LEGAL MEASURES ON CONTROLLING MEDICAL TOURISM FACILITATOR

BY

MISS KANPARPAT NOPPHARESKSAWAT

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS IN BUSINESS LAWS (ENGLISH PROGRAM)

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THAMMASAT UNIVERSITY
ACADEMIC YEAR 2015
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THESIS

BY

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ENTITLED

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was approved as partial fulfillment of the requirements for
the degree of the Master of Laws Program in Business Laws
on August 11, 2016

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ABSTRACT

According to the escalation of health care movement and a result of unsatisfied medical care within the national level, the dramatic rise in the amount of patients has been found in the intensive competition in medical tourism market, especially ASEAN countries. Nevertheless, the distance, time, knowledge, languages, and culture turn out to be the incentive matter in driving patients to come across the world. It explicitly seems that the patients are not able to choose the greater medical treatment program without the comparison of several factors relating to a choice, a price, a facilitation, and a completion of services, whereas the medical providers have no capacity to access to consumer bases.

As mentioned, a medical tourism facilitator is a middleman who rearranges and delivers healthcare service to the patients as to eliminate the gap between customers and other providers. The more competitive medical care are found, the more significantly increase on ‘sale of medical treatment’ occur. Thereby, each medical tourism facilitator put its effort to attract patients, whether domestic or international level, which leads to the main problems ranging from the pre-medical treatment to post-medical treatment. The deceptive advertisements and the disclosures of information are referred to as the oppressive allurement, while the contractual terms and conditions benefiting the medical tourism facilitator itself may not be set forth straightforwardly. Furthermore, the limitations and exclusions in the contract always rule a few responsibilities for medical tourism facilitator in the case of medical error, undertreatment operation, uncertified medical equipment and physicians, and the cancellation of insurance coverage which affects the patients’ rights. As
a result of low patient protection, the indirect effect brings Thailand to the downturn of medical tourism and damages the medical tourism reputation consequently.

The laws that generally impose on medical tourism facilitator case are Consumer Protection Act and Civil and Commercial Code of Thailand, whereas specifically governing law is Tourism and Tourist Guide Business Act. Noticeably, a medical tourism facilitator defines the quasi-broker in health care network. Still, the specifically governing law is not available for control its business operation. When it comes to the existence of legal measures, the unsuitable resolutions are addressed. The main problem on controlling medical tourism facilitator can be divided into three issues.

First of all, the definition of medical tourism facilitators shall be deemed as uncertain which leads to the misleading interpretation among Thai authorities on exercising their power, investigation, and the enactment of adequate legal measures. With the concentration on tourism and movement of foreigners, medical tourism is referred to as a kind of tourism which is subject to tourism law. Even the fundamental nature and structure of this kind of business fall under the medical service with partial insurance, the medical tourism facilitators are not subject to any medical laws and regulations.

Secondly, with the registration approval using simple qualification, the illegal and unqualified medical tourism facilitators can easily access the patient base.

Lastly, the business operations of medical tourism facilitators, comprising the advertising, the disclosure of information, quality of care, report of business operations, and contractual terms and conditions, complied with the general legal measures and broad scope of authority review in passive manner, cannot assure the efficiency of the health care. The particular issues that should be enacted, such as review system for patients and fiduciary duty, do not exist as well.

In this regards, the legal measures on controlling medical tourism facilitators shall be concerned for the further amendment and enacted laws and regulations for the maintenance health care quality and potential medical tourism market of Thailand with the steady consciousness of patient safety.

Keywords: Medical tourism facilitator, Medical travel broker, Cross-border healthcare, Control measures, Patient safety, Insurance, Medical tourism, Medical travel, Health tourism.
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CHAPTER 1
INTRODUCTION

1.1 Background and Problem

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 stakeholders, especially medical providers, insurance companies, and other facilities. Medical tourism facilitators are persons who rearrange and deliver healthcare service to patients, particularly foreign patients. The medical tourism facilitators have several significant influences on decision-making of the patients and providers who participate in medical service. Critically, the medical tourism facilitators are primary entity of medical service network\(^1\) that plays the role of a marketing channel in competitive marketplaces for global patients. Recently, the medical tourism becomes a furious battlefield of medical service competition as a result of operations of the medical tourism facilitators. Such competition brings medical tourism facilitators a referral fee for coordinating providers in exchange for their medical service network operation. Main problems in this study challenge the legal status and business operations.

First of all, the legal status of medical tourism facilitators becomes the primary concern. The interpretation of competent officials expresses that the legal status of medical tourism facilitators should comply with tourism law. Thus, tourism license approval and qualification should be applied. Indeed, medical tourism facilitators are administrators in medical service network. The requirement of license approval bases on the leisure program which defines the low quality and qualification for persons who manipulate the whole of medical care networks. Besides, the other providers in medical service network have no liability if they know the illegal status of medical tourism facilitators and still enter into the network. Hence, the illegal medical tourism facilitators are able to continue their businesses without any public investigation which could logically impacts patients’ safety. The last issue of legal status is the fiduciary duty. Presently, the medical tourism facilitators use 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’ rights and medical standards, the medical tourism facilitators, wholly or partially, may cause medical errors that result in bad reputation of Thailand as the medical hub. Medical tourism facilitators make the exaggerated commercial ads for attracting the patients without any precautions of medical accidents or the assumed risks. Some of them pretend that they are health consultants; even though, they have not been certified by Medical Council or other health care organizations. Besides, the unilateral contracts between medical tourism facilitators and the patients limit the patients’ rights. The infamous terms and conditions include 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 will be addressed with the death and disorder was Joy Williams\textsuperscript{2}, whereas the fault advertisement was represented in British female teacher case\textsuperscript{3}.

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.

This study will discuss on control measures without touching on the remedial measures. Legal measures on controlling medical tourism facilitators can be categorized into two types: preventive and remedial measure. When it comes to the remedial measures, the drawback of such method does exist. Recently, most of errors arising from medical service arrangements have been sent to the courts for litigation which is deemed as remedial measures. Nevertheless, several clients in trials are confronting with unpleasant factors in particular with time consuming, high expenses, and stress during the proceeding. In the case where there is no applicable law suitably and specifically applies on medical tourism facilitator cases and the adhesion contractual terms and conditions benefit the medical tourism


facilitators themselves, the courts have to rely on the general laws and unfair contracts. The clients are entitled to sue the medical tourism facilitators on the ground of tort and contract. The laws of brokerage, hire of work, and obligation, including consumer protection law state the simple functions which can be found in the common transaction and do not cover the fundamental issues of medical service network. Some of medical tourism facilitators are able to escape from the liabilities as the few responsibilities set forth in the contracts. When the laws of contracts are not deemed as the best solution, the clients still enable to use the tort approach. In the aspect of tort law, medical tourism facilitators can be subject to a liability based on a fault, providing that they physically harm their clients by poor health supply. The burden of proof will be on the claimant of the issues. Therefore, the clients need to present the reasons and evidences in accordance with health care system of which they are not familiar and not available for the access. So, the clients will face the problems of litigation relating to the legal burden, the health and insurance acknowledge, and the evidences. As can be seen, the remedial measures may rather be trouble for the clients. With the alternative way, control measures which is a part of preventive measures should be considered. The other reason why we should focus on the aspect of the control is to amend the root of the problems that medical tourism facilitators (the gatekeeper of medical service network) cause. The patients should be protected since the beginning level and should not be injured in the health care network. As a result of jeopardize medical treatment, the patients may suffer from the remedial proceeding. The last reason is the participation of partners in medical service network. The control measures may make each provider realize how significant of the health supply and the consciousness on patients’ safety is.

Nevertheless, to control the medical tourism facilitators, Thailand lacks both specific instrument to impose a legal status and business operation. Thereby, the patients may either take a risk on fault management in the medical service network or be harmed from the medical errors. Giving the general provision, the inadequacy of the existing laws is indicated. Some provisions involve and relate to the control of medical tourism facilitators.

Firstly, Consumer Protection Act B.E. 2522 (1979) refers to the fundamental law for controlling the business and the consumer protection. Noticeably, the services which are subject to these provisions are defined as the ordinary services that can be seen in daily life. Because of the general legislation, consumer protection law is an unfit instrument, such as consumer protection board which does not specialize 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 contracts which refer to the modern business model.

Secondly, Tourism and Tourist Guide Business Act, B.E. 2551 (2008) is statute that tends
to govern on leisure basis. The object of this law does not cover the mobility of patients in
medical tourism network. Unfortunately, Thai competent officials construe that medical tourism
is one kind of travel. As a result of the wrong interpretation, the medical tourism facilitators have
to follow 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 requirement and 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 competent
agencies who 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 effectively. To explain, the provisions of medical tourism
facilitator shall 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 three contracts do not the fully cover and provide the legal instrument of
control on medical tourism facilitator because of the hybrid contract in the medical service network.
Medical tourism facilitators are referred as 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 point third parties for contractual conclusion. On the other hand, medical
tourism facilitators are defined as the quasi-brokerage character because their responsibilities go above
and beyond the call of duty of inducing the patients. 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 resolution are also addressed. The medical tourism facilitators are not the
employees with the respect of the beyond on the completion of work following the satisfaction of the
patients, the after health proceeding, and other necessity functions. Medical tourism business indicates
that the hybrid contract is not just the basic service contract in normal practice. The law of hire of work enacts 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 regulates payment methods while the law of hire of work and obligations use the simple scope of liability whether creditors partially perform the obligations with fault or not. Thereby, the general terms cannot suitably be applied 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’ contracts are defined as the specific contract in respect to medical care and insurance, so the law of obligation cannot fill the loophole of particular context. In the other word, three laws lack the specific control measures.

Fourthly, relevant medical legislations rule that medical tourism facilitators are not subject to the control of governmental agencies in healthcare criteria. This brings a problem to Medical Council of Thailand 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 cautious 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 measures do not favor the foreign patients and affects the reputation of Thai medical tourism. The struggles of bringing cases to Thai civil courts cause the patients gain lower compensation when comparing with expensive expenses during litigation\textsuperscript{4}. Moreover, the patients have to face the problem of inadmissible evidence in foreign language\textsuperscript{5} and extent period of time\textsuperscript{6}. Therefore, the mere use of remedial measures cannot complete the efficient medical service network. As a result, the preventive measures 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 that can increase the confidence on health care for patients.

\textsuperscript{4} Nathan Cortez, “Recalibrating The Legal Risks Of Cross-Border Health Care”, Yale Journal of Health Policy, Law & Ethics; Civil Procedure Code of Thailand, s. 46.
\textsuperscript{5} Interview with Yuthana Srisavat and Pongwut Bamrungsuksawat, L.L.M. Candidates, Southern Methodist University, Dedman School of Law, in Dallas, Tx (Mar. 18, 2009) (citing Civil Procedure Code, s. 13, and 46, procedural rules that require the translation of court documents into Thai).
\textsuperscript{6} Nathan Cortez, supra note 4.
Even, the problems of medical tourism facilitators can reasonably affect the whole countries. 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. As the result, the medical and insurance laws are involved in the consideration of consumers’ health through controlling the medical tourism facilitators’ operation. The recent existing regulations are found in the Republic of Korea, and the United States. This study 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. The Korean medical law launched the new provisions on registration and investigation on medical tourism facilitators, whereas; the United States imposes managed care organization code. Such legal instrument of the United States can be used to govern the managed care organizations which have the same function as medical tourism facilitators. The managed care regulations have the strict control on registration, license, investigation, advertisement, medical standard, liability, contractual control, report of business operation, grievance system. California module law offers the strong patient protection and detailed regulation in order to maintain affordable health care. Consequently, this study mostly recommends California law as a module law.

Thailand, as 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. Recently, Thailand does not have a broad scope of regulations to solve these problems. 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 is to harmonize the legal measures and to create the patients’ confidence, which can protect Thai medical practitioners and facilities in medical service system and the patients. In addition, being the leader of medical services in ASEAN7, Thailand shall prepare for

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greater mobility of patients that resulted from AEC opening at the end of 2015. The private sector should not manipulate the chronic and complicated problem unsystematically alone. It can be noticed that the controlling on medical tourism facilitators is also able to enhance the competitiveness of Thai medical tourism and to support Thai identity on medical tourism.

The control legal measures which are proposed by this study shall govern the medical tourism facilitators’ status and the practical arrangement in the next chapter.

1.2 Hypothesis

Being the medical tourism destination country, Thailand, however, has the recent statute which is the inadequate measures of controlling medical tourism facilitators and their operation of medical service network. Therefore, the practical operations of medical tourism facilitators do not comply with medical hub policy and global medical standard that causes the demolished identity of Thai medical tourism. In order to enhance the competitiveness in the medical marketplace and increasingly consciousness of consumer safety, it is time to explore the suitable control measures of medical tourism facilitators from other countries and apply them as the appropriate solution for medical tourism of Thailand.

1.3 Objectives of Study

(a) To support Thai medical tourism for both local and foreign patients.
(b) To install how significant of patients’ right of the business operation of medical tourism facilitators.
(c) To explore and analyze legal measures, laws and regulations referring to the control of medical tourism facilitators, who are the primary entities of medical service network, journals that belong to foreign countries.
(d) To explore and evaluate related laws and regulations belong to Thailand referring to the control of medical tourism facilitators.

University, 2006; นพรัตน์ จวงพุ่ม, “ศักยภาพของโรงพยาบาลในการรองรับการเป็นศูนย์กลางการท่องเที่ยวเชิงสุขภาพ”, ปริญญานิพนธ์, หลักสูตรปริญญาโทวิทยาศาสตรมหาบัณฑิต สาขาวิชาการวางแผนและการจัดการการท่องเที่ยวเพื่ออนุรักษ์สิ่งแวดล้อมของมหาวิทยาลัยศรีนครินทรวิโรฒ, ภาษีบุคคล 2550 (Noppharat Juangpum, “Capacity of Thai Hospital on Medical Tourism Centre”, Master Degree, Environmental Management and Operation Branch, Faculty of Science, Sreenakarinviroth University, May 2007).
(e) To introduce the appropriate solutions by adopting foreign legal measures, laws and regulations as for protecting patients whether domestic or international level from the error of the operation of medical service network and also controlling the medical tourism facilitators as well.

(f) To secure medical practitioners and other facilities in the medical service network and patients.

1.4 Scope of Study

(a) Fundamentally concentrates on the paper of the legal measures and existing statues available in foreign countries referring to the control of medical tourism facilitators.

(b) Principally explore the foreign measures and legislations as a model for adaptation of suitable and effective legislative and non-legislative solutions for medical tourism facilitators in Thailand.

1.5 Methodology

This thesis is basically based on documentary research consisting of texts and papers as source materials, for instance, research, journals, articles, newspapers, videos, broadcastings, publications, books belongs to both government and private sectors, including domestic and international laws and information through the Internet.

1.6 Expected Results

(a) Enhancing both of local and foreign patients to consume the medical tourism of Thailand systematically through the installation of patients’ confidence.

(b) Escalating the consciousness of patients’ right which can be affected regarding the arrangement of medical tourism facilitators.

(c) Understanding the policies, measures and statues referring to the control of medical tourism facilitators, consisting of articles of foreign countries.

(d) Introducing a recommendation for adoption of appropriate legal measures on controlling medical tourism facilitators in Thailand.

(e) Proposing the policies, measures and regulations belonging to foreign countries for Thai medical tourism facilitators with the compliance of those regulations as for supporting the competitiveness of the global medical service marketplace.

(f) Protecting Thai medical practitioners and facilities within medical service system, and patients as well.
CHAPTER 2
MEDICAL TOURISM FACILITATOR IN GENERAL CONCEPT AND PRACTICES IN THAILAND

Healthcare, the essential determinant in the physical process of the well-being of human all around the world, is indicated as being a health instrument for relieving of any disorder, disease, or injury. When humans grow older, the first issue that built up in their mind is how to sustain their physical health and prevent the illness which can lead to the demise of their life. The globalization, driven by high technology, brings humankind with the new advanced health care service to improve the quality of care. After the renovations of medical treatment among countries, the specialized physicians and other healthcare facilities have the capability to supply prestigious therapies differently. The modern hip grafting and replacement can be found being practiced in India, while the best plastic or cosmetic surgery has been naturally found in Mexico, the Republic of Korea, and Brazil. The other great general surgeries and medicines can be located in Singapore, Malaysia, Turkey, Canada, Costa Rica, Taiwan, and Hungary. Still, the standard technology and specialized expertise are considered as being common medical treatment in the United States. When it comes to Thailand, cosmetic surgery, rehabilitation, and other medical services are the important healthcare treatments among foreign patients.

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11 CNBC, supra note 9; Sabel Rolland, supra note 9.
The mobility of crossing the border of the countries is not the recent issue, but its increases in distances, rates, and speeds on transferring process is the issue\textsuperscript{13}. In the edge of globalization, the dynamic process drives people to cross borders in the pursuit of better standard and alternative channel. Several factors, such as modern transportation and communication, particularly the fast-track data, linking internet, and easy access to goods and services aboard, tend to influence the decision-making of local people to prefer oversea healthcare.

What drives people from both developing and developed countries to look for other options? The answer is “four necessities for a living”. Primarily, health service refers to what human needs.

Rather than accepting the domestic medical treatment, most patients additionally seek for the international medical service. Evidentially, the significant research implicitly demonstrates that global patients make their efforts on the pursuit of health care regarding the quality of care\textsuperscript{14}. Numerous factors, such as less specialized doctors and facilities, the avoidance of rimming medical treatment expenses, wasted time, illegal procedure, and alternative healthcare service in the host country, are the fundamental reasons beyond cross-border healthcare\textsuperscript{15}.

It seems that the high mobility of patients occurred between the prosperous countries to the less wealthy countries. Otherwise, the patients from a country with the less medical standard will cross the borders to the countries with the higher medical standard\textsuperscript{16}. The mobilization of people appears everywhere. The Republic of Korea, the famous country for plastic surgery, is deemed as being conspicuous heaven for Thai females for uplifting face and cosmetic surgery, due to the


\textsuperscript{14} Sara Caballero-Danell and Chipo Mugomba, “Medical Tourism and its Entrepreneurial Opportunities - A conceptual framework for entry into the industry”, School of Business Economics and Laws, Goteborg University, January 2007, at 1; Glenn Cohen, “Protecting Patients with Passports: Medical Tourism and the Patient-Protective Argument”; CNBC, supra note 9.


television programs representing beauty surgery promotion and the trend of having a baby-cute face as Korean girls. Besides, some particular medical bypasses that require the high technology are handled in the United States, especially endoscopic surgery, midwife and caesarean section.

On the other hand, Thailand is also regarded as being a destination of medical tourism for western, and ASEAN persons, such as Cambodian, Myanmarese, Vietnamese, and Laotian people. The number of patient travelling to Thailand and other countries is increasing every year. Recently, the increase of western patients moving to developing countries, such as


21 โครงการเสริมสร้างผู้ประกอบการใหม่ สานักงานพัฒนาผู้ประกอบการ กรมส่งเสริมอุตสาหกรรม, ศูนย์กลางการแพทย์แห่งเอเชียด้านแพทย์ ยา สำอาสน์ไทย สุขภาพ, อุตสาหกรรมสาร, วารสารของกรมส่งเสริม
Mexico, Costa Rica, Hungary, Poland, Philippines, India, Thailand, and Malaysia, to receive medical treatment has significantly occurred because the potential of health care services. Owing to medical tourism policy of Thailand, the collaboration of the Ministry of Industry, Tourism, and Public Health tries to impose the national plan for supporting the expansion of medical tourism marketplace in Thailand. Providing that the stock market exchange of BDMS has grown, this resulted from the extension of branches of hospital and the increase of physicians within its network. The research also founds that Bumrungrad International Hospital network has sustained approximately four hundred thousand patients from the western countries.

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22 Glenn Cohen, supra note 14.
24 ข่าวหุ้นธุรกิจ, BDMS ซื้อโรงพยาบาลราชบุรี มีปัจจัยบวก โบรกฯ แนะเก็บ ให้เป้าสูงสุด 22.70 บ., 2 กรกฎาคม 2558 (Stock News Online, “BDMS buys Ratchaburi Hospital affecting the positive investment and maximum 22.70 bahts”, July 2, 2015, available at http://www.kaothon.com/online/content/view/12396/BDMS) (last visited May27, 2016); Money Channel Thailand, Business Model "BDMS Infinity Profit with Powerful Network” Part 2,
To achieve this strategy, international and domestic patients who are not familiar with the medical treatment criteria, would be persuaded to contact either one-stop center of medical service or any person to arrange the medical care. Providing that the supply in medical service is motivated for commercial profit, entrepreneurs, who keen on marketing channels and expert in an accomplishment of stability, engage in medical service network. Such kind of hybrid career dealing with an aggregation of healthcare sector combines economic system and delivering medical care together. Such phenomenon brings the most well-known terminology, the medical tourism facilitator, to a consolidation of the medical service network. With the high global trading, some turn to be agents or facilitators on crossing territorial borders to globalize the countries of destination after customers’ arrival. Those have been identified as being ‘medical tourism facilitator’ has the duty of healthcare delivery service and facilitating all relevant service, including transportation, accommodation, insurance package, and maybe leisure program to patients within his medical network. It implies that the number of medical tourism facilitator increase as the patients have more mobility.

To generate the characters of medical tourism facilitators among the practical business operation, the first part of this chapter addresses the status and the influences on health care and how it operates in health care services worldwide under governmental control in general. Then, the second part reviews the status, business operations and controlling measures on medical tourism facilitators in Thailand briefly.

2.1 Medical Tourism Facilitator in General Concept

Before touching on issues of medical tourism facilitators, the background of an establishment and innovation of medical tourism must be addressed first. Nowadays, most of the


patients seek the best medical care outside of their host countries. The major available paper evidentially reviews that some groups of people try to pursue the wellbeing within the field of health tourism because of the negotiated price of health services combined with tourism activities. Nevertheless, the hybrid function between surgery and leisure seems to be a brand-new tourism, achieving a significant growth over numerous years\(^\text{27}\).

Cuba is the first country which has actively encouraged the hybrid form of medical tourism since the 1990s through successfully launched ‘Sun and Surgery’ packages which composed of cardiac, transplant, dental, and cosmetic procedures in connection with ‘wellness adventures’ advertisement. Consequently, the medical tourism brand identity has been a well-known sign of synonymous words, such as cross-border healthcare, health tourism, and medical travel used from now to then interchangeably\(^\text{28}\). Cross-border health care has rarely been used when compared with medical tourism because the medical tourism is more welcome by all of the people from around the world. However, the cross-border health care shall not be eliminated or fades away owing to an anti-regulatory direction\(^\text{29}\).

