

LEGAL MEASURES ON CONTROLLING MEDICAL TOURISM FACILITATOR*

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ABSTRACT

According to the escalation of health care movement resulted from unsatisfied medical care within the national level, the dramatically increase of patients has been found in the competitive medical tourism market, especially in Thailand. As mentioned reason, medical tourism facilitator, health care middleman, tries to establish a supply of medical services to the patients that leads to ‘sale of medical treatment’ phenomenon. Since medical tourism contracts are referred to modern contracts relating to medical and insurance issues, it is exploring that Thai laws and regulations are challenged because of legal loophole. Hence, in order to understand and realize how Thai laws should be amended, it is necessary to study foreign laws.

Each medical tourism facilitator put its effort to attract patients, leads to the main problems on both legal status and business operation since the pre- medical treatment until post-medical treatment. An advertisement and a disclosure of information refer to the oppressive allurements, while the adhesion contractual terms and conditions benefit the medical tourism facilitators themselves. Furthermore, the contractual limitations and exclusions always provide the few responsibilities for medical tourism facilitator in the case of medical error, poor medical procedure, uncertified medical equipments and physicians, and the cancellation of insurance coverage which affect the patients’ rights. As a result of low patient protection, the indirect effect brings Thailand to the

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downturn of medical tourism progress and destroyed medical tourism reputation consequently.

This article provides readers with an overview of laws and regulations from the Republic of Korea, and the United States of America (California and Pennsylvania) which have faced to the problems of health care service network as same as Thailand. Those countries present their laws specifically govern medical facilitators. With the respect to existing laws, Thailand has the recent statue which is the inadequate measures of controlling medical tourism facilitators and their operations of medical service network. In this regards, this article will state analysis of how legal measures on controlling medical tourism facilitator shall be concerned and alternative resolutions in order to create effective and complete enforcement.

Keywords: medical tourism facilitator, medical travel broker, cross-border healthcare, control measures, patient safety, insurance, medical tourism.

บทคัดย่อ

เนื่องจากการเพิ่มขึ้นของเคลื่อนไหวทางด้านสุขภาพอันเป็นผลมาจากการได้รับการบริการทางการแพทย์อันไม่เป็นที่พึงประสงค์ภายในประเทศ ทำให้จำนวนผู้ป่วยซึ่งเพิ่มขึ้นอย่างรวดเร็วพบได้ในการแข่งขันทางตลาดด้านการท่องเที่ยวเชิงการแพทย์โดยเฉพาะในประเทศไทย จากเหตุผลดังกล่าว ผู้อำนวยความสะดวกในกิจการท่องเที่ยวเชิงการแพทย์ซึ่งเป็นตัวกลางเชิงการแพทย์ พยายามที่จะเข้ามาจัดหารบริการด้านการแพทย์ให้แก่ผู้ป่วยจนนำมาสู่ปรากฏการณ์ของ “การขายการรักษาพยาบาล” สัญญาการท่องเที่ยวเชิงการแพทย์อันเป็นสัญญาผูกมัดและมีความทันสมัยซึ่งเกี่ยวข้องกับประเด็นการรักษาพยาบาลและการประกันได้สร้างความท้าทายต่อกฎหมายไทยเพราะเกิดช่องว่างการกฎหมายขึ้น ดังนั้น เพื่อเข้าใจและตระหนักถึงการแก้กฎหมาย จึงมีความจำเป็นอย่างยิ่งที่จะต้องศึกษากฎหมายของต่างประเทศ

ผู้อำนวยความสะดวกในกิจการท่องเที่ยวเชิงการแพทย์พยายามดึงดูดความสนใจของผู้ป่วยจนนำมาสู่ปัญหาเรื่องสถานะทางกฎหมายและการดำเนินกิจการตั้งแต่ก่อนการเข้ารับรักษาพยาบาลไปจนถึงขั้นตอนหลังการรับการรักษาพยาบาล การโฆษณาและการเปิดเผยข้อมูลถือเป็นสิ่งเร้าที่น่าสนใจสำหรับผู้ป่วย ขณะที่ข้อตกลง

