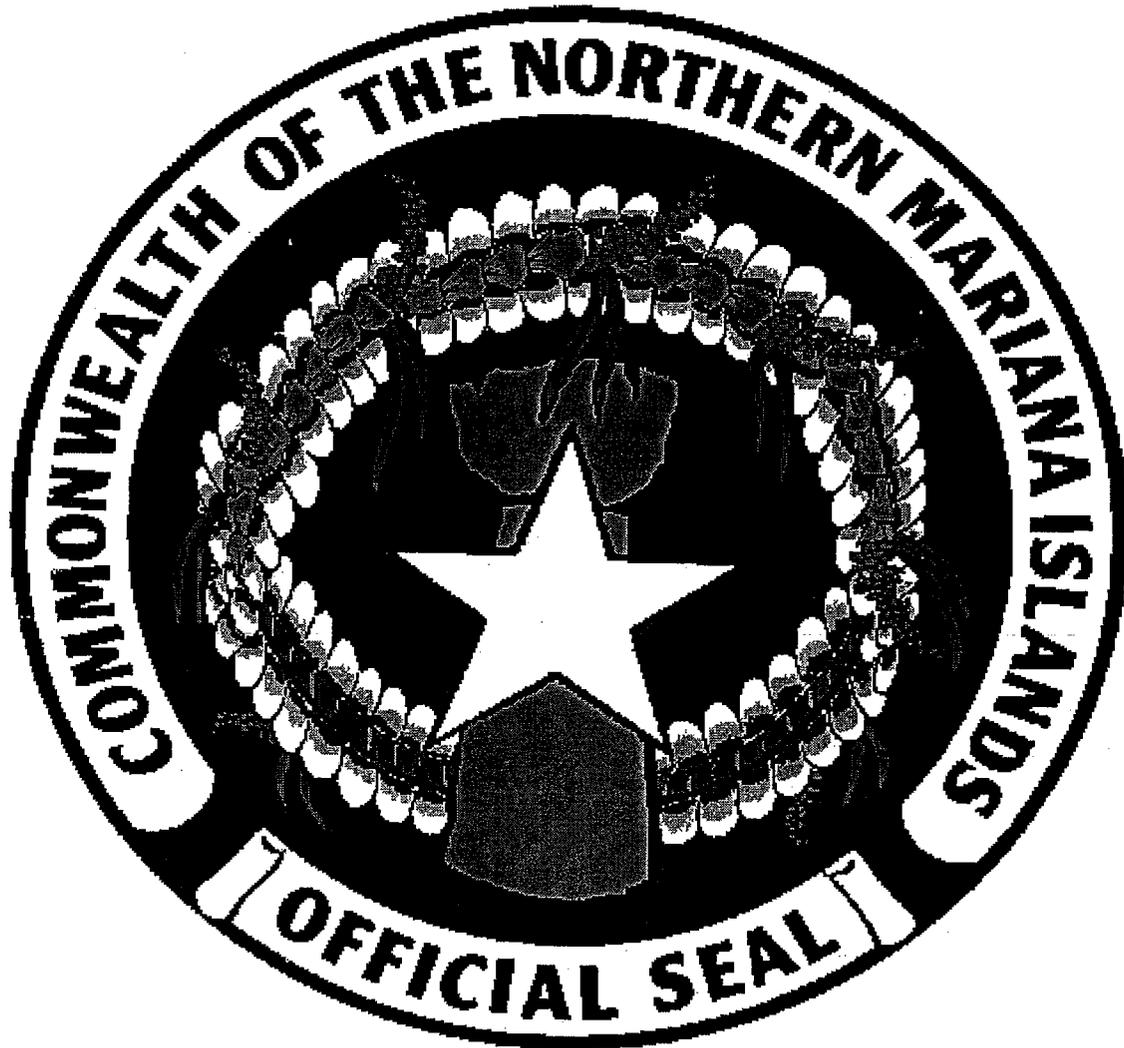


COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS



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COMMONWEALTH REGISTER

VOLUME 30  
NUMBER 08

August 25, 2008

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# COMMONWEALTH REGISTER

VOLUME 30

NUMBER 08

August 25, 2008

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**Commonwealth of the Northern Mariana Islands  
Commonwealth Medical Profession Licensing Board**