The medical tourism can be divided into five types according to its particular healthcare characters, such as leisure tourism, outdoor recreation, spa tourism (wellness tourism), dental tourism, and medical tourism\(^\text{30}\). The reasons behind the medical tourism are an avoidance of marginal medical care capacity, excess time of waiting, and immense expenditures in the country of origin\(^\text{31}\). Signally, medical tourism tends to be taken into the cross-border context from the richer to poorer countries where the convincible motivation of quality of services, the length of waiting time, treatment expense, illegal procedure, and availability of complementary and alternative medicine are taken in the consideration of patients\(^\text{32}\). Increasingly, medical tourists are traveling from developed countries to developing countries, where exclusive and private hospitals are available for wealthy foreign patients\(^\text{33}\).

\(^{27}\) Sara Caballero-Danell and Chipo Mugomba, supra note 14, at 1.

\(^{28}\) Kristen Smith, supra note 15, at 2-3.


\(^{31}\) Id.

\(^{32}\) Kristen Smith, supra note 15, at 2-3.

This individual patient may arrange this through medical tourism facilitators who specialize in making arrangements for international patients\textsuperscript{34}. The people seeking medical treatment abroad have been affected by six reasons: seeking unavailable specific medical treatments in the host country, obtaining uncovered insured treatment, buying drugs and medical services at the higher price, inaccessible immediate medical care, and the restrict medical procedures by regulatory bodies within the host country\textsuperscript{35}.

When it comes to a concept of medical tourism, non-emergency surgical intervention is intentionally subjected to its variation, as well as fertility treatments, surrogacies, elective cosmetic surgeries, holistic, rehabilitation, and medicine.

To underline constructive understanding on healthcare, medical tourism is determined as being the mobility of patients from the host country to another country for medical treatment. Affirmingly, the success of growing business is driven by the amount of facilitation and the existing companies in medical care regarding the experience of being tourism agents. Medical tourism is not only traveling abroad; it also means a valuable development of medical and journey for life-saving treatment\textsuperscript{36}. Otherwise, medical tourism is separated from holiday or the consumption of tourism services\textsuperscript{37}. Nowadays, as seen in the distorted practice of medical tourism facilitators, the facilitators try to advertise holiday plan for attracting the patients\textsuperscript{38}.

With the “Cross-Border Health Care” terminology, the movement of patients is usually motivated by the poor treatments in the host country. For the perfect healthcare covering specific procedures, several necessaries, and health information, the health care providers have to contact


\textsuperscript{36} Kristen Handley, “Sustaining Medical Tourism in South Korea”, the U.S.-Korea Institute at SAIS available at www.uskoreainstitute.org, at 128 (last visited May 27, 2016).


\textsuperscript{38} Kristen Handley, supra note 36.
with the agents and health insurers abroad. With the implication of growing number, it expressly shows the tendency of transferring patients aboard for care. Some temporarily move from the old to the new member states for the medical conduct which is not provided in national packages. The first initiated medical tourism package is dental care and cosmetic surgery.

In support of medical tourism, the number of individuals, who are interested in obtaining quality cross-border medical care, partially rises. On the other side, a multitude of governments is also interested in support of their economy and back up the gross domestic product (GDP). Thus, a result of the exploding Medical (Health) Tourism industry is innovatory established. The significant increase of gross revenues generated that the countries have been obtaining come from medical tourism are Cuba, Malaysia, Jordan, and India. With these reasons, Dubai and Harvard Medical School subsidiary tried to establish Dubai Health Care City in order to enter into the medical market and grabbing the most massive healthcare complex.

Providing that various organizations try to ensure their employee’s healthcare, employers hire their broker and insurance network. In the same way of business operation of cross-border facilitators and third party administrators, the employers from all over the world are starting to provide the benefits and the risk assessment for their participants on both domestic and international medical tourism.

In the nature and structure of this kind of business, medical tourism facilitators, in the other word, a “medical travel agents”, provide the similar function to cross-border healthcare facilitators.

The issues relevant to medical tourism facilitators are composed of the status, the business operation, and the regulatory organizations on controlling medical tourism facilitators. On the ground of regulatory organizations, the lack of the specialized authority and the control measures leads to a non-effective resolution. In this study, the scope will be narrowed merely on the status and the business operations of medical tourism facilitators.

In order to pursue horizontal and vertical knowledge about healthcare business, this part covers the broad scope of medical tourism facilitators’ practices to illustrate the bird’s eye view and a

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40 Id; Glenn Cohen, supra note 14, at 1472-1473.
clear understanding of the new operations of healthcare network. In this part, we touch on general status consisting of the status and business operations of medical tourism facilitators as follows:

2.1.1 Status of Medical Tourism Facilitator

The analysis of the status of medical tourism facilitators shall be on the ground of surrounding issues extending to the definition, business model, and legal status in order to solve the actual problem of the status of the medical tourism facilitators.

2.1.1.1 Definition and Significance of Medical Tourism Facilitator

To achieve the strategy of accessible healthcare, both international and domestic patients, who are not familiar with the medical treatment criteria, would be encouraged to contact either a one-stop medical service center or any person who can arrange the medical treatment. With the competitive supply in medical service, the medical tourism facilitators are represented as a specialized person with greater experience in medical service marketplace, and are able to completely provide the whole of information and assuming a risk.

To understand what medical tourism facilitators are and how significant they are on patient decision making, in this part, this study will demonstrate both academic and practical information as follows:

(1) Definition of Medical Tourism Facilitator

When patients are moved from the one place to another, someone has to be in charge of the transportation, coordination of care, credentials vetting and privileging of the health care professions, and the appropriateness or fitness for the travel to where care will be rendered. This job of as a coordinator is generally referred to as ‘medical tourism facilitator or medical travel facilitator’⁴². Considering each single word, ‘facilitator’ comes from ‘to facilitate’ which means to make something easier. A person who facilitates something for someone, thus, need to prepare, contemplate, imagine, and rehearse all purposes, processes, procedures, including troubles in order to avoid obstacles and increase the continuity of the system. The following word, ‘medical’, usually refers to a person who tries to make the best system to eliminate pains or to improve health. By the way, ‘tourism’ does not only mean leisure program for relaxation in holidays. It also refers to the kind of movement, or movement from a place to other. Not all medical tourism is associated

with tourism and leisure activities. The term of medical tourism facilitator has been used in different wording by using words, such as a ‘broker’, ‘agency’ or ‘intermediator’ instead of a facilitator. Besides, some use the term of ‘global healthcare’, ‘medical travel’ or ‘cross-border healthcare’ instead of medical tourism. By the way, these entities have the same meaning through acting as being a liaison for patients in medical tourism\textsuperscript{43}.

Medical tourism facilitators have several names depending on the region and the historical background of the destination countries. Among the ASEAN countries, healthcare facilitators are the recent phenomenon supported by the private sector of those developing countries, such as Malaysia, Singapore, and the Philippines. Additionally, the governmental sector also indirectly considers escalating the scale of healthcare trade regarding the wealth and economic stability through the consumption of foreign patients as being the potential tool for recovering the difficult economy\textsuperscript{44}. As briefly described, this phenomenon is named as being ‘medical tourism’. Otherwise, the developed western countries take an approach in hybrid healthcare network system as being a ‘managed care organization’ in harmonization. Also, among the European countries, ‘cross-border healthcare facilitator’ is the most well-known given name.

To compare the meaning between ‘cross-border healthcare’ and ‘medical tourism’, the functions of both definitions serve the same characters that cover global mobility of patients, offer the medical treatment abroad, and serve lower medical expenses and potential on medicinal quality. Thus, the similarity of both medical tourism and cross-border healthcare is the arrangement of the movement of patients from one country to another country for the aim of receiving medical treatment. Therefore, there is no different term between medical tourism and cross-border healthcare scheme.

(2) Influences of Medical Tourism Facilitator on Patient’s Decision Making

Being business men, the medical tourism facilitators could make an insider deal for lower medical expenses which the individual patients may not be able to do so\(^\text{45}\). The patient himself could face the desperate situations because of cultures, languages, and coordination in the country of destination. Moreover, the individuals cannot ask the provider for the pre-medical treatment until they meet the doctors directly, which also including post-recheck healing process before going back home. Lastly, patients need to pick the most captivating health care package. They, thus, have the desire to join the network of the medical tourism facilitators for a specific recommendation. The main duty of medical tourism facilitators is to make the process of movement as a positive experience as possible. Apart from, transportation, accommodation and vehicles rental, the medical tourism facilitators have to be add the health care travel plan to such duties. Thus, the individual or group services are available for each client by medical tourism facilitators in order to secure their personal health information, confidentiality, and privacy\(^\text{46}\).

At this level, medical tourism facilitators are established for healthcare administration due to immense influence on decision-making of patients on the ground of numerous factors: patient’s choices, pricing, facilitation, post-treatment design. In order to estimate the vitality of medical tourism facilitators, several factors shall be explored as follows:

1. Choice Factor

With the competition of medical service marketplace and the comparison of medical practitioners, the power of purchasing will be placed in the hands of patients. To illustrate the issue, after being affiliated partners with Agoda and Booking Websites, which have more than seven hundred thousand properties in leisure journey from all around the world\(^\text{47}\), hotels earn the significant numbers of bookings from independent travelers\(^\text{48}\). On the other hands, the small

\(^{45}\) ณัฏฐิรา อ าพลพรรณ, supra note 23; Nathan Cortez, supra note 4; Glenn Cohen, supra note 14.

\(^{46}\) Maria K. Todd, supra note 42.

\(^{47}\) “5 reasons to partner with agoda”, available at https://partners.agoda.com/ (last visited May 27, 2016).

middle man who suggests a few services will be less likely to be targeted from consumers, such as Gomio, Kayak, or Lonely planet websites 49.

Applying the same strategy and consumers’ mindset to this study, the medical tourism facilitator, who is gathering the distinguished medical services and insurance programs, will be the primary focus for patients. The medical tourism facilitators serve the essential function as websites do as being middlemen. The customers need to compare their facilities with others, and seek the best service in the future. The more choices of consuming base are provided, the more patients’ attraction is gained. To illustrate, BDMS, the grand medical network in Thailand which offers the insider hospitals for patients, are attracting the numerous patients in progress 50.

It implies that the sole medical treatment may not accessible to the consumer base worldwide. Additionally, the first question that comes into medical practitioner’s minds is how he could access the patient base which he may not be able to know each other before. Rather than affluent medical skill, the doctors are not keen on business dealing and do not familiar with the marketing business and management. The medical providers, who are merely engaging in medical treatment and could not access the consumer base as easily as the facilitators do, need facilitators to manage and rearrange the patient program in business term instead.

When it comes to the ethic of medical practitioners, the way of building the medical service network sponsored by the hospital may be against the medical regulations. Even the medical provision stipulates that hospitals are entitled to make advertisements within the limited scopes, such as name, location, standard, and facilities, they are prohibited from making the untruth, or overestimated advertisements with attention of flattering their hospitals 51. Thus, the hospitals will be restricted regarding the right on advertisement, which might lead to the reluctance of patient from all around the world and the inconvenience of securing medical service market directly. The medical practitioners will be restricted in term of the advertisement or commercial ads from the

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51 ประกาศกระทรวงสาธารณสุข ฉบับที่ 11 (พ.ศ. 2546) เรื่อง หลักเกณฑ์วิธีการ และเงื่อนไขในการโฆษณาสถานพยาบาล; ประกาศแพทยสภาที่ 50/2549 เรื่อง ค าที่ห้ามใช้ในการโฆษณา (Declaration of Ministry of Public Health No.11 B.E. 2549 (2006): principle, procedure, condition of sanatorium advertisement, Declaration of Medical Council No. 50/2549: prohibited word in advertisement, article 3.)
medical councils or other regulatory sectors within each country, which leads to obstacles on access to international patients. Also, the medical practitioners recognize that the medical tourism facilitators are the potential tool for grabbing patients from all around the world.

As a critical issue, the medical tourism facilitators, the primary entity of the whole medical service chain, fundamentally play in the role of attracting the global patient owing to its potential ability to compete in the market. It seems that the medical tourism facilitators are the crucial weapon for Thai medical providers, especially on the edge of thriving medical hubs in ASEAN and other parts around the world. Thereby, the more increase in mobility of patient on medical treatment brings immense numbers of medical tourism facilitator.

2. Price Factor

When it comes to the price factor, consumers usually target the small fare facilities with minimum qualified standard. Compared to Agoda and Booking websites, there are several low fare promotions in last minute offered or group tickets with much more saving from the hotels. In the other business ways, the destination of services often offer the negotiated price for middlemen, in return, such middlemen has the obligation to bring as many consumers as he could. Similar to medical tourism facilitators, the doctors or hospitals will conclude the insider deals with them to obtain the vast amount of patients in return. Also, an individual patient cannot get the deducted medical costs, whereas medical tourism facilitators have the capability to retain the negotiated price.

3. Facilitation Factor

Rather than the lack of relevant knowledge of medical care, the patients could find themselves in the terrible situation facing the obstacles of cultures, languages, and medical process in the country of destination. One-stop service provided with the experienced staff shall be determined as being the best channel to bring patients for medical treatments, as being service centers for foreigner patients. Moreover, the medical providers are not always keen on contact with the foreign patients by using different languages and cultures.

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52 Supra note 27.
54 Information Center of Medical Services, (IMS), available at
4. Pre and Post- Medical Treatment Factor

Being typical patients, they need to take all risks and responsibilities for themselves, including the pre and post healing process. Firstly, they have to go to hospitals or clinics directly, and receive diagnosis about the illness and private medical history, and make the appointment in the pre-medical treatment stage which can cause the inconvenience for the patients. Besides, if the doctors cannot take the complicated medical case due to the underestimated technology or other services, the patients might be forced to go for nothing which is time wasting. Apart from the pre-medical treatments, the post-medical treatments are also a vital process before the patients can go back home safely. After receiving the medical care, the patients must follow the medical result, such as infection, wounds, medicine, rehabilitation, or any symptoms without any medical advice. If they find something wrong, they need to come back to the doctor who took their case. It will make the alien patients facing troubles because of the remote area and cross-border process. To fill the gap of lacking pre and post medical service, medical tourism facilitators create the full-option program from the pre-medical treatment level to rechecking medical result, including the recovery process in the case of medical error.

Additionally, the fundamental function of providers is the medical conduct on specific illness as required; excluding the most significant process to enhance the patient’s confidence, such as the pre-medical treatment and post-recheck healing process. In the diagnostic stage, the providers need to meet the patients face to face for appropriate cure consideration, the individual patient, who cannot contact the doctors directly, will be in trouble on the access to medical care.

2.1.1.2 Business Model of Medical Tourism Facilitator

The standard business models can be divided into numerous types. The operation, called as being Collective business models, are handled by the government sector or association which is becoming the substantial information resource for professionals and endeavors for their

http://www.vichaivej.com/international_medical_services_th.php#.VqDMkVl97IU,
https://www.bumrungrad.com/th/services-and-facilities/international-patient-center,

members as Thai Medical Tourism Association and Thailand Medical Tourism Cluster do\textsuperscript{56}. Another type is a direct sales model which represents the sale of product and services in their home or through heads of an officer\textsuperscript{57}.

The medical tourism facilitators promote their medical service network by face to face method. Over the last three or four years, thousands of organizations were born. The more creative mindsets of the entrepreneurs, the more complicated operations of medical tourism facilitators can be.

The medical tourism facilitator is generated as being the intermediators, whether sponsored by a health care provider, insurance company or third party both individual and organization. For example, Bangkok Dusit Medical Services (BDMS) is initially sponsored by Bangkok Hospital, whereas United Group Program, Blue Choice Health Plan\textsuperscript{58}, and Stop-Loss\textsuperscript{59} Brokerage are sponsored by the insurance company. Additionally, the private sector of the website of Thaimedtour also represents the various third parties, such as MedTreat, Panorama-Medica Group Co. Ltd NC, International Medicare Group Overview, and others\textsuperscript{60}.

Whether the initiatives of medical tourism facilitators’ operation have been sponsored by the medical providers, insurance companies, individuals or organizational third parties\textsuperscript{61}, naturally, the certain model forms can be categorized into three types: ‘cutting out the middleman’ model, ‘network effect’ model, and ‘all in one business’ model\textsuperscript{62}.

\textsuperscript{57}Maria K. Todd, \textbf{Handbook of Medical Tourism Program Development: Developing Globally Integrated Health Systems}, (1\textsuperscript{st} ed, 2011).
\textsuperscript{60}List of health broker and Medical Tourism Facilitators, \textit{supra} note 27.
\textsuperscript{61}Medical tourism congress, “\textit{Medical Tourism Facilitator & Travel Agents}”, \textit{available at} http://www.medicaltourismcongress.com/medical-tourism-facilitator-travel-agents/ (last visited May 27, 2016).
\textsuperscript{62}Maria K. Todd, \textit{supra} note 57.
(1) Cutting out the Middleman Model

Cutting out the middleman model represents the absence of intermediaries in medical service supply chain and providing a direct service to the consumer base. With directly purchasing, this type of business model could be one right choice for the providers as for small expenses and skyrocket profit margins. However, cutting out the middleman model is not the good resolution for non-initiative buyers due to less market transparency. Rather than affirmative answer, the drawbacks resulted from this strategy also affect the medium and small providers in the long term because the retailers always have access to the consumer base through competitive market. For example, MeddiBuddy, the startup directory of overseas clinics in the southern Chinese city of Guangzhou, give patients more options for the communication and medical treatment program, particularly cosmetic surgery.

(2) Network Effect Model

The great benefit of this type is to increase a value of a product because more and more people use it. The second model depends on medical service network composed of medical service, insurer, transportation, accommodation and other facilities for subscribers. With the strong and independent operations of each service within such medical network, the patients are entitled to obtain broad choices with high qualified standards. This model is deemed as being the most useful model in driving health care in that the completion of specific facilities provides the desirable medical treatments.

Preferred provider organizations and the insurers tend to use this model to some extent. Many network effects are often mistaken for economies of scale, which results from the business size rather than interoperability. The best possible scenario is when a network organizer amasses

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the critical mass of a variety of purchasers in need of the product of the providers, and where the critical mass will be steered to providers in a broad network. A key success or failure is determined by how the organizer preserves the competition between the members of the network (instead of price fixing or leveling) allowing for broad consumer choice. The network organizers have the same interoperability of economic production which starts from the contractual conclusion, the management, and the balance of ongoing contractual relationship demand with purchasers. The supplementary functions comprise the inspection, the qualified measurement, and the report.

Apart from the function of facilitators, hotel facilitators can manage medical care for the patient and the provider, such as the ITC-WelcomGroup of India. While leisure tourism facilitators also turn to change their appearance to medical tourism business, such as Commonwealth Travel of Singapore. Some facilitators initially start being a medical travel planner, such as Global Choice Healthcare, MedRetreat, BridgeHealth International, and Planet Hospital.

Beyond the operation of the medical networks, such networks could be sponsored by any entities, such as insurance companies, providers, and the brokers themselves.

In the partial operation sponsored by the insurance company, the insurance company could set the subsidiary company or provides the policy to the facilitator. The obvious example, in this case, is Blue Cross and Blue Shield, the big brother of insurance area, which supplies the all medical arrangements from pre-operative care to necessary post-operative care before returning back to the host country. Also, Korean medical institutions try to launch the new global medical networks covering insurance and medical providers to foreign patients.

When it comes to medical tourism facilitators which are supported by the third party, employers and the third parties play the role of navigators of delivering healthcare service network in the form of managed care organization. Several years ago, the US healthcare system depended on the private sector in financing, purchasing and delivering health care services to

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67 Id.
68 Id.
give the most benefit from the patients. Thus, the US patients suffered from high healthcare expenses. For example, US Medsolution and UK Globe Health Tours are the liaison between western patient market and Asian doctor in regions.

Moreover, the employers also desired to support the healthcare services for their workers as mentioned in labor employee’s right. Still, the employers themselves cannot manipulate more than a thousand employees at the same time, so they need an organization to handle this problem instead. Health groups, which have been sponsored by primary care and specialists, insurance company, and broker, provide the deductible price of unique benefit. The primary type of curing process that has been used are preventative medicine, patient education, and in other ways.

The definition of managed care organization is the systems of financing and delivering health care to enrollees. It organizes around managed care techniques and concepts, or a variety of techniques intended to reduce the cost of providing health benefits and to improve the quality of care ("managed care techniques"). The managed care organization supplies those techniques or provides them to organizations and individuals. Managed care is any method of organizing health care that the dual goals are controlling health care costs and maintaining the quality of care. Some say that managed care organizations contact insurers or self-insured employers and finances for health delivery, especially specific provider network.

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75 Neelam K. Sekhri, supra note 71.
79 US Legal, Managed Care Organization (MCO) supra note 76.
Managed care organization has the unique structure that it enters into contracts with health care providers and medical facilitators to provide care for members at reduced costs. These providers make up the plan that serves the member patients differently by relying on the rules of the network\textsuperscript{80}. Within the system, the patients can seek numerous services relevant to his medical treatment. Hence, managed care organization provides combined functions of health insurance, delivery of care, and administration, including the independent practice associations, third-party administrators, management service organizations, and physician-hospital organizations\textsuperscript{81}. The elemental factors that the managed care organization applies on their arrangement are explicit standards for selecting providers; formal programs for ongoing quality improvement and utilization review, emphasis on keeping enrollees healthy to reduce the use of services, and financial incentives for enrollees to use providers and procedures associated with the plan\textsuperscript{82}. Managed care organization is divided by its structure and contractual nature as follows:

1. Health Maintenance Organization (HMO)

Under Health Maintenance Organization Act of 1973, health maintenance organizations are defined as being the legal entities providing a prescribed range of health services, known essential health services, to an enrolled population in return for prepaid payments\textsuperscript{83}. In the HMO procedure, the health maintenance organization must arrange with the hospitals and medical practitioners to serve healthcare service to the patient participating in the health maintenance organization network. Being the arrangement sector which is not owned or controlled by the hospitals and medical practitioners, the health maintenance organization would manipulate the financial responsibility, the payment process, the medical policy upon health plans, organization requirements, and patient cares during the medical conducting\textsuperscript{84}.

\textsuperscript{82} Christine Tobin, supra note 78.
Health maintenance organizations are licensed at the state level, under a license that is known as a certificate of authority (COA) rather than under an insurance license\textsuperscript{85}. Health maintenance organizations are subject to Health Maintenance Organization Model Act adopted by the National Association of Insurance Commissioners (NCQA) to provide a model regulatory structure for states to use in authorizing the establishment of health maintenance organizations and monitoring their operations.

Even health maintenance organizations who are the middle men liable for the medical arrangements as same as the medical tourism facilitators, the health maintenance organizations have the significant different characteristics from the medical tourism facilitators. Firstly, a primary care physician (PCP) is a gatekeeper of a health maintenance organization whereas the medical tourism facilitator himself is the gatekeeper. To describe, the gatekeeper in the network of a health maintenance organization has a primary duty to indicate a patient’s treatment, whether in preventive care stage, illness curing or lab studies. That means a primary care physician needs to make the patient’s referral and participates in selecting a specialized doctor in the next level within the plan network, unless it is an emergency case\textsuperscript{86}. Besides, the medical expenses, mostly paid in the prepaid payment annually, are in the form of monthly premium up to the insurer\textsuperscript{87}, while the patients in medical tourism need to pay the real costs per medical treatment without fixed and periodic prepayment.