และเงื่อนไขของสัญญาการท่องเที่ยวเชิงการแพทย์ยังให้ประโยชน์ต่อผู้อำนวยการในกิจการท่องเที่ยวเชิงการแพทย์อีกด้วย ข้อสิทธิและข้อยกเว้นต่างๆ ได้ก่อภาระหน้าที่ความรับผิดชอบน้อยนิดให้แก่ผู้อำนวยการในกิจการท่องเที่ยวเชิงการแพทย์โดยเฉพาะในกรณีหากเกิดความผิดพลาดจากการรักษาพยาบาล การรักษาพยาบาลที่ต่ำกว่ามาตรฐาน การไม่ได้รับรองมาตรฐานของอุปกรณ์และแพทย์ผู้เชี่ยวชาญหรือบุคลากรอื่นๆ และการปฏิเสธการประกันการรักษาพยาบาล ซึ่งล้วนกระทบต่อสิทธิของผู้ป่วยทั้งนั้น ผลอันเกิดจากการคุ้มครองผู้ป่วยซึ่งไม่เหมาะสม นำมาสู่ผลกระทบทางอ้อม โดยเป็นการทำลายภาพลักษณ์ของกิจการท่องเที่ยวเชิงการแพทย์ของประเทศไทย

บทความนี้ได้เสนอภาพรวมของกฎหมายจากประเทศสาธารณรัฐเกาหลีและสหรัฐอเมริกา (มลรัฐแคลิฟอร์เนียและเครือรัฐเพนซิลเวเนีย) ซึ่งเคยประสบปัญหาเรื่องเครือข่ายการให้บริการทางการแพทย์ เช่นเดียวกับประเทศไทย ประเทศเหล่านี้ได้ออกกฎหมายมาควบคุมผู้อำนวยการในกิจการท่องเที่ยวเชิงการแพทย์เป็นการเฉพาะ ในปัจจุบัน ประเทศไทยมีมาตรการทางกฎหมายซึ่งเป็นไม่เพียงพอต่อการควบคุมผู้อำนวยการในกิจการท่องเที่ยวเชิงการแพทย์และการดำเนินกิจการด้านการท่องเที่ยวเชิงการแพทย์ ด้วยเหตุนี้ บทความฉบับนี้จึงมุ่งเน้นการวิเคราะห์ว่าเหตุใดมาตรการทางกฎหมายในการควบคุมผู้อำนวยการในกิจการท่องเที่ยวเชิงการแพทย์จึงสมควรได้รับการพิจารณาและการเสนอวิธีการแก้ไขปัญหาเพื่อการบังคับใช้กฎหมายอย่างมีประสิทธิภาพและสมบูรณ์

คำสำคัญ: ผู้อำนวยการในกิจการท่องเที่ยวเชิงการแพทย์ นายหน้าในกิจการท่องเที่ยวเชิงการแพทย์ การรักษาพยาบาลข้ามประเทศ มาตรการในการควบคุม ความปลอดภัยของผู้ป่วย การประกันการท่องเที่ยวเชิงการแพทย์ การท่องเที่ยวเชิงสุขภาพ

Medical tourism is defined as a new phenomenon in the healthcare industry that reflects a greater mobility of patients from the host countries to other countries for medical procedures supplied by several stakeholders¹, especially medical providers, insurance companies, and other facilities.

¹ Archie A. Alexander, *Cross-Border Health Care Services Trading: "Glocal" Trading Challenge*, Rapee Editor, Rapee Thammasat University 2015 (Maticchon PLC 2015) 154-191, ISBN: 978-9-74-466819-6. <https://www.facebook.com/rapreebooktu> (last visited May 27, 2016).

For sustainable medical service network², medical tourism facilitators are persons who rearrange and deliver healthcare services to patients, particularly foreign patients. Critically, the medical tourism facilitators are a primary entity of medical service network that plays the role in a marketing channel in competitive marketplaces for global patients.³ The medical tourism facilitators have significant influences on decision-making of the patients and medical providers in accordance with medical choice, price, facilitation, and pre-post medical treatment.⁴

Recently, the medical tourism becomes a fierce battlefield of medical service competition as a result of operations of the medical tourism facilitators. With such competition, medical tourism facilitators earn a referral fee from the coordinating providers in exchange for the operations of medical service network.⁵ Given with joint coordination and shared objectives for various stakeholders of medical tourism network, in order to narrow the scope of this study, the relationship between medical tourism facilitators, patients, and medical providers shall be discussed.

² The integration of medical service with the network system between hospital or other medical professor, insurance company and other relevant healthcare facilities.

