

THE LEGAL FRAMEWORK FOR MEDICAL TOURISM IN MALAYSIA

ABSTRACT

Medical tourism is becoming a popular option for tourists seeking medical attention across the world. It involves predominantly biomedical procedures, ethical issues combined with travel and tourism. Medical tourism is fast growing multibillion-dollar industry around the world and it is an economic activity that entails trade in services and it's a combination of two of the largest world industries: medicine and tourism. The term has been employed by the travel agencies and the media to describe the rapidly growing practice of travelling across international borders to obtain medical care. Malaysia is one of the countries that are promoting medical tourism aggressively. The key concerns facing the industry include: absence of government initiative, lack of a coordinated effort to promote the industry, absence of a clear cut legal framework, medico-legal and ethical issues and lack of uniform pricing policies and standards across hospitals. This thesis therefore examines the legal framework for medical tourism in Malaysia and also looks at the prospects and challenges facing the industry and therefore made some recommendations for creating an enabling environment for this sector to flourish.

KEY WORDS: Medical Tourism, Legal Framework, Environment, Industry and Government Initiative

INTRODUCTION

Tourism is one of the most important economic and social development industries in the world. Tourism industries played a role in technology and information transfer and exchange in the world. The industries attract foreign investment, and contribute to the growth of domestic industries in any economy in the world. In most cases it stimulates the development of infrastructure because tourism industry is considered to be a medium of environmental conservation as well as maintaining local diversity and culture. Hence if not properly managed it can create and lead to a legal dispute.

It is worthy of note that tourism industries are closely related and linked to the key economic sectors in any country such as transportation, hotels, hospitals, restaurants, wholesale, retail and construction industry. This is as a result that tourism industries have the capacity to create a multiplier effects in various ancillary and supporting services. Consistently the growth in tourist arrivals and tourism receipts over the decade since international travel has become accessible to the general public, this has convinced many

developing nations that tourism industries will create a huge positive impact on their economy.

Medical tourism refers to a situation when persons elect to travel across international borders with the intention of receiving some form(s) of medical treatment. This treatment may span the full range of medical services, but most commonly includes dental care, cosmetic surgery, elective surgery, fertility treatment to mention but a few. Setting the boundary of what health personnel regarded as medical tourism for the purposes of trade accounts is not straightforward. Medical tourism is related to the broader notion of health tourism which, in some countries, has longstanding historical antecedents of spa towns and coastal localities, and other therapeutic landscapes. Some researchers have considered health and medical tourism as a combined phenomenon but with different emphases. Carrera and Bridges (2006) defined health tourism as "the organized travel outside one's local environment for the enhancement or restoration of an individual's well-being in mind and body".

Prior to this time, most common belief used to be that tourists travel mainly for pleasure; however this position may not be correct because in today's global world, people embark on travelling for several reasons that go beyond leisure. Tourism cuts across various aspects of human endeavor ranging from sport, leisure, religion or pilgrim pursuits, environmental, business,

trade and commerce amongst others. In view of the asserted facts, it is widely acknowledged that there are several reasons why people may decide to travel for either pleasure or one of the above stated factors. It has also been pointed out that for some tourist typologies "travelling" offers escapism from mundane daily routine, it can serve as a means of relaxation and an opportunity to experience a new cultural environment entirely. However, in medical tourism, "tourist" primarily seeks medical treatment.

Travelling is no longer an exclusive preserve of the rich and elite. Travel and tourism is Malaysia's seventh largest industry and is expected to grow further after attracting a 42% (forty two) percent increase in allocation to RM 358 (three hundred and fifty eight) million under the budget 2013. On top of that, tax breaks and sustained promotional campaigns are set to push the Malaysian tourism industry further into the International limelight. According to the Prime Minister Datuk Seri Najib Tun Razak, tourism is one of the key contributors to economic growth ,providing almost 12 (twelve) percent of Gross Domestic Product (GDP) and revenue generated from the sector this year is expected to increase by RM 62(sixty two) billion from RM 585 (five hundred and eighty five) billion last year.

Currently Malaysia is ranked Ninth country in tourism industry in the world. Medical tourism yields many benefits for the economies of countries that

choose to partake in the tourism industry. Apart from being good for the country's image, expenditures by in bound medical tourists contribute to national reserves of foreign currency thus increasing the host countries national income which ideally is re-invested into economy through the provision of public services. " the rewards to the tourist industry, and especially the hotel sector, are considerable" because of the often necessary stay required of the patient for recuperative purposes(Connell 2006) as a niche market within tourism market description reveals while there are plenty of economic gains there are also many social issues surrounding medical tourism.

In the recent years, the culture of traveling abroad for cosmetic surgery has become common practices amongst the youth and even adults, typically with marketing and promotion in media forms that are health related to or of a "wellbeing" nature. Evidence is given by the extensive available research on the pursuit of well-being within the tourism industry which has been identified as Malaysia's key economic area with the potential to generate high revenue for the country by 2020, the industry is expected to attract 36 (Thirty Six) million tourists and record one hundred and sixty eight Billion (MYR 168) as revenue.

For the past few years, the number of patients who had sought medical attention in Malaysia had been on the increase; however, there is still a lot to be done to make this industry more flourishing as it is presently in India,

Singapore and some other ASEAN countries. Presently, the patronage being witnessed in the industry is greatly decreasing. As a result, this is capable of having some adverse effects on the nation's economy.

Firstly, it will greatly reduce the revenue generated from the health industry. Secondly, there will be fewer tourists who will be visiting Malaysia and thus there will be a decrease in the profit being generated by the tourism industry and lastly, it will surely minimize the number of jobs available in Malaysia and lead to unemployment.

1.2 Background of the problem

The importance of tourism to nation's economy cannot be overemphasized. It is a sector that has attracted huge revenue in recent years and has greatly contributed to nation's GDP. Medical tourism was brought and became popular at the aftermath of the Asian financial crisis that led private hospitals to seek alternative revenue sources. Malaysia started active participation in medical tourism since 1998 with the setting up of the National committee for the promotion of medical and health tourism. In Malaysia, the medical solutions range from traditional medicine to telemedicine.