Health maintenance organizations can be divided into several kinds\textsuperscript{88}, such as a network model, a staff model, and a group model. In the network model, the health maintenance organization contacts with more than one group practice to provide physician services for the members\textsuperscript{89}.

\textsuperscript{85} Peter R. Kongstvedt, \textit{The Managed Health Care Handbook}, 4\textsuperscript{th} ed, at 1322 (2001).
\textsuperscript{87} Healthy Children, “Types of Managed Care Plans”, available at https://www.healthychildren.org/English/family-life/health-management/health-insurance/Pages/Types-of-Managed-Care-Plans.aspx (last visited May 27, 2016); Christine Tobin, \textit{supra} note 78.
\textsuperscript{89} Eric R. Wagner and Peter R. Kongstvedt, “Types of Managed Care Organizations and Integrated Health Care Delivery Systems”, chapter 2, available at http://www.jblearning.com/samples/0763739839/39839_ch02_019_040.pdf (last visited May 27,
2. Point of Services (POS)

Typically, a point of services is composed of the structure of health maintenance organization and preferred provider organization. The members in the organization are entitled to pick the provider out of the network. However, if the patients select the provider who is out of the network, the co-payment would be higher, as network providers have agreed to accept a discounted rate for services in return for patient volume and patient referral. Still, the point of services has the same characteristics as health maintenance organizations that patient needs to pick a primary care doctor who manages and coordinates medical care within the network.

Like preferred provider organizations, the plans of the point of services traditionally contain deductible and coinsurance amounts (portions of the expenses that are shared by subscribers) that apply to out-of-network services. Monthly plan costs will fall in somewhere between the health maintenance organizations and preferred provider organization models. Although preferred provider organizations have freedom to seek care inside or outside the plan network, health maintenance organizations restrict such freedom.

The medical tourism facilitator has a characteristic which is not similar to the point of services because the former acts as being an ordinary middleman in health care arrangement, whereas the latter is the gatekeeper operated by the primary care provider.

3. Preferred Provider Organization (PPO)

In general, preferred provider organizations are legal entities who arrange the network of physicians, hospitals, and other providers, including insurers, employers, and third-parties administrators, for providing medical service to patients. Thus, preferred provider organizations act as being the gatekeepers. At first, the preferred provider organizations gather

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90 Eric R. Wagner and Peter R. Kongstvedt, supra note 89; United Healthcare, supra note 89; Christine Tobin, supra note 79.


92 Understanding Managed Care, supra note 84.


94 Christine Tobin, supra note 78.
various designated professionals into their network by offering the substantial discount below
their regularly charged rates. In order to earn incomes, they charge the insurance companies the
access fee for participating in their network without a concern of fixed and periodic
prepayment. Moreover, ‘free movement’ within the network is commonly referred to referral-
free access (or self-referral) to doctors and specialists. However, some hospital admissions,
diagnostic tests, outward patient surgeries and other services will require pre-certification. The
reduced cost will be applied where patients choose the provider in the network, on the other
hands; individuals are permitted to use non-participating preferred providers in higher levels of
coinsurance or deductibles routinely.

The governing regulation on preferred provider organizations relies on state law. There is no
federal law stipulates the control measures in the area of health and insurance. Compared with the
medical tourism facilitators, preferred provider organizations have the closest function as follows:

3.1 Being a Gatekeeper

Both of them are the middle men who firstly provide or make the health care arrangement
for the patients within the network, which is composed of doctors, hospitals, and other kinds of
providers. The gatekeepers in these terms are the regular organizations with no specialized
knowledge in medical approach. Hence, both of them just respond for the meeting of patients
and doctors regarding the particular brokerage contracts without authorities to review, diagnose
or decide the cases either way.

3.2 Referral Fee

Brokerage fees, which may also be called finder's fees, kickbacks, fee splits, or referral
fees, might be legal and ethical precepts in the United States. As licensed physicians, medical

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95 Healthy Children, “Types of Managed Care Plans”, supra note 87.
96 Academic paper is not available, except non-academic paper: Wikipedia, “Managed care”,
(last visited May 27, 2016).
98 US legal, “preferred provider organization (PPO)”, available at
mcos/preferred-provider-organizations-ppos/(last visited May 27, 2016); Understanding Managed
Care, supra note 84.
99 Eric R. Wagner and Peter R. Kongstvedt, supra note 89; United Healthcare, “Managed Care”, supra
note 89.
specialists are entitled to pay or receive referral fees. The medical tourism facilitators will earn an income by charging commission fee from the providers, other facilities, and insurance companies. However, preferred provider organizations will charge the referral fee from the insurer.

When it comes to payments of providers to the middle men, preferred provider organizations and medical tourism facilitators have the same characteristic. Preferred provider organizations make the pursuit of negotiated payment rates with hospitals, which providing them a competitive cost advantage. The form of payment rate is often found in fixed fee schedules, discounts from charges, fees based on diagnosis related groups, and all-inclusive per diem rates. Regarding the flow of trade and healthcare negotiations, the growth of a coalescence of global trade and health nexus is applied in extensive health worker migration and cross-border health care. The medical tourism package always offers hotel accommodations, a representative company in the country of destination, arranging payment, transportation, transferring of medical records, and negotiated prices for whatever medical procedures. The important element in such packages must include with suitably qualified physicians and appropriate medical facility. A person, who bridges the gap between clients and providers through seeking inexpensive treatments, are ‘medical tourism agencies’, ‘medical travel agencies’, or ‘medical brokerages’. The reason beyond negotiated medical treatment cost is that direct communications between the consumers and the providers are

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101 Eric R. Wagner and Peter R. Kongstvedt, supra note 89; United Healthcare, “Managed Care”, supra note 89.

102 Nicola S Pocock and Kai Hong Phua, supra note 45; Smith R, Chanda R, Tangcharoensathien V: Trade in health related services, Lancet 2009; Fidler DP, Drager N, Lee K, “Managing the pursuit of health and wealth: the key challenges”.


104 Leigh Turner, “First World Health Care at Third World Prices”: Globalization, Bioethics and Medical Tourism, Biomedical Ethics Unit, Department of Social Studies of Medicine, Faculty of Medicine, McGill University, available at http://www.globalhealthequity.ca/electronic%20library/Turner%20Globalization%20Bioethics.pdf (last visited May 28, 2016).
too complicated, even in the initial stages of the medical transaction\textsuperscript{105}. As seen in the Oklahoma City, some hospitals in the United States agreed to negotiate medical expenses, such as West Vancouver, B.C., brokers. Consequently, competitive fees and the high quality of care have been altered Oklahoma City into a medical hub\textsuperscript{106}.

3.3 Formation of Network

In general, the medical tourism facilitators always form their network directly through contractual preferred medical providers as same as preferred provider organizations do. In the same direction, preferred provider organizations typically establish a network by contracting with selected providers to provide health service and other diagnostic facilities\textsuperscript{107}.

3.4 Health Care Management

Many preferred provider organizations implement utilization management programs to control the usage and cost of health services for their covered beneficiaries\textsuperscript{108}. In the same way of medical tourism, medical tourism facilitators operate their network and arrange health treatment for the benefit of participating patients.

In conclusion, the structures of medical tourism facilitators and preferred provider organizations are the same. Thus, it is appropriated to apply the relevant regulation of preferred provider organizations in medical tourism facilitator case.

(3) All in One Business Model

Lastly, for all in one business model, the medical sector will govern the full option for the medical network rather healing alone. Even they are not longing for other facilities. To say briefly, hospitals directly grant some hotels as being rehabilitation for a commission in return, such as the World Medical Center serving the transportation, accommodation, visa application, and insurance\textsuperscript{109}. By its nature, the third parties cannot operate the particular medical treatment.

\textsuperscript{105} Peter F. Colwell & Charles M. Kahn, \textit{The Economic Functions of Referrals and Referral Fees}, 23 \textit{J. REAL EST. FIN. & EcON.} 3, 267-96 (2001); Medical Tourism Association, “\textit{About Us}”, \textit{available at} http://www.medicaltourismassociation.com/aboutus.html (last visited May 28, 2016).


\textsuperscript{107} Eric R. Wagner and Peter R. Kongstvedt, \textit{supra note 89}; United Healthcare, “\textit{Managed Care}”, \textit{supra note 89}.

\textsuperscript{108} \textit{Id.}

\textsuperscript{109} The world medical center, \textit{available at}
Thus, we could not find that they use this business model type in their operation. The outstanding example of the one-stop center is Apollo BGS Hospital Group located in New Delhi and Chennai\textsuperscript{110} and Fortis Wockhardt in Mumbai\textsuperscript{111}.

The scope of this study shall concern all medical tourism facilitators whether or not sponsored by the intermediators (both organization and individual), healthcare providers, and insurance companies. The close relationship between healthcare providers or insurers, and brokers would have a significant impact on the patient protection, so they should be identified in this study as well.

\subsection*{2.1.1.3 Legal Status of Medical Tourism Facilitator}

Critically, medical tourism facilitators seem to be the principal organ of the medical tourism industry and also affect the patients’ decision-making through the mentioned influences regarding to Americans who travel overseas in 2012 for medical treatment with an annual growth of 35\%\textsuperscript{112}. Thereby, the relevant sectors, who take the responsibility of healthcare both from private and public governmental authorities, put their effort to seek the best resolution to secure the patients’ right and maintain the medical standard differently upon the beyond policy as follows:

\begin{enumerate}
\item \textbf{Certification} \hspace{1cm}
\begin{itemize}
\item Certification is the approval of recognizing predetermined qualifications and minimum requirements on those individuals who have completed the certification process and demonstrated their ability to perform their profession competently\textsuperscript{113}. The non-governmental organizations use the certification for the disclosure of public information and to business control.
\end{itemize}
\end{enumerate}

\hspace{1cm}

http://theworldmedicalcenter.com/th/new_site/welcome/index/international_medical_services_center (last visited May 28, 2016)\textsuperscript{110}

Apollo BGS hospital, \textit{available at} http://www.apollobgshospitalsmysore.com/(last visited May 28, 2016)\textsuperscript{110}


When it comes to the private sector, who is the dominant player in the cross-border healthcare industry, they create the active certificate system for the facilitator within its imaging network.

The Medical Tourism Association (MTA) is an international association dealing with medical tourism and modern medical care on the worldwide level. The initiative persons in establishing Medical Tourism Association were composed of healthcare providers, medical tourism facilitators, international hospitals, medical practitioners, insurance companies, and other affiliated companies. For the best quality of care for the domestic and international patients and intensive concentration on healing patients, MTA imposes guidelines for operation, certification and courses training for all kinds of staffs in medical tourism industry based on three principles: transparency in quality, pricing, communication and education\textsuperscript{114}.

Actually, MTA is not a new phenomenon in global medical services because people always cross the border of the host country to seek cheap and satisfied medical services several centuries ago. Still, MTA was born to improve the private sector practice. If the private sectors actively concentrate on the quality of care enough, the public healthcare will be moved forward consequently. Having high technology with potential accreditation systems, MTA has the capability of announcing and sharing healthcare information all around the world\textsuperscript{115}.

To support the efficiency and competition in the marketplace, the Medical Tourism Association currently imposes the ‘Medical Tourism Facilitator Certification Program’\textsuperscript{116} which can use to determine ‘best practices’ among medical tourism facilitators. In general, the applicants will be asked two hundred questions in connection with business practice, such as the way of selecting the provider, facilitation, personal inspection of foreign facilities, surgeon meeting, and handling patient complaints in relation to the compulsory form\textsuperscript{117}. On the ground of the accounting

\begin{flushleft}
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\textsuperscript{115} Id.
\textsuperscript{117} Medical Tourism Association, “Medical Tourism Facilitator Certification 2009-2010”, available at http:// Medical Tourism Association, Medical Tourism Facilitator Certification 2009-2010,
inspection, the applicants will be asked about a channel of obtaining revenue. In the point of view of healthcare, the applicants also need to fulfill the information about patients’ outcome tracking, coordinates follow-up care, and using the medical advisor. The certification requiring, at least the minimum practical standard, could also provide the confidence to the consumers, medical service providers, and insurer companies.

To obtain the certification lasting for two years from the approval date\textsuperscript{118}, a medical tourism facilitator needs to pay $2,500.00 USD for a biannual fee of the program certification. After the approval process, the name of medical tourism facilitator will be declared as seen in the certified organization in the website of MTA, including the published magazine going out to over 4,000 people in the industry. Additionally, such a medical tourism facilitator will be promoted by insurance companies, hospitals, and the employers who seek the healthcare management organization to take care their employees. Those can be pushed the ability of medical tourism facilitator throughout the whole industry\textsuperscript{119}. At last, the patients will be assured that certified medical tourism facilitators can be trusted and have the excellent practices with the higher standard\textsuperscript{120}. Patients’ safety can be ensured by certification program of MTA\textsuperscript{121}.

(2) License

Opposite to certification, license is the approval process for specific profession issued by a state government agency\textsuperscript{122}. The recognition stipulated in the license always requires minimum training, educational background, and examination\textsuperscript{123}. The indicated person upon the law must apply for the license to obtain the permission to perform a task or job. Otherwise the non-licensure, even with the lack of minimum ability or knowledge required by law, will not be able operate\textsuperscript{124}.

http://medicaltourismassociation.com/Certification%20Evaluation%CCCCCCCCCC%For m.PDF (last visited May 22, 2016).
\textsuperscript{119} Id.
\textsuperscript{120} Id.
\textsuperscript{121} Medical Tourism Association, Medical Tourism Facilitator Certification Program, 2008-2009, supra note 116.
\textsuperscript{122} Ruth E. McBurney, supra note 113.
\textsuperscript{123} Id.
Nevertheless, the United States and Malaysia impose the strict regulation to maintain the quality of care in the medical service network and patient protection. Both of them claim that the patient protection is indispensable. Still, the certification system is imposed in the managed care organization law which has little relation to characteristics of medical tourism facilitators. The requirements of managed care organizations, which constitute the operation of an insurance business, represent the different features upon the concentrated healthcare levels. At least, minimum requirements are provider type & number in network, conduct utilization review, conduct medical case management, treatment guidelines, internal dispute resolution, peer review function, physician training, and occupational medical specialists. Rather than medical standard, the other necessaries are included, such as return to work programs, quality assurance (QA), safety services, financial disclosure, geographic access to care, timely access to care, 24-hour info, and advertising standards. Besides, authority to review managed care organization contracts, meetings, required data elements, reporting requirements, and on-site audits is included in the process of the investigation\textsuperscript{125}.

(3) Accreditation

Similar to certification, accreditation serves as the formal declaration by a neutral third party that the affirmed program is considered to meet the minimum standard of the certification program\textsuperscript{126}. To pursue the adequate standard of medical tourism, Joint Commission International has been established to provide the basis for accreditation of hospitals, including giving organizations the useful information to sustain patient safety, performance improvement, and accredited status\textsuperscript{127}. Nevertheless, the JCI accreditation merely oversees the medical treatments performed by the hospitals and clinics, not the medical tourism facilitators and its subsidiary.

In the case of partial insurance operating within the medical network, the governmental sector, especially National Committee For Quality Assurance (NCQA), will oversee their


performance against NCQA’s Standards and Guidelines. The specific type of managed care organization, preferred provider organization, will be controlled through the pre-approved process regarding NCQA’s Preferred Provider Organization (PPO) Accreditation Program. This program provides consumers, employers, and others with information about the quality of the national preferred provider organizations. Moreover, the preferred provider organization is required to furnish a report on their customers’ experiences and satisfaction in vital areas, such as access to care, claims payment and customer service.

(4) Registration

Alternatively, to gather much more information about the business operation, the governmental sectors apply the registration system to maintain the certified individuals. The advantage of registration is to collect the most data and to use the business standard with rules and regulations which could lead the controlling authority to recognize the ongoing business in the society and provide the suitable measures for them in the future. With the light measures of registration and its flexibility, several countries that do not concentrate on the foreseen problem trend to adopt the registration on medical tourism facilitators. For example, Korean medical tourism facilitators have to register and comply with specific requirements regarding Medical Service Act. If not, the unregistered facilitators will be liable under the medical law. Also, hospitals and clinics will be punished for using unregistered medical tourism agencies.

(5) Non-legal Requirement

As mentioned in legal requirement whether the light or strong measure, still, some countries do not provide any legal status of medical tourism facilitators as for controlling action. The medical tourism facilitators have the capacity to operate their business on their own without any restriction or approval from the responsible sectors, such as Thailand and India.

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130 Ruth E. McBurney, supra note 113.
2.1.2 Business Operation of Medical Tourism Facilitator

Three models on medical tourism are used to develop and manage the medical network: blended, retail, and consultant model\textsuperscript{133}. The retail model is the most famous because of the medical tourism facilitators, especially in Thailand and other countries in Southeast Asia as they can set their own marginal price up to personal creative package, commissioned negotiation, and the wholesale price from suppliers. We can easily find the low-cost massage, delicious meals, natural sightseeing, and high-class hotel in Thailand. The saving on medical service program that the medical providers set is also acceptable. Hence, the medical tourism facilitators use this channel to innovate their package and serves marketed program to companies, and individual groups. The total cost of a completed package is reasonable that the executive take these courses. That is the reason that this model is used widespread in Thailand.

Otherwise, the medical tourism facilitators make revenue through relationship changing and contractual amending with other medical providers. The medical providers, sometimes, provide the non-commissioned price to the medical tourism facilitators and require that them to act as a consultant and charge fees for services rendered to the patients. This structure call blended model (combination between consultant model and retail model). With the last model, consultant model, the medical tourism facilitators act as consultants and charge a professional fee for services. Some medical tourism facilitators are interested in this model because of the services being rendered by the medical providers. Besides, the significant increase in the cost of the case may bring an unexpected outcome and does not warrant additional commission on a percentage of charge basis. This study generates merely the retail model which is famous in Thailand.

The primary distribution functions for tourism intermediaries are to provide information and to arrange travel related services. The primary criteria they set for selecting their medical partners in the medical tourism destinations includes health and safety inspections, proper communication facilities, certification, insurance and credibility and site inspections\textsuperscript{134}.

Their primary objective, the component of the promoting element of the service marketing, is to make the service concise and easier to understand and valuable for the

\textsuperscript{133} Maria K. Todd, \textit{supra} note 42, at 4-5.
\textsuperscript{134} Sara Caballero-Danell and Chipo Mugomba, \textit{supra} note 14, at 40-41.
consumers. Even the business-to-consumer marketing, as observed, is a common tool used by medical tourism enterprises or governments\textsuperscript{135}.

The main principle of the operation of medical tourism facilitators is based on the education of patients about the various medical facilities and physicians, and the operation and coordination of services for patients and providers\textsuperscript{136}. Naturally, contracts, which are relevant to medical tourism facilitator’s duty, consist of two contracts as follows:

**2.1.2.1 Contracts of Medical Tourism Facilitator**

First of all, the main contract between medical providers, insurers, and facilitators has the distinct characteristic of medical supply of providers with the exchange of negotiated medical expenditure per treatment. For achieving the complete medical service, the insurers will be liable for reimbursement for the exceeding medical costs and unexpected damages arisen from medical malpractice. Another contract, the subsidiary contract, is dealing with other facilities in transportation, lodging, and supplement food. Both of two contracts will be gathered and rearranged into one medical tourism package stipulated in the contract between facilitator and patient. To illustrate, the medical network chart will be placed as follows:

![Figure 2.1 Main Contracts of Medical Tourism Contract](image)

\textsuperscript{135} Sara Caballero-Danell and Chipo Mugomba, \textit{supra} note 14, at 43.

\textsuperscript{136} About Us, \textit{“Health Tourism India”}, \textit{available at} http://www.health-tourism-india.com/about-us.html(last visited May 28, 2016); Medical Tourism Facilitators, \textit{“Good and bad”}, \textit{available at} http://jordan.medicaltourism.com/(X(1)S(ls1qeo04tzxoe5jkln1wvjx4))/destination/medicaltourismfascilitators.aspx (last visited May 28, 2016).
In the aspect of the contract between medical tourism facilitators and providers, the medical tourism facilitators acclaim referral health care companies for providing superior care options in fix lower rate. In return, the medical tourism facilitators gain the commission or referral fee. The amount of referral fee is set anywhere between 6% to 20% depending on the hospitals and the treatments offered to the customers. The hospitals pay a fee (percentage) from whatever the patients pay the hospital, to the facilitators who sent the patients. Rather than the percentage of commission, the medical tourism facilitators could decide the amount of treatment cost for patients’ payments, and then take the difference after paying actual medical care cost. In addition to the revenue, the medical tourism facilitators are entitled to take the free

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138 No academic paper is available, except non-academic paper, Quora, “What are the business models for Medical tourism?”, available at https://www.quora.com/What-are-the-business-models-for-Medical-tourism (last visited May 28, 2016); Julie Munro, supra note 100.
charges of a hotel room, minimal airfares, complimentary dinners or executive activities, and the identified products from the providers. This revenue system might be cheaper for patients.\footnote{Evgeny Viner, “What are the business models for Medical tourism”, available at https://www.quora.com/What-are-the-business-models-for-Medical-tourism (last visited May 28, 2016).}

Otherwise, the medical tourism facilitators also have the duty to supply several patients to the preferred provider in return, including making an appointment, transferring medical record, completing medical payment and facilitating follow-up process after medical treatment.

2. Medical Tourism Facilitator and Insurance Company

- Commission (Percentage)
- Suggest the suitable insurance packages
- Provide patients for insurance company
- Complete payment of premium

Figure 2.3 Medical Tourism Facilitator and Insurance Company Chart

Apart from coordinating with the providers, the medical tourism facilitators also contact the insurance companies to join their one-stop medical service. As the patients seek for medical tourism outside of their country, they must take the greater risk from not being insured by any insurance company. Consequently, the former medical tourism facilitators have to expand their role with full-cover one-stop service in the medical area through launching insurance and training support for that evolution.\footnote{Nadine Godwin, supra note 113; Medical Tourism Magazine, “Clear Medical Tourism Facilitator Contracts Benefit All Parties”, October 3, 2012, available at http://www.medicaltourismmag.com/clear-medical-tourism-facilitator-contracts-benefit-all-parties/(last visited May 28, 2016).} In order to achieve the complete medical service, the insurers will be bound for the reimbursement for the exceeding medical cost and damages arisen from medical malpractice. Medical tourism insurance products are a merged part of the health tourism industry.
Companies that provide insurance products for medical travel services are the outstanding groups among potential patients’ eyes as having an advantage over their competitors.\(^{141}\)

Therefore, the insurance companies are included in medical service network following the practice of medical tourism facilitators.\(^{142}\) Intentionally or otherwise, most agents have bypassed that stage cue. The situation is changing, as indicated by the Scottsdale conference sponsored by Well-Being Travel. Well-Being Travel selected a preferred medical travel facilitator and a preferred insurance provider.\(^{143}\) It is not surprising to learn that a medical travel insurance policy will erase the imperfection in medical tourism.

