

## Medical Travel: The Ethical and Legal Challenges

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### Abstract

Medical tourism is a term referring to the people traveling to other countries to obtain medical care. Like any other rapid growing industry, medical tourism has prompted ethical and legal issues. These issues are mainly pertained to malpractice and consumer protection. Beside these, risk management, foreign hospital liabilities, international advocacy, facility ownership, intellectual property, organ trafficking and ethical issues are other matters that should be addressed. Travel medicine also contains alternative medicine and telemedicine. Therefore, comprehensive and detailed legal regulations should be performed to govern mentioned issues. Otherwise, in future this industry will face serious challenges.

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### Introduction

Medical tourism, also called health tourism and wellness tourism, is a rapid growing industry referring to people from all around the world traveling to other countries to receive medical, dental, and surgical care. They are called tourists while beside medical care; they experience the attractions of the countries that they are visiting [1].

Medical tourism is an opportunity for healthcare facilities to benefit from international patient market. To gain this goal, they must first attract foreign patients; therefore healthcare providers should consider leveraging on both clinical and business considerations. Well-coordinated efforts facilitate the process of traveling, hospitality, and the healthcare trade may lead to a sustainable growth of this

business [2]. Medical tourism has several feathers [3]. Ethical and legal issues is one of them (figure 1).

This aspect of medical travel is more important. Medical travel has raised numerous ethical concerns. For example, it may lead to a duality in health care policies: ensuring the access of health care for every citizen, while on the other hand promoting state-of-the-art technologies for foreign patients [4]. Others have raised concerns about possible changes in doctor-patient relationships, by commoditization of health care services [5]. Most prominently, medical travel involving human body resources, especially organs, has raised comprehensive debates including concerns both on how they are obtained and how they are used. Consid-



ering this fact, many countries have set restrictive policies governing their donation and access. But international variations in such legislation have encouraged some patients or health care providers to take advantage of those differences. Shimazono estimates that around 5% of all recipients in 2005 underwent commercial organ transplants overseas [6]. Further she finds that travelling abroad to undergo transplantation has become the most common way of receiving transplants in certain countries. In some countries Human body resources are more available, because underprivileged and vulnerable populations of these countries jeopardize their personal health for a small financial reward. It is also noticeable that in some of these countries standards of health care for donors are often poor and lacking follow-up cares [7].

On the other hand, every country has different standards, rules and regulations that have limited the cross border delivery and seeking of medical care [8].

[8]. Since different standards exist between the international tourist and the destination country, many challenges face the legal profession. Presently the internationally accepted policies to settle medical tourism issues and debates regard-

ing to malpractice across international boundaries is limited [9, 10]. Patients may not be covered by personal insurance or be incapable to seek compensation by undesirable treatment [11]. Figure 2 presents the unique legal and ethical issues which exist in Medical tourism. Ethical issues commonly involve organ transplant, stem cell research and that of the doctor and patient relationship [12]. Additional legal issues involve alternative medicine and telemedicine [13]. We will focus this article on the medical travel legal and ethical issues; policy issues, cross border issues, privacy protection, and malpractice for the hosting provider.

**Policy Issues in Medical Travel**

One of the most important problems in medical travel is follow-up [10]. In some cases for procedures requiring aftercare to monitor the healing process or remove stitches, traveling patient have problems finding a local physician willing to provide postoperative follow-up care. Faithlessness to another provider’s work is one reason some physicians are not willing to provide follow-up care to patients treated abroad [12]. Another reason for this loath is that patients treated abroad often lack insurance, since many doctors assume that health insurance is the only way for patients to finance medical care [14]. Although