*In the Matter of Terri H. Clawson, PA,* ) Case No. 2008-02  
(Amendment of practice agreement) )

**BOARD EMERGENCY ORDER #01  
APPROVING PRACTICE AGREEMENT AMENDMENT  
FOR REMOTE SUPERVISION**

**Summary**

This Order is entered *nunc pro tunc* Thursday, July 24, 2008, pursuant to the Board's oral decision at its meeting that day. It IMMEDIATELY authorizes the licensee, a PA working at the Tinian Health Center, to work under the supervision of a physician located at a site other than the same Tinian Health Center. This order thereby allows Ms. Clawson, as the only non-nurse medical professional who is full-time stationed on Tinian, to continue to treat patients until the Center's management can find a full-time physician/s. This order is valid through the day after the Board's scheduled August meeting, stated below.

**Discussion**

The "Health Care Professions Licensing Act of 2007". ("the Health Care Act" or "the Act"), 3 CMC §§ 2201 - 36, PL 15-105, requires that a physician's assistant ("PA") be licensed by the Health Care Professions Licensing Board ("the Board") and that her conduct conform to certain statutory and regulatory standards and specific dictates.

The pre-existing regulations of the predecessor Medical Professions Licensing Board continue in effect, except as amended by the Board:

(e) Except as otherwise provided herein, the regulations, guidelines, standards, and procedures related to the regulation of the functions and operation of a regulated health care professional and/or profession that are in force when this Act becomes effective, shall continue to apply until amended or repealed by the Board.

3 CMC §§ 2235(e). The Board has amended its regulations in part. 140 NMIAC 50.3 - Commonwealth Health Care Professions Licensing Board Regulations. 30 Com Reg. 03, p 28388 - 28426. It has not yet amended its PA regulations. So the pre-existing regulations apply.

1 The Board's authority proceeds from the Act and the Administrative Procedure Act.  
2 The Act established the Board with complete jurisdiction, power and authority to  
3 regulate the health care professions. 3 CMC § 2204(a). The Board's powers include:  
4

- 5 • to adopt rules and regulations to enforce the Act. 3 CMC § 2206(b);
- 6 • to issue, deny and condition licenses. 3 CMC § 2206(c);
- 7 • to conduct disciplinary hearings to suspend or revoke licenses. 3 CMC  
8 § 2206(h);
- 9 • to suspend or revoke a license. 3 CMC sec. 2206(k);
- 10 • **act summarily in the face of the likelihood of harm to:**
  - 11
  - 12 i. **the public health, safety or welfare; or**
  - 13 ii. **to the patients of a health care professional who is regulated**  
14 **by this Chapter; 3 CMC § 2206(n).**
  - 15

16 (Emphasis added) A PA practicing with a license issued prior to the new Act and its  
17 new regulations continues as a licensee until the Board suspends or revokes that  
18 license:  
19

20 For the transition period between the application of the old Medical Practice Act and the  
21 new Health Care Professions Licensing Act, specifically until new applicable regulations  
22 are promulgated, each practicing member of each profession over which the Board has  
23 jurisdiction shall be deemed practicing with a license until regulations are promulgated for  
24 the respective profession and an indicated re-licensing application period has ended, or  
25 until the Board acts to suspend, modify, revoke or otherwise affect a license, whichever  
26 comes first.