Under Malaysia's health tourism promotion drive, there are 35 (Thirty Five) licensed private hospitals in Malaysia which have been chosen to promote Malaysia as a health tourist destination. Malaysia achieved some successes as a regional hub for good healthcare and its ability in providing state-of-the-art medical facilities and services for medical tourists. Malaysia became a center of medical excellence based on its high quality of medical facilities and highly trained and qualified medical personnel.

In today's world, medical tourism has grown tremendously in many countries such as Thailand, India and Singapore among others. In the 1990s, many Asian countries were adversely affected as an aftermath of the Asian economic crisis. Thus, they needed to find economic diversifications and solution to settle the crisis. As a result, these countries began to concentrate in medical tourism as an alternative means of generating revenue.

As a result, Malaysia needs to create an enabling environment to its teeming customers who will be visiting the country from time to time to seek medical attention. There are certain legal and ethical issues which need to be addressed. These issues will include medical negligence, tortuous liabilities and a range of other medico-legal and ethical issues. Without ensuring a sound legal framework, patients and investors may be discouraged to patronize the industry.

The total number of foreign tourists in a particular country will have a direct impact on foreign earnings and revenue increase in that country. According to data provided by Keckly & Underwood (2008) they remarked, that Malaysia has experienced smaller scale of medical tourist compared to neighboring countries. As a result, Malaysia is getting a lower foreign earnings and revenue from the medical tourism industry as a result of an improper utilization of the opportunities offered by the sector. Apart from this, Chan K.E. (2009) said due to the economic downturn, some medical tourist may postpone their treatments which are not serious such as cosmetics surgery and knee surgeries in Malaysia and this even makes the problem worse. This delay would have an adverse effect on those hospitals that offer these services, thereby reducing the revenue accruable to the sector.

1.3 Research Objectives

The main objectives of this research are to examine the effective factors that can help Malaysia to attract international patients into the country. It is important to mention that the laws and policies for creating an investment friendly environment for medical tourism in Malaysia are not sufficient enough. This research will therefore identify the means of creating a competitive advantage in Malaysia's medical tourism industry through the factors and

contributions of medical tourism which are currently practiced by corresponding organizations and institutions. These objectives are as follows;

1. To examine the effectiveness of the medical tourism industry in Malaysia.
2. To identify and examine the medico-legal problems that may arise in attracting international patients to Malaysia.
3. To examine the prospects and challenges facing Medical Tourism in Malaysia.
4. To determine the primary factors that motivate foreign patients to travel abroad for medical services.
5. To define the role that stakeholders play for developing medical tourism sector.
6. To develop an implementable framework for establishing a sustainable medical facility.
7. To recommend effective solutions to the problems facing the industry in Malaysia.

RESEARCH QUESTIONS

The researcher raises some questions which the study seeks to address. These are:

- Whether the present legal framework for Medical Tourism in Malaysia is adequate?
- What are the legal and ethical issues of concern facing the industry in Malaysia?
- Whether the existing legal framework for Medical Tourism in Malaysia guarantees legal certainty and policy stability? and;
- What are the prospects and challenges facing the medical tourism industry in Malaysia?

1.4 MEDICAL TOURISM: MARKET DESCRIPTION

There are limitations on this study in terms of the amount of non-academic and academic articles related to the subject area of medical tourism. Although the term medical tourism and “wellness tourism” were equally interchangeable in Europe during the 1960’s and 1970’s, using the chosen definition of medical tourism in this study, it is a market that has been established and is experiencing significant growth over the last couple of years. Many of the sources used in this research do not only provide their definitions of medical tourism but also show the variety and range of businesses that are involved in this type of tourism. Thus the market description is based on an analysis made of the medical tourism reality, what services operators offer how

countries market their destinations and packages them with medical treatments, the social issues that have arisen and the effects of the absence of a legal framework to keep up with the development of the medical tourism niche market. The analysis also explains how infrastructure in medical tourism destinations are changing in order to host tourists that are also patients by giving special attention to the safety and technological requirements, among other things, in an effort to compete against medical institutions in various regions for the medical tourist's disposable income.

1.5 Significance of the study

Medical tourism is a new niche in the market, although many countries of the world such as India, Thailand, and Singapore at one time or the other are renowned in the area of medical tourism partly because of the low and inexpensive medical services which they provide. The total amount of revenue generated by these countries in medical tourism was unprecedented. This is the reason why the researcher has decided to conduct this research in order that Malaysia can be a leading medical tourism destination in the world which will help it in boosting its economic activities, (VMY) 2014 promotional campaign carnival which consisted of various exhibitions, activities, and bazaar, that enabled visitors to learn about Malaysian tourism industry.

During the carnival, held from January 18 to 20 2013 at the Bukit Jalil National Stadium, Kuala Lumpur, the VMY 2014 promotional campaign was launched by Prime Minister Datuk Seri Najib Tun Razak in a grand opening. In his speech, Najib said every Malaysian needs to ensure the success of the campaign project, and also ensure tourists to feel that they are accepted with polite and friendly treatments. The Prime Minister noted that despite the promotional work being done by the government ministries and agencies, the best advertisement for the country is the experience of tourists. Sharing of their memorable experience with family and friends will encourage and attracts other visitors to Malaysia. He further requested that Malaysians must be prepared to give them experience that will leave a lasting impression in their minds. The above assertion is one of the reasons why tourism is interesting and this is the reason why the researcher has decided to research into it. The research also identifies the factors and competitive advantages that are being adopted by other popular medical tourism destinations such as Thailand and Singapore, so that it could be adopted by Malaysia medical tourism. The way and manner they provide the health services and the strategy they adopt may be useful for adoption and emulation here in Malaysia. Understanding and adopting these contributions, competitive advantages and factors are necessary to enhance the effectiveness of medical tourism in Malaysia. With

this, government will be able to understand the factors that can attract more foreign patients to Malaysia.

These factors can be fully or partly utilized by Malaysia medical tourism. This will invariably assist the Malaysian government in promoting its medical tourism industry to a world class standard. If the outcome of this research is fully implemented, the tourism industry will gain more foreign investment inflow by attracting more medical tourists and gain more foreign earning as the medical tourists will also spend time and travel to some popular destinations in Malaysia such as Genting highland, Cameron highland, Jajerk resort at Penang to mention but a few. However, other than private hospitals and health care providers, many related industries might get benefit from these tourists as well and in order to compete with the neighboring countries and gain more earnings from medical tourism. This will no doubt assist the Malaysian government in promoting its medical tourism to global standard. The tourism industry can gain more foreign inflow, by attracting more medical tourists, the tourism industry can gain more foreign earnings as the medical tourists will also spend time and travel to some popular destinations in Malaysia. Other than private hospitals and health care providers, many related industries might get benefit from them, such as the hospitality industry.