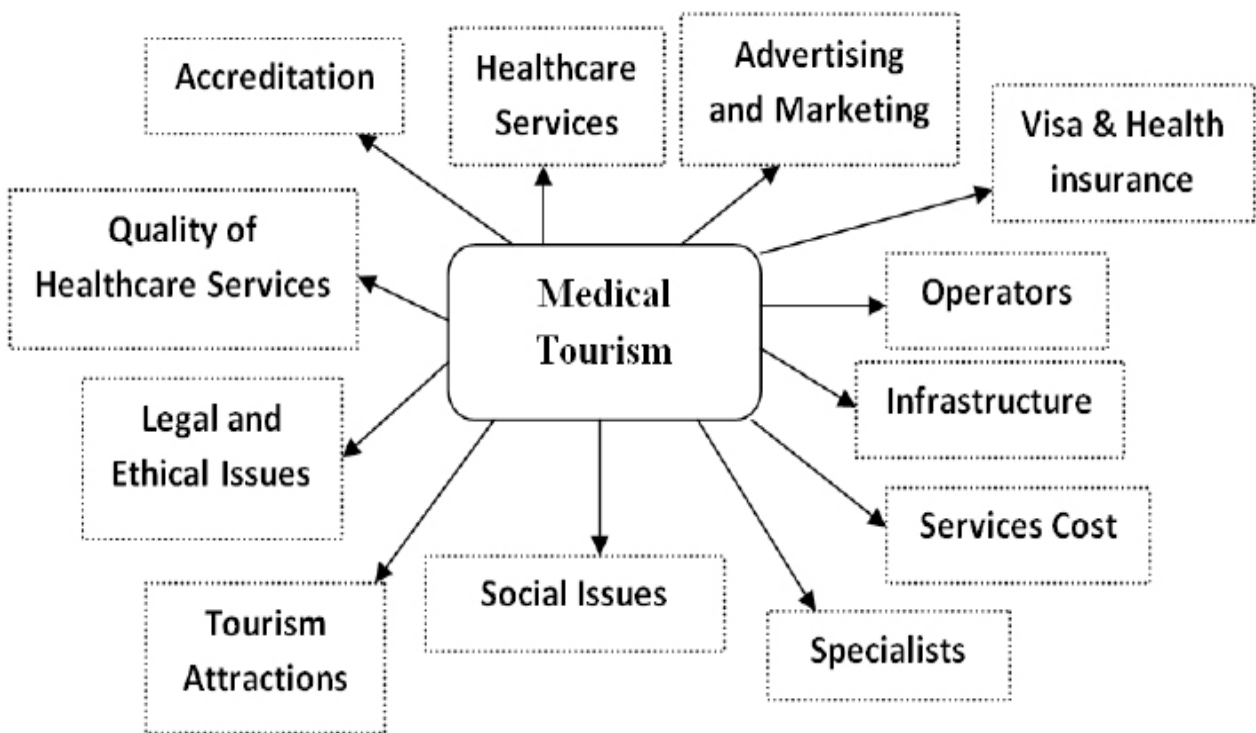


Figure 1: Medical Tourism and Its Feathers

in some patients their regular doctors continue to treat them throughout recovery. Patients with a regular physician will likely fare better than those who are seeking physician care for only a short-term (postoperative) need [12].

### **Cross Border Issues**

A medical tourist should be well aware of possible complications and legal issues that he may face across the international borders. In all medical and surgical interventions potential risks lies, no matter the patient is being treated in his home country or abroad and independent to the proficiency of the practitioner. Still the legal implications are undefined when the patient undergoes his medical care abroad. The participants in the legal issues include the client, facilitator agent, employer, and destination provider. Today there are limited regulatory policies for medical tourism [15]. The hospital care administrator needs to aware that the international patients may be protected by laws of their home country unlike the local patients. Hence there may be need to appropriately address the legal conflicts [8].

For example Malaysia is becoming one of the biggest markets for medical tourism in Asia. The rise of this “medical tourism phenomenon” is due to combination of medical travel with visiting popular tourist destinations in Malaysia. Presently, the excessive number of foreign patients has made the Malaysian health care providers topic of numerous malpractice claims. Language barriers, unsatisfactory provision of treatment and maintenance of high-quality treatment are some of the problems that patients and health care providers are facing [16].

Forgione Smith, and Weiner have studied some of the issues facing lawmakers, health service policy makers, and health service researchers regarding the impact of medical tourism on the US health care system. Many Americans travel across the border to receive cheaper treatments such as cosmetic, dental and plastic surgeries, with the need for less stringent laws which benefits global health care [17, 18]. As an example, legislators in Texas may allow health providing organizations to exist on either side of the US/Mexican border. This has created a challenge amongst US physician who can't compete with the much cheaper treatment costs in Mexico and also Mexican legal system

that protects the Mexican doctors [18].