(2) Subsidiary Contracts

<table>
<thead>
<tr>
<th>Subsidiary Contracts</th>
<th>Medical Tourism Facilitator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transportation</td>
<td></td>
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<tr>
<td>Lodging</td>
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<tr>
<td>Meals</td>
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<tr>
<td>Other Necessities</td>
<td></td>
</tr>
</tbody>
</table>

Figure 2.4 Subsidiary Contracts of Medical Tourism Contract

- Commission (Percentage); or
- Revenue

| Medical Tourism Facilitator | Other Necessities |

- Suggest the services, such as accommodation, transportation, leisure program (if may) for patients
- Provide patients for services
- Complete payment of services

Figure 2.5 Subsidiary Contracts of Medical Tourism Contract Chart

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\(^{143}\) Nadine Godwin, supra note 113; Medical Tourism Magazine, supra note 141.
To fulfill more desirable medical cares, medical tourism facilitators would add other facilitates, except for medical providers and insurance. Regarding the practical business way, the transportations, lodging, meals and other relaxation activities are provided in the form of a package during the medical treatment process. Sometimes, the clients might have the right to choose other facilitators upon their need. However, some must be offered by the fix package. To pursue more attention from clients, the medical tourism facilitators often add the leisure and spa program after medical treatments.

At this stage, medical tourism facilitators would receive the commission fee or the differences from such services, and have the obligation to fulfill payment, convince the patients to choose the preferred services and supply patients with such services.

Noticeably, the medical tourism facilitators could also charge the patients for administrative fees and other, such as the differences of currency and payment process costs.\textsuperscript{144}

\textbf{2.1.2.2 Process of Its Business Operation}

The procedure of medical tourism operation\textsuperscript{145} starts with the broadcast, advertising of medical tourism facilitators for promoting the package of medical treatment oversea. Usually, the ads must include the name of the hospitals, specialized doctors, and any provided accreditation. If the patients are interested in such medical plan, they will contact to the medical tourism facilitators within the host country. In the primary stage after concluding a contract with patients, the medical tourism facilitators will suggest the hospitals or clinics as per required treatment, request for medical history and test, make an appointment with leading doctors, and arrange consultations with doctors (may use video conference). After consulting with medical providers, the medical tourism facilitators have to assist in planning treatment for the patients. In the same time, they have the right to ask the patients for acceptance of the waiver clauses and collect the payment (not all facilitators do this). On the part of rearrangement, they will arrange logistic services, such as passports, flights, lodging and transportations, and then offer the insurance packages. The next process is to bring the patients to the hospitals, provide the post-treatment

\footnotesize{\textsuperscript{144} Evgeny Viner, \textit{supra} note 139.} \\
facility (if any), bring the patients back home, and follow checkup recovery process.\textsuperscript{146} Sometimes, additional leisure trip could be inserted.\textsuperscript{147}

\begin{figure}[h]
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\includegraphics[width=\textwidth]{figure2.6.png}
\caption{Process of Its Business Operation}
\end{figure}


2.2 Medical Tourism Facilitator Practices in Thailand

Recently, the inclination of patients from the United States and western countries temporarily travel to developing countries, such as Thailand, Malaysia, and India for surgical treatments. Referring to the strategy, more than 150,000 foreign patients received medical care in India since 2004, and the number is likely to increase by 15% of such amount per year for the next decades. On the other hand, hospitals in Malaysia received 130,000 foreign patients, which have risen according to the expectation from 2004.

The research also found that Thailand has played in the role of being the country of the destination as Bumrungrad International Hospital in Bangkok received 400,000 western patients, including 55,000 Americans. The medical tourism has obtained a variety of health care; bariatric procedures, reproductive procedures, colonoscopies, cardiac care, dermatologic, orthopedic, procedures of otolaryngology, mammograms, dental care, screening labs, fertilization, assistive, hygiene, diagnostic imaging, complimentary medical care, and rehabilitation. The starting year of medical tourism ranged from 1998 to 2009148.

Owing to the desire of patients in obtaining the proper care at the lower price within short waiting time149, Thailand is the proper choice for the desire150. Besides, Thai public policy takes an approach of being the most modern medical hub in ASEAN151.

To understand the nature of the medical tourism facilitators deeply, the relevant details status, general business operations, and controlling measures shall be informed as follows:

148 Lee Ann Eissler, PhD, RN, FNP-BC1 & John Casken, RN, MPH, PhD, “Seeking Health Care Through International Medical Tourism”, School of Nursing & Dental Hygiene, University of Hawaii at Manoa, Honolulu, HI, USA, at 179.

149 นายแพทย์สุธีร์ รัตนะมงคลกุล, 5 สมัชชาสุขภาพกับนโยบายสาธารณะแบบมีส่วนร่วม การพัฒนานโยบายการเป็นศูนย์กลางสุขภาพนานาชาติ, หน้า 164-166 (Dr. Sutee Rattanamongkolkul, 5 Organizations with Public Strategy in the Case of International Medical Hub, at 164-166); ภูผ่อง ภาคพรต, การท่องเที่ยวเชิงสุขภาพของประเทศไทยในตลาดกลุ่มมุสลิมหน้า 1-7 (Noppadol Pakkaprot, Medical Tourism of Thailand in Muslim Marketplace, at 1-7).


151 แผนงานการพัฒนาศักยภาพด้านการพัฒนาศักยภาพระหว่างประเทศและสุขภาพ สานักงานพัฒนานโยบายสุขภาพระหว่างประเทศ สานักงานนโยบายและยุทธศาสตร์ กระทรวงสาธารณสุข, ประเทศไทย บนถนนสุรนารี กลางสุขภาพ นานาชาติ, หน้า 1-5. (International Trade and Health Care Development Plan, International Health Policy Development Division, Policy and Strategy Division, Ministry of Public Health, Thailand and the International Medical Hub, at 1-5).
2.2.1 Status of Medical Tourism Facilitator

In the merging edges of healthcare and worldwide commerce, medical tourism facilitators establish the medical networks to fulfill the demand of international patients. The following business model and legal status at this moment can illustrate the whole conception of Thai medical tourism.

2.2.1.1 Business Model of Medical Tourism Facilitator

In Thailand, medical tourism facilitators take approaches of business models, such as comprise cutting out the middleman, network effect, and all in one business model.

(1) Cutting out the Middleman Model

As mentioned in general concept, the cutting out the middleman model is the method that eliminates the liaison between the customers and providers leading to the low-cost service as seen in some Thai medical providers’ operation. The successful example is Bumrungrad Hospital, which comes up with direct access policy for both domestic and international patients. This business model restricts the scope of medical services through opting out the other supplement facilities. The main slogan of Bumrungrad is to provide the modern science, compassion, and the integrity of the best care for their patients. With the ongoing operation, Bumrungrad has received over million patients per year, especially 520,000 international patients\(^{152}\).

Noticeably, the core of medical tourism in this study is medical care; therefore, this model shall be applied to the operation controlled by doctors or hospital merely.

(2) Network Effect Model

The nature of network effect model has been addressed in numerous medical tourism businesses because of the greater benefit than the other types. As well as in Thai medical tourism marketplaces, many medical tourism facilitators apply this potential model to access both domestic and western customers.

For example, BDMS becomes hugely successful due to the network effect, because more and more people accept the BDMS network. The various examples\(^ {153}\) of the network effect


Beyond the operation of the medical networks, the medical networks could be sponsored by any entities, such as insurance companies, providers, and the brokers themselves.

The insurance companies naturally need to adopt the network model because it is able to access the consumer base all around the world. Under the sponsoring insurance company, such as United Group Program, Blue Choice Health Plan, and Stop-Loss Brokerage, the insurance companies, which adopt the policy or set up subsidiary company, have the obligation to operate facilities for the subscribers within the medical network. The highlighted example is Companion Global Healthcare which is a subsidiary company established by BlueCross BlueShield of South Carolina. It manipulates the medical care for the insider members through cooperating with Bumrungrad Hospital.

Sometimes, the facilitators initiatively start the beginning level of the medical network. For example, Bangkok Dusit Medical Services (BDMS), initially sponsored by Bangkok Dusit Medical Services Public Company Limited obtains 11% increase of patients. There is a rapid growth in 13 new launched hospitals as well. Bangkok Dusit Medical Services (BDMS) consist of six major hospital groups – Bangkok Hospital, Samitivej Hospital, DNH Hospital, Phyathai Hospital, Paolo Memorial Hospital and the Royal Hospital within the same network. Rather than a variety of the providers, BDMS also provides the insurance coverage as seen in the

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158 Kathryn Senior, supra note 53.
159 สถานเอกอัครราชทูต ณ กรุงวอชิงตัน, supra note 58 (Royal Thai Embassy, Washington DC).
160 สถานเอกอัครราชทูต ณ กรุงวอชิงตัน, supra note 59 (Royal Thai Embassy, Washington DC).
162 Bangkok Dusit Medical Services (BDMS), supra note 50.
unplanned inpatient services for insured persons. The patients are required to prepare the available insurers currently working with BDMS, if not, BDMS Third-Party Payer Services team will then coordinate directly with patients’ insurance company for issuing a guarantee of payment for treatment cost or medical accident cost. Also, International Medical Getaways, MedAsia, Co. Ltd, Global Health Travel, Surgical Trip, and others are determined as being companies adopting network model.

Some hospitals in Thailand are already internationally recognized and have direct agreements with insurance groups. In sponsoring provider terms, it seems that it is hard to find this kind in Thai society because the provider, who creates its network, is not willing to share the market segmentation with others. Miracle Thailand Card (debit card) for tourists is offered in partnership with state-owned Krungthai Bank, which offers medical and life insurance coverage in case of the accidents.

Lastly, the third parties in connection with medical service chain can be found in employers or the third parties. To illustrate, the private company is not entitled to have much more social welfare or relevant special right of public health care. Thereby, the managers put their effort to embody the supplement rights rather than salary and bonus for new applicants. Good health is concerned to be one potential tool for building up senses of company’s belonging and consciousness which can push the company to the succeeding line in the future. With the long-term policy on health care, the employers seek for the medical services and insurance for healing any illness, symptoms and disorder resulted from working. By acting as administrators in the collaboration, the employers are known as being the middle men in the medical network. Group Health Insurance program of Pacific Cross Health (small, medium and, large), offers their employees welfare strategy effectively and efficiently for many thousands of workers in different locations. The famous role that the insurance always be is the coverage for the medical benefit

164 Id.
166 International Medical Getaways, supra note 154.
167 Med Asia Health Care, supra note 155.
168 Global Health Travel, supra note 156.
169 Surgical Trip, supra note 57.
170 Gloria O. Pasadilla, PhD, Medical Tourism: Some Lessons for Countries that Seek Entrance to the Global Industry.
offered by their employers. Several insurance companies and employers are approaching the issue of medical tourism tentatively. They are concerned whether the benefits will outweigh the potential risks. As a result, some insurers have incentives only for employees who are willing to travel for discounted care. For example, the U.S. employers, who have to counter with the rising medical care cost every year, put their effort to seek the reduced healthcare cost destination. Thailand is suitable for sending their employees. Notably, some firms need to be responsible for paying out their health care claims. Thereby, the consumer base accessing into the medical tourism is mainly found in the individuals or employees.

Another group, third parties, is also a part of the medical network. Their obligation is to offer the healthcare packages for employees of the large companies where the employers cannot take all responsibility in accordance with full health care. Additionally, the private sector found on the website of Thaimedtour also represents the third party, such as MedTreat, Panorama-Medica Group Co. Ltd NC, International Medicare Group Overview, and others.

(3) All in One Business Model

Briefly, hospitals directly grant the nearby hotels as being rehabilitations for a commission in return. Particularly, World Medical Center serves the transportation, accommodation, visa application, and insurance. By its nature, the third parties cannot operate the medical treatment. Thus, they could not be found in this business model type.

The scope of this study shall concern all medical tourism facilitators whether sponsored by the intermediators (both organization and individual), healthcare providers, or insurance companies.

172 สันักงานส่งเสริมการหะพระประเทศ ณ นครชิคาโก, supra note 23.
174 Tomislav Meštrović, supra note 171.
175 Eric Wahlgren, supra note 171.
177 World Medical Center, supra note 109.
The close relationship between healthcare providers or insurers, and their brokers would have an impact on the patient protection firmly, so they should be identified in this study as well.

### 2.2.1.2 Legal Status of Medical Tourism Facilitator

The medical tourism facilitators can operate the business on their own without any restriction or approval from the responsible sectors, such as Thailand.

The non-legal status brings the drawback to the healthcare standard because the important data of medical tourism facilitators for ongoing controlling policy has not been recorded in any pieces of evidence. In addition to the aspect of proof, unregulated medical tourism facilitators who manipulate inappropriate quality and qualification, could enter into the medical network chain easily. Rather than the direct effect of non-legal status, the brand identity of Thai medical tourism could be ruined because of the non-approved conditions and terms from the certain specialized sectors.

To escape from the medical oversight of Thai competent officials, most of the medical tourism facilitators apply for tourism license as for persuading the patients. Surprisingly, medical tourism, the global healthcare service, is not wholly under supervision of Ministry of Health. Thus, the medical tourism facilitators can escape from investigations relating with health care. In the point of view of the application on tourism license, the medical tourism facilitators can submit little information and paper sheets with respect to the capital, insurance, and the conditions stipulated in the contracts. As seen, the other necessary information in particular with health care, specific conditions, and insurance coverage has not been collected in the proceeding of approved license.

Consequently, the collapsed image of Thai medical tourism leads to the non-competitive situation among the competitive medical network marketplaces in nowadays.

### 2.2.2. Business Operation of Medical Tourism Facilitator

With the health trading in globalization, most of the businessmen try to comply their operation in the country of the destination with the others competitive medical tourism. Therefore, the practical operations of Thai medical tourism facilitators are similar to the general concept. The following part will touch the sample of business operations and actual problems arising from its function.

#### 2.2.2.1 Process of Business Operation

Medical tourism intermediators serve distribution channels for both of the service and prominent sources of information. The functions of Thai medical tourism facilitators are not
different from the practice of global medical tourism facilitators as the compliance of the structure on obligations and rights of medical tourism facilitators are stipulated in the main and subsidiary contracts.

In the aspect of Thai medical providers, they give the moderators a percentage commission for bringing patients in the reciprocal contracts. Otherwise, the medical tourism facilitators need to convince the patients to choose the preferred providers, make a meeting, transfer patients’ record and participate in the affordable operation.

The example of the participation of insurance company is the cooperation between Bumrungrad Hospital Group, BlueCross BlueShield, and Blue Choice Health Plan of South Carolina in the United States. BlueCross merges the Bumrungrad Hospital Group under its medical network as being one of hospital choices for employers in the fix low price (around 50% lower than individual offers). Additionally, Blue Cross Blue Shield says that its insurance policies could make patients receive less offshore medical facilities expenses. For the pursuit of excellent healthcare benefit of employees, the employers put their effort in deflated financial burden in exchange of feasibility of outsourcing medical offshore. It is extremely unwise to travel outside of one’s home country without this type of insurance, unless the hospital has negotiated with other insurers to cover all possible eventualities.

181 Van Dusen, supra note 180.
2.2.2.2 Factual problems in Business Operation

When it comes to the impairments on Thai medical tourism, concerned issues are ‘healing or selling medical care’ and ‘the commission basis. Naturally, the medical tourism facilitators handle the medical service network for earning the referral and commission fee. The more amount of patients participate in the network, the more referral and commission fee the medical tourism facilitator gains. It logically seems that the referral fee is the driver of active operation of medical service that pushes the medical tourism to the trigger point. With the increasing medical expenses, the private hospitals in medical tourism chains in Thailand have been exploring the greater amount of medical care profits which affects the whole medical care, particularly at national level.

Nowadays, a variety of medical tourism facilitators turn to ‘support selling’ rather than ‘support facilities’ in the medical service network. The exact problem can be analyzed into two criteria: a pre-medical treatment and a post-medical treatment.

(1) Pre-medical Treatment Process

In pre-medical treatment stage, medical tourism facilitators, who have to furnish accurate and transparent data and make advertisements according to such data, create the default broadcasting advertisements under medical standard for physicians or non-certificated hospitals.

Firstly, the medical tourism facilitators distort the commercial ads, especially in social media, by merely showing the strengths for attracting patients or changing patients’ behaviors and attitudes toward medical concern. When such advertisements are posted on the press, the relevant authorities face the trouble of control and limitation. Besides, the samples or precautions of occurred medical accidents would not usually be seen in the medical tourism network with the operation of the facilitator because of the afraid of reduced amount of the patients. The visible sample advertisement of exceeding the truth is the one that claims that specialized doctors are available in the medical service network, leading to the misunderstanding.

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183 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.

184 นายแพทย์สุธีร์ รัต楠amongkolkul, supra note 149. (Dr. Sutee Rattanamongkolkul).
of the consumers. The specialized branch of medical doctors has not been certified by the Medical Council and it is also against the ethic of the physician.

One example of false advertisement is the case of Dr. Kamol Pansritum, a plastic surgeon in Thailand who specializes in sex-change surgery. The advertisements on the web page, unambiguously but falsely, claims its association with Bumrungrad Hospital of Bangkok, the only American-accredited hospital in Thailand. This organization really express on the doctor's web page.

Unfortunately, surrogacy advertisements are rarely found on the websites of facilitators. However, it can be accessed on messages in the web boards or internet forums arranging surrogacy, such as clinicrak.com, Dr. Seri's clinic, and weneedbaby.com. At first sight, the patients may be confused for what the being a surrogate or what facilitators are going to say because they usually describe their features and health appearances as same as dating online chat. Otherwise, someone prefers the direct wording as being commercial surrogacy program. Apart from Thai facilitators, foreign facilitators are also involved in Thai surrogacy advertisements on the internet.

Secondly, medical tourism facilitators hide the important knowledge to convince patients. The medical tourism agencies tend to work on a commission basis, with the clinics, hotels and airlines which pay commission to them when patients book their services. The non-disclosure of

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190 Net Doctor, what is a medical tourism facilitator, available at
commission fee that the medical tourism facilitators receive can create the conflicts of interest. For example, the providers may, whether its treatment meets the medical standard or not, offer the higher commission fee to gain an extended period of time on advertisement. Facilitators may, of course, argue that ‘it is all about the patients, and the sales commission has never influenced them.’ Alternatively, they may say that it is an ‘acceptable business practice’ in this world. Sometimes, the same argument is used in the healthcare market in general. However, the industry, driven by profit with commission model, raises the contemplation that decisions are made on the appropriate healthcare solution for patients. Few facilitators disclose their business model, kickbacks, or commissions they receive. As seen, provided to patients by facilitators, there is no indication of whether the firm is receiving a commission from hospitals or not, and of what amount that might be. Of course, the medical tourism facilitators shall not be determined as being tourism agents. Thus, the payment of commissions, which attract referrals (or admissions) of patients, is considered unethical and unacceptable. Such payments indicate a conflicts of interests that may negatively affect patient care since the patients may not necessarily be referred to the most appropriate doctors or hospitals for the treatment. They may, instead, be advised to receive the service from the doctors or hospitals from which the agent collects a higher commission.

In the medical tourism industry, Thailand Medical Travel (TMT), are able to make anywhere from 6% to 20% of referral commission depending on the hospitals and the treatments offered to the customer. Naturally, all these details will be negotiated with these organizations in the contracting phase. Many 1-star facilitators, especially in countries like India and


Id.

Julie Munro, supra note 100.


Thailand, are not aware of how limited their services are, and their low ranking when compared with competitors in other states\textsuperscript{196}.

As discussed above, the medical tourism facilitators negligently focus on healthcare of patients that brings the weakness and the negative attitude among the patients\textsuperscript{197}. Lastly, after Thai medical identity was ruined, the insurance companies in the host country will logically refuse to offer the medical error coverage\textsuperscript{198}. Some said that the patients should seek the destination providing standard equal to or higher than international norms, apart from Thailand\textsuperscript{199}.

The fault advertisement can be seen in Joy William case and Dr. Xeping case, and failures of the healthcare operation are Baby Carmen case and British teacher\textsuperscript{200}.

1. Joy Williams Case

Joy Williams died under anesthetic when the SP clinic tried to correct what had gone wrong\textsuperscript{201}. The police said that Dr. Sompob Saensiri was not certified to perform cosmetic surgery and had been arrested on charges of “criminally negligent homicide.” His website contains glowing testimonials from people he claims to have operated with\textsuperscript{202}.

2. Dr. Xeping Case

Dr. Xeping is an owner of the company which offers the several plastic surgery packages, such as face lift, liposuction surgery, surgical six-pack and face off. She also presents that her

\textsuperscript{197} Seth Tuler, Uma Langkulsen, Caron Chess & Nuntavarn Vichit-Vadakan, “Health and Environmental Risk Communication in Thailand: An Analysis of Agency Staff’s Perspectives on Risk Communication with External Stakeholders”.
\textsuperscript{198} Ranking of medical tourism countries, supra note 198.
\textsuperscript{201} ACA Watch, News and TAMMM News, supra note 2; Andrew Buncombe, supra note 2.
organization coordinates with the leading Thai doctors and clinics which have been certified by JCI accreditation. Otherwise, Dr. Xeping claims that she is not a medical tourism facilitator, but she is the consultant in the field of the beauty and surgery. Even though, she rearranges the beauty surgery package from her medical providers, such as Theeraporn Clinic, for the patients in a similar way to medical tourism facilitator’s operation.

The critical points of the default commercial ads have been raised both of “the only two hospitals receiving JCI accreditation” and “face off program”. Firstly, there are more than two hospitals in Thailand that achieved the standard of JCI accreditation, but she uses the word of “only” that could mislead the patients. Secondly, “face off program” is the cosmetic surgery program that is used to give a more youthful appearance to the face. Nevertheless, face off has the similarity to the famous movie, face/off. In the story, the police officer (John Travolta) has to do the face off or face-transplant surgery through cutting off the other’s face and then placing a prior's face onto another’s as to find out the secret and stop an explosion of the terrorist (Nicolas Cage). As mentioned, face/off is a notable movie in this century, therefore, the ordinary person who heard about “face off” will recognize and imagine that face off surgery does exactly exist. Actually, in the medical care practices, face off does not. The facelift, or rhytidectomy, does exist instead. This plastic surgery can be used to reshapes the lower one-third of the face through removing excess facial skin. For the success, the facelift is supplemented with additional procedures locating at the brows, cheeks, forehead, and eyes. Being the critical point of the view, by using the term of the face-off program and providing the successful case in the

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particular with Mr. Surachai Sombhatcharearn case, Dr. Xeping could lead the falsified information and false advertisement to the consumers.

