is withdrawing as the disciplinary prosecutor. In addition to other considerations, our continuation in this role would place this Office in an untenable conflict of interest in presenting the case, wherein certain assistant attorneys general may potentially be called as witnesses, having previously advised the board. Given our withdrawal as disciplinary prosecutor, we advise the Board to secure an able replacement to prosecute this case in a timely manner; and, as we informed Dr. Miller and Mr. Gillan, the replacement may or may not be an attorney.

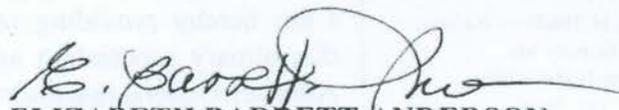
In pursuit of its disciplinary responsibilities, the Allied Health Board is authorized to establish a budget to assist in carrying out such duties through the hiring of consultants for investigation and prosecution. The Board's enabling statute, 10 G.C.A. section 12803(c)(14), permits the Board to contract consultant(s) for special needs of the Board in the investigation of complaints, monitoring of a licensed person -in terms of violation of this Act, and other monitoring/investigation.- Further, Section 12803(i) permits the Board to appoint committees from its membership and employ an executive secretary or director and other staff, including an adequate staff of investigators, to effectively perform its duties under the act. It may also employ private counsel or its own full-time attorney. I advised Dr. Miller and Mr. Gillan that I would support any efforts initiated by the Board to secure from the Guam Legislature the necessary resources for these purposes, and I reiterate that support now.

Further, with respect to the disciplinary matter before the board, the current appointment of Attorney Ben Sison as hearing officer will continue until completion of the case. I advised Dr. Miller and Mr. Gillan that the Board should meet with its hearing officer in the near future to discuss both the case and the particular role the Board desires the hearing officer to play in the proceeding. Specifically, the Board should communicate to Attorney Sison whether, as hearing officer, he should solely facilitate the disciplinary proceedings with the Board functioning as the finder of fact and decision-maker, or whether he, as hearing officer, will act as the finder of fact who will make recommendations for the Board's consideration.

As the Board moves forward with the case, it might also be prudent for it to revisit the original complaint, given that significant time may have passed since the alleged conduct underlying the complaint occurred. The Board should be intimately familiar and comfortable with the disciplinary charges it is bringing against a party. A review of the complaint, which can be conducted with the Board's legal counsel, could determine if the individual charges reflect the current Board's sensibilities and are still pertinent, prosecutable, and supported by available witnesses and evidence.

I hope I have been able to clarify and articulate my positions with respect to my Office's legal assistance to and representation of the Allied Health Board. My decision with respect to not being able to provide investigative and prosecutorial assistance is not exclusive to the Allied Health Board, but will extend to all similar boards and commissions. Although our role will be limited in this regard, we stand ready to assist the Board with the legal advice and support it requires in more fully assuming and fulfilling its administrative and enforcement functions and responsibilities.

Sincerely,

  
**ELIZABETH BARRETT-ANDERSON**  
Attorney General of Guam

cc: Karl Espaldon, Deputy AG, Solicitors Division  
James Gillan, DPHSS Director