### **Privacy Protection**

Medical records are necessary for communication between professionals and to maintain continuity of treatment. The sharing of medical records can be difficult while traveling overseas and currently is performed by the medical tourism facilities in the destination country or facilitator agent. The facilitator is usually an agent connecting the patient to the health care organization in the destination country. Therefore the agent is not a provider of health service and is not practicing medicine. The provider is in close contact with patient and has access to the patient's records. Hence he must ensure confidentiality and security of medical information. Unfortunately, laws regarding privacy and data transfer in the hosting countries are currently unregulated in medical tourism [10].

The European Union (EU) has a Data guidance to protect personal and medical data. The directive prohibits the transfer of data from the EU to a recipient outside of the EU unless the recipient country provides protection that is comparable to the EU's [19]. Only three countries of Switzerland, Canada, and Argentina are recognized to have data protection safeguards consistent with the European Standards. The transfer of data from the European Union to the United States can only be implemented with the patient's consent [19].

The United States has a privacy protection in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) which protects all health information that is part of an individual medical record or payment and requires the covered entity to keep track of disclosures in print or electronic form. Privacy stipulations require standards to be set to secure and protect electronic information. In certain situation disclosure of the information might be possible, for example Individuals may request personal information through informed consent [20].

Canada has two federal privacy laws, the Privacy Act and the Personal Information Protection and Electronic Documents Act (PIPEDA). The Privacy Act applies to Canadian government agencies and places limitations on their ability to collect, use and discloses personal information. PIPEDA applies to the private sector and similarly regulates the collection, use or disclosure of personal

**Figure 2.** Overview of Legal and Ethical Issues in Medical Tourism.

1. Legal Expectations by Medical Tourists.
2. Regulations and their Implications.
  - Global
  - Federated
  - Local
3. International Legal Mediation, Arbitration and Alternative Dispute Resolution System. A System with Fixed Rates of Compensation, including Caps.
4. Liabilities of Destination Provider.
5. Risk and Liability for
  - Medical Travel Agents
  - Medical Travel Insurance Facilitators
  - Medical Air Transports
  - Hotels and Resorts
  - Medical Services
  - Medical Healthcare workers
6. Legal aspects/liabilities for Advertising and Marketing.
  - Legal limitations on international healthcare marketing
7. Legal aspects for Information Mechanism on Global Health
8. Future Implications for Regulators, Quality Control and Compliance Organization.
9. International Advisory Services.
10. Accreditation

information in connection with commercial activities [20].

### **Malpractice**

Since laws referring to medical malpractices are widely different in origin and destination countries, policies and strategies need to be set to coordinate

these rules to protect patients and health care providers in cases of lawsuit disputes. Consent forms

have been developed for this matter. Another strategy could be development of an alternative dispute resolution system. Currently there is no organized International system for resolving legal disputes of medical tourists. A model for developing an International Legal Mediation, Arbitration and Alternative Dispute Resolution system for healthcare can be derived from commercial entities [21]. A number of countries including Australia, France, Japan, Korea, UK, Germany, Russian Federation, The Netherlands, Malaysia, Denmark and India have entered into bilateral investment treaties. These agreements

allow the settlement of disputes between an investor of one contracting party and an investor of the other contracting party through negotiation, conciliation and arbitration. However, some differences can be only settled by civil suites such as matters of public rights, proceedings under the Foreign Exchange Management Act (FEMA), intellectual property rights, taxation matters, winding up under the companies act, and insolvency proceedings [21].

### **Conclusion**

Many reasons have led to improvement of medical tourism industry. Reasonable costs of high quality treatments offered in selected countries, favorable currency exchange rates in the global economy, the ease and affordability of international travel and along with these tourist attractions of the destination countries are the most important reasons. Nevertheless the promotion of so called industry has raised many ethical and



legal issues. Malpractice, consumer protection, organ trafficking, alternative medicine and telemedicine are terms in need of regulatory laws and policies. Ethical issues related to doctor and patient relationship have also been raised during the development of medical tourism. Therefore many challenges for the practice and ethics of medicine can be predicted in the future [6, 21].

Although medical tourism is a beneficial industry, health care professionals have to familiarize themselves with the innate dangers of this trade. Medical tourists can benefit from consulting with an informed healthcare professional in their home country and discuss the issues and potential risks pertained to their journey and treatment. According to this fact, it seems that a new role is being provided for health care professional as this industry expands around the world. In addition, the number of uninsured and self-pay patients traveling abroad for treatment continue to raise as medical care becomes more expensive in countries where third-party payment is the norm [22].