³ Maria K. Todd, *Medical tourism facilitator's handbook*, CRC Press, Newyork, United States, 2012, page 1.

⁴ ณัฐจิรา อัมพลพรรณ. บริษัท มาร์เก็ตไวส์ จำกัด, *สรุปลสาระสำคัญจากการประชุม International Medical Tourism & Travel*, ระหว่างวันที่ ๑-๒ มีนาคม ๒๕๕๓, โครงการศึกษาเพื่อเพิ่มศักยภาพทางการตลาดสำหรับกลุ่มนักท่องเที่ยวเชิงสุขภาพและโครงการสำรวจพฤติกรรมและความพึงพอใจของนักท่องเที่ยวชาวต่างประเทศกลุ่มสุขภาพความงาม (NattiraAmphonphan, Marketwise Co Ltd., *International Medical Tourism & Travel Conference 2010*); Glenn Cohen, *Protecting Patients with Passports: Medical Tourism and the Patient-Protective Argument*; Nathan Cortez, *Recalibrating The Legal Risks Of Cross-Border Health Care*, Yale Journal of Health Policy, Law & Ethics.

⁵ Charles Runckel, "Why Should You be a Medical Tourist?", available at http://www.business-in-asia.com/asia/medical_tourism.html; Medial Tourism Business Plan, available at <http://www.morebusiness.com/medical-tourism-business-plan> (last visited May 28, 2016); Medical Tourism Research Group, SFU, *Medical Tourism Facilitators: Ethical Concerns about Roles and Responsibilities*; Roy G. Spece, Jr., *Medical Tourism: Protecting Patients From Conflicts Of Interest In Broker's Fees Paid By Foreign Providers*, Journal of Health & Biomedical Law.

Main problems in this study are the legal status and business operation. First of all, the legal status of medical tourism facilitators becomes the primary concern. As Thai officials interpret that the legal status of medical tourism facilitators shall comply with tourism law; tourism license approval and qualification are applied. Indeed, medical tourism facilitators are administrators in medical service network. The requirement of license approval is based on the leisure program which demonstrates the lack of requirements on medical and insurance, and low quality and qualification for persons who manipulate the whole of medical care networks. The indirect result from the wrong interpretation is that the specialized regulatory organizations in health care are not able to review their legal status. Hence, the medical tourism facilitators can operate the business on their own without any restriction or approval from the responsible sectors. The non-legal status could lead medical tourism facilitators to enter into the medical network chain easily and brings the drawback to the healthcare standard and patients' safety. Besides, the other providers in medical service network have no liability even if they know the illegal status of medical tourism facilitators. The last issue of legal status is the fiduciary duty. Presently, the medical tourism facilitators are subject to the principle of reasonable care as the main duty. However, they have to manage the medical service network that addresses the curious question of which the suitable duty they should comply.

Lastly, the business operation is another concern. With less consciousness on patients' right and medical standard, the medical tourism facilitators, whether wholly or partially, cause medical errors that destroy the reputation of the medical hub of Thailand. Medical tourism facilitators make the exaggerated commercial ads to attract the patients without any precautions of medical accidents or the assumed risks.⁶ Some of them pretend that they are health

⁶ นายแพทย์สุธีร์ รัตนมมงคลกุล, ๕ สมัชชาสุขภาพกับนโยบายสาธารณะแบบมีส่วนร่วม กรณีศึกษา นโยบายการเป็น ศูนย์กลางสุขภาพนานาชาติ, หน้า ๑๖๔-๑๖๖ (Dr. Sutee Rattanamongkolkul, 5 Organizations with Public Strategy in the Case of International Medical Hub, page 164-166); พล.ต.ต.นพ.อรรถพันธ์ พรหมฑารัตน์, ศัลยกรรมและเวชศาสตร์เพื่อการเสริมสวยประเทศไทย (Autpapan Polnmontarat, Surgery and medical operation for Thai Beauty, available at

consultants; even they have been not certified by Medical Council or other health care organizations. Besides, the unilateral contracts between medical tourism facilitators and the patients may restrict the patients' rights and impose fewer responsibilities for them.⁷ The famous terms and conditions include with several waiver clauses, such as a declaration of non-medical referral service, no medical professional staff, termination of service, limitation of liability, and non-recovering process on medical error. The medical accident case which addresses the death and disorder was Joy Williams⁸, whereas the fault advertisement is represented in British female teacher case⁹ and Dr. Xeping case.¹⁰

Nevertheless, to control the medical tourism facilitators, Thailand lacks both instrument and statue specifically imposed on legal status and business operation. Thereby, the patients may be vulnerable to fault management in the medical service network or be harmed from the medical error. Giving the general provision, the inadequacy of the existing laws is identified. Some provisions are involved and related to the control of medical tourism facilitator.

