



Review Article

Legal Features and Aspects of Medical Tourism

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ABSTRACT

Background and Aim: The high cost of health care and long waiting time of the patients caused creation of the motivation that patients, especially from the developed countries, receive these services in other countries. On the other hand, also in developing countries, factors such as globalization and liberalization of trade in health services, led the way for the rapid growth of medical tourism. However, these industry is facing a number of challenges, among the most important, legal aspects can be noted. Since little research has been done in this regard, the aim of this study is to evaluate the legal aspects related to medical tourism.

Materials and Methods: This study is a review article on the legal issues of medical tourism. In order to collect information on the legal issues of medical tourism, databases, SID and PubMed, Google Scholar were examined using the key words "medical tourism", "health tourism" and "legal aspects" and about 47 related articles were found, after studying the titles and abstracts of the articles found, 23 subjects which were associated with the research topic, were studied. Then the results obtained were analyzed.

Ethical Considerations: Honesty and integrity were taken into consideration in searching, analyzing, and reporting the texts.

Findings: According to the results of the study, medical tourism industry is growing, but there are challenges related to the legal aspects of medical tourism include the areas of access to services, medical errors, health insurances, licensing and regulatory approvals of centers, medical operations and medical technologies.

Conclusion: Medical Tourism legal challenges should be taken into consideration by policy makers and trustee institutions in this industry, as according to globalization of these challenges, trying to eliminate them is necessary, which by turning threats into opportunities, facilitates the attraction process of foreign patients.

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Introduction

Tourism as we have today, was developed after World War II. Recognizing the importance of various aspects of tourism, new forms was invented and developed for it¹; topics such as sports tourism, religious tourism, health tourism, business tourism and ..., is growing. Countries which have relative or competitive advantages in each area, compared to other countries, try to attract and serve foreign travelers and finally, earn exchange and money for their own country, relying on these advantages. Today, in proportion to the development of tourism, medical tourism as a branch of health tourism, has been regarded by many developed and developing countries.² Since the 1990s, several factors have led to the expansion and strengthening of health tourism. On the other hand in developed countries, the high cost of medical care, long waiting time of the patients, as well

as the time they had to spend to take approval from their insurance, raised the impetus that despite some problems, they receive these services in other countries.¹ On the other hand, health tourism in developing countries, under the influence of factors such as globalization and trade liberalization on health care, was the way for the rapid growth of this type of tourism.³ The Asian financial crisis also led to governments to seek new revenue sources. Research conducted on the pattern of Singapore medical tourists expenses showed that, on average, a medical tourist spends \$ 362 daily.⁴ Favorable changes in exchange rates in the global economy, urged Asian countries to develop this type of tourism. In addition, the rapid upgrade and improvement of technologies used and trying to fill the gap caused by the lack of technology as well as providing services in accordance with

international medical standards also improved the quality of services of these countries.³ Southeast Asian countries like Malaysia, Thailand and Singapore due to affordable services, world-class and innings without a long line, attracted a flow of treatment demand from developed countries such as America, England, Canada, Germany and others.² The Malaysian government in its ninth program 2006-2010, has stressed to become Malaysia's position as a hub for health tourism in the world.⁵ This country, after the Asian economic crisis and the need for economic diversification, intended to health tourism to keep active its private health sector. Thailand has gained a good reputation in transgender surgery and cosmetic surgery since the 1970s. Singapore has done large investments for the development of health tourism in recent years as well. So that the country's tourism marketing program, has targeted to attract one million foreign patients. India which is now also considered as the international medical tourism center, in addition to the extension of the scope of services it offers, has conducted greater efforts to equip the infrastructure, improve technology and medical devices, keep the costs low, and deliver the medical protocols signed, as success rates in complex surgical operations such as heart, bone marrow, kidney transplant is similar to the best hospitals in the world.⁶ In the Middle East, Jordan has pioneering role in medical tourism as well.⁷ In recent years, countries such as Bahrain and the United Arab Emirates have also made efforts in this field.⁸ Before the Islamic Revolution, Iran has been considered as one of the strong medical hub in the region. As Shiraz as one of the ocular disease and Urology care centers, was considered as reference center for patients from Persian Gulf countries.² In the past, patients from neighboring countries, especially Arab countries around the Persian Gulf were traveling to Iran, and especially to Fars province to receive medical services.⁹ Iran's special geographic position, History of Medical Sciences and the availability of medical and paramedical teams, low-cost and high-quality health services, has led to increasing importance of medical tourism in economic and medical fields in Iran.¹⁰ With the growing medical staff and investment in hardware and software sectors, we have seen the increase in quality of health services provided. This growth in a variety of treatment areas, has caused dramatically capabilities for admission of foreign patients. On the other hand, due to the proper cost of treatment in the country, compared to countries in the region, especially the Arab countries of the Persian Gulf and other quantifiable advantages, such as low cost of transport and in general, cost of living, has been facing our country to a good opportunity for investment in the field of medical tourism business.¹⁰ Also, achieving the goals set out in the Fourth Development Plan and Vision as a legal requirement, shows another dimension of the importance of health tourism.¹¹

