

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 742

Introduced by HONORABLE LUIS R. VILLAFUERTE

EXPLANATORY NOTE

Ghost Surgery is a practice that has become prevalent in many hospitals in the country. *What* exactly is *ghost surgery*, *how* does it happen and *what* are the grave consequences of such illegal and unethical practice are addressed in this bill, which is proposed to be enacted into law.

A. *What is **Ghost Surgery**.*

It is surgery performed on voluntarily unconscious patients which makes it possible to substitute surgeons without the patient's knowledge and permission thereby intentionally misleading the patient about the surgeon's identity which defeats the informed consent to the surgery.

B. *How does it happen.*

The methods in which "***Ghost Surgery***" is carried out is as follows: Well known and popular city surgeons who are extremely busy would schedule their surgeries in two to three (2 to 3) hospitals with overlapping time frames. Since there is no way said surgeon can be physically present in all these hospitals at the same time, the surgeon just takes the time to show his face while the patient is still awake before the actual surgery. The surgeon then leaves the hospital and proceeds to the other hospital(s) to do the same. The patient meanwhile presumes that said surgeon will be his or her operating surgeon. The patient is then operated upon but actually by *another* Surgeon or Resident Surgeon whichever the case, but *without* the patient's knowledge and consent. The *Attending Surgeon* and the *Operating Surgeon* who had an internal arrangement on this case will then split the fees.

Another method in which "**Ghost Surgery**" is carried out is as follows: In the provinces an attending doctor who is NOT a surgeon admits a patient for surgery in a hospital. A Surgeon-Colleague or a Resident Surgeon will do the actual surgery *without* the patient's knowledge, permission and consent. During the whole operation or surgery, patients are led to believe that the surgery was actually performed by his or her "attending doctor". Once again fee splitting is practiced.

Any well known and busy Anaesthesiologist can likewise be guilty of practicing GHOST ANAESTHESIA for the same reasons as that of the GHOST SURGEONS. Fee-splitting is also widely practiced in this case.

The hospitals where such unethical, illegal and immoral practices are performed are very much aware of the GHOST PRACTICE AND FEE-SPLITTING.

C. Illegal and ethical consequences

Surgical ghosts are ethically questionable and legally dangerous. Patients do not believe that surgeons are interchangeable (fungible, in legal terms). A patient's choice of surgeons is as important as the informed consent to the surgery. Intentionally misleading the patient about the surgeon's identity is fraud and defeats the informed consent to the surgery.

An operation properly performed by a surgeon operating without the consent of the patient, albeit the patient suffers no injuries except those which foreseeably follow from the operation, could not justify the substitution of surgeons. The mental anguish resulting from the belated knowledge that the operation was performed by a doctor to whom the patient had not given consent is legal basis for the award of damages. Furthermore, substitution of surgeons without the patient's knowledge and permission is an intentional invasion of another's rights, and punitive damages may be properly assessed in an appropriate case.

The patient is entitled to choose his own physician and he should be permitted to acquiesce in or refuse to accept the substitution. The surgeon's obligation to the patient requires him to perform the surgical operation: (1) within the scope of authority granted by the consent to the operation; (2) in accordance with the terms of the contractual relationship; (3) with complete

disclosure of all facts relevant to the need and the performance of the operation; and (4) to utilize his best skill in performing the operation. It should be noted that it is the operating surgeon to whom the patient grants consent to perform the operation and the patient is entitled to the services of the particular surgeon with whom he or she contracts. The surgeon, in accepting the patient is obligated to utilize his personal talents in the performance of the operation to the extent required by the agreement creating the physician-patient relationship. He cannot properly delegate to another the duties which he is required to perform personally.

Medical ethics should be important to all doctors. The life-threatening risks, post operation hazards, possible surgery failure and other related grave consequences on the patients and their families who may be victims of *ghost surgery* will be damaging not only to the individuals and families concerned but to the whole society as well. Ghost surgery is a legally and ethically dangerous that must not be promoted

Considering the merits of this bill, approval hereof is earnestly requested.