These factors and competitive advantages will be able to improve the current status of medical tourism in Malaysia and attract more medical tourists to the country. Besides, it helps Malaysia to become a global medical hub. Therefore, by attracting more international patients, the revenue and profit will be increased and it will benefits many other related industries.

1.5.1 Significance to the researcher

This study is useful to provide a better understanding in tourism destination industry in Malaysia. The increasing number of tourist arrivals shows that Malaysia has a good image among foreign tourist countries. So from this study, it will help the researcher to identify the medical impact that affect tourism destination marketing industry, the factors that have a positive or negative effect may increase or reduce tourism activities in Malaysia. It will also help the researcher to explore concept used in medical tourism organization in Malaysia tourism development and promotion and formulate the medical plan best suited to tourism medical strategies in Malaysia. Aside this, it will help the researcher to investigate the relationship between the role of medical equipment and facilities used by medical tourism organization and the environmental factors that attract tourist arrivals. Hopefully, this study will

provide better understanding to medical tourism and the factors that affect or influence the tourist choice to gain medical attention in Malaysia.

1.5.2 Malaysian Government: Ministry of Tourism and Culture (MOTAC)

The increasing number of tourist arrival gives an important impact on foreign exchange earnings which is gross or net profit, employment generation, and attracting investor to invest in Malaysia. This study will benefit the Malaysian Government especially Ministry of Tourism and Culture (MOTAC) in preparing Malaysia as a world-class destination especially in the area of medical tourism. It will also help the ministry to strategize on how to maintain tourism sustainability by instituting strategic medical plans to encourage medical tourist arrivals. The plan objectives are to consequently fulfill the government objectives by 2020. In addition to this, Malaysian Government through the Ministry of Tourism and Culture (MOTAC) needs to upgrade the capacity in the provision of related tourism services to attract the medical tourist to visit or revisit Malaysia for post treatment. The results from this study will help Malaysia Government especially Ministry of Tourism and Culture (MOTAC) as a whole in promoting Malaysia by providing a variety of tourism programmes in attracting tourist to choose Malaysia as a tourism destination consequently increasing the number of tourists' arrivals.

1.5.2 Non Government Organization

The Non- Government organizations that are involved in tourism worked closely with Malaysian Government Ministry of Tourism and Culture (MOTAC) as well as Malaysia Tourism Promotion Board (MTPB) in promoting Malaysia. The organizations are Malaysia Association of Tour and Travel Agent (MATTA), Bumiputra Travel and Tour Agents Association of Malaysia (BUMITRA MALAYSIA), Malaysia Inbound Tourism Association (MITA), Malaysia Chinese Tourism Association (MCTA), Car Rental Association of Malaysia (CRAM) and Malaysia Indian Travel and Tours Association (MITTA). The result from this study will offer some valuable information to the associations which can create public awareness by promoting programmes of the tourism industry and enlighten the public on the rules and responsibilities of tours and travel agents. These organizations consequently should actively promote the interest of the tourist and travel trade and profession through convention, seminars, fairs, and workshops.

1.5.4 Tourism Companies

According to Ministry of Tourism and Culture Malaysia (MOTAC) Malaysia, up until May 2013, there are 3,397 tourism companies registered in Malaysia under the ministry. This study will benefit the tourism companies in

understanding the changing needs of tourism and to create and offer tourism packages to satisfy the tourist needs. It will also help the tourism companies to ensure their long term viability of their business, position themselves objectively within the market, and support local communities in promoting tourism. This study also help tourism companies to evaluate their medical concept and consequently upgrade the medical concept that constituted to their medical survival. In addition, the collaboration between tourism companies and non government organization like MATTA, MITA, BUMITRA and others, will give huge benefit to them in improving the tourism medical destination, and this study will create a valuable transformation to the medical tourism companies to enhance the Malaysian medical tourism development.

1.5.5 Future Researcher

This study focused on the medical tourism industry in Malaysia. It will be useful and beneficial to future researcher as a guideline to them in expending the research topic in an area not covered in the research.

1.6 Limitation\Scope of the study

The thesis focuses on the legal framework for medical tourism in Malaysia. The research work shall also extend its findings to the laws, regulations and policies applicable to the tourism industry generally and Medical Tourism in particular. It will also look at the international best practices for medical tourism with a view to adopting better policies and creating more enabling environment for the industry in Malaysia.

1.6.1 Subject, Respondent and Location

The coverage of this study is about medical tourism in Malaysia. Today, tourism is generally the fastest growing industry in the global economy. Thus, a successful tourism industry is related to the correct combination of tourism medical strategies, tools, and technology use. The respondent of the study are medical practitioners, the stakeholders and the patients. The medical practitioners include the medical doctors, the nurses, the pharmacists, the medical technologies, the physiotherapist and the cosmetologists. The national stakeholders consist of Travel Agents and Tour Operators, Hotel Managers, Tourism Attractions Manager, Employees of Tourism Associations and Local Publicity Employees. The patients include the international tourist from different countries who are visiting Malaysia for medical attention. The total respondent in this study will be 50 which consist of both female and male,

with different status, age, level of education, occupation and different a . The location of this study is at Kuala Lumpur, various hospitals will be involved such as Ampang General Hospital, Ampang Puteri, etc.

DELIMITATION

In this research there are some barriers that may restrain the researcher from collecting important data to complete the research. Amongst these are;-

Some medical tourists may be unwillingly to give full information about themselves and the hospital maybe unwilling to allow the patient to divulge information even though they are willing to, because the main concern of the hospitals is to enable the medical tourist to rest during and after the medical treatment.

The second barrier is that not all hospitals are free and are willing to spare time to grant interview. Some hospitals may also not be willing to reveal the profit made from medical tourist because such figure will be treated as private and confidential information. This may also be one of the major limitations as the profit will be regarded as a portion of the research topic

The third limitation or barrier is the issue is that where influential personalities seek medical treatment abroad, such information will not be divulged

especially if such person is highly placed or a public figure. It may therefore be difficult for the researcher to get any tangible information from such medical patient or hospital.