27  
28 140 NMIAC § 50.3 -101-002.  
29

30  
31 A PA shall have at all times in effect a "practice agreement" with a supervising  
32 physician. 140 NMIAC § 50.1-1220, -1230(d). Such agreement ordinarily provides that  
33 the physician will be available for consultation, will review and co-sign patient records.  
34 It provides for the scope of the PA's activities. It also provides that the physician co-  
35 signs for prescription of medication and other treatments, except that the PA may not  
36 prescribe DEA-controlled substances. 140 NMIAC § 50.1-1235.  
37

38 The Administrative Procedure Act provides for licensee hearings, when a notice of a  
39 hearing is required, and defers to an agency's specific organic act. 1 CMC §§ 9108-10.<sup>1</sup>  
40 This Order addresses an emergency situation coming under the specific "immediate  
41 and grave danger to the public" provision of the HCPLA, 3 CMC § 2206(n).  
42  
43

1 **Facts and allegations**  
2

3 Ms. Terri H. Clawson, holds a CNMI license as a PA issued on September 19, 2007,  
4 and which expires on September 18, 2009. She addressed the Board at its meeting of  
5 July 24, 2008. She advised the Board that Dr. Ronaldo B. Toledo, the full-time  
6 physician of the Tinian Health Center ("THC") had allowed his license to lapse and had  
7 resigned, and she had just heard of this the day before, on July 23, 2008. She pointed  
8 out that her practice agreement had been executed with Dr. Toledo.  
9

10 She further described the health care provider situation at the Tinian Health Center.  
11 She and nurse-practitioner Arley Long, were now the only senior health care  
12 professionals at the Health Center. That meant that they were the primary patient care-  
13 givers to all Tinian residents. Further, they were responsible for call. In fact she,  
14 Clawson, was scheduled for 24/7 call in the absence of Dr. Toledo.  
15

16 She showed the Board a stack of prescriptions about 3 inches thick. The prescriptions  
17 required the co-signature of a physician. The scrips were for DEA scheduled  
18 substances. One was for the medication necessary to treat a cancer patient. While  
19 Ms. Clawson had had solo prescription authority as a PA in Utah, she did not have that  
20 authority here in the CNMI. Rather, she depended on her supervising physician,  
21 pursuant to her practice agreement, to co-sign her prescriptions.  
22

23 If she could not secure physician co-signatures on scrips her patients could not receive  
24 their medications, including pain-reduction medications and cancer treatment. If there  
25 were no physician for her practice agreement she could not treat patients.  
26

27 In her view, the situation presented the prospect of grave harm to the public health,  
28 safety and welfare of Tinian and to the patients of the Tinian Health Center. While she  
29 badly wanted to provide medical services to her patients and the community, she also  
30 did not want violate the terms of her license, specifically the requirement for physician  
31 supervision. She requested that the Board fashion a remedy.  
32  
33

34 **Board findings and conclusions**  
35

36 Ms. Clawson has over 15 years' experience on the Mainland as a medical assistant,  
37 emergency medical technician, medical technologist, and medical transcriptionist. The  
38 Board is convinced from her presentation and its own investigations that she is an  
39 experienced, dedicated health care professional and is eager to treat her community's  
40 patients.  
41

42 The Board is further aware that Dr. Toledo resigned due, among other things, to health  
43 reasons. Further, he allowed his CNMI medical license to lapse on July 15, 2008.  
44 Apparently he did not advise the Tinian Health Center, or Ms. Clawson, of his changes

1 in status. Ms. Clawson is not responsible for his failure to communicate, or his  
2 employer's failure to anticipate the problem and assign another physician to the THC.

3  
4 Ms. Clawson acted responsibly by advising the Board in person the day after she  
5 learned of her supervising physician's termination of licensure and services. The THC,  
6 and the Tinian community it serves, are clearly in a health care crisis situation.

7  
8 The Board at its July 24 meeting advised Ms. Clawson that it would issue an order  
9 allowing her to be supervised remotely, probably by ER physicians at the  
10 Commonwealth Health Center ("CHC"). The order would be valid for two weeks. The  
11 Board explained that, as CHC does not control or manage the Tinian Health Center –  
12 the Tinian Mayor does – she would need to discuss the matter with CHC management.  
13 The Board said it would also write CHC a letter, but that the Board could not assign a  
14 physician to the THC. The Board licenses, it explained; it does not employ or manage  
15 physicians.