LUIS R. VILLAFUERTE

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 742

Introduced by HONORABLE LUIS R. VILLAFUERTE

**AN ACT PROHIBITING THE PRACTICE OF GHOST SURGERIES BY
MEDICAL DOCTORS AND HOSPITALS**

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

1 **SECTION 1. TITLE** – This Act shall be known as "***The Ghost Surgery***
2 ***Act***".

3 **SEC. 2. DECLARATION OF POLICY** – The State recognizes the need to
4 establish safeguards to protect its citizens from the dangerous practice of
5 "*ghost surgery*" which is ethically and legally questionable and dangerous.
6 Due to many potential risks in possible failure and life-threatening
7 consequences as well as damage from surgeries, the practice of *ghost*
8 *surgery* not only betrays the trusts of patients to his surgeon who delegates
9 the surgery to another surgeon which the patient does not know or has
10 never met *before* or learned only of the substitute or surrogate surgeon only
11 *after* the operation thereby denominating such surgeries as "ghost
12 surgeries." It is therefore hereby stated as state policy that "ghost
13 surgeries" (including ghost anesthesia) are prohibited and declared unlawful.

1 The State recognizes that patients should have the right to opt out and
2 to demand that their surgeon will perform their operation and that the
3 patient is entitled to the services of the particular surgeon with whom he or
4 she contracts with. Even if the "ghost surgeon" performed skillfully and to
5 the benefit of the patient, even if there was no "malice" and "intent to
6 injure", the whole practice of "*ghost surgery*" in itself implies deception and
7 dishonesty which is hereby declared as *mala prohibita*. There is no excuse
8 for not letting a patient know that another doctor other than the one the
9 patient recognizes and authorizes will actually perform the patient's surgery.

10 The State recognizes that the practice of "*ghost surgery*" (including
11 ghost anesthesia) is an intentional invasion of another person's rights. Thus,
12 a patient's choice of surgeon and anesthesiologist is as important as the
13 informed consent to the surgery.

14 To have another physician operate on one's patient or apply
15 anesthesia *without* the patient's written consent is a deceit. And to
16 intentionally mislead the patient about the surgeon's or anesthesiologist's
17 identity is fraud.

18 The State recognizes that the patient is entitled to choose his own
19 physician and the patient should be permitted to acquiesce in or refuse to
20 accept the substitution. The surgeon's obligation to the patient requires him
21 to perform the surgical operation. The surgeon cannot properly delegate to
22 another the duties which he is required to perform personally.

1 **SEC. 3. Definition of Terms** – For purposes of this Act:

2 ¹ A **Ghost Surgeon** shall be defined as a **surgeon** who **operates on:**

- 3 1. a patient who belongs to another surgeon who was contracted for,
4 2. a patient that belongs to another doctor who is NOT a Surgeon

5 In both instances the patients are unaware of the switch and are
6 deliberately not being informed of such practice.

7 If the situation occurs where anesthesia is administered to a patient
8 under similar or analogous circumstances, such shall be deemed "ghost
9 anesthesia" and is subject to the provisions of this Act.

10 **SEC. 4. Scope.**

11 1. This Act shall apply to *doctors* and *hospitals* who intentionally
12 perform surgeries or apply anesthesia on patients *without* the
13 patient's knowledge and consent that they will be the actual doctor
14 who will perform the operation or surgery irrespective of whether or
15 not splitting of fees actually occur with the doctor whom the patient
16 originally contracted to perform the surgery

17 2. This Act shall *not* cover or apply to:

- 18 a. Teaching institutions under supervised operation by experienced
19 surgeons. Teaching the next generation of medical doctors and
20 the necessity of hands-on experience is a must in such a
21 situation. The inexperience of "student doctors" under this
22 situation of "supervised operation" is for the most part backed

up by experienced medical doctors teaching them, so no harm comes to the patient.

- b. Under special arrangements with private patients, and with reference to the usual form of consent to operation, the surgeon may use the services of assisting residents or other assisting surgeons when the operation reasonably requires the employment of such assistance and it has the patient's consent and approval.

SEC. 5. *Implementing Rules and Regulations.* - The Secretary of Health shall issue the rules and regulations necessary to carry out the purpose of this Act.

SEC. 6. *Effectivity Clause.* - This Act shall take effect fifteen (15) days following its publication in the Official Gazette or in two (2) national newspapers with general circulation.

Approved,