1.7 Research Methodology

The research method use in this thesis is basically mixed structure method by combining data sources, methods, investigators and theories which will give more interpretations for the views of medical tourism. Primary data is accumulated by the researcher, particularly to meet up the research objective of the subsisting project. While the usage of primary data is the trend of medical tourism in Malaysia. A set of questionnaires will be administered in order to get information from the hospitals and the patients.

Semi structured interview will also be conducted during the interviews with hospital administrators and key personnel in some private hospitals that are well known for the treatment of tourists. Some of these hospitals are Ampang Puteri specialist hospital in Kuala Lumpur, Tawakalitu hospital, Pantai medical centre and few others that are reputed for treating patients. Also, some of the patients will be interview and tape recording will be used which will be later transcribed by the researcher.

The tape recorded and notes taken will shed additional light on the textual contents and indicate specific question that did not directly appear in the interview transcripts. Questionnaire will also be sent by email to other well-known hospitals for medical tourist in Peninsular Malaysia.

Secondary data will also be collected and analyzed. This includes articles, brochures, journals and internet sources relating to medical tourism in Malaysia.

The stakeholders who agreed to participate in this study as interviewees and provide information regarding the medical tourism sector in Malaysia are as follows Ampang General Hospital, Ampang Puteri, Pantai Cheras, etc the excerpt of the interview is indicated on the appendix 2 of this thesis. The interviews were conducted in person face to face and audio recorded and handwritten, notes were taken throughout their duration. The order of the interview questions varies from one interview to the other, depending on the interviewee's background and expertise. In some cases, probe questions were asked by the researcher in order to identify a new idea that was introduced by the interviewee.

Emails as seen in Appendix C, thanking the participants and providing further contact details for the researcher was sent after the completion of each interview, just in case there is need for it. Contact information for the university

and the researcher's academic advisor were also provided throughout the documentation that was provided to the interviewee just in case they have or remember some other issues that are important and were not referred to during the interviews.

This research also adopts a case study methodology to examine a framework developed through the literature review to determine how it fits in reality. It also provides a starting point to define further the primary roles of the medical tourism network for developing the medical tourism sector.

1.7.1 Sampling Method

The target population is the private hospitals that provide medical services for foreign patients. There are thirty-five hospitals which provide this service in Malaysia. Random sampling will be used to select Fifteen out of Thirty Five private hospitals that foreign patients patronize. However, due to the large number of hospitals, judgmental sampling method will be chosen, focusing on the hospitals that patients used to patronize in seeking medical treatment .In addition, convenience sampling method has been chosen to obtain information. From this method, three private hospitals that are willing to help by giving feedback in doing this survey has been selected. The sampling method

employed is based on qualitative method as for the email quantitative method will be adopted by sending the questionnaire to the other balances of private hospitals

1.8 Literature Review

Medical tourism or medical travel is the act that patients travel to other countries obtaining medical, dental and surgery care. Medical tourism is a profitable industry and its flow could stimulate the country's economy. The domino effect of medical tourism would enhance growth in medical services, hospitality, tourism of Malaysia's scenic destinations and not forgetting shopping. The impact would be certainly long term profitability and growth in the industry. Almost two decades ago, Goodrich & Goodrich(1987) defined Health-care tourism as "the attempt on the part of a tourist facility (for example a hotel) or destination to attract tourists by deliberately promoting its health care services and facilities; in addition to its regular tourist amenities" it is a new niche industry that combines leisure and health care. In Europe the definition of medical tourism and wellness tourism were equally interchangeable during the 1960's and 1970's, it refer to a combination of leisure and health-care which includes spas, resorts, hot springs.

Connell (2005) defined medical tourism as a niche industry " where people often travel long distance to overseas countries to obtain medical, dental and

surgical care while simultaneously being holiday-makers, in a more conventional-sense"

The emergence of medical tourism satisfies the needs for the growing number of foreign patients, mainly in developed countries. This not only benefits foreign patients but also those medical tourism destinations, principally in the developing countries.

Monica (2007) says medical tourism occurs when international patients travel across boundaries for their health-care and medical needs and simultaneously engage in more conventional forms of tourism.

India is one of the countries that have deliberately set out to be a dominant medical tourism destination. Cornell stated (2006), "India is capitalizing on its low costs and highly doctors to appeal to these medical tourists" the outcome of this deliberate policy show that in 2004 India had 1.8 million inbound medical tourist, making the industry's contribution to the economy an estimated USD333 million. The growth of medical tourism is a growing phenomenon on other Asian countries such as Singapore and Thailand where medical tourism is used to boost the arrivals to their beach resorts.

According to India's medical tourism reports business operations are growing at 30 percent per year with projected revenues of at least USD2.2 billion by

2012. Other notable medical tourism destinations include Singapore, Malaysia, and Thailand. Singapore's medical tourism market campaign is targeted to attract one million foreign patients annually thus increasing the GDP contribution of this sector above USD1.6 billion, and Malaysia expects medical tourism receipts to be approximately USD590 million in five years' time. Most of the dominant medical tourism destinations in terms of global revenues reside in the Asian region. Thailand and South Korea are also well established in medical tourism expert contributing to regional Asian, whose contributions are predicated to set the medical tourism industry past the USD4 billion mark by 2012 (Asia's Growth Industry, 2006)

During the study of this research it is established that some countries like Bolivia, Brazil, Cuba, Costa Rica, Hungary, India, Israel, Jordan, Lithuania, Malaysia, Thailand, Belgium, Poland, Singapore, and South Korea are currently promoting medical tourism and the continual development of medical tourism as a niche market within the tourism industry has led to the emergence and expansion of niche markets within the medical tourism as different destinations have become specialized, with some offering dentistry, heart surgery, hernias, or other medical treatments. This is the case in Eastern European countries such as Poland and Hungary where their specialization is dental care or South Africa with specialization in plastic surgery. In the Caribbean and South America this

type of tourism is gaining popularity (Connell, 2006). We proposed to develop a framework to better understand the observations collected from medical tourism as a niche market. A conceptual framework collected from logical developed, described and elaborated network of associations among concepts that have been identified through theoretical and empirical research.