3. Bring Carmen Home Case

Providing that the surrogacy cost and non-banned statuses can be found in developing countries, many Americans and Europeans are interested in surrogacy services, with the process of completed fertilization between sperm and egg implanted in women living in Thailand.

Gordon Lake and Manuel Santos, the gay couple from Spain, found the surrogacy advertisement issued by a Thai medical tourism facilitator on the internet. They made the risky decision based on non-legislative of surrogacy of Thailand. Nevertheless, after Carmen was born, their surrogate mother rejected to return Carmen by claiming that the couple is not ordinary family and affecting Carmen’s upbringing. After the default of returning the baby, the facilitator was not liable for the mistake of partially surrogate mother selection, and is not inspected by the Medical Council of Thailand either. That leads to immense ruined Thai medical tourism among the global patients with questioned topic of legal surrogacy in Thai society.

4. British Female Teacher

British female teacher bought the coupon from a medical tourism dealer on the website with the amount of two thousand bahts to obtain the lip surgery from a clinic. The medical tourism facilitator depends on the declaration of the competent medical provider and adequate equipment in its commercial ads. After receiving the lip surgery, her lip became infected and inflamed. Eventually, it turned into the purple lips. The victim tried to claim a remedy and re-surgery to cure

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her lips. Still, the clinic refused to heal her and reject any reimbursement arising out of this case. The medical tourism agency also closed its business down few weeks after medical error of the victim.

(2) Post-medical Treatment Process

In the post-treatment stage, medical tourism facilitators, regarding waiver right contractual term, negligently ignores to remedy the injured patient from their medical errors.

1. The Contractual Content Benefiting Medical Tourism Facilitator

At first, medical tourism facilitators always make a formal contract with conditions and terms that stipulate the benefit merely for their side. The necessary clauses, which secure the patients’ right and qualified medical standard, have been dismissed because they do not want to be restricted by their contracts. For example, the completion clause includes recovering and rechecking process before sending patients back to their hometown is not provided. This study has no access to the contracts of medical tourism facilitators in Thailand. However, the contracts of foreign medical tourism facilitators between facilitators and patients shall be used on the analysis because of the similar features. Placid Way, a medical tourism company, who is experienced in exporting patients out of the United States for a long time shall be used as a sample. The Placid Way contractual contents trend to restrict the patients’ rights as follows;

1.1 Declaration of Non-Medical Referral Service

Placid Way Company stipulates that it is not a kind of medical referral service and will not be responsible for any recommendation and approval from any healthcare provider, even though its website expressly gives all information, duties on the operation and medical tourism process. It totally says that the patients have to be responsible for all damages that may arise from the default of information on relevant links in the website, loss during the medical errors, medical decisions, even from the default of Placid Way’s managements.

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214 Id.
1.2 No Medical Professional Staff

Moreover, Placid Way does not provide any primary physicians for the patients before entering into medical tourism contract. The patients themselves cannot consult with doctors or professionals in order to set forth the medical program.

1.3 Termination of Service

The contractual content reserves the right to terminate the concluded contract at any time without notice for any reason. Besides, the company has the right to discontinue any service with no prior notice to patients. It impacts patients’ right to access to health care services which are the fundamental human right.

1.4 Limitation of Liability

The company will not be liable for any damages arising from using websites, tools, functions or services that websites provide. The damages include tort, breach of contract, and any punitive, whether they are actual, indirect, incidental or consequential. Of course, medical malpractice is also excluded from its liability.

2. Non-Recovering Process on Medical Error

The medical tourism facilitators have the duty to recover victims in the case of medical error resulting from, whether partially or wholly, the default of commercial ads or any business operation of medical tourism facilitators. Nevertheless, lots of medical tourism facilitators are able to escape from their liability. The following medical accidents cases show the deaths and injuries that result from the weakened patients’ right, low consciousness and low medical care.

2.1 Goldberg Joshua Case

Joshua died under suspicious circumstances after 11 days at Bumrungrad Hospital in Bangkok. His father was suspicious about the black market organ harvesting. The doctors had never diagnosed the viper bite that a subsequent autopsy revealed that it had caused Joshua’s drop foot.

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215 Id.
216 Id.
217 Id.
2.2 Unknown Case

A woman came from Sydney to a hospital in Bangkok for a breast lift and tummy tuck and was discharged and within five days of operation. After the discharge, she developed an infection in her abdomen and left breast. She boarded the nine-hour flight home, gravely ill and with weeping wounds and a potentially fatal infection. She had several rounds of revision surgery.

2.3 The Australian Model Case

Mindy Bouchet who a model has many regrets about her decision to visit Thailand for her breast augmentation.

2.4 Roy Richter Case

Margaret and Roy had watched a TV documentary about an international hospital in Thailand which present itself with quality health care as a safe and economical alternative to medical care in their country. Former hospital patients returning to the US praised the hospital with the high level of care and the professionalism of the Thai doctors and staffs. Digging further, she found the hospital's sleek website and impressive credentials. Soon after then, Margaret contacted the hospital to arrange appointments with a specialist and confirmed arrangements for the trip to Thailand. Two years later, Margaret hired a Thail lawyer and was in a Thai courtroom, giving testimony regarding how she learned of her husband's death. This results from a series of poor medical procedures at the hospital she had placed so much faith in. It was caused by errors of the unqualified medical personnel that should never have happened.

2.5 Baby Gammy Case

The surrogate mother entered into a surrogacy contract with a medical tourism facilitator with an Australian couple. Such surrogacy would gain her another fifty thousand bahts from the standard three hundred thousand bahts if she were able to give a twin. After four months of

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surrogacy, the health recheck was done, but the medical tourism facilitator did not notify the data of Down’s syndrome of the infant to the surrogate mother and the Australia couple. At seven months of surrogacy, the data was disclosed. The Australian couple tried to ask the surrogate mother to abort the infant, but she refused. The surrogate mother stated that the couple had rejected the sick infant and only took healthy sister back to Australia.

It implies that the health care checking standard is low, and the failure of medical tourism network cooperation can easily occur. After the tremendous crisis of Thai surrogacy, Thailand has launched the new provisions prohibiting the surrogacy advertising and promotions, and also ban surrogate commercial agents and unregistered clinics. Regarding the new law, only three years married couple with at least one Thai partner can seek for legal surrogacy. Still, no provisions govern in the case where the medical tourism facilitators engage in the other types of medical care network. The only thing, which the government could do, is the investigation of the business registration of medical tourism facilitators. Overall, illegal surrogacy in commercial package critically discredits Thai medical industry that results in the hardship for patients’ access to quality physicians and medical care.

Apart from direct effect mentioned above, the indirect adverse effect is that it could decrease the patient’s confidence in Thai medical tourism and competitive skill among medical services in ASEAN.

With competing market analyzed above, the countries, which offer the small amount of medical expenditure, are always the country of the destination among the patients, especially Jordan, Mexico, India, Malaysia, Singapore, Philippines, and Thailand. The critical factors that

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226 วุฒิสุข สุขเจริญ, วิทยา มุงอินทร์, และ ภาริน ธนนทวีกุล, supra note 7(Wuttisuk Sukjarearn, Witthiya Mung-inn, and Parlin Thonnatawee); Narongrit Havarungsi, supra note 7; นพศิริ ชลขวัญ, supra note 7.
affect the growth of medical tourism can be categorized into three levels: (1) state economic, political, and social Environment and image; (2) quality of care facilities and services; and (3) industrial attractiveness and infrastructure in healthcare.227

From the ranking of the global best medical tourism destination, Canada is voted as the top medical tourism destination worldwide because it is the most suitable security, economic, and cultural environment with reasonable medical expenses. The second and third places are the United Kingdom and Israel respectively.228 Surprisingly, Thailand was ranked twentieth out of twenty-five reviewed countries with an overall score of 65.46. In contrast, when comparing to the ASIA countries, India and Philippines become the ninth with the total score of 70.4.229 However, the polls of medical tourism ranking show the uncertain result because of a variety of different factors. Another paper, which uses the conceptualized reasons on fantastic vacation, safety and affordable healthcare price, reveals six countries of the world best medical tourism destination, including India, South Korea, Malaysia, Singapore, Taiwan, and Thailand.230 It is quite tough to determine which rank Thailand is. However, we could able to learn that Thailand is not the only one country potential that provides the medical care. Significantly, the popping up question shall be ‘how to sustain most global patient with all rendered instrument.’

To analyze the strength of a rival of Thailand, India has recently concluded the health care convention with Russia for providing a choice of medical destination. India has also supplied other facilities, such as accommodation, Ayurvedic clinics, yoga centers, and ashrams

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230 Six Countries in Asia Make the Top Ten List of Medical Tourism Destinations, supra note 12.
for past few years\textsuperscript{231}. Rather than Russian patients, Indian hospitals also received nearly half a million medical tourists annually\textsuperscript{232}.

The Republic of Korea, the leading country of plastic surgery with the highest number of cosmetic surgery than any other country\textsuperscript{233}, has gained some Eastern patients from Taiwan, Thailand, and Russia, especially China\textsuperscript{234}. The Korean progressive step was the establishment of the Council for Korea Medicine Overseas Promotion for promoting the medical tourism\textsuperscript{235}.

Malaysia uses the religion to strengthen its ability by imposing the medical understanding for Muslims in the Middle East (Arab States) which is the largest base of patients in the world\textsuperscript{236}. Besides, Singapore intends to use the relations with the United Kingdom, state-of-the-art facilities, cleanliness, and fluency in English language to compete with Thailand directly\textsuperscript{237}. Lastly, Philippines and Taiwan also start to compete for medical tourism market through aggressive promotion to obtain more medical tourists from China, Russia, and the Middle East countries.

\textsuperscript{236} นภดล ภาคพรต, supra note 151.
In contrast, Thailand is struck in the uncertain situation of coup control\textsuperscript{238}. The foreign patients are warned by their governments of the situation in Thailand\textsuperscript{239}. Without systematical promotion, Thai medical tourism relies on the mouth-to-mouth advertisement of the ex-patients. To illustrate the disadvantage of the location of Thailand, patients would reasonably seek the nearby destinations to save their budget. As a result, Mexico, Jordan, and India are the popular destinations for patients from both United States and Europe. Besides, ASEAN countries are chosen as the region with the cheapest medical expenses, as seen in the medical policy of Singapore, Philippines, and Malaysia\textsuperscript{240}.

Thailand is not as popular as Mexico, the Cayman Islands, South Korea and other countries\textsuperscript{241}. As discussed above, Thailand needs to launch the new policy or measures to compete in fierce medical tourism market.

2.3 Conclusion

Regarding the different healthcare system in each country and worldwide commerce, the oversea patients become the target in establishing intermediators in medical tourism marketplaces. Business models found in the medical tourism are cutting out the middleman, network effect, and all in one business. Still the most useful model is network effect which is expressly shown in both destinations and host countries. In the aspect of the legal status of medical tourism facilitators, certification is more accepted among patients because of specific medical standard guarantee. Even though its weakness as being soft law may affects the enforcement. Thailand often relies on the International Commission for Hospital Accreditation to provide control over hospitals. However, there is almost no supervision over medical tourism facilitators. With the compliance of practical business operation, Thai medical tourism facilitators adopt the form of contracts, whether main and subsidiary. It can be clearly seen that

\begin{itemize}
  \item \textsuperscript{241} Samuitimes, supra note 220.
\end{itemize}
the unilateral contracts benefit their partner, except patients. Moreover, the lack of governmental control over health agent brings the downturn to Thai Medical Hub policy and healthcare standard of Thailand less competitive than other destination countries.

Regarding finding a regulatory framework or paradigm, legal control measures of Thailand will be discussed in the next chapter.
CHAPTER 3
THE CONTROL MEASURES OF MEDICAL TOURISM FACILITATOR IN THAILAND

As mentioned before, in the study of monitoring measures on medical tourism facilitators or network of health care system, the legal consciousness is placed in the high, medium, and low standards followed by each country. The measures imposed on medical tourism facilitators can be categorized into a measure of sanction and a measure of control. To explore more in the aspect of Thai existing laws, we merely study a measure of control.

Given the whole perspective on healthcare, measures of sanction seem to be the potential tool to manipulate and enforce medical tourism facilitators to comply with laws and regulations. However, it seems that patients do not prefer the litigation because of non-effective, worse surrounding and the complicated procedures outside their host countries.

In the general lawsuits, the litigations are based on claiming either in tort or contract. In the point of view of tort law, Civil and Commercial Code of Thailand commonly stipulates the liability for the wrongdoer and compensation for the injured person. Besides, the liability based on a fault is related to legal problems of the medical tourism facilitators. 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), this case would be under section 420\textsuperscript{242}. Nowadays, there is no existing law that imposes the liability on middlemen on fault of the medical practitioners and medical malpractices arising from the providers\textsuperscript{243}. 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. At last, the compensation, which is based on the real damage and the other factors, might not be enough to compensate the injured person due to different currency values and other expenditure spent during the court proceedings. Otherwise, the medical tourism facilitators need to be responsible for the failures, such as the default of information, providing a subpar medical standard in the network and other operations. In addition

\textsuperscript{242} Civil and Commercial Code of Thailand, s. 420.
to tort litigations, breaches of contracts are another reason of lawsuits. Thus, the liability shall be limited for their own faults based on the contractual deals and laws.

When it comes to procedural law, over the numerous years, Thai citizen usually states the infamous quote as ‘it is better to eat dog shit than to go to court’. According to the lower rate of litigation, it may suggest an unfriendly atmosphere for plaintiffs. Compared with the western standard, Thai compensation is in lower level and also is aggravated with the high expenses of the litigation. Moreover, all foreign languages evidences, which are related to the trial and adjudication of the civil cases, must be translated into Thai in pursuant to section 46 and section 86 of Civil Procedural Code. If not, the courts have the power to rule that any evidence in foreign languages is inadmissible and may refuse to admit such evidence. Usually, the time spent per case may take more than five years to be final. This time consuming aspect deters the foreign patients and is a significant obstacle to patients’ consideration.

As mentioned above, the measures of sanction, which provides a light and unenforceable method, is not enough to secure the patients’ right and medical standard. On the alternative measure, the control measures should be discussed to complete the patients’ safety.

On the measures of control, the medical tourism facilitators are associated with two criteria: general and specific terms. The relevant laws that generally govern this issue are Civil and Commercial Code and Consumer Protection Act B.E. 2522 (1979). However, the laws which specifically govern the issue are composed of Tourism and Tourist Guide Business Act, B.E. 2551 (2008) and the three medical laws as follows:

3.1 Thai Laws and Regulations Generally Governing on Medical Tourism Facilitator

The character of medical tourism facilitators on medical service chain possibly affects patients who are also consumers. Nowadays, compared with the foreign countries, such as the United States, Malaysia, and the Republic of Korea, Thailand still lacks the laws that specifically apply in this case. On this part, the study, which is relevant with the characteristics of the law

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245 Id. at 497.
246 Nathan Cortez, supra note 4; Civil Procedure Code of Thailand, s. 46.
247 Interview of Yutthana Srisavat and Pongwut Bamrungsuksawat, L.L.M. Candidates, supra note 5.
248 Nathan Cortez, supra note 4.
governing medical tourism, intend to simplify the problems from each legal measure. The laws which generally regulate core function of medical tourism facilitators are composed of laws of contract of Civil and Commercial Code of Thailand and Consumer Protection. To pursue the vertical and horizontal knowledge, the structure of each law shall include the meaning, application of law, and comments on strong and weakness.

3.1.1 Law of Contract

When we think about the main code governing simple transaction in daily life, Civil and Commercial Code is firstly concerned as to determine the basic obligations and rights. As well as medical tourism facilitators, such medical network contract deserves classification and consideration on general functions. The relevant law on medical tourism facilitators is Civil and Commercial Code of Thailand, especially the brokerage, agency, hire of work, and obligations and contracts. Firstly, we shall analyze the suitable kind of contract that match with fundamental functions of medical tourism facilitators for the appropriate application.

3.1.1.1 The Nature and Structure of the Medical Tourism Facilitator Contract

The medical tourism facilitators act as being the middlemen or liaisons, whether by individuals or organizations. They arrange the medical service network for the patients on the domestic and the international level. The core of the business is to deliver the medical treatments and to fulfill most convenient of medical system. The medical tourism facilitators always add the insurance coverage, accommodations, transportations and leisure in such medical service network. The medical tourism facilitators solely respond to the contractual duties and do participate in the range of other businesses within the network, except an indication of medical deductible cost.

In general, a medical tourism facilitator has to enter into two contracts. The first one is the contract between the medical tourism facilitator and the patient which provide a healthcare service, a primary check, a process of medical sustaining, a post-treatment, a total expenditure, special benefits for the patient, and other facilitations. The second one is the contract between the medical tourism facilitator and the medical provider which indicates the commission fee, deductible expense on the medical service, and the whole process of supplying healthcare treatments for the patient. Therefore, the medical tourism facilitator contract has the vital nature as same as the specific broker.
For the application of the medical tourism facilitator agreement with Civil and Commercial Code, the relevant contract shall be described as follows:

(1) Brokerage Contract

Broker is an agent who does something for a commission, or a brokerage fee, on behalf of a principal as an intermediary between the latter and third party in transacting business relative to the acquisition of contractual rights, or to the sale or purchase of any form of property, real or personal, the custody of which not entrusted to him for the purpose of discharging his agency\(^\text{249}\).

Upon the brokerage contract, the contractual parties are a principal and a broker, excluding the third party who might enter into the contract with the principal. Otherwise, the broker acts as the intermediator between the principal and the third party for creating the legal relationship. As can be seen, the broker tries to fulfill the desire of the principal, which is done by indicating the opportunity for the conclusion of a contract, and it is totally distinct from agency contract. Therefore, the broker is not the direct contractual party with the third party which leads to the limitation of its obligation and care. The broker is entitled to receive the commission when the (main) contract between the third party and principal is concluded. The unusual distinctive of brokerage contract is freedom of the broker to indicate the main contract. On the other hand, if the broker does not point the third party for entering into the main contract, the broker holds no liability, including a commission as well\(^\text{250}\). Even though the duty of the broker is the duty which results in the achievement; the broker always has choices whether to do it or not\(^\text{251}\).

Another vital issue that shall be concentrated on is a commission. As seen in section 845 and 846, the broker is entitled to receive a commission in two cases. Firstly, in the case of explicit remuneration agreement, the principal needs to give the commission fee to the broker as he has agreed. Lastly, implicitly remuneration agreement is the common brokerage reciprocal


\(^{250}\) ประสิทธิ์ โฆวิไลกูล, คำอธิบายประมวลกฎหมายแพ่งและพาณิชย์ ตัวแทนค้ำต่ำงและนำยหน้ำ,พิมพ์ครั้งที่ 3, กรุงเทพมหานคร : ส้านั้พิมพ์นิติธรรม, 2545, หน้า 33 - 34. (Prasit Cowilaikul, Commission Agency and Broker, 3rd ed, Bangkok: Nititham Publisher, 2002, at 33 - 34).

contract that requires both parties to perform their obligations. When the parties do not explicitly agree on the remuneration, it shall be assumed that the broker performs his duty for the compensation in return. Still, the broker needs to be appointed by the principal in the prior stage, and then he has the right to claim for the commission. In the other word, the broker, who is not appointed, has no right to ask for a commission fee\textsuperscript{252}.

Medical tourism facilitators, who are not employed by any organization, provide the best suggestion based on several health care services for the patients who are members in their healthcare service network. With the vertical and horizontal knowledge of the medical process, they are able to convince the customers in selecting the suitable medical practitioners and hospitals, including the insurance packages. Noticeably, a medical providers are persons, who agree to pay remuneration to the brokers for indicating the opportunity for the conclusion of a contract under section 845\textsuperscript{253}. Notwithstanding, medical providers do not have the power to order or control the operation of the medical tourism facilitators.

It seems that the main character of the contract is suitable to be applied with the law of brokerage. However, medical tourism facilitators should not be deemed as brokers who point third parties for contractual conclusion. On the other hand, medical tourism facilitators are defined as the quasi-brokerage character because their functions go above and beyond the call of duty of inducing the patients. For example, they have to enter into the contract and supply health care packages until the completion of medical procedures that include the health review after the entire of such packages. As a result of unfit law, the law of brokerage does not cover the main elements of controlling medical tourism business. But, to make the problem of inadequate provision clear, the application of the brokerage law shall be considered.

(2) Hire of Work Contract

Apart from the brokerage contract, the hire of work contract is also one kind of the specific contracts in Civil and Commercial Code of Thailand. To understand the definition of hire of work contract, its fundamental characteristic shall be categorized into three aspects: work, accomplishment of work, and remuneration\textsuperscript{254}.

\textsuperscript{252} Id, at 190.
\textsuperscript{253} Civil and Commercial Code of Thailand, s.845.
\textsuperscript{254} นนทวัชร์ นวดะบุตรพิสุทธิ์, หลักกฎหมายเอกเทศสัญญาลักษณะจ้างแรงงาน จ้างทำของ-รับขน, โครงการ สำรวจและเอกสารประกอบคณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์, กรุงเทพมหานคร, 2559, หน้า 34
Firstly, ‘work’\textsuperscript{255}, the existing word in section 587 and other sections, could make the common understanding that it refers to corporeal objects and touchable matters or things. Still, the meaning of work covers any performance upon what parties agree. Hence, the performances in medical tourism facilitator contracts would fall within that section since the process of advertisements until checkup procedures are deemed as a work.

Secondly, ‘accomplishment of work’\textsuperscript{256}, the most significant factor in this analysis, seems to make two logical senses: the benefit of the employer, and achievement. The contractor agrees to accomplish a definite work for the employer for the completion and achievement of works by following the employer’s orders. The code limits the accomplishment merely on matters or objects, excluding the satisfactory or quality in the employer’s point of view. The completion of work becomes the most important aspect rather than the process of how the work is done. It does not matter if the contractor himself will make the whole or partial work. Implicitly, the employee can hire the others to finish his work for the employer instead. Notwithstanding, the contractor may holds the liability to finish the work for the employer on time. It reminds that the qualification of the contractor is not the essential matter, except the work requires qualification of the contractor under section 607.

The contractor usually hires others on two methods: hire of service contract and subhirer on hire of work contract. The latter is the main focus of this study because it has the same characteristic with medical tourism chain. Sometimes, the contractor could not complete the whole work by himself whether of inability, timing or other substances. He may use the third party as a tool for fulfilling his job. In the same way of medical tourism chain, the medical tourism facilitator cannot be a medical professional or an insurer at the same time owing to its non-specialized medical and financial market. The facilitators are only capable of facilitating or rearranging the medical program in the central point. The patients usually pay attention to the detailed medical program but are not concerned about the medical procedures.