Despite the rapid growth of medical tourism, this industry faces a number of challenges, among the most important of which, legal aspects can be noted. Since little research has been conducted in this regard, the aim of this study is to evaluate the legal aspects related to medical tourism. This study is a review article on the legal issues of medical tourism. In order to collect information on the legal issues of medical tourism, databases, Scopus, SID, and PubMed Google Scholar were examined and about 47 related articles were found, after studying the titles and abstracts of the articles found; 23 subjects associated with the research topic, were studied. Then, the results obtained were analyzed.

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Materials and Methods

The present study is a review article on the legal issues of medical tourism. In order to collect information on the legal issues of medical tourism, databases, SID and PubMed Google Scholar were investigated using the key words "medical tourism", "health tourism" and "legal aspects" and about 47 related articles were found; titles and abstracts of the articles found were reviewed and 23 subjects related to the research topic, were studied. Then the obtained results were analyzed in the separation of iterative themes including access to services, medical errors and ill-treatment, health insurance, licensing and regulatory approvals of centers, medical operations and medical technologies.

Findings

The findings of the articles related to legal issues of medical tourism in areas of access to services, medical errors, health insurances, licensing and regulatory approvals of centers, medical procedures and medical technologies are analyzed.

Access to Services

Due to differences in the legal systems of different countries, access to some services is prohibited in some countries. In this case, some challenges arises regarding the use of a foreign patient from these services in a country. In this regard, some of these services may be illegal in the country of origin and the destination country, but stricter rules be applied in the country of origin, while procrastination may be made country in implementing rules in the destination country. The challenge raised in this case is that how the origin country decide about a guilty patient. One key issue in this regard is the issue of dealing members, which is banned in most countries, while its associated laws vary in different countries.¹² In some cases, civil patients lay at the end of the waiting list for organ transplantation due to lack of financial resources, while foreign patients

are of the priority. Another important point in this case is trafficking of organs and tissues of local citizens to provide foreign patients.¹³

In Iran, in order to prevent buying and selling human organs at the international level, rules have been established to prevent such a possibility by the Ministry of Health, Treatment and Medical Education, including the following: First, foreign patients are not allowed to receive kidney from an Iranian, Secondly, they cannot give organ to the citizens of Iran needing transplantation, Third, foreign patients can get member from unrelated individuals, provided that the donor and recipient are both from one nationality, and a license of organ transplantation be obtained from the Ministry of Health, Treatment and Medical Education.¹⁴ However, whereas these provisions cannot guarantee entirely ethical organ donation for tourists, but is taken into account as a positive step towards more ethical treatment of transplant tourism. Therefore, although the law of organ transplantation in Iran makes no restrictions for foreigners or tourists organ transplantation, they can take transplant organ in Iran, provided that the organ donors are from their fellow citizens.¹⁴