Firstly, Consumer Protection Act B.E. 2522 (1979) is referred to as the fundamental law for controlling the business and the

<http://www.manager.co.th/Daily/ViewNews.aspx?NewsID=9570000076666>, <http://www.erk-erk.com/2013/04/stmstyle8/#sthash.DhZuYMFm.dpuf> (last visited May 28, 2016).

⁷ PlacidWay Terms of Use, *available at*

<http://www.placidway.com/termsconditions.php>; Medical Tourism Magazine, *supra* note 141; General Terms and Conditions of Med2Heal, *available at*

<http://med2heal.com/contact/terms-conditions/>

⁸ Andrew Buncombe, *British woman's cosmetic surgery death in Thailand sparks warning over 'surgical tourism', Police say the surgeon was unqualified*, *available at* <http://www.independent.co.uk/news/world/asia/british-womans-cosmetic-surgery-death-in-thailand-sparks-warning-over-surgical-tourism-9815529.html> (last visited May 29, 2016).

⁹ TV3 News, *Error lip surgery of British female teacher*, January 8, 2016, *available at* <http://morning-news.bectero.com/international/08-Jan-2016/67409> (last visited May 29, 2016).

¹⁰ Nation TV, "เซปิง-ชลธิศ" จากคู่หูเป็นคู่ความ หันหลังสร้างดาวคนละครอง, ๑๗ กุมภาพันธ์ ๒๕๕๙, (Nation TV, "Xeping-Chonlathid" *from partners to rivals*, February 17, 2016, *available at* <http://www.nationtv.tv/main/content/social/378489991/>) (last visited May 29, 2016).

consumer protection. Noticeably, the services which are subject to these provisions are defined as the ordinary services that can be clearly seen in daily life. Because of the general legislation, consumer protection law is the unfit instrument, such as consumer protection board which is not specialized in medical and insurance, and broad scope of protection without concerns on medical care and insurance. Besides, its purpose excludes the control of business operation with specific terms on medical advertisement and disclosure. Hence, the consumer protection law does not cover the medical tourism contracts which are referred to the modern business model.

Secondly, Tourism and Tourist Guide Business Act, B.E. 2551 (2008) is a statute that tends to govern on leisure basis. The objective of this law does not cover the mobility of patients in medical tourism network. Unfortunately, Thai officials construe that medical tourism is one kind of travel. As a result of the wrong interpretation, the medical tourism facilitators are only subject to the legal instruction, such as application of tourism license, tourism qualification, and orders and declarations of Tourism Board. In order to gain the tourism license and qualification approval, the applicants have to furnish the relevant information in connection with the scope of tourism service. It can be explicitly seen that the consideration of medical treatment and insurance are not stipulated in the tourism provisions. Similar to Consumer Protection Board, the committee of tourism business and guide comprises the agencies who are keen on the leisure and commerce, not specific healthcare and insurance criteria. Thus, the rules and regulations, which are enacted by Tourism Board, do not focus on health care and cannot solve the problems consequently. To explain, the provisions of medical tourism facilitator should be subject to the particular broad which is able to suggest or manipulate the particular knowledge, such as medical and financial terminology.

Thirdly, Thai Civil and Commercial Code is the basic code imposed on several types of cases, including brokerage contract, obligation and contract, and hire of work. Those are not complicated legal relationship because these three types of contracts do not fully