However, if the qualification of the contractor does matter in completion of work, the contractor must gain the permission of the employer on transferring the work to the subhirer. This is due to the contractor gains a trust from the employer (fiduciary duty). The medical tourism

\textsuperscript{255} Nontawat Navatrakulpisut, Hire of Service, Hire of Work, and Carriage, Text and Materials of Thammasat University, Bangkok, 2016, at 34.

\textsuperscript{256} Id., at 35.

\textsuperscript{256} Id., at 36.
facilitators, who participate in the medical chain, are assumed to have the special knowledge of medical, finance, and service because they deal with the health care, bodies, and lives of a human.

As being known, the hire of work contract is determined as a bilateral contract which binds two contractual parties, not covering the third parties who do not enter into such contract. The subhirer or the third party is not the party, which leads to no legal relationship between the employer and the subhirer. Consequently, the contractor would have the liability to the employer instead. Compared with medical tourism chain case, the medical tourism facilitators have to be responsible for any fault and liability of their contracts. Even it is their subhirers who do something wrong, the medical tourism facilitators have to resolve this problem upon their contracts based on the relationship between him and subhirer, and additionally, liable for the patients (employer) on the relationship of prior hire of work contract.

Besides, the accomplishment also confirms that the benefit of the employers is a vital factor. The employer is entitled to have the right to do contractual termination during the period of working time, even nobody commits the wrongful act if he realized that the act of his contractor affects his benefit on his view. Such unilateral termination is legal and is not on the ground of bad faith according to section 605. In the opposite, the contractor does not receive such legal protection, so he cannot raise the reason of the necessity to sustain his benefit against his employer. It seems that the contractor is in disadvantage when compared with the employer.

Lastly, the ‘remuneration of the contract’ must be found in the fixed form or exact amount after the completion of work. Still, the contractor could separately accept the remuneration. The medical tourism facilitators gain the package cost from patients, whether partially or wholly. By the way, the money they earn is still on the ground of the accomplishment of work.

In conclusion, a medical tourism facilitator sacrifices the time, effort, and expertise to integrate the medical service into the network for the commission and another benefit from the providers and insurance companies in return. The obligations and rights resulting from the medical tourism facilitator contract is similar to hire of work contract regarding section 587 of Civil and Commercial Code of Thailand in that the facilitator (employee) render services (medical provider and insurance company) to a consumer (employer) for the remuneration in return.

257 นนทวัชร์ นวตระกูลพิสุทธิ์, supra note 256, at 40.
258 Civil and Commercial Code of Thailand, s. 575.
Notwithstanding, the medical tourism facilitators are no deem as the employees because their duties are beyond the completion of work regarding the satisfy of the patients and the process of medical rechecking, rehabilitation, and other facilitation. The completion of work in these contracts solely means the medical provider supply. It can be explicitly seemed that the medical tourism facilitators operate the networks since the advertisement until the quality of care review which against the completion of work according to section 587. The hire of work contract does not appropriately apply on medical tourism facilitator. Medical tourism business indicates that the hybrid contract is not just the basic service contract in normal practice. The law of hire of work enacts 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. When non-suitable resolution is addressed, the application of this law should be discussed in order to make legal problem clear.

(3) Agency Contract

An agent, in contrast, is a person who is sponsored or employed by the provider network to purchase or bring most consumers to such healthcare service network pursuant to section 797\textsuperscript{259}. Under the control of the principal or the provider, the agent presents the principal business and relieves from the responsibility of other health care service. Under the power of control factor, the medical tourism facilitator is not appropriately fallen under the agency law because the medical tourism facilitator is not under the control of any provider and has no willing to take the responsibility instead of the provider.

The medical tourism facilitators conduct their business operation by themselves without any interfering acts from medical providers and insurance companies. To say briefly, each character in the medical network needs to manipulate his affairs due to the aim of the being a middleman. The structure and the nature of the medical tourism facilitators are based on service contract. Because they enter into the medical tourism chain for the commission fee, not for the others’ benefit on behalf of the providers, even though the medical tourism facilitators supply the patients for the providers and conclude agreements instead of the providers. The medical tourism facilitators are also not considered as being the special agents following the section 800. It stipulates that the agent who has a special authority may do on behalf of his principal whatever is

\textsuperscript{259} Id, s.797.
necessary for the due execution of the matters entrusted to him\(^{260}\). The medical tourism facilitators are the central entities, who manage and offer the patients to the providers. They, in the aspect of the providers and the patients, also operate the other parts which concerns on the facilities without behalf of the provider.

As mentioned the law of specific contract above, the next part will indicate the law of general contract.

(4) Obligation and Contract Law

In the reciprocal contract which both parties have the obligations and rights, a person agrees to do something for obtaining something in return. Comparing to the law of obligation, medical tourism facilitators, who offer to engage and operate the medical service network for a commission fee and other revenue in return, have the same functions stipulated in the law of obligation and contract. Hence, obligation and contract law shall be applied to medical tourism facilitator cases.

3.1.1.2 Application of Law on Medical Tourism Facilitator

After analysis the definition of the common functions of medical tourism facilitators, we get the appropriate contractual law: brokerage, hire of work, and law of obligation and contract. The following part is a description of law application on medical tourism cases.

(1) Brokerage Contract

Law of a specific contract, such as brokerage, is stipulated in Civil and Commercial Code of Thailand for enforcement between contractual parties according to the doctrine of freedom of contract. The specific contract has a unique characteristic which is different from the general contract that it shows the particular purpose of the parties. So the specific law should be stipulated to govern the specific contract separately. If the law of specific contract does not state any title, the law of general contract shall govern \textit{mutatis mutandis}, unless it contrasts with the special characteristic of the specific contract. Nevertheless, the parties can draft the contract different from the law of specific contract as long as they are not against good moral and public order. According to the contractual dealing, the parties must be bound by their own contract, excluding the third party. However, in some specific contracts, the law can affect the relationship between the contractual party and the third party owing to its nature of the contract, especially

\(^{260}\) \textit{Id}, s. 800.
the responsibility to the third party. Even the third party is not the contractual party; the law still protects his interest as long as he acts in a good faith\textsuperscript{261}.

Due to the main characteristic of brokerage as being a middleman, who leads the consumer and provider meet together, the rights and duties of the broker shall be concentrated on only payment. There is also no liability for any rendered performance because of his mediation\textsuperscript{262}. The indication means that the contacting or process for the appointment between the principal and the third party is the fundamental reason, while the procuring of contract refers to any necessary procedure or activity for achieving the principal’s desire. When the broker is able to make an appointment, he has discharged all of his duties. The result whether the main contract is concluded or not is merely the last process which has initiated through the indication. The broker has no legal binding to participate in the dealing or negotiation process. Because of the lack of participation in the main contract, the broker has no legal binding or any responsibility where the breach of the main contract occurs. Moreover, the broker might not declare the name of the party in the main contract to the others. Notwithstanding, when the broker hides the name of such party, he must be responsible for the performance according to his indicating or procuring of the main contract pursuant to section 848\textsuperscript{263}. Brokerage contract is not required by the law to be written as evidence, so the parties can make the verbal brokerage contract. Because of less strictness on the qualification of the parties, the incompetent person could become a broker\textsuperscript{264}. Nevertheless, the other reasonable opinion provides that the brokerage law does not stipulate the adjudged incompetent issue; the law of personal qualification shall be imposed. When the act has done by a person adjudged incompetent or quasi-incompetent person, it can be determined as voidable pursuant to section 29 and section 34.

Lastly, the law does not prohibit the broker to acts as a broker for the third party. If the broker performs his obligation in good faith, he is entitled to obtain the revenue according to

\begin{thebibliography}{99}
\bibitem{supra}นนทวัชร์ นวตะกูลพิสุทธิ์, \textit{supra} note 254, at 22-26.
\bibitem{262}กุศล บุญยืน, ค้าอธิบำยประมวลกฎหมายแพ่งและพาณิชย์ ว่าด้วยตัวแทนและนำยหน้ำ, พิมพ์ครั้งที่12, กรุงเทพมหานคร:สำนักพิมพ์นิติธรรมการ, 2541, หน้า 216. (Kuson Boonyeun, \textit{Agency and Broker}, 12\textsuperscript{th} ed, Bangkok: Nitibannakarn Publisher, 1998, at 216).
\bibitem{supra}ประสิทธิ์ โฆวิไลกูล, \textit{supra} note 250, at 86 (Prasit Cowilaikul, \textit{supra} note 252, at 86).
\bibitem{263}สหัส สิงหวิริยะ, ค้าอธิบำยประมวลกฎหมายแพ่งและพาณิชย์ว่าด้วย ตัวแทน นำยหน้ำ, กรุงเทพมหานคร:สำนักพิมพ์นิติธรรมการ, 2550, หน้า 130. (Sahad Singhaviriyam, \textit{Agency and Broker}, Bangkok: Nitibannakarn Publisher, 2007, at 130).
\end{thebibliography}
section 847. The reason beyond this principle is that the broker is only the middleman who makes the meeting, not conclusion or negotiation of the main contract. Hence, the way of being a broker for both parties does not matter and it cannot be assumed as acting in bad faith as well. By the way, if the broker tells the personal stuff of one party contrasting to the benefit of such party, he cannot ask for the remuneration and the paid cost owing to his bad faith.

As described, the broker is entitled to claim for his remuneration after the brokerage appointment and indicating the opportunity of the conclusion of the main contract. Even the main contract is terminated whether, by the third party or principal, the broker still has the right to ask for his commission fee and prepaid cost. The achievement of the main contract does not refer to the completed conclusion of the main contract, on the other hand, it refers to the appointment of the principal and the third party. Besides, the broker is presumed to have no authority to receive on behalf of the party’s payments or other performances due under the contract pursuant to section 849. In some cases, the principal agree to give the commission fee to the broker if the latter could indicate or procure the third party for entering into the main contract for a specific period of time. If the latter could not follow the time schedule, he cannot receive the commission fee in return. In the part of the termination of the contract, the law of brokerage contract does not stipulate the role and procedure of brokerage; thus, the law of general contract, section 386 to section 391 shall govern instead.

When applying brokerage law on terms of payment, the remuneration of medical tourism facilitators shall be impliedly agreed, if not, the expected remuneration shall be concerned instead. In the case of bad faith or receiving of the benefits from the third party, the medical tourism facilitators could not claim for the agreed remuneration.

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265 ประสิทธิ์ โฆวิไลกูล, supra note 250, at 80 (Prasit Cowilaikul, supra note 252, at 80).
266 ประสิทธิ์ โฆวิไลกูล, supra note 250, at 45-50, 58, 76-77 (Prasit Cowilaikul, supra note 252, at 45-50, 58, 76-77).
268 Civil and Commercial Code of Thailand, s. 846.
269 Id, s. 847.
Still, the awkward moment may reasonably be occurred when applied the brokerage law that the medical tourism facilitators cannot receive payments or other performances on behalf of the parties because the brokers are not a contractual parties.

Lastly, the medical tourism facilitators shall not be liable for the failure of performance of other parties within medical network chain because of their functions\(^\text{270}\). Nevertheless, they still have responsibilities for the fault arisen on their operation.

**(2) Hire of Work Contract**

In the legal relationship of the contractor and the employer, the contractor has two obligations: general obligation and the special obligation.

To pursue the definition of general obligation\(^\text{271}\), the purpose of the hire of the contract shall be demonstrated. On the ground of the accomplishment, the contractor needs to complete and finish his work to his employer, following the employer’s benefit under section 587. During the process of work creation, the contractor cannot, either willingly or negligently, omit or terminate the contract, unless the employer is at fault regarding to the word order or to his instructions. The reason behind this logic is to sustain the most benefit of the employer. The contractor has to be bound by the obligation of result\(^\text{272}\) which is a duty to achieve a certain result. When the contractor commits the contractual breach in respect of an obligation of providing a result, the employer only has to express that the contractual result has not been achieved. Then, the former party is deemed liable for a breach of contract unless he can prove that the obligations cannot be fulfilled because of force majeure event or an act or omission of the latter party.

The medical tourism facilitators are deemed as the contractors who need to sustain the benefit of their employers, in the other word, health care of patients. So the obligation of the result is to pursue and secure the health and life until their patients get well.

The other obligations, special obligations\(^\text{273}\), the contractor needs to prepare tools or instruments which are necessary for the execution of the work pursuant to section 588. In

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\(^{270}\) *Id*, s. 848.

\(^{271}\) นนทวัชร นวตระกูลพิสุทธิ์, *supra* note 256, at 72-75.


\(^{273}\) นนทวัชร นวตระกูลพิสุทธิ์, *supra* note 256, at 75-92.
addition, the contractor also has to supply materials for the work in good quality to secure the most benefit of his employer (if they agree so) under section 589. If the contractor gives the improper materials resulting in the defect of work, he is deemed to liable pursuant to section 595 combining with the provisions of the Code concerning sale. Another issue on materials is the destroyed or damaged substances before due delivery. Without any compensation of the employer, the contractor needs to take the risk from such accidents because he prepares the materials himself according to section 603. Otherwise, if the employer agrees to supply his materials, the contractor has a duty to use them carefully and without wasting them according to section 590. The only reason that makes the contractor liable is the knowledge of unfit materials or unsuitable order without giving notice to the employer under section 591.

When it comes to the health care cases, most patients do not have a great ability to supply the complicated technology to sustain their health and life, concerning the skill of risk managing on finance. They need the medical tourism facilitators to prepare the tools, instruments, and materials instead. Thus, the latter party must offer the qualified tools and materials with medical accreditation or license. The substances of other providers in the necessary of healing also involve.

The relevant obligation to special obligations is to work at a proper time or not delays in the proceeding. When the contractor delays the work in contrary to the terms of the contract and such manner can be foreseen that the work will not be finished within the agreed period, the employer will be able to terminate the contract without having to wait for the time agreed upon for delivery under section 593. This legal protection aims to assure the progress of the work while section 594 is available to shield the quality of the work. Section 592 combining with 594 give a right to the employer to inspect the work during the progression and ask him to fix the defective goods or services within a reasonable time. If not, the employer can let the third party to do so, and the contractor needs to be responsible for such compensation. Lastly, section 596 requires the contractor to deliver the work on time. In medical tourism, some patients, who travel across the world for health care, may be in an urgent need of medical operation. If the medical tourism facilitators delay the progression that brings the perilous diseases or symptoms, they can cancel the medical package and claim for the compensation according to section 596. Also, they can exercise the right of inspection whenever they want during the curing procedure.
After discussing the obligations, the right of the contractor shall be exercised when he fulfills all duties and submit the work to his employer pursuant to section 602. As mentioned, the contractor can let the third party do his work, except the case of qualification of the contractor, does matter.\(^{274}\)

The liability of the contractor can be divided into two sections: before and after delivery of work. Before work submission, the contractor has to be liable for the compensation in the case of improper starting time or delays of work\(^{275}\), defective materials\(^{276}\), amendment work\(^{277}\), delay in the delivery of work\(^{278}\), and delivery of defective work\(^{279}\). However, the employer cannot refuse to accept the defective work after the acceptance of it either expressly or impliedly. Still, he can exercise his right in the case of an undiscovered defect of work at the time of delivery, or the defect hidden by the contractor. The post-delivery liability of the contractor is based on the ground of guarantee of the completion of work within reasonable time. Generally, the contractor is not liable for the delivered work resulted from the ordinary using of it (wear and tear). However, the purpose of hire of work contract is to assure the benefit of the employer. The law imposes the protection for him through the time bar on defective matter within one or five years depending on the type of work. Nevertheless, the contractor cannot raise the time bar against the employer when he conceals the defective work.\(^{280}\)

When applying hire of the service contract on medical tourism facilitator cases, the liability of medical tourism facilitators is restricted on a defect or a delay of the work arising from any material or order supplied by the patients, and such medical tourism facilitators have no idea on the default.\(^{281}\) Additionally, medical tourism facilitators have to be liable for the defect appearing within one year after delivery of the work.\(^{282}\)

The termination of the contract will be imposed in that the essence on the qualification of medical tourism facilitators’ matters, and such as the demise of facilitators.\(^{283}\) On the other hand, if the time frame is the essential matter of the contract, the patients could raise the contractual

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\(^{274}\) นนทวัชร์ นวตระกูลพิสุทธิ์, *supra* note 256, at 92-96).

\(^{275}\) *Civil and Commercial Code of Thailand*, s.593.

\(^{276}\) *Id*, s.594 and 472.

\(^{277}\) *Id*, s.591.

\(^{278}\) *Id*, s.596.

\(^{279}\) *Id*, s.598.

\(^{280}\) *Id*, s.600.

\(^{281}\) *Id*, s.591.

\(^{282}\) *Id*, s.600.

\(^{283}\) *Id*, s.606.
The termination, for example, is that the medical tourism facilitators have not started to work yet or there is a delay in progress of work that it can be foreseen that the medical treatment will not be finished within the agreed period. This also includes the delay of the work after the time fixed in the contract or reasonable time.

If medical tourism facilitators appoint another person to operate the medical services whether partially or wholly, the medical tourism facilitators must be responsible for the work and any mistake of the sub-facilitator.

(3) Obligation and Contract Law

When the offer and the acceptance have met together, the existence of a contract will occur. After that, both parties shall perform their duty according to contractual terms pursuant to *Pacta Sunt Servanda* principle. In a reciprocal contract, both sides have their obligations and rights, providing that one has to do something and receives the something in return. If any party does not perform their obligations whether negligently or willingly, it can be determined as being a breach of contract. Noticeably, all contracts, including medical tourism contract, is under the law of obligation and contract. Medical tourism facilitators are the creditors whereas the patients are the debtors in the health delivery. Otherwise, medical tourism facilitators are the creditors while the patients are the debtor in the obligation of payment.

When it comes to the contractual liability, if the creditor receives any damage, the contractual liability may be claimed by the creditor regarding the default performance, and non-performance of the obligation by the debtor.

The result of breaching contract is that the creditor, who is not involved in such breach, is entitled to terminate the contract, and also claim compensation for any damage. The breaching party is also bound to restore the other to his former condition. On the other hand, the creditor may make a claim to the court for compulsory performance. However, if the nature of an obligation does not permit of compulsory performance, the creditor is entitled to have the right to claim damages.
In the case of the providing information, the medical tourism facilitators need to provide the important contractual terms to the patients. If they avoid telling the truth, which is an essential element or quality of the person and such information could leads to mistakes of entering into a contract, the contract is void or voidable respectively\(^{292}\). Otherwise, if the medical tourism facilitators are silent on a fact or a quality, the contract shall be deemed as a fraud and voidable\(^{293}\). Besides, if the falsified data impacts the consent of receiving medical treatment, such unwilling consent is an uncompleted consent leading to the void of medical treatment. Nevertheless, essential element or quality of the person relies on ordinary business operation with respect of the interpretation of a declaration of intention in good faith\(^{294}\).

### 3.1.1.3 Comment

When the medical tourism facilitator cases fall under the broker contract, still, the brokerage contract is the general provision. The broker provisions only provide the terms of broker’s remuneration payment\(^{295}\), the entitlement for the remuneration or reimbursment due to the broker act for the third party\(^{296}\), and the power to receive a payment on behalf of the parties\(^{297}\). Moreover, the personal liability of a broker for the non-performance of the other contractual parties through his negotiation\(^{298}\) is stipulated as well. In fact, the medical tourism facilitators’ task is to handle with the health care of patients, which the essential thing is the survival of patients, not just normal goods or services. The medical tourism facilitators should not be determined as brokers because their functions are not limited to persuade patient. Thereby, the general terms in Code cannot suitably apply to the specific case.

The above legal status in accordance with not being as employees, the medical tourism facilitators have to fulfill the duties beyond the completion of work. Otherwise, contracts of medical tourism are more likely referred to service contract. As the nature of medical tourism facilitator does not matches with the hire of the service contract, basically, the provisions of service contract could be applied to medical tourism facilitator cases. The fundamental terms and the policy beyond the service contract provisions are intentionally placed in the simple situation

\(^{292}\) Id, s.156 and 157.
\(^{293}\) Id, s.162 and 159.
\(^{294}\) Id, s.171 and 5.
\(^{295}\) Id, s.846.
\(^{296}\) Id, s.847.
\(^{297}\) Id, s.849.
\(^{298}\) Id, s.848.
of any transaction. Absolutely, the simple situation excludes the hybrid medical network which has more complicated and profound structure affecting human life. Moreover, the medical tourism facilitators have the special obligation that more than the warranted special skill, payment period, fixing in the case of a service error, contractual termination and recovering stipulated in service contract law. Hence, the hire of work contract cannot be suitably and reasonably adopted in the medical tourism facilitator cases.

For the application of the obligation and contract law on medical tourism facilitator cases, the reluctant consideration could happen. The obligation and contract laws provide the breaching party a liability resulted from non-performance based on the true intent and purpose of the same of obligation. The lack of the definition of nature the contract, specific operation on healthcare delivery, standard of medical care, and giving consent process may cause the unsuitable resolution. Providing that both parties have a little knowledge about the medical area, the medical tourism facilitators (the debtor) might not be able deliver the excellent healthcare to the patients (the creditor) because of the complicated scientific treatment. Medical tourism contract is not the daily transaction, so the law of obligation should not be applied on this case. Otherwise, this law does not stipulate the control measures for medical tourism facilitators.

In the case where medical tourism facilitator cases are governed by three laws: brokerage, hire of work, and obligation and contract, the rights and obligations of general contracts do not cover the specific and significant terms of medical tourism facilitator contract. Otherwise, on the litigation, the patients may face the obstacles when suing them to the courts. Low compensation, inadmissible evidence in foreign language, and extent timing of the litigation reflect the incomplete and ineffective remedial measures. For the avoidance of insufficient remedial measures, preventive measures shall be concerned.

In the case of giving data, the general provision does not provide the specific kind or scope of which data is essential elements or consistent quality of person regarding the interpretation of parties and ordinary practice. Using the regular practice of being medical service broker, the risk, medical error, commission, or any discredited information would be concealed from the patient’s knowledge. Thus, the patients will be in gambling situation that could damage the reputation of medical tourism industry of Thailand. Moreover, medical tourism contract is the international transaction requiring the fully furnished facts for considering the decision. If the patients have

\[299\] Id, s.368.
access to limited information, the attractiveness of Thailand’s medical tourism might be damaged. As the general provisions merely stipulate the post-stage of contractual termination, the patient suffered from the defective medical tourism network could not be fully restored. Hence, the non-specific provisions are not sufficient to control the medical tourism facilitators’ practice. The further limitation on Thai legal measures will be analyzed in Chapter 5.

3.1.2 Consumer Protection Law

In order to increase the margin of profit, medical tourism facilitators may supply poor quality goods and services at the greater price. Moreover, businessmen, especially monopolistic and unethical medical tourism facilitators, tend to use the abuse of power to mischievous healthcare of patients physically. Literally, patients would not only face the low medical standard, but they would also confront with deceptive advertising, unfair trade practices, limited patient’s choice, and illiteracy on therapeutic area\(^{300}\).