It is possible that providing some services to be illegal in the origin country of the patient, while deemed legal in the destination country. A sensible example of this type of services is abortion and euthanasia.¹⁵ In Iran's abortion law, no restrictions are considered on abortion in the case of citizens of other countries. Therefore, this law also could potentially be admitted for abortion for tourists. As, first the applicant of therapeutic abortion is authenticated and after authentication by providing a birth certificate or a verification by prosecutors, endorsement of abortion is adjudicated by the medical device.¹⁶

Also, it is possible some services are considered legal in both countries; the challenge in this case is that after the patient has received medical service in the country of destination, may need to keep track, and tracking which receives in his home country, especially in the insurance coverage, can be problematic.¹²

Medical Errors and Adverse Treatment

The problem of medical errors and ill-treatment, is one of the challenges in the treatment field, which with the introduction of medical tourism, it is more complicated to deal with and manage it.¹⁷ Medical error, is defined as an involuntary action that occurs due to negligence or is an action that do not lead to desired results in the practice (JCAHO). In the Iranian legal texts, medical error is also defined as: the physician's action or inaction that causes physical, financial or spiritual damage inflicted to the patient; in accordance with Clause 3 of Article 295 of the Islamic Penal Code whenever a murder or assault or battery occur as a result of recklessness or negligence or lack of skill and lack of compliance with a case, in such a way as if

regulations were obeyed, an accident would not have happened, murder or assault or battery will be in order of quasi-intentional injuries. It is also stated in Article 336 of this law that "The fault is whether of carelessness, negligence, lack of skill, lack of compliance with government regulations".

Whereas, there are no global rules and regulations regarding addressing the issue of medical errors and ill-treatment, also it is not available an international legal entity that foreign patients can report their complaints to it, so, the discussion of medical errors and malpractice in the form of medical tourism, is one of the major challenges of this industry¹⁷, and about the incidence of medical errors, lack of legal protection or lack of necessary medical malpractice laws to protect foreign patients, may face these patients with some legal issues.¹³ When the patient is ill-treated, they have legally the right to sue, and usually receive compensation, when it happens in the international arena, the differences between the legal systems in different countries, create hurdles in this regard.¹⁷ Also, transparent treatment procedures and providing information to patients to make informed choices, will be necessary¹², which given the vast differences in cultural and surveillance systems in the healthcare systems of different countries, as well as lack of coordination regarding the adoption of international standards, among developed and developing countries, it is facing many challenges.¹⁸ In this regard, the need to inform patients about medical errors of the destination country is of great importance to the patient informed choice. Patients must also receive adequate and credible information before traveling and paying costs.¹⁹ In this context, the monitoring of websites providing information to patients, is important.²⁰

In this regard, doctors may also travel their overseas and offer advice or even cure illness there, also in these conditions, since the parties both are foreigners, so the legal issue is more difficult in case of medical error, and in this regard, the issue of liability insurance for doctors, is important at international level as well.¹⁷

Health Insurance

The lack of portability of health insurance to abroad and lack of medical services coverage received in the foreign country, is one of the major obstacles in medical tourism industry.²¹ The portability of health insurance has been also proposed in a study (2012) as one of the most important challenges of trade in health services in the countries of the ASEAN region.⁹ Although, a small number of public and private insurances cover some non-emergency services under certain conditions. About the coverage of services in foreign countries, private health insurances have more shares, but their coverage is limited to emergency services.²² Insurance issue is of importance, especially in relation to issues of financial abuses and fraud in the international area.¹⁸ In this context, the adoption of

standards for the insurance system integration, in relation to the same crypto acceleration of medical procedures and their reports seems necessary (WHO). On the other hand, as was also raised in the discussion of medical errors, adoption of measures to address the professional liability insurance for physicians and health care organizations, regarding the incidence of medical errors and adverse treatment, is another important issue about the insurance relating medical tourism.¹⁷

Licensing and Regulatory Approvals of Centers, Medical Procedures and Medical Technologies

