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SUPERIOR COURT
OF GUAM

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IN THE SUPERIOR COURT OF GUAM

CASSANDRA MAE EGANA, Petitioner, vs. MARIANAS PHYSICIANS GROUP, LLC. doing business as SAGUA MAÑAGU, JACQUELINE WARMKE, and YBL PLLC doing business as MDX IMAGING CENTER, JANE DOES 1-10 MEDICAL PROVIDER, and JOHN DOE INSURANCE, Respondents.	**Special Proceedings Case No. SP0042-26** **DECISION AND ORDER DENYING MOTION TO DISMISS**

Respondent Marianas Physicians Group, LLC moves to dismiss Petitioner Cassandra M. Egana's Petition to Compel Arbitration on the ground that service of an arbitration demand was defective and, therefore, no arbitration was properly initiated. The Court finds that Egana complied with the Guam Medical Malpractice – Mandatory Arbitration Act (MMMAA) in filing an arbitration demand and that MPG subsequently waived any defect in service. The Court thus DENIES MPG's motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Underlying Dispute & Arbitration Proceedings.

Egana alleges that she suffered medical malpractice in June 2023. Pet. Compel Arb. ¶ 11 (Feb. 25, 2026). On May 31, 2024, she filed a Demand for Arbitration with Dispute Prevention & Resolution, Inc. (DPR), and claims that DPR accepted the filing and assigned an administrator. Decl. Victorino Torres, ¶ 3, Ex. 1 (May 6, 2026).

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Egana further claims that she served her Demand on MPG on June 5, 2024, and served Defendant Jacqueline Warmke on July 2, 2024. *Id.*, Ex. 2. The sworn Declaration of Service for MPG indicates service upon "Ashley Leon Guerrero, who is an agent authorized by appointment or by law to receive services of process." *Id.*

On June 25, 2024, MPG's counsel wrote to Egana's attorney requesting more time to respond to the Demand. *Id.*, Ex. 3. Egana's counsel agreed and asked whether MPG agreed that "**service of the demand tolls the statute of limitations on June 5, 2024?**" *Id.*, Ex. 4. MPG's counsel indicated MPG's agreement that the statute of limitations was tolled. *Id.* MPG and Warmke subsequently submitted an Answer containing no objection to the initiation of arbitration or compliance with the MMMAA. *Id.*, Ex. 5.

On February 20, 2025, MPG's counsel wrote to Egana's attorney to suggest a procedure for selecting an arbitrator. *Id.*, Ex. 7. The parties subsequently executed a Stipulation to (1) submit the matter to arbitration before Judicial Arbitration and Mediation Services ("JAMS"); (2) pursue arbitration in accordance with the Guam Arbitration Act; and (3) cooperate in good faith to select mutually acceptable arbitrators and to finalize the arbitration agreement within 30 days. *Id.*, Ex. 8.

Four months after this Stipulation, Egana's attorney wrote to MPG's counsel, expressing frustration that the arbitration panel selection had not progressed. *Id.*, Ex. 9. Within a few months of that letter, Egana filed this action seeking to compel arbitration. Pet. Compel Arb.

B. This Litigation.

MPG moves to dismiss this suit on the grounds that service was defective and no arbitration association ever accepted, administered or constituted a panel. MPG claims that because no duly constituted panel existed, it could not have raised objections to service, and

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further, this Court may not exercise jurisdiction under 10 GCA § 10108. In addition, MPG contends that because arbitration did not properly commence, the limitations period never tolled, and the claims are now time-barred.

Egana responds that MPG agreed in writing that service tolled the limitations period, proceeded with arbitration and answered the demand without objection to service, stipulated to JAMS, and waived service defects. Egana also asserts that MPG is equitably estopped by its refusal to select an arbitrator.

II. LAW AND DISCUSSION

A. Standard of Review.

MPG styles its Motion to Dismiss under Guam Rule of Civil Procedure 12(b) generally, but raises arguments under 12(b)(1) (subject-matter jurisdiction), 12(b)(2) (personal jurisdiction), and 12(b)(5) (insufficiency of service). On a Rule 12(b)(6) motion, the Court construes the pleading in the light most favorable to the non-moving party and resolves all doubts in its favor, dismissing only where the claimant can prove no set of facts entitling it to relief. *First Hawaiian Bank v. Manley*, 2007 Guam 2 ¶ 9; *Taitano v. Calvo Fin. Corp.*, 2008 Guam 12 ¶ 9.

Insofar as the Motion raises a factual challenge to service, the Court notes a factual dispute: the Declaration of Service upon MPG states the demand was delivered to an agent authorized by appointment or by law to receive service, while Dr. Annie Bordallo declares otherwise. Decl. Victorino Torres, Ex. 2; Decl. Annie U. Bordallo, ¶ 6 (Apr. 8, 2026). As later discussed, the Court need not resolve that factual dispute because any defect in service was waived under 10 GCA § 10129; the Court therefore does not reach the issue of proper service.