16  
17 The Board has since learned that Acting DPH Secretary Brostrum arranged for Dr.  
18 Hazel Brown, of Saipan, to work at the THC over the weekend. Apparently, however,  
19 Dr. Brown became unavailable Monday morning. Of course, while a physician may be  
20 on call, she would not be expected to be present at the THC on a 24-7 basis. It may be  
21 that Dr. Brown will arrange to work for the THC and move to Tinian. In the meantime,  
22 however, there is great uncertainty as to the presence of a physician at the THC. Ms.  
23 Clawson still needs a supervising physician.

24  
25  
26 **Ruling and ordering paragraphs**

27  
28 The Board having been fully advised in the premises of this matter, for the above-stated  
29 reasons, hereby ORDERS that:

- 30  
31 1. Ms. Clawson has been fully in compliance with the terms of her license, given  
32 the totality of the facts and circumstances of this matter;
- 33  
34 2. Ms. Clawson has acted responsibly and professionally in contacting the Board as  
35 soon as she learned of the absence of her supervising physician;
- 36  
37 3. The people of Tinian are in dire need of medical care at the Tinian Health  
38 Center. The situation presents the likelihood of grave harm to the public health,  
39 safety and welfare of Tinian and to the patients of the Tinian Health Center.
- 40  
41 4. But there may not be a physician on-island to provide that care on an  
42 uninterrupted basis for some days or weeks in the immediate future;
- 43  
44 5. The Board does not, and cannot, hire or order a physician to provide medical

- 1           care to Tinian or supervise Ms. Clawson;
- 2
- 3           6.    Ms. Clawson is ready, willing and able to provide medical services to the Tinian
- 4           community, including prescribing medication;
- 5
- 6           7.    The Board believes that it is inadvisable, and unfair, to provide Ms. Clawson with
- 7           unsupervised prescription authority at this time;
- 8
- 9           8.    THC and CHC could agree to provide the required supervision of Ms. Clawson's
- 10          activities, including the review and approval of prescriptions, remotely, with
- 11          necessary contact by telephone, existing telemedicine facilities, or via the
- 12          internet with simple video and voice communication by such free services as
- 13          Skype and Vonage;
- 14
- 15          9.    Such remote supervision can be conducted professionally and with due regard to
- 16          the health, safety and welfare of the people of Tinian;
- 17
- 18          10.   However, such remote supervision cannot, and should not, be a permanent
- 19          condition;
- 20
- 21          11.   Without such remote supervision the people of Tinian would be subject to a
- 22          health care emergency;
- 23
- 24          12.   While the Board stated at its meeting that it would provide authority for such
- 25          remote supervision for a 14-day period, the constantly changing situation with
- 26          respect to a physician for Tinian and the realities of the Board's meeting
- 27          schedule, warrant the Board's authorizing this matter through August 31, 2008;
- 28
- 29          13.   Ms. Clawson is authorized through August 31, 2008, to enter into a new practice
- 30          agreement signed with a CHC physician whom CHC will designate. This
- 31          agreement shall provide for remote supervision, which may include consultation
- 32          with ER on-duty physicians. The agreement may provide for review of Schedule
- 33          II through V prescriptions within 7 days rather 2 days.
- 34
- 35          14.   The Board shall address this matter at its next meeting.
- 36
- 37          15.   A copy of this order shall be placed in a public area of the Tinian Health Center;
- 38
- 39          16.   The Executive Director is directed to do the following in person or by electronic
- 40          means:
- 41                a.    serve this Order on the licensee, Ms. Terri H. Clawson (email:
- 42                        tclawson@terriclawson.com);
- 43
- 44

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- b. serve this Order on the director of the Tinian Health Center (tel: 433-9233; fax 433-9247);
- c. have the Order published in the next Commonwealth Register.

Unanimously enacted at the Board's meeting of July 24, 2008, and by review and electronic affirmation thereafter on the date stated below. A party seeking to appeal this Order is directed to 1 CMC § 9112(b), which provides for judicial review of final orders within 30 days in the Commonwealth Superior Court. The Board believes that this IS a final Order.