Several legal concerns are developing across the world for the providers in the destination countries as healthcare consumers decide to undergo treatment procedures in developing countries. These legal issues develop when there is outsourcing of medical and surgical care with different laws in the nations. For example in the field of organ donation and trafficking, more accurate policies with greater clarity and disclosure are required [21]. The medical traveler needs to be accustomed to lawful rights such as cross border issues, medical record confidentiality, and protection against malpractice before starting the tour. This can be facilitated by different types of patient and destination provider consents.

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### Conflict of Interests

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### References

- Mussell R, J Sheather, Sommerville A. Medical Tourism. *Journal of Medical Ethics*. 2006;32(4): 248-248.
- Eggertson L. Wait-list Weary Canadians Seek Treatment Abroad. *CMAJ*. 2006;174(9):1247.
- Dannell S, Mugomba C. *Medical Tourism and Its Entrepreneurial Opportunities : A Conceptual Framework for Entry into the Industry*. 2006; Goteborg University.
- Brady CJ. Offshore Gambling: Medical Outsourcing Versus ERISA's Fiduciary Duty Requirement. *Washington & Lee Law Rev*. 64(3);1073-1114.
- Ben-Natan, ME, Ben-Sefer, Ehrenfeld M. Medical Tourism: A new Role for Nursing? *The Online Journal of Issues in Nursing*. 2009;14(3).
- Ramirez de Arellano, AB. Patients without Borders: The Emergence of Medical Tourism. *Int J Health Serv*. 2007;37(1):193-8.
- DeWitt AL. *The Legal and Practical Effects of Health Care Reform*. 2010.
- Horowitz MD, Rosensweig JA. Medical tourism--Health Care in the Global Economy. *Physician Exec*. 2007.33(6):24-6, 28-30.
- Howze KS. Medical Tourism: Symptom or Cure? *Ga Law Rev*. 41(3):1014- 1050.
- Mirrer-Singer P. Medical Malpractice Overseas. *The Legal Uncertainty Surrounding Medical Tourism*. 2007;70(2):211-232.
- Williams D E. *Predicting the Impact of Medical Tourism*. 2007.
- Nemie P, Kassim J. Cross-border Issues in The Development of Medical Tourism in Malaysia: Legal Challenges and Opportunities. *J Law Med*. 2009; 17(1):59-73.
- Weiner S M. *Medical Travel: The role of Law in a Dynamic Environment*, 2010.
- Forgione DA, Smith PC. Medical Tourism and Its Impact on the US Health Care System. *J Health Care Finance*, 2007;34(1):27-35.
- Linda DB, Dianne JB. LEGAL ISSUES Traveling with Privacy Protection. 2007; Available from: <http://www.medicaltourismmag.com/issue-article/legal-issues-traveling-with-privacy-protection.html>
- Wikipedia. 2010; Available from: [http://en.wikipedia.org/wiki/Health\\_Insurance\\_Portability\\_and\\_Accountability\\_Act](http://en.wikipedia.org/wiki/Health_Insurance_Portability_and_Accountability_Act).
- Ehrbeck T, Guevara C, Mango PD, Mapping the Market for Medical Travel. *The McKinsey Quarterly*, 2008.
- Carrera PM, Bridges JF. Globalization and healthcare: Understanding Health and Medical

- Tourism. *Expert Rev Pharmacoecon Outcomes Res.* 2006; 6(4):447-54.
19. Shimazono Y. The State of the International Organ Trade: A Provisional Picture Based on Integration of Available Information. *Bull World Health Organ.* 2007;85(12):955-62.
20. Turner L. Commercial Organ Transplantation in the Philippines. *Camb Q Healthc Ethics.* 2009;18(2): 192-6.
21. Stoeckle J D. From Service to Commodity: Corporization, Competition, Commodification, and Customer Culture Transforms Health Care. *Croat Med J.* 2000;41(2):141-3.
22. Helble M. The Movement of Patients across Borders: Challenges and Opportunities for Public Health. *Bull World Health Organ.* 2011;89(1):68-72.