Weak regulatory systems and lack of integration, particularly in developing countries, is a major challenge in medical tourism industry, though monitoring, evaluation and International accreditation systems, is a tool for measuring the quality of centers' services in each country, but these systems are implemented at different levels in various countries, which complicates patient selection, insurance systems and even the judicial systems to determine medical errors.²³ In the context of legal requirement, accreditation is considered, that there is currently no international organization responsible for this case.²⁴

The lack of consistency in the quality of services, patient safety and risk reduction, is not only a challenge, but also the challenge of medical errors itself, faces insurance reports and professional responsibilities of physicians and health care organizations with the challenge.²³ This problem in developing countries, which have weaker regulatory infrastructure, is highlighted, as the standards for granting licenses to health care centers, specialists and medical technologies, monitoring and accreditation represents the expected quality level in the countries and consequently, the health insurance systems in the countries, undertake risks appropriate to this level of the quality, therefore, in countries with lower levels of quality, issues of accreditation and insurance responsibilities are also different.¹⁸

Conclusions

Statistics of different countries, indicates the rapid growth of medical tourism. What is certain is that this industry is growing and every country has its share of those demands. At the macro level, governments and public institutions are interested to take economic advantage of the benefits arising from it, and also in micro levels, hospitals, different providers of medical and travel services, in competition with each other, try to raise their own share. The Government of the Islamic Republic of Iran, thanks to their advantages in the field of medical tourism, including particular geopolitical and climatic position, the presence of skilled professionals, and low cost and high quality medical care, has decided to use the available opportunities. According to Article 87 of the Fourth Development

Plan, the Ministry of Health must provide 30 percent of their foreign exchange uses, through export revenues of services and health facilities. To this end, the Health Tourism Committee has been formed to adopt policies and measures to develop this type of tourism under the supervision of the Ministry of Health, Treatment and Medical Education. This committee's mission has been declared as to introduce the therapeutic potential of Iran at the international level and contribute to equip medical centers and hospitals with required equipment and facilities. According to the cases above and medical tourism market, which is rapidly going to be competitive, Iran like other countries active in the area of medical tourism, is also facing challenges, one of the most important of which is legal issues. According to the present studies on the legal aspects of medical tourism, areas of access to services, medical errors, health insurances, licensing and regulatory approvals of centers, medical procedures and medical technologies should be considered by policy makers and institutions responsible in this industry.

In relation to access to services, due to differences in the legal systems of different countries, it is essential to develop measures to consider differences in the field of providing services to foreign patients. In this regard, in some cases, such as organ transplants, Iran has taken measures, but given the importance of the issue and the willingness of the country to provide active medical services in the international arena, it must be more widely considered by policy makers.

About medical errors, since there are no laws and regulations, on addressing the problem of medical errors and adverse treatment, as well as an international legal entity that foreign patients can report their complaints to it, is not available, so the discussion of medical errors and malpractice in the form of medical tourism, is one of the major challenges in this industry, and in the incidence of medical errors, lack of necessary legal protection or weak laws related to medical errors to protect foreign patients, may face these patients with some legal issues. In this context it is appropriate, while adopting measures to address the issue of patient complaints, treatment procedures and providing information to patients to make informed choices, be transparent.

On the issue of health insurance, lack of transportability, is a challenge the entire industry of medical tourism is facing with, so taking necessary measures in this regard could be considered an advantage. In this regard, the issue of professional liability insurance for doctors in relation to foreign patients should also be considered.

The lack of unity in the quality of services, patient safety and risk reduction is also considered as a big challenge in the medical tourism industry, particularly for developing countries. In this context, since Iran does not use the International Accreditation System, so the issue is far highlighted. In this regard, an attempt should

be taken to obtain internationally recognized certificates of approval for the quality of medical services.

Finally, given that medical tourism industry is growing, but its challenges, especially in terms of legislation and regulations should also be considered, as according to the globalization of these challenges, trying to eliminate them is necessary; which by turning threats into opportunities, facilitates the attraction process of foreign patients.

Conflict of interest statement

The author declares that they have no conflicts of interest.

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