*Admad Al-Alou*

\_\_\_\_\_/s/\_\_\_\_\_  
Dr. Admad Al-Alou, Chairman

Dated: July 30, 2008

Dr. Janet McCullough, Vice Chair: /s/

Ms. Pamela Carhill, Secretary-Treasurer: /s/ *Pamela Carhill*

Dr. Leticia Borja, Board Member: /s/

Dr. Ken Pierson, Board Member: /s/

Commonwealth Health Care Professions Licensing Board  
Building No. 1336, Capitol Hill  
Saipan MP 96950

tel 670.664.4809  
fax: 670.664.4813  
bpl@pticom.com

4 Draft order re Clawson remote practice agreement.wpd

ENDNOTES

1. The APA sections are as follows:

§ 9108. Administrative Procedure: Adjudications.

(a) This section applies in every adjudication in which a sanction may be imposed, except in an agency proceeding respecting the grant or renewal of a license, unless an agency proceeding therefor is required by law to be preceded by notice and opportunity to be heard. In an adjudication under this section, all parties shall be afforded an opportunity for a hearing after reasonable notice.

(b) Hearings shall be conducted and orders shall be made in accordance with 1 CMC §§ 9109 and 9110; provided, however, that in the event and to the extent that any other law provides for adjudication, then the provisions of such other law shall be controlling.

§ 9109. Administrative Procedure: Conduct of Hearings.

(a) Persons entitled to notice of an agency hearing shall be timely informed of:

(1) The time, place, and nature of the hearing;

- (2) The legal authority and jurisdiction under which the hearing is to be held;
- (3) The particular sections of the statutes and regulations involved;
- (4) The matters asserted.

If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

(b) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent, order, or default.

(c) A party or any other person entitled to be present and represented by counsel of his own choosing in an agency hearing.

(d) Upon request of any party and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the subject sought, an agency authorized by law to issue subpoenas shall issue subpoenas to compel the attendance of persons at a hearing or in taking depositions. On contest, the court shall sustain the subpoena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of failure to comply.

(e) There shall preside at the taking of evidence:

- (1) The agency; or
- (2) A hearing officer appointed by the agency.

The function of persons presiding at hearings and of persons participating in orders or decisions in accordance with this chapter shall be conducted in an impartial manner. A presiding or participating person may at any time disqualify himself or herself. On the filing in good faith of a timely and sufficient affidavit of personal bias and prejudice or other disqualification of a presiding or participating person, the agency shall determine the matter as a part of the record and order or decision in the case.

(f) Subject to published rules of the agency and within its powers, persons presiding at hearings may:

- (1) Administer oaths and affirmations;
  - (2) Issue subpoenas authorized by law;
  - (3) Rule on offers of proof and receive relevant evidence;
  - (4) Take depositions or have depositions taken when the ends of justice would be served;
  - (5) Regulate the course of the hearing;
  - (6) Hold conferences for the settlement or simplification of the issues by consent of the parties;
  - (7) Dispose of procedural requests or similar matters;
  - (8) Make or recommend orders or decisions in accordance with this chapter; and
  - (9) Take such other action authorized by agency rule consistent with this chapter.
- (g) Except to the extent required for the disposition of ex parte matters as authorized by law, persons presiding at hearings or persons participating in orders or decisions may not:

- (1) Consult a person or party or representative of a person or party on a fact in issue or on applicable law, unless on notice and opportunity for all parties to participate; or
- (2) Be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecutory functions for an agency.

(h) Persons presiding at hearings or participating in orders or decisions may:

- (1) Communicate with other members of the agency, except as limited by subsection (g) of this section; and,
- (2) Have the aid and advice of one or more personal assistants, and of the Attorney General and his or her staff if such assistance would not be in violation of subsection (g) of this section.

(i) Except as otherwise provided by statute, the proponent of an order or decision has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. Except as otherwise provided by law, privileges relating to evidence in the Commonwealth Superior Court shall apply in the conduct of hearings. A sanction may not be imposed or an order or decision issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in

accordance with reliable, probative, and substantial evidence. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

- (j) The record in a hearing under this chapter shall include:
  - (1) The notice and any pleadings, motions, and intermediate rulings;
  - (2) Evidence received or considered;
  - (3) A statement of matters officially noticed;
  - (4) Questions and offers of proof, objections, and rulings on them;
  - (5) Any order or decision, recommended order or decision, opinion, or report by the person presiding at the hearing;
  - (6) All staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case;
  - (7) Transcript or summary of testimony and exhibits; and
  - (8) All papers and requests filed in the proceeding which are not specifically mentioned above.
- (k) On payment of lawfully prescribed costs, the record shall be made available to the parties within a reasonable time.
- (l) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

§ 9110. Administrative Procedure: Issuance of Orders and Decisions Upon Hearing.