1.9 Conclusion

The medical tourism is going through exciting phase where alongside of international activities, more intra-regional travels are taking places in this sector of the healthcare market. The research results clearly revealed that there is an overwhelming perception about the industry and there is so much more that can be achieved within this sector. However, there are challenges, which require immediate attention of the medical tourism industry stakeholders.

The perceptions from the medical tourists were that they do actively engage in medical tourism primarily because of an economic standpoint, with additional important factors being that they can access a treatment that may not be

available in their home countries, or if available, there is an unacceptable delay involved before being able to receive it.

The absence of a statistical framework makes it difficult to get the actual size of the market. Studies conducted on the growth of the industry must rely on forecasted income claims by medical tourism destinations. Thus there is the opportunity for studies on the development of such a framework.

Although the challenges of branding campaigns is not the focus of this study, given the frequency of some challenges encountered during our research, the success of these branding strategies may be an appropriate research question for follow-up papers to add to the knowledge base about this niche market.

CHAPTER 2

2.0 INTRODUCTION: A review of relevant literature exposes a framework that presents several medical tourism factors, the consideration of which can affect a patient's decision when choosing a medical destination and facility. This thesis compares the factors that were determined by interviewees in choosing their destination and what attract them to select the country of their choice.

The combinations of characteristics that attract medical tourists include the following: accreditation of the selected hospitals, hotel themes, affiliation with external organizations, foreign patient affairs, collaboration with tourism stakeholders and environmental responsibility.

However, Dunn(2007) highlights the essential elements that create a medical tourism destination that remains a competitive in the global market, these elements are defined by the "PEST" Analysis or test as political strength and stability, economic strength and stability, social behavior, and Technological infrastructure and capability. However, implementing these foundations soundly and excellently is very vital to a country's ability to establish a sustainable legal framework in any economy. However, determining these factors will help to lay the foundations for the establishment of a medical tourism network that will play a crucial role in fostering the gradual growth of the medical tourism sector which will, meanwhile, respect the three interconnecting circles of sustainable development such as social environmental and economic factors.

This research is very important in order to have a further understanding of the development of medical tourism from various perspectives, which are the divers that force patients to look at medical tourism as a solution to resolve

their financial status, health condition, or a medical vacation for visiting relatives and also consider it to be a tourist attractions.

Medical tourism network has actually plays a primary role for improving the medical tourism sector according to the above drivers. Establishing a medical tourism network will therefore provide medical facilities with tools, consultations and resources to improve the medical services and technology for attracting patients from foreign markets. Determining the roles of stakeholders within the medical tourism network will also help researchers utilize various methods to overcome certain challenges facing the development of the medical tourism sector, such as, malpractice, quality of the healthcare, post- operative services, and competitiveness. On the other hand, medical facilities should develop a framework that provides social and environmental benefits while attempting to achieve profitable goals. Therefore, this study is vital for determining the primary drivers that motivate a medical facility to adopt a framework for integrating the company's strategy with an excellent value.

This thesis has adopted many cases in the field of medical tourism; this will be presented in chapter three of this thesis. Some of these cases provide useful hint and information on the case study that allows the researcher to answer various questions and objectives which has been reported in this chapter one of this thesis.

2. 1 Various Definition of Medical Tourism

The medical tourism has been defined by many people. According to Lee and Spisto (2007) medical tourism is defined in a very simple context to mean "travel activity that involves a medical procedure or activities that promote the well being of the tourist" the medical industry practitioners also defined tourism as the act of travelling beyond home country to receive a healthcare treatment that is either less expensive or more accessible this is according to (Kim, Leong, Heob, Anderson and Gaitz,2009). However another definition is given by Bookman and Bookman's (2007) as "an economic activity that entails trade in services and represents the splicing of at least two sectors: medicine and tourism. Jagyasi (2008) also defined the two terms "tourism" and "medical" individually in order to establish and bring out a suitable definition that will encompass a full definition of medical tourism. In his review on the two terms, that is tourism and medical treatments he went further to conclude that combining the two definitions to understand the attributes of medical tourism is not enough because medical tourism industry is large and it includes various activities and procedures that play a primary role in creating a medical services for international patients. In this regards, medical tourism can be defined as a "set of activities in which a person travels long distances or across

the border, to avail medical services with direct or indirect engagement in leisure, business or other purposes.

2.1 The Characteristic of Medical and Health Treatments

As earlier discussed in this thesis, the word medical and health tourism has been used interchangeably by various authors. According to (Lee and Spisto, 2007) following the report released in 2006 by Tourism Research and Marketing (TRAM), suggesting that combining the two terms “medical treatments” and “healthcare treatments” would create a new sector of medical healthcare sector which can be entitled as “ medical and healthcare tourism suggested by Lee. The TRAM reports explains and places the components of medical and healthcare treatments into four categories. These are categorize as : Treatment of illness, enhancements, wellness, and reproduction. According to (Lee &Spito,2007) in their study it was reported that the treatment of illness represents a wide range of services that vary from a simple healthcare service that can be provided by local health professionals, such as vaccines, therapy treatments, and nutrition to a complex surgical procedure such as heart transplant. Enhancement procedures on its own represent procedures that are non-disease related. Although these kinds of procedures require the work ability of a skilled and qualified physician who will, for instance conduct

cosmetic procedure such as, breast surgery, facelift, liposuction and cosmetic dental work.(Lee&Spisto, 2007).

Wellness on its own falls under the heading “alternative healthcare services”, this include Spas, acupuncture, aromatherapy, beauty care, facials, exercise, herbal healing, homeopathy, massage, yoga and diet. In most cases these healthcare products are usually operated by professionals who are accredited by local or international organizations and health associations. Although it is further argued by Lee&Spisto,2007 that most of these healthcare activities will not be regarded and cannot be determined as medical tourism activities because most of wellness procedures do not require skilled medical practitioners. This is very common in various countries.

The last but not the list mentioned is the “Reproduction” this is in fact the new area in medical tourism. Some patients do travel offshore in search of fertilization procedures. According to Lee and Spisto (2007) in their study, fertility procedures are regarded as illegal in some countries, prompting other countries, like Israel, to provide these surgeries for international patients at attractive costs. (Steinner, 2009) In this regards birth tourism has been utilized under the category of reproduction tourism, which means that some mothers travel abroad to a foreign country for the purpose of achieving citizenship for their children. Thus as a result of this any medical treatments that require the

services of trained and qualified practitioners or physicians , licensed facilities, transportation, cultural interaction, and accommodation should be classified and underlined as a form of medical tourism.