cover and provide the legal instrument of control over medical tourism facilitator as the hybrid contract in the medical service network. Medical tourism facilitators are referred to persons who engage in medical service network. They start the business by introducing their medical tourism packages, entering into contract, bringing patients for medical treatment, and health recovering. As mentioned, medical tourism facilitators should not be deemed as brokers who arrange third parties for contractual conclusion. On the other hand, medical tourism facilitators are defined as the quasi-brokerage characters. As a result of unfit law, the law of brokerage does not cover the main elements of controlling medical tourism business. When it comes to hire of work contract, non-suitable solution also addresses. Medical tourism business is the hybrid contract which is not just the basic service contract in normal practice. The law of hire of work imposes the rights and obligations of normal service for contractual parties. It is not surprised to learn that hire of work law cannot give the best solution for amendment problems. The law of brokerage mainly imposes payment method while the law of hire of work and obligation use the simple scope of liability whether creditors partially perform the obligation with fault or not. Thereby, the general terms cannot suitably apply to the specific case. The law of obligation serves the general principle in the reciprocal contracts, including the contracts in medical tourism network. However, the medical tourism facilitators' contract defines the specific contract in respect to medical care and insurance, so the law of obligation cannot fill the loophole of particular contexts.

Fourthly, relevant medical legislations rule that medical tourism facilitators are not subject to the control of governmental agencies in healthcare criteria. This brings the hardship to Medical Council of Thailand in that it cannot exercise its power on the investigation, the indication of liability, and penalty for illegal medical tourism facilitators. The mere suggestion it could give is the cautions for the patients before contractual conclusion.

Fifthly, legal measures for enhancing medical tourism can be categorized into two types: preventive and remedial measures. The remedial measure does not favor the foreign patients and affects the

reputation of Thai medical tourism. In the general lawsuits, the litigations are based on claiming either in tort or contract. In the point of view of tort law, where a medical tourism facilitator himself is determined as being the wrongdoer by causing the damage to a patient on his own fault without any contemplation of the third party (the provider or other facilitating entities), he has to be liable to the injured person.¹¹ Recently, there is no existing law that imposes the liability on middlemen on fault of the medical practitioners and medical malpractices arising from the providers.¹² Unless the medical tourism facilitators partially damage the injured with the falsified information or suggesting the substandard treatment that destroys the whole purpose of patients' informed consent. Apart from tort litigations, breaches of contracts are another reason of lawsuits. Thus, the liability shall be limited for their own faults based on the unilateral contractual deals and laws. Struggles on suing to Thai civil courts serve the patients lower compensation compared with expensive expenses during litigation, inadmissible evidence in foreign language, and extended period of time.¹³ As mentioned above, the measures of sanction which provide a light and unenforceable method, are not enough to secure the patients' right and medical standard.

As can be seen, the existence of inadequate legal measures in laws and regulations impedes patients' safety and the reputation of Thai medical tourism. As a result, the preventive measure shall be concerned in the scope of legal status and business control. When the medical tourism facilitators are controlled, the reasonable and adequate medical treatment will occur which would increase the confidence on health care of patients.

The serious problems of medical tourism facilitators are also found in most countries around the world. A lot of countries are

¹¹ Civil and Commercial Code of Thailand, s. 420.

¹² S. Saithanu et al., *Management of Medical Liability in Thailand*, 12 J. Health Sci. 876 (2003) (Thail.).

¹³ David M. Engel, *Globalization and the Decline of Legal Consciousness: Torts, Ghosts, and Karma in Thailand*, 30 Law & Soc. Inquiry 469, 506 (2005), at 493.

looking at causes and the way to stop the impact on health care systems. Most of them realize that the medical tourism facilitators are still a valuable factor in the medical tourism, so they do not prohibit such career from the medical network. As the result, the medical and insurance laws are involved with the consideration of consumers' health. The recent regulations are found in the Republic of Korea and the United States by focusing on California and Pennsylvania. The reason behind choosing Korean law as a model law is that the Republic of Korea is the famous destination country as same as Thailand, and also faces the same tough oversight on the business operation of medical tourism facilitators.¹⁴ The harmonization between Korean and Thai legislations would strengthen the Thai policy on worldwide health care and enhance the competitiveness of Thai medical tourism. Apart from Korean law, the laws of the United States governing on managed care organization are enacted to solve the increasing healthcare cost problem in the employees' welfare in most states.¹⁵ Given with the same functions of being middlemen in medical service network, managed care organization and medical tourism facilitators are involving in the health crisis through their facilitation. Unfortunately, each state has its own policy on the control of managed care organization, without any federal code. This study will explore only two states: California and Pennsylvania. Noticeably, preferred provider organization is one kind of managed care organization which has the nature and structure as same as medical tourism facilitator. The reason of selecting Pennsylvania regulation as the model law is that it gives the broad provision with a

¹⁴ Camille Hong, *Are Illegal Korean Agencies Sending Patients To Bad Plastic Surgeons?*, Economics, News Stories, April 1, 2015, available at <http://koreanplastic.com/are-illegal-korean-agencies-sending-patients-to-bad-plastic-surgeons/> (last visited May 29, 2016); Chelsea Kim, *Medical Tourism in South Korea: Beware of Illegal Brokers Who Overcharge You*, Medical Tourism Korea, available at <https://www.seoultouchup.com/medical-tourism-south-korea-beware-illegal-brokers-overcharge/> (last visited May 29, 2016).