(a) When the agency does not preside at the reception of the evidence, the person presiding shall initially decide the case unless applicable law or agency rule requires, either in specific cases or by general rule, the entire record to be certified to it for the making of an order or a decision concerning a regulation. When the person presiding makes an initial order or decision, that order or decision then becomes the order or decision of the agency without future proceedings unless there is an appeal to, or review on motion of, the agency within the time provided by rule. On appeal from or review of the initial order or decision, the agency has all the powers which it would have in making the initial order or decision, except as it may limit the issues on notice or by rule. When the agency makes the order or decision without having presided at the reception of the evidence, the person presiding shall first recommend an order or decision to the agency.

(b) Before a recommended initial order or decision, or an order or decision on agency review of an order or decision, the parties are entitled to a reasonable opportunity to submit for the consideration of the persons participating in the decision:

- (1) Proposed findings and conclusions;
  - (2) Exceptions to the order or decision or recommended order or decision; and
  - (3) Supporting reasons for the exceptions or proposed findings and conclusions.
- (c) The record shall show the ruling or decision on each finding, conclusion, or exception presented. All orders or decisions, including initial or recommended orders or decisions, or those on agency review, are a part of the record and shall include a statement of:
- (1) Findings and conclusions, and the reasons or basis for them, on all the material issues of fact, law, or discretion presented on the record; and
  - (2) The appropriate decision, order, sanction, relief, or denial thereof.

1 CMC §§ 9108-10.

**PUBLIC NOTICE**  
**OF ADOPTION OF REGULATIONS**  
**WHICH IS AN AMENDMENT TO THE EMPLOYMENT RULES AND REGULATIONS**  
**OF THE DEPARTMENT OF LABOR**

**ACTION TO ADOPT PROPOSED REGULATIONS:** The Commonwealth of the Northern Mariana Islands, Department of Labor ("DOL"), HEREBY ADOPTS AS PERMANENT REGULATIONS the Proposed Regulations published in the Commonwealth Register at Volume 30, Number 03, March 25, 2008, pages 28326 through 28329, pursuant to and in substantial compliance with the procedures of the Administrative Procedure Act, 1 CMC § 9104(a) and (c). The DOL announced that it intended to adopt them as permanent, and now does so. (*Id.*) The Regulations will become effective 10 days after adoption. (1 CMC § 9105(b))

**AUTHORITY.** The regulations are promulgated in accordance with the Administrative Procedure Act, 1 CMC §9101 et seq. The Secretary of Labor is authorized to promulgate regulations pertaining to employment of citizens, permanent residents, and foreign national workers pursuant to PL 15-108 Sections 4530, 4606; 4691, 4971, and 4972.

The regulations will suspend the entry to the Commonwealth of foreign national workers to be employed in unskilled positions.

**REGULATIONS**

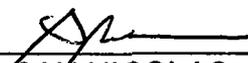
**AMENDMENTS TO the Employment Rules and Regulations (effective February 1, 2008)**

**Part VI. Employment of Foreign National Workers,**

Section 2: Entry Into the Commonwealth, B. Approved Employment Contract, is amended with the addition of a new subsection (14) to read:

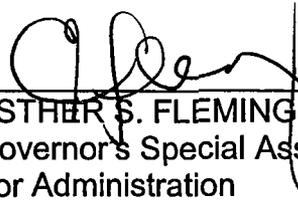
(14) The Director of Labor shall not, unless in the best interests of the Commonwealth, approve any application for employment in an unskilled position of a foreign national worker coming from outside the Commonwealth in order to ensure employment of workers already in the Commonwealth who have become unemployed as a result of past and anticipated closures of business operations. The fees paid in connection with an application for a position determined to be unskilled and therefore not approved are transferrable for a period of six months.