2.1.2 The Medical Tourism Market and the Globalization of Medical Tourism

There is a wide expansion of the global market which enables international organizations to be established in order to prevent malpractice and raise awareness of the best business practices to sustain incentive growth and respond directly to future demands on the issue of medical tourism. There are lot of organizations such as World Trade Organization and the council for Trade in Services, the General Agreement on Trade in Services which was established in 1995 under the auspice of WTO. The aim of this agreement is to create policies, standards, and regulations that encourage the development of international trade in services between countries. These foundations create a safe environment for global trade in services, allowing developing countries to benefit from their developed counterparts through the exchange of information, ideas and technology. However ,some developing countries such as Singapore, Malaysia, Thailand and India have recruited skilled physicians who have obtained their degrees in western world and returned to their home counties to practice their profession.(Lambier,2009).

Gaining the international market for medical tourism, one needs to expatiate further on the medical tourism market. Cateora and Graham (2005) make a distinction between local and international markets, they both argued that the international market can be viewed as "business activities designed to plan, price, and direct the flow of an organization's goods and services to consumers in more than one country for profit". In this sense, it can be rightly deduced that operating under the medical tourism model, and offering services to patients who are from other countries, can contribute greatly and enormously to the benefit of other industries, including those of tourism and travel. The globalization of medical tourism can therefore be explained as indicated in the Bookman and Bookman's study (2007). In reality and in actual fact this involves evolving gradually thanks to the growth of international trading and services such as tourism products, flight tickets, law consultants.etc.

According to Hudson (2009) in reviewing the two major concepts of marketing and international marketing to determine the major factors that drive the globalization of tourism products. Marketing can therefore be described as "the process of planning and executing the conception, pricing, promotion, and distribution of ideas, goods, and services to create exchange that satisfy individual and organizational objectives. According to the idealistic description

of the concept of marketing, medical products such as medical tourism packages, medical equipments and medical services can be promoted, transferred and distributed by certain bodies for a particular location with the express purpose of benefiting practioners, facilitators, medical institutions and patients.

2.5 The tourist environment consist of inbound and outbound. The inbound tour is actually tour that operates within the country. While the outbound is that which operates from and out of the country, such as medical tourism. It is remarkable to note that the Malaysian government realizes to be strong in the economic and developed country they need a lot of income from foreign currency.

There are other associations that relate to tourism industry in Malaysia and mostly their objectives are to protect their interest and tourism industry. Their existence is important to make sure the tourism industry keep on growing and maintain a certain standard quality. These organizations are Malaysian Tourism Centre(MTC), Malaysian Association of Tour and Travel Agents(MATTA),etc. All are under the Ministry of Tourism (MOT)

MINISTRY OF TOURISM (MOT)

Ministry of Tourism was officially established on 27 March 2004 following the formation of the new Cabinet in 2004. The ministry of culture, Arts and Tourism was restructured into the Ministry of Tourism and the Ministry of Culture, Arts and Heritage.

Vision

- To develop Malaysia into a leading tourism nation.

Mission

- To implement the National Tourism Policy towards making the tourism industry the nation's main source of income for the socio-economic development of the country.

National Tourism Policy

- To turn the tourism industry into a major, sustainable, viable and quality sector which contributes to the socio-economic development of the country.

Objectives

- To develop a sustainable tourism industry in order to generate a major source of income for the country.

- To promote the tourism sector professionally, efficiently and continuously to meet the needs and preferences of foreign and local tourists.
- To strengthen and upgrade a quality service delivery system in order to ensure tourist satisfaction

Function

- To formulate the national tourism policy to achieve the Ministry's vision, mission and objectives.
- To implement policies pertaining to the progress and development of the tourism industry.
- To co-ordinate, monitor and evaluate the effectiveness of tourism programmes and projects.

Division and Unit

- Division : Policy, Planning and International Affairs, Licensing, Administration and Finance, Human Resources, Information management, Tourism Services and Development
- Units: Public Relation and Customer Services, Internal Audit and Legal

MALAYSIA TOURISM CENTRE (MTC)

The Malaysia Tourism centre (MTC) is located within a building in Kuala Lumpur, which is both an architectural and historical landmark. Built in 1935, the main building served as the residence of a wealthy mining and rubber estate tycoon, Eu Tong Seng. Its architecture is typically colonial reflecting the era during which it was built.

In 1941, it briefly housed the war office of the British Army. However, when the Japanese invaded Malaya during the Second World War, it became the headquarters for the Japanese Imperial Army until the end of the war in 1945. Soon after, the new government of the federation of Malaya (as Malaysia was then termed) claimed ownership of the building. A conference hall was added and named Tunku Abdulrahman Hall, in Honour of YTM Tunku Abdul Rahman Putra Al Haj, the country's first prime Minister.

Since then, the Hall has become the venue for numerous historical events including the Malayan Parliament in 1959 and the Installation Ceremonies for several of Yang Dipertuan Agong (Malaysian Kings).

In 1988, the then Ministry of Culture, Arts and Tourism refurbished the main building, added two wings to the existing building and renamed it the Malaysia Tourist Information Complex (MATIC). Opened to the public since mid-August 1989, MATIC offered a wide range of facilities and services to assist tourists in

planning unforgettable holidays in Malaysia. It also enabled them to experience the essence of Malaysia within the environments.

IJSER

CHAPTER THREE: MEDICAL LEGAL PROBLEM ASSOCIATED IN THE CAUSE OF UNDERGOING MEDICAL TREATMENT ABROAD.

3.1 Causes of Mishap: There have been many cases where doctors have unwittingly fallen foul of the law. This is because they are unaware of the relevant statutes regulating their area of practice or because they have not fully understood the principles underlying considerations such as consent or confidentiality.

The best way to avoid running into similar problems is to develop a good working knowledge of (and comply with) the legal framework that governs the practice of medicine.