¹⁵ Dana Baroni and Amy Lee, Research and Oversight Council on Workers Compensation 2002, *An Analysis of Managed Care Network Standards in Other State Workers' Compensation Systems*, available at <http://www.tdi.texas.gov/reports/wcreg/netstands.html> (last visited May 28, 2016).

clear policy and allows the preferred provider organization to create the contract and business operations as long as not against the prohibition.¹⁶ Otherwise, California set the new definition of managed care organization. “Health care service plan” is placed instead of managed care organization. California module law offers the strong patient protection and detailed regulation in order to maintain affordable health care.¹⁷ Consequently, this study mostly imposes California law as a model law.

The Korean medical law launched the new provisions on registration and investigation on medical tourism, which is Medical Services Act B.E. 2553 (Amendment in 2010). In order to control the legal status, Korean law gives the definition of medical institution, and liabilities for all partners in medical service network for the acknowledgement of conspiracy on illegal status of medical institution.

On the aspect of business operation, Korean law indicates broad scope without guidance and bestows the power to relevant officials to review all activities. It leads to the ineffective result on the suitable practice which the medical tourism facilitator should comply with.

In addition to Korean law, with West’s Pennsylvania Administrative Code, it seems that Pennsylvania law takes an approach of the review by relevant officials and the broad principle on legal status and business operation of preferred provider organization that has the same function as Korean law. For controlling the legal status by a license approval and a qualification of preferred provider organization, Pennsylvania provisions concentrate on the regulatory organization in particular with the specialized skill, the scope of review, and the coordination among responsible governmental sectors.

¹⁶ *Id.*

¹⁷ California Department of Managed Health Care, *available at* <https://www.dmhca.ca.gov/>.

By the way, without business practice, Pennsylvania law stipulates the broad principle on quality of health care and management, contractual control, and grievance system, including the compliance with medical conduct and insurance regulations.

Lastly, by Knox-Keene Health Care Service Plan Act of 1975, combined with Regulations Applicable to California Licensed Health Care Service Plans of 2015, California laws uses the greater strict control on health care service plans on both legal status and business operation. The license approval with all required documents and evidences, qualification of health care service plan, and fiduciary duty become the alternative solution in order to eliminate the illegal status of the plans because of detailed guideline which make the entrepreneurs easily understand and follow. Besides, the competent officials specialize in medical care and insurance have the power to examine the plans' status.

Moreover, giving the guideline for business operation, California regulations impose several issues that cover the pre-medical treatment to post-medical treatment. The control on advertisement, quality of care (system management and health care), report of business operation, contractual control, and grievance system are the effective rules that make the medical tourism facilitators able to find the reasonable practice on the balance between patient protection and business affairs.

Back to the limitations of Thai laws and regulations in connection with controlling medical tourism facilitator, the existing legislations are not appropriate to apply on the cases because they do not provide some specific terms and conditions. It seems that the study on control measures of medical tourism facilitators from other countries, combined with analysis of existing Thai regulations shall be taken in order to make the appropriate solution for medical tourism in Thailand.

The essential reason to harmonize the legal measures is to recreate the patients' confidence, protect Thai medical practitioners

and facilities in medical service system and the patients. Thailand, one of the countries of destination for medical tourism, enters into the global medical market with the 'medical hub of ASIA' policy and other factors, such as high medical standard, low medical expense, and plenty of sightseeing. It seems that medical tourism facilitators, private organizations, are the giant wheel on driving the medical tourism. In addition, being the leader of medical services in ASEAN, Thailand shall prepare for greater mobility of patients that is sequenced from AEC opening at the end of 2015s, instead of allowing private sector the manipulates the chronic and complicated problem unsystematically. It can be noticed that the controlling on medical tourism facilitators is also enable Thailand to enhance the competitiveness of Thai medical tourism and to support Thai reputation on medical tourism.