Submitted by:

  
GIL M. SAN NICOLAS  
Secretary of Labor

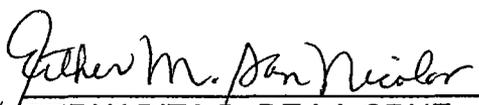
08/21/08  
Date

Received by:

  
ESTHER S. FLEMING  
Governor's Special Assistant  
For Administration

8/22/08  
Date

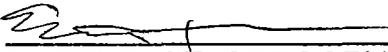
Filed and  
Recorded by:

  
for BERNADITA B. DE LA CRUZ  
Commonwealth Register

08.25.08  
Date

Pursuant to 1 CMC § 2153(e), as amended by Public Law 10-50, the rules and regulations attached hereto have been reviewed and approved as to form, and legal sufficiency by the CNMI Office of the Attorney General.

Dated the 21st day of August 2008.

  
MATTHEW T. GREGORY  
Attorney General

**PUBLIC NOTICE**  
OF ADOPTION OF REGULATIONS  
WHICH IS AN AMENDMENT TO THE EMPLOYMENT RULES AND REGULATIONS  
OF THE DEPARTMENT OF LABOR

**ACTION TO ADOPT PROPOSED REGULATIONS:** The Commonwealth of the Northern Mariana Islands, Department of Labor (“DOL”), HEREBY ADOPTS AS PERMANENT REGULATIONS the Proposed Regulations published in the Commonwealth Register at Volume 30, Number 05, May 27, 2008, pages 28477 through 28485, pursuant to and in substantial compliance with the procedures of the Administrative Procedure Act, 1 CMC § 9104(a) and (c). The DOL announced that it intended to adopt them as permanent, and now does so. (*Id.*) The Regulations will become effective 10 days after adoption. (1 CMC § 9105(b))

**AUTHORITY.** The regulations are promulgated in accordance with the Administrative Procedure Act, 1 CMC §9101 et seq. The Secretary of Labor is authorized to promulgate regulations pertaining to employment of citizens, permanent residents, and foreign national workers pursuant to PL 15-108 Sections 4530, 4606, 4691, 4971, and 4972.

The regulations require that the number of “alien workers” present in the Commonwealth on May 8, 2008 not be exceeded. They would provide a system for monitoring the departing “alien workers” present in the Commonwealth on the effective date of these regulations and the arriving “alien workers” after the effective date of these regulations so that the Commonwealth can ensure that the number of “alien workers” present in the Commonwealth on May 8, 2008 will not be exceeded.

## REGULATIONS

AMENDMENTS TO the Employment Rules and Regulations (effective February 1, 2008)

### Part III. Moratorium on the Hiring of Foreign National Workers,

#### Section E: FEDERAL MORATORIUM

1. Federal requirement. The federal legislation (S. 2739, Section 103(i), P.L. 110-229) requires: “During the period beginning on the date of the enactment of this Act and ending on the transition program effective date ... the Government of the Commonwealth shall not permit an increase in the total number of alien workers who are present in the Commonwealth as of the date of the enactment of this Act.” The date of enactment was May 8, 2008.
2. Numerical cap. The number of “alien workers who are present in the Commonwealth” is 22,417. The Commonwealth established this benchmark when the U.S. House and U.S. Senate passed the legislation (as closely approximating and fairly representing the actual number on the precise date) so as to be able to implement the federal requirement immediately, as is the intent of the law.
  - a) The term “alien workers” for this purpose includes persons admitted to the Commonwealth in immigration classifications 706A, 706B, 706D, 706F, 706I, 706J, 706K, 706L, 706M, 706N, and 706P. Persons in each of these categories are “aliens” and they are all admitted to the Commonwealth under conditions that permit work while in the Commonwealth. Persons who entered or enter the Commonwealth as tourists, students, immediate relatives of aliens (who are not permitted to work), for investment purposes, or under treaty provisions are not included in the term “alien workers.” Classification of any alien present in the Commonwealth is determined by the last approved permit application, and aliens admitted under immigration classification 706E who were previously admitted under a classification that permitted work will be deemed “alien workers” for these purposes.
  - b) The term “present in the Commonwealth” includes “alien workers” who have an Authorization for Entry on the effective date and “alien workers” who are temporarily absent from the Commonwealth on the effective date due to medical referral, home leave, family leave, vacation, work assignment, or other temporary absence. These persons have an established employment or residence in the Commonwealth, consistent