Three main sources of medical laws are:

- (1) Statutes: These are Acts of parliament and statutory instruments laying down clear requirements that must be adhered to. Most cover aspects of practice but some such as the data protection Act are not specific to medicine, but have a considerable impact on medical practice. In actual fact, a statute is an act of legislation that declares, „proscribes, or command; a specific law, expressed in writing. In Malaysia, courts tend to follow a few general rules in determining or scope of a statute. They are not static and irreversible. A statute may be changed or repealed by the lawmaking body that enacted it, or it may be overturned by a court depending on the circumstances of the matter. A statute may also lapse,

or be terminated, either under the terms of the statutes itself or under legislative rules that automatically terminate statutes unless they are reapproved before certain amount of time has passed. Most legal disputes are covered at least by statutes, though contract and tort disputes are exceptions because they are largely governed by case law as we shall see later in the thesis.

- (2) Case law: These are principles derived from the interpretation of individual court cases on relevant areas such as consent, confidentiality and clinical negligence. These principles apply to all areas of clinical practice and represent a constantly evolving area of law.
- (3) Codes of Conduct and statements of professional responsibility issued by General Medical Council. In this all medical practioners should be conversant with standards of practice and responsibilities that are a condition of their continued registration. Examples of important statutes affecting medical practice in Malaysia will be discussed later in this thesis.

3.2 MEDICAL NEGLIGENCE

There are many instances where a patient can sue their doctor for medical or professional negligence after a mistake has caused them a loss. In this regards this thesis will examine when the medical professional owes a patient a duty of care, when the duty of care is breached and

how the court determines whether that duty of care has actually been breached, and the rules on when the breach will be found to cause the loss.

Although ,unfortunately, sometimes when you go to doctor things do go wrong. Sometimes they go terribly wrong. Sometimes wrong pills were administered, there is a misdiagnosis error made, which may be spotted at the next appointment. And many more as we shall discuss further. Although, when a lasting injury is caused, it is not surprising that patients normally turn to the law to seek redress for the loss. Thus, such redress can hinder medical tourism if care is not taking and if it is so enormous the government can loose greatly. The enormous economic impact can be so devastating that it can destroy the whole essence of medical tourism environment.

3.2.2 The Law of the Tort of Negligence

The law of the tort of negligence is based on the general principle of "Love thy Neighbor" The neighborhood principle. For instance if Mr A wishes to sue Dr. B (a medical professional) in the tort of negligence he must be able to prove the following:

(1)B owed A duty of care:

(2) B breached the duty of care; and

(3) B's breach of duty caused A a loss

Each of the above factors will be considered in the light of medical negligence and thus relate it to medical tourism. How it will affect the individual, the doctor concerned, the hospital and the government at large.

3.2.2.1 The duty of care: The law on a duty of care in cases of clinical negligence is based on the general principle of the law of tort. Negligence is the most important area of tort law. A tort is a civil wrong other than a claim for breach of contract; and for which a right of civil action for damages may arise. It can be said to be an act of omission of the defendant that creates an infringement of an interest of the plaintiff that the law will recognize, and which involves the plaintiff proving the balance of probabilities that their version of the facts is the more believable. However, there is no one single definition of the word 'tort' or 'tortious liability'. Tortious liability arises from the breach of a duty primarily fixed by the law; this duty is towards person generally and its breach is redressible by an action for unliquidated damages. The law of tort in Malaysia is largely derived from the common law of England. Thus tort covers subjects such as trespass to the person, for instance, assault and battery and false imprisonment, negligence, defamation, trespass to land, nuisance and

trespass to goods such as conversion and detinue. But the most important to medical law is negligence.

Negligence is actually the most important area of tort law which includes the duty to take care. Although it is not every careless act done by a person that results in his being held responsible in law. He will only be liable in negligence if he is under legal duty to take care. There can be no legal liability for professional negligence unless there has been a breach of duty of care owed to some persons.

The legal liability for professional negligence can only be incurred when there has been a breach of duty of care owed to some persons, the duty of care may arise in contract, tort, or by reason of a statute and may be owed by the professional to a client or to a third party. However, the duty of a professional depends very much on what the professional is employed to do. The law imposes an implied duty of care on professionals because the public profession of a special skill is a representation or undertaking to everyone that any person in that profession possesses the requisite ability and skill. Thus a professional must use reasonable care and skill. However, a professional must not be negligent in their duty. Negligence is actually a failure to do some act which a reasonable man in the circumstances would not do.

Thus, in professional, negligence is judged by the test of the ordinary skilled man exercising and professing to have that special skill. Although he needs not possess the highest expert skill in carrying out the duty. Thus the duty of care on the part of professionals is sometimes not only owed to clients who engaged them but also to the third party. Therefore, when giving skilled advice knowing that it will be passed on to a third party who will rely upon it, the professional owes the duty of care to both the client and the third party. And where that third party suffers financial loss due to the professional's negligence, he may claim for damages. For instance in the case of *Hedley*, you owe a duty of care to anyone you may foreseeably injure. In other areas of the law the issue becomes complex, but for medical lawyers it is rarely an issue. A medical professional will obviously owe a duty of care to a patient they are looking after. See also the case of *Goodwill v. BPAS* (1996) 2 All ER 161, it was held that a doctor giving contraceptive advice to a patient owed her a duty of care, but did not owe a duty of care to anyone the patient then had sex with.

3.2.2.2 Breach of Duty: The breach of the duty is very much controversial in the law of tort. Normally in the law of negligence, a breach of duty arises if the defendant falls below the standards expected of a reasonable person. However, it is more complex than in medical cases. For instance in the case of

Bolam v. Friern HMC (1957) 2 ALL ER 267, In this case it was held by Mc Nair J: that:

" A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art."

Though Bolam was itself a first instance case, but it has been approved on several occasions by the House of Lords. Thus the significant of the Bolam test is that a doctor will have a defense to a clinical negligence claim if he or she can show that there is a responsible body of medical opinion which would have found the way the doctor acted acceptable. Therefore, even though other doctors, perhaps even most doctors, would not approve of the way the doctors acted, he will not be negligent if he can find a responsible body of medical opinion. This can make it very difficult for the claimant. This will not be enough to produce a few expert witnesses who are critical of what the doctor did. The claimant must be confident that the defendant will not be able to find expert who represents a body of opinion which would find what the doctor did as acceptable. See also the case of Bolitho v. Hackney (1997) 4 All ER 771. In this case:

" A child was admitted to hospital suffering from respiratory difficulties. A nurse summoned the doctor in charge of the case. The doctor did not attend. Later, the child collapsed and suffered cardiac arrest. He suffered severe brain damage. Expert evidence suggested that had a doctor attended he would have arranged for intubation to ensure an airway. This would have avoided cardiac arrest. The judge, rejecting the claim, found that the doctor had breached the duty in failing to attend, but that had she would not have arranged for the intubation."