As the result of the unqualified consumption of patients, consumer protection law that ensures the rights of consumers, fair trade, and flawless data in the marketplace through preventing fraudulence on trade practice and controlling business operation shall govern.

The relevant consumer protection law to medical tourism facilitator is Consumer Protection Act B.E. 2522 (1979). In this part, we shall analyze the definition between medical tourism facilitator and entrepreneur with the application of the law and critical comments.

3.1.2.1 Medical Tourism Facilitator and Business Operator

The law provides the definition of business operator as a seller, a producer for sale, a person ordering or importing goods into the Kingdom for sale, a person purchasing goods for resale or a person providing a service and also includes a person operating an advertising business\(^{301}\). In contrary, the consumer is deemed as a person who purchases or receives a service from a business operator or a person who receives an offer or a solicitation from a business operator for purchasing goods or receiving a service\(^{302}\).


\(^{301}\) Consumer Protection Act of Thailand B.E. 2522 (1979), s.3 ‘consumer’.

\(^{302}\) Id, s.3 ‘business operator’.
Medical tourism facilitators are determined as a party within medical service network who sacrifice time and labor on the basis of hire of work contract. Comparing to the meaning of business operator in Thai consumer protection law, medical tourism facilitator, and the business operator has the same function on providing services. Moreover, the patients entering into medical tourism contract receives a service from medical tourism facilitator through facilitating medical treatment procedure abroad. Hence, such patients are also the consumer according to Consumer Protection Act.

As mentioned above, the Consumer Protection Act shall be applied in medical tourism facilitator cases.

3.1.2.2 Application of Law on Medical Tourism Facilitator

Virtually, consumer protection law provides three measures on advertisements, labeling, and contracts of the business operator. Still, this study shall concentrate on business operation measures of controlling advertisements and contracts, including the disclosure of information.

(1) Consumer Protection against Advertisement

As for advertisements of service for the public, an advertisement may not contain a statement which is unfair to consumers or may cause an adverse effect on the society as a whole. Such statement also concerns with the origin, condition, quality or description of goods or services as well as the delivery, procurement or use of property or services. For more detail of unfair or causing adverse effect statements, the principles give the caution of false or exaggerated statements or statements which may cause a misunderstanding in the essential elements concerning services. Nevertheless, it is based on any technical report, statistics or

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303 Id, s.3 ‘business operator’.
304 Id, s.3 ‘consumer’.
306 สำนักงานคณะกรรมการคุ้มครองผู้บริโภค สำนักนายกรัฐมนตรี, supra note 305, at 17-21).
307 Consumer Protection Act of Thailand B.E. 2522 (1979), s.22.
anything which is false or exaggerated. The standard of indicating statements is the primary
stage of advertisement broadcasting.

The regulation also sets the post-stage on strengthening the control measures after
broadcasting advertisements. The committee of advertisements shall have the power to issue
following orders, amending the statement of the method of advertisements, and correcting by
advertising the possible misunderstanding of the consumers. On restraining process, the
competent official also has the power to prohibit the use of certain statements as appeared in the
ad, and ban the advertisement or the use of such method for advertisement in accordance with
the rules and procedure prescribed.\(^{308}\)

In the aspect of an entrepreneur, the advertisements of medical tourism facilitators are
prohibited from any conduct that may be harmful to patients’ health or cause physical or mental
harm that may cause disturbances to consumers.\(^ {309}\)

Sometimes, the essential information, status and other details concerning business
operators, which could affect the decision-making of the patients, may be opted out from the
advertisement, providing that medical tourism facilitators afraid of decreased votes of their
medical network after ads launching. Thereby, the requirement of the Committee on
Advertisement on the description needs to be fulfilled.\(^ {310}\)

(2) Consumer Protection against Contract

For entering into the contract of the service for consumers, the controlling measures
indicate the cardinal rules for the service. The contract between a businessman and the
consumers, especially the controlled business, shall be described with certain contractual terms.
If the principal terms which could affect patient’s decision-making are not stipulated in the
contract, the consumers would receive unreasonable disadvantageous goods and services.\(^ {311}\)
Besides, the contract must not contain the unfair contract terms.\(^ {312}\)

In the case where requirements of the Committee on Contracts containing either any
contract terms or any contract terms with conditions regarding section 35 bis, the medical
tourism facilitators need to comply their contracts with such requirement. If not, the contracts

\(^{308}\) Id, s.27.
\(^{309}\) Id, s.23.
\(^{310}\) Id, s.25.
\(^{311}\) สำนักงานคณะกรรมการคุ้มครองผู้บริโภค ส านักนายกรัฐมนตรี, supra note 305, at 27-30).
\(^{312}\) Consumer Protection Act of Thailand B.E. 2522 (1979), s.35 bis.
which lack contractually controlled business terms shall be deemed as containing such terms\textsuperscript{313}. Otherwise, if contracts contain prohibited terms, such terms shall be deemed that they do not exist\textsuperscript{314}. Regarding the requirement on contractual terms, medical tourism facilitator contracts are not be restricted by any monitoring measure.

On the issue of receipts, some particular services need to stipulate necessary statements that extremely affect disadvantage of consumers, and do not contain unfair statements either\textsuperscript{315}.

(3) Disclosure of Information

According to the general principle, the correct advertisements would enable the consumers to appropriately select the suitable clinics, hospitals or doctors. In the case of any goods or services, it is necessary for the consumers to know the facts concerning the status and other details regarding the medical care network. The medical tourism facilitators shall describe that the advertisement of such goods or service and others contain information for patients\textsuperscript{316}.

3.1.2.3 Comment

In the aspect of the advertisement of the medical tourism, the medical tourism facilitators are determined as being the primary entity of the medical service network. As they receive the commission fee from the providers and access fee from the insurance companies for the use of their network. Providing that more patients interested in their medical service network, they gain increased income. In addition to the fierce competition in the cross-border healthcare marketplace, the medical tourism facilitators have to put a more attractive special offer to persuade the patients.

Without the specific scope of issues and titles, the medical tourism facilitators share the only successful medical tourism cases as for attracting patients and audiences. Health care programs are not the general service because they are able to impact patients’ decisions on the sustainable lives. Some of patients who suffered from the disorder, serious symptoms, and inflamed diseases may enter into the medical service network without concrete consideration easily.

Because of the general conception without clear guidance and prohibited characters, the medical tourism facilitators would doubt what the good practices of medical tourism advertisement are. The Committee on Advertisement shall place more controlling elements of the advertisement

\textsuperscript{313} Id, s.35 ter.
\textsuperscript{314} Id, s.35 quarter.
\textsuperscript{315} Id, s.35 quinque.
\textsuperscript{316} Id, s.25.
on medical tourism business for preventive measures. Hence, general advertisement control in particular with common good and service has no capacity to effectively protect patients.

In the worst case, the Committee on Advertisement does not fully use the prior review on health ads regarding the non-specialized skill in medical and insurance acknowledgements. As a result of the lack of prior review, the medical tourism facilitators have the freedom to inititively create the attracting advertisements.

Moreover, the Committee of consumer protection law is composed of the general authorities who are not specialize in medical and insurance. This brings the inappropriate laws, regulations, orders, and competent officials’ decision because they may not understand the actual problems and the entrepreneurs’ mindset.

The last issue of advertisement problems is an ethic of the medical tourism facilitators. Consequently, the physicians are prohibited to make the advertisement relating to their medical conduct and reputation. For an access to the patients, the doctors and hospitals use the medical tourism facilitators as the distribution channel to attack the patients by offering commission for them. Noticeably, the medical tourism facilitators are not restricted by any law and regulation. Even though the medical professionals cannot solicit or induce the patients for obtaining health care programs and do not receive or provide any benefit of which is the remuneration in order to accept or provide the patients for such medical treatment regarding the Article 17 and 18 of the regulation of the Medical Council on the ethic of medicine profession practitioner B.E. 2549 (2006), the medical tourism facilitators are not subject to the regulation owing to not being as a medical professionals. In the other word, medical professionals are prohibited to do so. In the case where the medical tourism facilitators are free from any prohibition, it means that they are able to operate their health care business. Nowadays, it seems that several medical professionals still approach the patients as the consequent of no restriction which controls over all partners in medical service network. With the respect of the necessity of having medical tourism facilitator, they may solve the problems of the coordination, the access to consumer base, and the knowledge between the medical providers and the patients. Hence, medical tourism markets still need the medical tourism facilitators. Another reason is that the prohibition of advertisement is not efficient instruments as seen in the business practices. When the partners of medical service network, who have the purpose of making profit, have been limited to make the advertisement, significant marketing channel, the attempt of the entering into gray market through any hidden
and illegal acts may be dramatically increased. On the other hand, the transparency theory may be the better solution for applying to these cases. To allow the medical tourism facilitators to distribute their advertisement under the control of provisions relating advertisement may offer the easy investigation for the regulatory organization as well.

With globalization, the services relating to life, body, and healthcare of human being are complicated business, due to the contracts of primary medical tourism facilitators. As seen, the promotions and other obvious attractions of health care contract affect the consumers’ decisions. So the Committee on the Contract shall concern each contractual element with the specific medical knowledge and financial terms. According to the control measures of contract, the consumers will be protected and able to obtain the more information leading to effective consent of the patients in selecting the provider.

Nowadays, the legal control imposes the compulsory fourteen forms of contract, excluding the medical tourism facilitator contract on both of the provider and patient. Moreover, the controlled articles and statements that need to be clearly declared to the consumers, but are not stated, such as giving consent, payment process, benefits which the patients receive from the providers, insurance procedure, and medical record. Therefore, the controlled forms or articles of such contract are not critical concerned and set in any ministerial regulation, regulation, declaration, and order. In practice, the medical tourism facilitator contracts indicate the complicated conditions and terms relating to medical and financial area. Thus, the patients who receive the health care service from the medical tourism network do not gain more protection.

Lastly, the confidence in Thai medical tourism faces the negative result. More limitation on of Consumer Protection Act will be discussed in Chapter 5.

3.2 Thai Laws and Regulations Specifically Governing on Medical Tourism Facilitator

As explained, the specific nature and structure of contract shall be specifically governed by the law. The reason beyond such application is to pursue the suitable law matching with the special purpose of each contract. If the law with the general concept is imposed on the specific case, the overlapped result could happen. Rather than applying general provision on medical tourism facilitator cases, the specific provision shall be reviewed because the specifically governing law provides the contents in the particular area of medical and tourism which does not exist in general rule. To be observed, specifically governing legislation and regulation could
guide the medical tourism facilitators to engage their practices. The contents of the following law can be separated into two types: tourism and medical law.

3.2.1 Tourism and Tourist Guide Law and Regulation

Regarding regulatory framework for greater development and manipulation of tourism, the protection of tourists, whether cultural or natural, collaboration of the private sector and local communities shall be formulated in the law\textsuperscript{317}. The purpose of the tourism law is to impose the stakeholders’ responsibility, securing the rights and obligations for both domestic and international tourists and engaging tour guide operators. Therefore, persons who play the role of tourism market needs to generate the activity based on issues in tourism law.

Naturally, the recent progress on medical system of Thailand relies on travel agents who are in the medical network chain. Thus, some may classify the medical tourism operation in the same category of real leisure tourism. Even though the nature of medical tourism facilitators is specific liaisons within medical network market, not general tourism guides. Nowadays, duties toward patients, and their accountability toward patients and doctors are not critically concerned and set in any ministerial regulation, regulation, declaration and order ruled by the Committee. So, mainly, the Act shall be discussed. With this reason, the Tourism Act shall be touched to make clear understanding in particular with a definition and an application.

3.2.1.1 Medical Tourism Facilitator and Tourist Guide

According to analyze the legal issue on traveling, the fundamental principle used to decide is Tourism and Tourist Guide Business Act. As section 4 provides “Tourism business” means a business relating to guiding tourists for touring or for other purposes of traveling by providing either one or several services or conveniences such as lodging, food, guide, or any other services as prescribed in the Ministerial Regulation\textsuperscript{318}. All kind of tourism business has to fall under Tourism and Tourist Guide Business Act, which is generally interpreted as being a provision in the area of tourism.

The wording of ‘any other services’ has the meaning that covers medical tourism. Nevertheless, ‘medical tourism facilitator’ or ‘medical travel agent’ is not contained in this Act.

\textsuperscript{318} Tourism and Tourist Guide Business Act B.E. 2551 (2008), s.4 ‘Tourism business’.
With this logic, the medical tourism facilitator is interpreted as being an entity under the control of tourist authority according to its movement in bringing patients to receive therapeutic care.

3.2.1.2 Application of Law on Medical Tourism Facilitator

Under the control of Tourism and Tourist Guide Business Act, the application is composed of status and business operation as follows:

(1) Legal Status of Medical Tourism Facilitator

The tour guide and tour leader must be licensed and also conclude their contracts in the form following the provision. Moreover, this Act inserts the specific rights and duties for the tour guides and tour leaders, including the obligations to fulfill the tourism business protection fund. If they are against or negligently ignore this provision, their licenses will be suspended and canceled by Committee of Tourism Business and Guide.

Thereby, several big brother facilitators in medical tourism marketplaces are subjected to Tourism and Tourist Guide Business Act B.E. 2551 (2008) and registered with the Tourism Authority of Thailand as a travel agent specializing in medical tourism.

(2) Business Operation of Medical Tourism Facilitator

There are measures to govern medical tourism facilitators’ business operation as follows:

1. Advertisement

Medical tourism facilitators have to contain the following list in their advertisements: name and license number of medical tourism facilitator, payment system, nature and type of transportation and accommodation, tourist destination, tour guide, and the minimum visitors for tours.

2. Change and Default of Information

According to the duty of the compliance, all information within the scope of section 26 or actual information must be provided to tourists. If any changes or falsified data occurred, medical tourism facilitators need to notify such change to tourists before the payments. If the unnotified information leads tourists to involuntarily join the tour, such medical tourism facilitators have to return the money paid for tourists without delay.

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319 Id, s.15.
322 Id, s.27.
During trips, the medical tourism facilitators cannot change any information, unless they get the consent from tourists or the result of force majeure. Also, medical tourism facilitators have to refund the difference between the paid and actual fee after changing.\(^{323}\)

3. Cancellation of Tour

If, with tourists’ personal reason, tourists cancel the tour which they already paid for, medical tourism facilitators who completely do not make the failure on their tour businesses, need to return the money back regarding prescribed requirement of the Board. Still, of such cancellation of tourists either causes an inadequate number of cases of tourists following section 26(8) or resulted from the fault of medical tourism facilitators, such medical tourism facilitators have to return all the money to the tourists.\(^{324}\)

4. Prior Charge

Medical tourism facilitators cannot charge other expense rather than the one specified in advance. If not, medical tourism facilitators must notify their service charges and fees to be paid due to the location or activity exceeding those specified in the document.\(^{325}\)

5. Fiduciary Duty

By the virtue meaning of fiduciary duty, a fiduciary is a person who has a legal obligation to act or perform in the interest of another party or principals.\(^{326}\) When someone trusts the other, the fiduciary will be applied in this case as for a relation in a clear conscience. To be recognized, fiduciary duty serves the high standard of care as mentioned phrase "at a level greater than that trodden by the crowd".\(^{327}\)

In nature, the principal could not rely on his practice and would not be able to monitor the quality of his services. The mentioned performance can be categorized as being non-involving skill and understanding, trouble on monitoring and estimating the possibility of arrangement, and low alternative and efficient measures of the control mechanism.\(^{328}\)

\(^{323}\) *Id*, s.29.

\(^{324}\) *Id*, s.28.

\(^{325}\) *Id*, s.30.


\(^{327}\) Meinhard v Salmon (1928) 164 NE 545 at 546.

\(^{328}\) Tamar Frankel, “*Fiduciary Duties as Default Rules*”, *Oregon Law Review*, Winter, 1995, 74 Or. L. Rev. 1209, at 1210-1215.
When the principal entrusts the power or property to the fiduciaries, occasionally, the fiduciary has to follow the order effectively and not improperly act which may lead the risk and loss to the principal. To preclude the appropriation or abuse of power in a loss exceeding the potential gain from the fiduciaries' services, the law automatically imposes a fiduciary duty in the case relevant to nature of fiduciary relationships.

When the fiduciary acts on behalf of principal, the strict burden placed on the formers’ shoulders is a loyalty and no conflicts of interest between fiduciary and principal. The fiduciary shall concern other following duties in this relationship, justifiably vests confidence, vulnerability, reliance, good faith, and believe whatever the fiduciary suggest. The reason behind why fiduciary has to do something for the principal is not always based on margin profit, except the express contractual term or the consent to obtain profits in return.

Medical tourism has the virtual concept in connection to healthcare which is the significant issue of a sustaining human being life. Obviously, medical care is also the complicated topic. Thus, few people with the particular knowledge have the capacity to understand and get along with them. Of course, not every ordinary citizen are able to engage in the medical program for themselves. Hence, the patients coming for service rendered by medical tourism facilitators always rely on what the latter manage, owing to the trust and medical tourism facilitators’ credit. As a result from giving consent to the medical tourism facilitators to act on behalf of the patients, the medical tourism facilitators need to fulfill the fiduciary duty. Firstly, the medical tourism facilitators have to manage their service with high quality. Secondly, the duty of loyalty will be imposed in the case of escaping misappropriating from the property or interests of the principal.

However, there is no Thai regulation that imposes the medical tourism facilitators the fiduciary duty with the high caring standard.

6. Insurance Package

Medical tourism facilitators have to provide insurance for tourists.

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329 Id.
331 ไผทชิต เอกจริยกร, supra note 267, at 147.
332 Tourism and Tourist Guide Business Act B.E. 2551 (2008), s.34.
7. Provides for Tour Guide or Travel with Tourist Operators

Medical tourism facilitators must offer a tour guide, who has been licensed as a tour guide or have been registered, for tourists. The tour guide is deemed as being the employment of the tour operators.

3.2.1.3 Comment

As mentioned, Tourism and Tourist Guide Business Act is the provision that specifically stipulates the wide broad scope covering all kind of tourism businesses in particular with focusing on the leisure. When it comes to the medical tourism facilitators, those middle men is a kind of business operating partially on cross-border medical service network which mainly concentrates on the all national and international patients that receive the health care service in Thailand. Therefore, the most fundamental part of medical tourism is obtaining healthcare, not tourism. Even the medical tourism facilitators offer the cooperative tourism program for the patients after health care treatment. After booming medical tourism in Thailand, the original health care services are added with various functions to catch the eyes of the foreign patients. When more patients come across the world, medical tourism facilitators interest in entering into the market. So, the added tourism program is the effective tool for intensive competition in the medical tourism market in Thailand.

As interpretation of Tourism Board being mentioned above, the movement of medical network handled by the medical tourism facilitators is fallen under the Tourism and Tourist Guide Business Act, which is generally interpreted as being the provisions in the area of tourism. If they are against the provisions above, their licenses will be suspended and canceled by the Committee of Tourism Business and Guide.

Thereby, the provisions of Tourism and Tourist Guide Business Act solely provide the basic term of tourism, excluding the specific term of medical service and controlling the healthcare facilitator status. Tourism and Tourist Guide Business Act is not suitable to apply for the medical tourism facilitator cases. More detail will be discussed in Chapter 5.

3.2.2. Medical Laws and Regulations

To be considered, with increasing of healthcare issue and technology on global business, the ethic of medical professionals and rights on sustainable healthcare of patients is challenged.

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by the health trade. The legal instrument used to protect the safety of medical treatment is the result of ethical considerations. When more decades pass, the adoption of medical law reflects the altering structure of ethical progress. Moreover, an ethic also drives the interpretation of the law and another career of those interested in the medical service chain. Medical laws are the advances in shifting the boundaries of medicine, combined patient rights, medical practices, and the relationships between physicians and patients together.

As well as medical tourism facilitator issues, its business operation directly affects the global human health through worldwide facilitation on medical networks based on medical professionals in the destination countries and patients in the host countries. Thereby, the medical laws shall be contemplated in this case. Firstly, this study explores the definition of both medical tourism facilitator and medical professional. Then, it deeply concerns legal measures the medical laws impose on medical professional. In the end, the comment of medical tourism facilitator in the aspect of patients’ protection shall be concluded.

### 3.2.2.1 Medical Tourism Facilitator and Medical Practitioner

Applying medical laws on medical tourism facilitator, we shall critically figure out that what law is suitable to be imposed on medical tourism facilitator cases. Medical tourism facilitators are not persons who conduct medical treatment for patients. However, they act as a middlemen in the relationship between patients and doctors. The nature of medical tourism facilitators does not deeply engage in medical knowledge. However, being liaisons in medical network chain, medical tourism facilitators have some special relations.


1. **Medical Profession Act B.E. 2525 (1982)**

   Section 4 stipulates that a medicine profession practitioner is a person who is registered and obtains a medicine profession practitioner license from the Medical Council\(^{334}\). Besides, medicine profession, pursuant to this act, has to be conducted on human beings. The medical conduct covers a medical examination, medical diagnosis, medical treatment, disease prevention, midwifery, eyesight adjustment through touching lenses, needling insertion or acupuncture for medical purposes or

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\(^{334}\) Medical Profession Act B.E. 2525 (1982), s.4 ‘Medicine profession practitioner’.
numbing feelings. It includes surgery, use of radiation, injection of medicine or substances, insertion
of any items into the body for contraception, aesthetics, or body nourishment.335

The meaning and the operation of medical tourism facilitator does not insert in Medical
Profession Act B.E. 2525 (1982). Thus, this law cannot be imposed on this case.

(2) Healing Arts Practices Act B.E. 2542 (1999)

Section 4 provides that healing arts practice in this Act mean a professional practice, which
is performed or intended to be performed on human beings related to medical examination,
diagnosis, treatment, prevention, health promotion and rehabilitation, midwifery, but not including
practices of other medical and health professions under the laws on those professions.336 Any
conduct beyond the definition, especially medical tourism facilitator, will not be subject to Healing
Arts Practices Act leading no consideration about license and standard medical check.

(3) Sanatoriums Act B.E. 2541 (1998)

Section 4 determines the definition of the professional practitioner as a healing arts
practitioner; a practitioner of medicine profession, nursing, and midwifery, dentistry, pharmacy,
physical therapy, scientific medicine, traditional Thai medicine, applied traditional Thai
medicine; or a practitioner of other professions as prescribed by the Minister.337 Moreover,
Section 4 also specifies that the area of medical conduct in which it is typically conducted
regardless of payment.338 The mentioned place includes a vehicle provided for healing arts
practices under the law on healing arts practices. Besides, the place has been used for the purpose
of medicine profession practices under the law on medicine profession, and for nursing and
midwifery practices under the law on nursing and midwifery profession. Dental profession
practices under the law on dental profession, physical therapy profession practices under the law
on physical therapy profession, and technological medicine profession practices under the law on
technological medicine are included with the aim of conducting medical place. Addition to
western medical conduct, traditional Thai medicine profession practices and applied traditional
Thai medicine profession practices under the law on traditional Thai medicine profession is
subject to the scope of such place.