It is necessary to impose the laws and regulations that specially governing on medical tourism facilitator. In implicated attitude, the medical tourism facilitators are deemed as professionals in medical service chain. Thus, they are assumed to be persons who should take the responsibility for preventing the accidents and damages from medical errors. Both domestic and foreign patients, who are not familiar with advance technology and complicated bodies, entrust their lives in the hands of medical tourism facilitators. The indirect inputs that resulted from suitable legal measures are to increase the confidence of patients and develop Thai medical tourism image. Thereby, the proposed alternative resolutions are to stipulate the newly drafted law on specifically controlling medical tourism facilitator. The approaches on the status of law are composed of two phases: formal law and substantive law.

Firstly, the newly enacted law that specifically governs medical tourism facilitators: "*Medical Tourism Facilitator Control Act*". Noticeably, patients, whether domestic or international, should be protected in a similar way under the same umbrella of control medical tourism facilitator. However, to complete the integration of medical service and insurance, '*the definition of medical tourism facilitator*' shall be inserted in the relevant laws, with the condition of being

“subject to Medical Tourism Facilitator Control Act and other relating laws and regulations”.

Secondly, concerning on Medical Tourism Facilitator Control Act, the substantive law should be composed of the controls on legal status and business operation.

The advisory instruments on ‘*medical tourism facilitators’ legal status*’ are combined with an accurate definition, a 5-year renewal license approval, a qualification of medical tourism facilitators and an approval guidance for the consideration of governmental agency, liabilities for illegal medical tourism facilitators and third parties, and a fiduciary duty.

Otherwise, suggested instrument on the ‘*business operation of the medical tourism facilitators*’ can be categorized into three phrases: pre-medical treatment, during medical treatment, and post-medical treatment.

For the ‘*pre-medical treatment*’, the control on advertisement and the disclosure of information are imposed in order to limit the freedom of medical tourism facilitators and raise the awareness of the patients on the gathering information process.

In the aspect of ‘*during medical treatment*’, legal measures are composed of the report, quality of care, and contractual control. The reports of business operation will create the greater coordination among parties within medical service chains. This could make the patients able to access to the public information and also guide the trend of governmental policy for enhancing Thai medial tourism strategies. The quality of both health care and management can strongly supports the medical standard and insurance in practice. These two requirements reasonably lead medical tourism facilitators to control their partners of medical service network and complete their systems as well. Lastly, contractual control will provide the necessary terms and conditions in the legal relationship between medical tourism facilitators, patients, and medical providers, such as cancellation of coverage, access to medical record, medical tourism

accident coverage, and evidences. The control on contract is the potential instruments for the reduction of unfair terms and conditions. In practices of contractual conclusion, the medical tourism facilitators conclude the unilateral contracts which do not protect the consumer with limitation of its responsibilities. When the law does not impose the control on medical tourism facilitator, contractual parties need to rely on the freedom of contract. Even the patients are not satisfied with unfair terms; they have no choice but are compelled to enter into the medical tourism contract for medical treatment.

Finally, on '*post-medical treatment*', the grievance system will secure the patients' confidence and safety. On the other hand, the medical tourism facilitators have to follow the result of their business and be responsible for any errors arising from the medical service network with the review from specific board.

The efficient legal measures on controlling medical tourism facilitators shall be deemed as a potential instrument for driving Thai medical tourism to the acceptable global standard. Nevertheless, the measures in other aspects apart from legal approach should be considered as well. In order to enhance the steady progress systematically, Thai governmental authorities should launch the training practices or accreditation for the medical entrepreneurs to train their employees following Korean model practical guideline as for achieving the worldwide acceptance.

The proposed alternative resolutions in this study represent the mere legal control measures on medical tourism facilitators in particular with the relationship between medical tourism facilitators, patients, and medical providers. In the case where the governmental sectors are concerned on the necessity of newly enacted or amendment law for control over medical tourism facilitators, this study may be adopted or studied further as basic knowledge in order to indicate the explicit responsibilities of the relevant sectors and enhance the greater integration among all participants in medical tourism marketplaces. For the effective and complete enforcement and the broad scope of amendment laws and regulations, other issues

should be pursued, such as the relationship between medical tourism facilitators, insurance companies, and other providers within medical service network.

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