In the above case, the House of Lords held that where the claim led to an omission, the court had to determine whether the failure to attend was negligent and that also if the doctor had attended it would have been negligent to arrange the procedures which would have avoided the harm. In this case, the judge had found that the failure to attend was negligent but the doctor would not have intubated. The big question was, therefore, whether it would have been negligent not to incubate. Expert evidence had suggested that a responsible body of opinion would not have intubated. Therefore, the claim had failed because the Bolam test was not satisfied. Although there are some people who believed in the Bolam's test and there are those who oppose the Bolam's test. However, there is no point presenting the two argument here, what is most important is to examine how a professional

breach the duty of care. Once the duty of care is breached the claimant must be able to demonstrate that on the balance of probabilities that negligence caused the injury. That is referred to as the burden of proof. See the case of *Wilser v. Essex AHA* (1988) 1 All ER 871, in this case:

"A baby suffered blindness; it was unclear whether it was caused by premature birth or by the negligent care given by the medical team. The claimant failed because he could not show on the balance of probabilities that the harm was caused by the negligence"

3.2.2.3 Damages: Damages

Section 74 of the contract Act 1950, in Malaysia provides damages to be granted to a party as compensation for the damage, loss or injury he has suffered through a breach of contract. This section clearly indicate that the party may recover damages for, other expenses incurred as a result of the breach; the loss of profits arising as a result of the breach.

Thus under medical negligence once it is found that the defendants's negligence caused a defendant a loss, the court will assess the level of damages that are payable. There is a substantial body of law on calculating damages in negligence cases. Therefore, the key elements of an award of damages in a clinical negligence claim are as follows:

- (1) A figure for the loss of the body part or body function: the cases have developed standard sums for certain injuries.
- (2) Damages for the pain and suffering caused by the negligence
- (3) Loss of earnings as a result of the injury; in the case of high earners, this is the largest head of damages
- (4) Loss of amenity; damages for the loss of being able to engage in activities which the claimant previously enjoyed doing.
- (5) Expenses suffered as a result of the injuries; normally, a patient will receive any medical treatment they need to rectify this free.

In the above instance, finding the correct level of damages is highly problematic in law. Although there are some injuries that it is hard to put a sum of money on. For instance, what figure will represent the loss of an eye? Thus, this is evident that there are things that cannot be measured in monetary terms. For some other things, the court often has to calculate the losses into the future. This will actually need to involve guesswork.

There are cases where damages have been awarded based on the fact that the patient will need many years of care, but they have unexpectedly shortly afterwards. However, the only solution to the uncertainties of the future is to award structured settlements where future costs are paid in annual installments, and can be varied if claimant's condition worsens or improves.

In this regards we shall examine various Medical Mishaps that can jeopardize the viability of good medical tourism in Malaysia. The difficulty is that this means that for both parties the dispute will linger on for some time. But the one way of restricting damages is to claim that they are too remote.

3.3 MEDICAL MISHAPS.

Most incidents leading to medical legal problems fall into one of the following categories:

- (1) Failure to appreciate Legal and Professional Responsibilities.
- (2) Problems in Clinical Management
- (3) Medical Errors
- (4) Administrative Errors
- (5) Failure of communication, including inadequate medical records.

All the above medical mishap will be discussed one after the other.

3.3.1 CAUSES OF MEDICATION ERRORS

There are various causes of medication errors ranging from the following:

- (1) Badly transcribed instructions
- (2) Illegible prescriptions

- (3) Miscalculation of dosage
- (4) Confusion between similar Sounding drugs names or Similar looking packages
- (5) Clicking on the wrong drug in a drop down menu
- (6) Prescribing Contraindicated drugs
- (7) Not checking for Potential drug interactions
- (8) Not reviewing repeat prescriptions
- (9) Failure to follow up or monitor
- (10) Failure to act on laboratory results

The medication errors come under the heading of clinical management, they account for such a high level of complaints, claims and patient safety incidents that they deserve separate mention and it will be treated separately and extensively. The four most common errors associated with that are as follows:

- (1) Wrong Dosage
- (2) Inappropriate Medication
- (3) Failure to monitor treatment for side effects and toxicity
- (4) Communication failure between the doctor and patient

All the above elements will be discussed separately before dwelling into the medical cases that has been read and gone through .Such as a tear during delivery, A brain- damaged baby, a retained swab.

Some Medical Law cases that we shall examine include the case of Bolam V Friern Hospital Management Committee (1957) WLR 582. This is a typical example of a medical Negligence Case. In this case, Bolam, a mental health patient, was advised to undergo electro convulsive therapy (ECT). Though there is varied opinion as to desirability to warn client of risk involved in the process at that time, he was not warned of the risk of fracture, the use of relevant drugs and physical restraint necessary. As a result, Bolam sustained fractured hip during this treatment and claimed negligence.

However, in a claim for negligence, the court held that it is sufficient if the skill exercised is in accordance with accepted practice by responsible body of medical men skilled in that particular art. This means that when the defendant is a doctor, to determine his or her liability for medical negligence, the test of a reasonable man is substituted for that of another doctor conducting the same practice. This case has actually become popular because it established a separate standard of test for medical negligence from that of a reasonable man test in other tort cases.

Another case is that of *Janaway V. Salford Health Authority* (1989) AC 537. This case is that of conscientious objection. In this case, a secretary was requested to type a letter which referred a patient to a consultant in regards termination of the client's pregnancy. She refused to carry out the doctor's instruction claiming conscientious objection under section 4 (1) Abortion Act 1961. This section provided that "no person shall be under any duty, whether by contract or by statutory or other legal requirement, to participate in any treatment authorized by this Act to which he has a conscientious objection."

In this case the court held that natural meaning of "participate in" should be given to it. It means taking part in treatment for the purpose of termination the abortion.

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