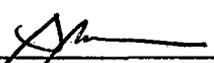
with the purpose of the federal legislation, and had no reasonable notice with respect to the effective date.

3. Transparency. The Department of Labor will publish each month on its website, on the day after the last business day of the month, the names of the “alien workers” who have departed the Commonwealth within that month and will publish at the same time the names of the “alien workers” who have entered the Commonwealth within that month. The Department will not allow entry of “alien workers” in a number that exceeds the number who have departed on a permanent basis. “Alien workers” who departed on a temporary basis and re-entered the Commonwealth will not be included in the calculation.
4. Fairness: In the event that the number of “alien workers” seeking to enter the Commonwealth during a month would cause an increase in the total number of alien workers who were present in the Commonwealth as of May 8, 2008, “alien workers” will be admitted to the Commonwealth on a permanent basis under the following priorities:
  - a) Replacements: An employer who repatriates a foreign national worker (that is, arranges, completes, and pays for a worker’s voluntary departure from the Commonwealth) after the effective date of these regulations may utilize the slot created by this departure so long as the completed application for the worker for whom the slot will be utilized is filed with the Department within 90 days of the departure of the repatriated foreign national worker.
  - b) Point system: For slots available and not filled by replacements, priority will be established by a point system. Applicants may submit a point total with each application as follows:
    - (i) For employment of U.S. citizen and permanent resident workers, one point for each percentage of total employment and, in addition, one point for each percentage of total employment above 20%;
    - (ii) For years of operation as an established business in the Commonwealth, one point for each year;
    - (iii) For major developments as defined in Section 4602(e) of P.L. 15-108 and Part III(B)(5) of these regulations, one hundred points;
    - (iv) For classification as a part of the visitor industry, twenty points; and for classification as part of the visitor support industry, ten points; and

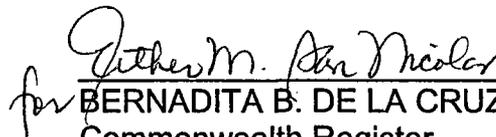
- (v) For providing the Department of Labor with a reasonably accurate forecast (updated as necessary) of need for new-entrant foreign workers three months in advance of the proposed arrival, ten points.

The Director of Labor will allocate available slots to the applications on hand having the most points, provided however that the Director may reserve slots for an anticipated major development as necessary. Applications may remain in the process for as long as a need for the foreign national worker continues to exist.

- c) Lottery: The Director of Labor may hold approximately 10% of the available slots for a lottery each month whose participants will be small businesses with fewer than five employees and who have at least one citizen or permanent resident worker in the workforce. Small businesses may also submit applications under the point system above.
5. Sanctions: The Director of Labor will monitor compliance with the cap carefully and conservatively at all times because, under the federal moratorium, the sanctions for non-compliance fall only on the foreign worker. The federal law provides: “[A]n alien [is subject to removal] at any time if the alien entered the Commonwealth after the date of the enactment of the ... Act and the Secretary of Homeland Security has determined that the Government of the Commonwealth has violated [the cap].”

Submitted by:  08/21/08  
GIL M. SAN NICOLAS Date  
Secretary of Labor

Received by:  8/22/08  
ESTHER S. FLEMING Date  
Governor's Special Assistant  
For Administration

Filed and Recorded by: for  8.25.08  
BERNADITA B. DE LA CRUZ Date  
Commonwealth Register

Pursuant to 1 CMC § 2153(e), as amended by Public Law 10-50, the regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Office of the Attorney General.

Dated the 21<sup>st</sup> day of August, 2008.



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MATTHEW T. GREGORY,  
Attorney General