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B. MMMAA Framework.

Under the MMMAA, arbitration is initiated by service of a demand for arbitration upon a respondent and by filing the demand with an "Association," defined as an "entity organized to arbitrate disputes pursuant to" the MMMAA. 10 GCA §§ 10101(a), 10103. Then, within twenty days after receiving service of the demand, the respondent shall file an answer identifying defenses. 10 GCA § 10104. A party that "proceeds with arbitration" and fails to state objections to any alleged non-compliance with the MMMAA waives the right to object. 10 GCA § 10129.

An Association may administer a proceeding filed under the MMMAA. 10 GCA § 10107. A panel of three arbitrators "shall have jurisdiction over pre-hearing procedures." 10 GCA § 10108.

C. Arbitration was Initiated.

MPG argues that absent the formation of an arbitration panel, no "Association" exerted jurisdiction over Egana's demand. This reading of the MMMAA folds in the process of initiating arbitration under section 10103 with the procedure for administering an arbitration under sections 10107 and 10108. MPG also claims that, absent the appointment of an arbitrator or panel, no body existed with which it could register objections.

The MMMAA, however, does not require the appointment of a panel in order for the respondent to register objections. Instead, even before appointing a panel, the law requires the respondent to identify defenses within 20 days after service of the demand—in other words, regardless of any contingency on appointing the panel. Filing a timely answer in response to a demand constitutes "proceed[ing] with arbitration" because it registers the respondent's objections then known. 10 GCA §§ 10104, 10129. Thus, if a respondent "proceed[s] with

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arbitration" by filing an Answer as required, then unasserted objections become waived under section 10129.

MPG further insists that under 10 GCA § 10108, the MMMAA vests jurisdiction in a panel, implying that jurisdiction otherwise fails to exist. But the mention of "jurisdiction" in section 10108 does not support that reading. The exact phrase referred to by MPG is that the "chairperson shall be decided by the three (3) panel members and shall have jurisdiction over pre-hearing procedures." 10 GCA § 10108. Read plainly, this provision gives the chairperson (as opposed to the panel) the ability to decide *pre-hearing* matters, which generally means motions or scheduling. It does not specify that jurisdiction exists only upon the appointment of a full panel, or that jurisdiction does not vest otherwise.

MPG's reliance on *Villagomez-Palisson v. Superior Court*, 2004 Guam 13, does not compel a different result. *Villagomez-Palisson* holds that medical malpractice claims must be submitted to mandatory arbitration before judicial proceedings may occur—not that the Superior Court is divested of subject-matter jurisdiction over a petition to compel whenever a respondent, after participating, later disputes the adequacy of initiation. Nothing in that opinion addresses waiver under section 10129, and it does not license a party to participate without objection and then invoke "jurisdiction" to undo that participation.

Next, MPG contends that Egana has never shown that she filed the Demand with an Association. Egana contradicts this and claims DPR accepted the Demand and assigned an administrator. Decl. Victorino Torres, ¶ 3. Setting aside whether or not DPR accepted the Demand, MPG stipulated to submit the matter to JAMS, another qualified Association. *Id.*, Ex. 8. The Stipulation also references a case number, implying JAMS opened a matter. This Stipulation reinforces that MPG "proceeded with arbitration" in selecting an Association,

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conducting arbitration under the Guam Arbitration Act, and agreeing to select mutually acceptable arbitrators and conclude the matter within thirty days.

Moreover, the Court addresses DPR as an "Association."[1] MPG has never contended DPR fails to qualify as an "Association;" indeed, MPG's briefing does not address DPR's qualification at all. Thus, for purposes of the Motion, undisputedly qualifies as an Association. Also, section 10103 conditions initiation only on service and filing with an Association—not on the issuance of a case number, acceptance for administration, or constitution of a panel. In other words, the Court finds that arbitration initiated with the filing of the Demand with DPR; and to the extent there are any questions about proper initiation, any defects were cured by MPG's later stipulation to submit to JAMS.

For all these reasons, the Court concludes that Egana properly initiated an arbitration proceeding, and MPG took measurable steps—answering and stipulating to a procedure—to proceed with the arbitration.

D. MPG waived service defects in its Answer.

MPG further attacks proper service.[2] The Court first addresses whether proper service can be waived. As mentioned earlier, once a party "proceeds with arbitration after knowledge that any provision of this chapter has not been complied with and fails to state his objections thereto in writing shall be deemed to have waived his right to object." 10 GCA § 10129. These

[1] The Court is aware that DPR's demand form references Hawaii law, but a provider's use of a form referencing another jurisdiction's arbitration act does not remove it from section 10101(a)'s broad definition.

[2] Respondent Jacqueline Warmke was personally served with the Demand. Decl. Victorino Torres, Ex. 2. The service defect MPG asserts does not apply to Warmke, who joined the motion to dismiss notwithstanding valid personal service. The defective service argument therefore fails as to Warmke independent of waiver.

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requirements are satisfied here. The Court lists all the times MPG communicated a legal position while failing to raise any objection to service:

- In its response to the Demand. Decl. Victorino Torres, Ex. 5. Further, it captioned its Answer "ARBITRATION PROCEEDING" and admitted that this is "a Petition for Arbitration," confirming that MPG itself treated an arbitration proceeding as pending. *Id.*
- In written correspondence to Egana's counsel agreeing that the limitations period was tolled. *Id.*, Ex. 4.
- In the written Stipulation to submit to JAMS. *Id.*, Ex. 8.
- In numerous written correspondence discussing how discovery should proceed and how arbitrators should be selected, yet raising no objection to service or initiation. *Id.*, Ex. 7; Decl. Michael F. Phillips, Exs. C, E (Apr. 8, 2026).

This evidence overwhelmingly shows that at multiple points, MPG had opportunities to register its objections to service in writing. Instead, by failing to raise the issue, it effectively waived the right to object.

Moreover, MPG's argument that service is a jurisdictional prerequisite that cannot be waived cannot be reconciled with the statute the Legislature enacted. Section 10129 expressly provides that a party who proceeds with arbitration after knowledge "that any provision of this chapter has not been complied with" and fails to object in writing "shall be deemed to have waived his right to object." That is a legislative determination that objections to compliance under the MMMAA are waivable. A respondent may not relabel a defect the Legislature made expressly waivable as a non-waivable jurisdiction bar.

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Finally, MPG asks the Court to apply its recent holding in *Hocog v. Cook-Huynh*, where the Court dismissed an action due to the failure to serve a medical practitioner with an arbitration demand. CV0140-25 (Dec. & Order at 5 (Aug. 11, 2025)). However, in that proceeding, there was no proof that the practitioner engaged in arbitration proceedings after service, whether defective or not. The practitioner received correspondence from the arbitration association, but there was no other proof to show that she proceeded with arbitration. That contrasts with MPG here, who engaged counsel who filed an Answer and took other measures to participate in arbitration.

E. The Claims Are Not Time-Barred.

Because Egana properly initiated arbitration, MPG's statute-of-limitations argument fails on its own premise. MPG contends that, initiation having failed, the limitations period never tolled and the claims are "waived and forever barred" under 10 GCA § 10105. That argument depends on whether arbitration was initiated, which the Court confirms here. Consequently, service of the Demand on June 5, 2024, tolled the applicable period.

Independently, MPG is bound by its own written concession. On June 25, 2024, in response to Egana's express question whether "service of the demand tolls the statute of limitations on June 5, 2024," MPG's counsel confirmed, "yes, he agrees." Decl. Victorino Torres, Ex. 4. Having secured extensions on the strength of that concession, MPG cannot now maintain that the period never tolled. The limitations objection is therefore both foreclosed by the Court's initiation ruling and independently barred by MPG's written admission.

III. CONCLUSION AND ORDER

Because arbitration was initiated and any defects in service have been waived, there is no

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basis to dismiss this action.[3] The Motion to Dismiss is therefore DENIED as to MPG and Warmke.[4]

This matter shall proceed. Respondents shall file an Answer in response to the Petition no later than 14 days from this Decision and Order. The parties shall appear for a Scheduling Conference on November 4, 2026, at 11:50 a.m.[5]

SO ORDERED this 8 October 2026.

HON. ELYZE M. IRIARTE
Judge, Superior Court of Guam

Appearing Attorneys:
Victorino DLG. Torres, Esq., Anthony H. Aguon, Esq., Matthew J. Holley, Esq., Pacific Legal Team, PC., for Petitioner Cassandra Mae Egana
Michael F. Phillips, Esq., Phillips & Bordallo, P.C., for Respondent Marianas Physicians Group LLC. doing business as Sagua Mañagu
Daniel J. Berman, Esq., Law Office of Daniel J. Berman, for Respondent Jacqueline Warmke

[3] Having concluded that arbitration was initiated and that any service defect was waived, the Court need not reach Egana's alternative argument that MPG is equitably estopped under 6 GCA § 5106(3) and *Mobil Oil Guam, Inc. v. Lee*, 2004 Guam 9. The Court notes only that the same record supporting waiver—MPG's requests for extensions, its written tolling concession, its merits Answer, and its stipulation to proceed before JAMS—would also support each element of estoppel.

[4] Respondent YBL PLLC was dismissed as a party under a July 27, 2026 Stipulation.

[5] To appear for the hearing, attend in person or open the Zoom app or go to https://guamcourts-org.zoom.us/ and enter Meeting ID: 864 4387 2213 and Password: JEMI.

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