335 Id, s.4 ‘Medical conduct’.
336 Healing Arts Practices Act, B.E. 2542 (1999), s.4. ‘Healing arts practice’.
337 Sanatoriums Act, B.E. 2541 (1998), s.4. ‘Healing arts practitioner’.
338 Id, s.4. ‘Area of medical conduct’.
The nature and structure of medical tourism facilitators are not contained in Sanatoriums Act, B.E. 2541 (1998). Thus, this law cannot be imposed on this case.

3.2.2.2 Application of Law on Medical Tourism Facilitator

As mentioned above, medical tourism facilitators are not subject to any medical law. The weakness results from lacking medical control. This part will explain the scope of requirement and legal measures on medical standard as if medical tourism facilitators were subject to medical laws: Medical Profession Act B.E. 2525 (1982), Healing Arts Practices Act, B.E. 2542 (1999), and Sanatoriums Act, B.E. 2541 (1998) 339.

(1) Legal Status of Medical Tourism Facilitator

Under those medical laws, if medical tourism facilitators were medical professional, they need to be licensed by Medical Council of Thailand following Medical Profession Act B.E. 2525340 and Art of Healing Division stipulated in Healing Arts Practices Act, B.E. 2542341. In the places of medical treatment, medical tourism facilitators have to be given the permission342. If medical tourism facilitators have prohibited qualification, they will be not approved by the responsible authorities343.

(2) Business Operation of Medical Tourism Facilitator

Under those medical laws, if medical tourism facilitators were medical professional, they have the duties to comply with their business operation with the minimum standard, and requirements stipulate in legislation and regulation.

In the aspect of Medical Profession Act B.E. 2525, medical tourism facilitators need to follow medical requirement, if not, their licenses shall be automatically terminated.344 Whereas in

339 แสวง บุญเฉลิมวิภาส, กฎหมายและข้อควรระวังของผู้ประกอบวิชาชีพแพทย์ พยาบาล, คณะนิติศาสตร์มหาวิทยาลัยธรรมศาสตร์, พิมพ์ครั้งที่ 7, กรุงเทพฯ, 2558, หน้า 63-70. (Savaeng Boonchaleamvipas, Law and Rule of Medical Professionals and Nurses, Faculty of Law, Thammasat University, 7th ed, Bangkok, 2015, at 63-70).
341 Healing Arts Practices Act, B.E. 2542 (1999), s.30.
342 Sanatoriums Act, B.E. 2541 (1998), s.16.
344 Medical Profession Act B.E. 2525 (1982), s.30.
the view of Healing Arts Practices Act, B.E. 2542, medical tourism facilitators also have to apply the requirement on business operation, if not, their licenses shall be automatically terminated\textsuperscript{345}.

When it comes to the ethic of medical tourism facilitators, both Medical Profession Act B.E. 2525\textsuperscript{346} and Healing Arts Practices Act, B.E. 2542\textsuperscript{347} stipulate that the ethic need to be sustained upon their operation.

For the issue arising from Sanatoriums Act B.E. 2541, medical tourism facilitators have the duty to disclose detail of sanatoriums place, a listing of a physician, and medical payments\textsuperscript{348}. The operators of sanatoriums place have to control and supervise doctors not to practice differently from approval requirement, and to perform their duties upon the medical law and ethic\textsuperscript{349}. For delivering the greater healthcare, such sanatoriums places provide the medical professionals, potential equipments, and report with all relevant evidences\textsuperscript{350}. Medical tourism facilitators also have capacity of making advertisements but they must not be false or exaggerated which may cause misunderstanding\textsuperscript{351}.

\textbf{3.2.2.3 Comment}

All three Acts: Medical Profession Act B.E. 2525 (1982), Sanatoriums Act, B.E. 2541 (1998), and Healing Arts Practices Act, B.E. 2542 (1999) are involved to the medical practitioner or medical provider field that conducts the medical service, excluding the facilitating operation of the medical network. The medical tourism facilitators have a duty to offer the other facilitation rather than the medical service, such as accommodations, foods, middle centers, and operations of the whole medical network. Hence, the medical tourism facilitators are not subject to the group of medical practitioner laws, even it relates to human being and healthcare system.

As not subject to the relevant medical regulation and not being a medical practitioner, the medical tourism facilitators cannot be approved and reviewed by the Thai Minister of Public Health, the Practice of the Art of Healing Commission, and Medical Council through any license approval and registration. Solely, the medical practitioners or another service are investigated and controlled by the Thai Ministry of Public Health and Medical Council.

\textsuperscript{345} Healing Arts Practices Act, B.E. 2542 (1999), s.45.
\textsuperscript{346} Medical Profession Act B.E. 2525 (1982), s.31.
\textsuperscript{347} Healing Arts Practices Act, B.E. 2542 (1999), s.38.
\textsuperscript{348} Sanatoriums Act, B.E. 2541 (1998), s.32.
\textsuperscript{349} \textit{Id}, s.34 and 36.
\textsuperscript{350} \textit{Id}, s.35.
\textsuperscript{351} \textit{Id}, s.38.
Besides, if any business operations of medical tourism facilitators contravenes with the standard medical requirements and ethic, such wrongdoer has no liability. To say it briefly, neither criminal, nor civil sanction with suspension and cancellation of business operation shall be imposed. More critics on the limitation of no medical regulation imposing will be discussed in Chapter 5.

3.3 Conclusion

In term of this chapter, we discuss two kinds of laws. It seems that there are numerous existing laws that govern on the status and business operation of medical tourism facilitators. Nevertheless, it is a totally wrong understanding regarding the lack of a suitable measures to control over the medical travel agent.

To underline the virtual regulation, the laws (Civil and Commercial Code and Consumer Protection Act) provide non-specific provisions for the basic function of the parties within medical tourism chain. Therefore, they are not sufficient to control the medical tourism facilitators’ operation. Particularly, in this globalization, the former traditional law and regulation cannot improve and indicate the accurate resolution of contractual hybrid medical tourism conditions. From the discussed characteristics, the medical tourism facilitators are not the broker in the brokerage contract and the employees in the hire of work contract. As can be seen, the laws of brokerage and hire of work provide the general functions which do not cover the specific characters of medical and insurance arrangement. The law of brokerage mainly regulates payment methods while the law of hire of work and obligations use the simple scope of liability whether creditors partially perform the obligations with fault or not. Thereby, the general terms cannot suitably be applied to the specific case because they do not stipulate any control measure. The law of obligation also serves the general principle in the reciprocal contracts. However, the medical tourism facilitators’ contracts are defined as the specific contract in respect to medical care and insurance, so the law of obligation cannot fill the loophole of particular context. Otherwise, health care issue cannot be governed by the laws which set forth for simple transaction for daily life. Similar to the law of brokerage and hire of work, the lack of control measures causes the ineffective inputs in medical tourism facilitators’ operations. Another reason, the liability bases on the law of obligation will lead to the health litigation and will be stuck in the hard situation in legal proceeding.

In the aspect of advertisement, providing that more patients interested in their medical service network, the medical tourism facilitators gain increased income from the commission
basis. In addition to the fierce competition, the highlighted special programs of medical treatment are presented by the medical tourism facilitators. As far as known, the consumer protection law shall govern the common goods and services, excluding medical tourism service which is a modern and hybrid service network. Without the specific scope of issues and titles on medical, insurance, and other necessaries, the medical tourism facilitators tend to broadcast the their achievement of medical tourism cases to the public. The patients who suffered from the illness may be motivated to purchase their programs. Because of the general conception without clear guidance and prohibited characters, the medical tourism facilitators would doubt what the good practices of medical tourism advertisement are. Lastly, the restriction of medical providers on advertisement cannot control the medical tourism facilitator which may lead to an unethical medical conduct as the consequent of the conspiracy of commercial ads.

Besides, the Committee on Advertisement and Contract do not expert in medical and insurance. The reluctant legislation and legal opinion may occur.

Medical tourism contract is not subject to the controlled contract stipulate in the consumer law. Even though such contract is controlled, the inappropriate solution may happen. Regarding the modern and hybrid contract, the medical tourism contract cannot be governed by the general law of which has the enforceable purpose on simple goods and services.

Most laws specifically governing on these issues are Tourism and Tourist Guide Business Act and all relevant medical laws. Again, they do not appropriately govern on medical tourism facilitator cases. The reason is that tourism law does not give the terms and conditions on medical standard, insurance, and other health facilitation. As well as medical law, medical law cannot be applied because medical tourism facilitator is excluded from the legal definition that brings no corrective controlling measure.

As can be seen, the existence of inadequate legal measures of Thailand is the result from applying general laws on the specific case in particular with medical tourism facilitators. 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.

After the examination of Thai existing law, we will compare the structure and characteristic of recent legal approaches provided in the United States of America and Republic of Korea to resolve the effective control measures on medical tourism facilitator in Thailand.
CHAPTER 4
THE CONTROL MEASURES OF MEDICAL TOURISM FACILITATOR IN FOREIGN COUNTRIES

In fact, the formation of the medical service network is not the new idea to deliver health care to the patient; in contrast, it has started for long time ago. Still, the beginning of medical service network was confined within the internal area of the countries. Around 1995, the medical service was extended in the horizontal way to cover the foreign countries in the international stage to seek the best and costly medical treatment.

Since the trend of medical tourism has been created, some of the destination countries ignore the control measures on such issue. The targeted countries believe that they can gather huge revenue from patients forever. Without preparing for competition in the market, these countries might face the bad situation where the medical tourism facilitators ignore the healthcare quality and ethic concern. Then, the flapping growth medical tourism will bring the adverse effect to the healthcare and welfare of society instead.

Nevertheless, some of the countries serving the global healthcare realize how much important to put on control measures to protect the patient, whether domestic or abroad, that leads to the patients’ satisfaction and medical tourism induction. Besides, the well-known qualified standard of medical tourism is capable of bringing the prosperity to the final recipient in the chain of healthcare service, and encouraging relevant business in the growth market. The most reasonable regulation is the Medical Service Act of the Republic of Korean in 2010. The alternative regulation related to the medical service network, such as preferred provider organization (PPO) and other entities which have the same character as the medical tourism facilitator, is introduced by the United States in state level. The comprehensive regulation on preferred provider organization can be found in the Pennsylvania and California. Apart from the public control of the several states, the private sector also plays the role in providing control measures among the medical tourism facilitators in worldwide. For example, Medical Tourism Association gathers the specialists and relevant organizations as for completing the loophole on the control of medical tourism facilitators.
This chapter describes existing legislations and other measures to control medical tourism facilitators in global healthcare, especially in the United States of America and Republic of Korea as to determine fundamental information for appropriate suggestion to Thai laws in Chapter 3.

4.1 Laws and Regulations of the Republic of Korea relevant with Medical Tourism Facilitator

The Republic of Korea, one of the most famous countries for plastic surgery, becomes the attractive destination for the foreigners in this recent year. At the first time of running medical tourism business, patients vote Korean facilitators, in the other word, medical tourism agents, as reliable persons who arrange all kind of related facilities, promotion, and truly care them.

However, where the competition in the marketplaces is so tight, the medical tourism facilitators are used as the most powerful tool to attract the patients with less consumer’s care. By offering low-cost surgery packages oversea through online channel and promotion sale, the illegal medical tourism facilitators significantly earn numerous Chinese patients in their network. Then, the worst situation happened when the poor standard quality of care brought the harmful treatment for the patients. For example, Chinese business woman Chen Yili, who entered into an illegal medical tourism contract, got the nose surgical accident by ill-prepared face shape design of her facilitator, and she suffered from infected misshaped nose and a mental disorder.

Besides, the foreign patients are also restricted to hospitals and medical practitioner choices without correct suggestion. Also, some healthcare brokers sell medical treatment in double price for foreigners which can be 500% higher than local prices.

Around 2009s, the Korean government found the negative effect of these healthcare brokerages which was accounted for the 14% decrease of industry of the world’s health care and enacted the new regulation to prevent the problem. The provision that relates to medical tourism facilitator in particular with legal status and business operation is Medical Services Act B.E. 2553 (Amendment in 2010).

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4.1.1 Legal Status of Medical Tourism Facilitator (Registration)

After that, Medical Services Act was amended, allowing hospitals to attract foreign patients through agencies and brokers, known as medical tourism agencies. Noticeably, Medical Services Act, especially section 27-2, is added by the registration with compliance of specific requirements for the all of the medical institutions and facilitators in the country. Any person who is interested in attracting medical tourists of South Korea needs to submit the information, especially guarantee insurance, minimum capital scale, and other matters. If not, a violation is punished with a maximum three years jail time or a fine of up to 10 million won (US$9,093). In consideration of the registration, the affair regulation requires, at least, one customer supporter who is employed in global healthcare medical institutions and has completed an annual mandatory 8-hour training course on healthcare laws, immigration procedures and general affairs.

Additionally, the insurance company must be liable for W100 million or more for a period of at least one year to cover potential damages in the case of negligence or unintentional mismanagement resulting in patient harms.

Otherwise, hospitals and clinics, which contract with unregistered medical tourism agencies for attracting foreign patients, will be prohibited to accept foreign patients for two years.

4.1.2. Business Operation of Medical Tourism Facilitator

Korean approval process provisions commonly require the medical tourism facilitators to comply with the medical standard and ethics, especially the minimum medical standard of medical tourism facilitator contracts. If not, the responsible authorities have the power to revoke the registration.

Addition to registration approval, the revoked registration is also put on the Minister of Health and Welfares’ shoulders. If any failure of the medical institution affects one of the three elements, which are the satisfaction of the registration requirements, attracting the other persons.

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355 Medical Services Act, Article 27 (Prohibition of Unlicensed Medical Practice, etc.) (3) 1 and 2.
356 Id. Article 27 (1) (2) and (6).
than those prescribed in Article 27 (3) 2, and performance of corrective order issued under Article 63, the registration can be revoked. The substantial issues under the scope are remote medical treatment, appointed person being responsible for safety control on radiation generator for diagnosis and special medical equipments. Other matters of business operation are medical records, laundry, necessary procedures and report of the business operation and management, restriction of advertisement for medical service, and keeping transparent accounting standards. For the patients’ confidence, the law stipulates that the facilitators shall submit the data of collected cost in issuing each and every certificate, patients’ choices, and furnish the scope, process, and method of elective treatment.

In the aspect of an ongoing policy of Korean government, the hospital shall directly collect their fees from the patient to prevent the inflation by agencies. Moreover, the government also supports the initial hospitals and clinics a guideline by avoiding illegal facilitators to maintain the reputation Korean medical tourism.

With more extensive policy maker interference (Qualifications of Medical Doctors in South Korea), all of Korean Medical Association (KMA) members employed at medical facilities may attain to complete at least 12 credits of training yearly, ranging from workshops, online training, lectures, publications, symposiums, and conferences. In post-medical service stage, Korean government plans to provide assistance for dispute settlement to medical care. On preventive measures on information for the consumers, the qualification and online review system will be created to provide the pros and cons of medical tourism facilitations and other

360 Medical Services Act, Article 27-2 (Registration, etc. for Attraction of Foreign Patients) (4).
361 Id, Article 34 (Remote Medical Treatment) (2).
362 Id, Article 37 (Radiation Generator for Diagnosis) (1) and (2).
363 Id, Article 38 (Installation and Operation of Special Medical Equipment) (1) and (2).
364 Id, Article 23 (Electronic Medical Records) (2).
365 Id, Article 16 (Handling of Laundry) (2).
366 Id, Article 35 (Special Exception to Establishment of Medical Institutions) (2).
367 Id, Article 56 (Prohibition, etc. of Medical Service Advertisement) (2) and (4).
368 Id, Article 62 (Accounting Standards for Medical Institutions) (2).
369 Id, Article 45 (Notification of Non-Covered Medical Costs).
370 Id, Article 46 (Patients’ Choice, etc. of Medical Doctors for Medical Treatment) (1)(3).
371 Michael Song, supra note 358.
372 Medical Tourism Cooperation, supra note 131.
organizations by surfing www.medicalkorea.or.kr\textsuperscript{374}. For furnishing most relevant data to healthcare brokerage, the registered medical institutions shall report the business performance of the previous year to the minister of health and welfare by the end of March of each year, as prescribed by Ordinance of the Ministry of Health and Welfare\textsuperscript{375}.

4.2 Laws and Regulation of Pennsylvania Relevant with Medical Tourism Facilitator

Due to the different regulation on preferred provider organization, this study will discuss control measures of two states which are Pennsylvania and California.

To analyze the managed care network standards among states of the United States and choose which one is going to be used as being a model in this study, it is necessary to know that each state has its own policy on health care plan. Most states use the managed care organization to solve the increasing healthcare cost problem in the employees’ welfare. Rarely, research and paper identify the effectiveness of enacted regulation and the satisfied resolution in that states, even though there are some reports that cite the comparison between states in managed care network standards.

Apart from the strict regulation, some states, such as Colorado, Nevada, New Jersey, Utah and Pennsylvania, are controversially concerned that the excessive regulation may be the barriers to innovation in suggested medical service network and cost-effective health care. Therefore, these states enact a relaxed state certification requirement. Pennsylvania regulation has the permanent statute separating the preferred provider organization from the other managed cares and indicating the particular provision\textsuperscript{376}.

Indeed, managed care is referred to the health care supply which has been occurred since the early of 1990. As can be seen, managed care may be found in several forms of operations in particular with the Medicare program for senior, the clinic systems, the employees’ compensation, and insurance companies with a condition of fee-for-service payment\textsuperscript{377}. On the ground of U.S. health care system that relies on the health insurance, most of employers try to take

\begin{footnotesize}
\begin{enumerate}
\item Medical Services Act, Article 27-2 (Registration, etc. for Attraction of Foreign Patients) (3).
\item Dana Baroni and Amy Lee, supra note 125.
\end{enumerate}
\end{footnotesize}
the approach of managed care industry to deliver health care programs for their employees. When the managed care organizations become as well-known entities among the stakeholders in medical care chain, the consequence of them is the increase in medical expenses. Apart from the high costs, other following factors drive managed care to the trigger point of the downturn on health system, poor care, cold solicitation, coverage cancellation, denying needed treatment to patients. Born of patient dissatisfaction with overestimated cost may be the indication of the public’s initial hesitation about moving into a managed care system.

When it comes to Pennsylvania, managed care organizations controlled almost half of all Pennsylvanians in 1996. Unfortunately, there is an obstacle arisen from the limited care of doctors because of the financial incentives that is motivated by specific contract language. The patients have a right to know whether the financial incentives supplied by managed care organization impacts the suitable medical treatment and physicians’ decision or not. As a result of several gag clauses, the enactment of Pennsylvania law amends this problem through an outright ban on all kinds of gag clauses and the incentive regulations on the quality of care.

The reason behind selecting Pennsylvania regulation as the model law is that it gives the broad provision with a clear policy and allows the medical tourism facilitators to create their contracts and business operation as long as not against the prohibition. Besides, the problems relating to cost, quality and access within the preferred provider organization can be identified by the law with several solution with consumers and providers. The explicit legal controls of

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379 Milt Freudenheim, “California is Rethinking Managed Care”, N.Y. TIMES, July 14, 1997, at 1.
Pennsylvania law are the regulatory organization, their power, and the coordination on legal review among responsible governmental sector in particular with the Department of Insurance and the Department of Health. Even though the oversight function is the supplementary control, but it is necessary for the effective and complete control measures.

Preferred provider organization is stipulated in West’s Pennsylvania Administrative Code, particularly in the title of insurance.

Following the definition, a preferred provider organization is a person, partnership, association or corporation which establishes, operates, maintains or underwrites in whole or in part of a preferred provider arrangement. To be highlighted, such preferred provider organization does not include a provider or a physician whose only involvement in the preferred provider arrangement is the performance of health care services, a nonprofit professional health service plan corporation, a nonprofit hospital plan corporation or a health maintenance organization. Rather than a general preferred provider organization, there is another kind of preferred provider organization, Risk assuming preferred provider organization. Risk assuming preferred provider organization has more characteristic than the general preferred provider organization, in that it creates a financial risk to itself.

### 4.2.1 Legal Status of Medical Tourism Facilitator

The issues in legal status of medical tourism facilitators will be concluded with approval control through license and the capital for risk-assuming medical network as follows:

#### 4.2.1.1 Approval Control: License

Preferred provider organizations, which do not assume any financial risk, must submit the information and evidence for the application of approval of being preferred provider organization to the Insurance Commissioner of the Commonwealth and the Secretary of Health of the Commonwealth. The contractual information of the applicant cover, a copy of every standard form contract with physicians and providers, a copy of every standard form contract with health care insurers and purchasers, and a copy of every standard form contract with enrollees or groups of enrollees setting forth the preferred provider organization’s contractual obligations to provide.

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387 31 Pa. Code § 152.3, § 152.3. Content of an application for approval (c).
Otherwise, risk-assuming preferred provider organizations need to provide information and evidences related to financial risk\(^\text{388}\). The information on business operation includes a description of the proposed service area, a detailed description of the types of financial incentives, a copy of procedures, and a description of the incentives for enrollees to use the services. The applicant may submit the other reasonable information\(^\text{389}\).

Hence, medical tourism facilitators have to be licensed in compliance of submitted document above.

**4.2.1.2 Capital for Risk-Assuming Medical Network**

Being the wide medical network of the risk-assuming preferred provider organizations, additional capital or reserves in established stage must be exceeding the minimum capital and surplus required of a stock casualty insurer with accidents and health powers at the time it commences operations. On the other hand, risk-assuming preferred provider organizations also have to maintain their admitted assets in excess of liabilities by at least the minimum capital and surplus required of a stock casualty insurer with accident and health powers\(^\text{390}\).

The commenced operations will be granted, if the preferred provider organizations’ application is approved by the Commissioner and the Secretary pursuant to § 152.11 and § 152.5\(^\text{391}\).

**4.2.1.3 Qualification of Preferred Provider Organization**

The general discipline of the qualification of preferred provider organization has the broad scope. The preferred provider organizations could be any person who is chosen, elected or appointed as an officer or a director who command the confidence of the public and warrant the belief that the preferred provider organization’s operations will be honestly and efficiently conducted.

**4.2.2 Business Operation of Medical Tourism Facilitator**

After the approval process, if there is any change in standard form contracts, such evidences must be submitted to the Secretary for review whether the changes may lead to subpar treatments or poor quality health services\(^\text{392}\).

\(^{388}\) 31 Pa. Code § 152.3, § 152.3. Content of an application for approval (a).

\(^{389}\) 31 Pa. Code § 152.3, § 152.3. Content of an application for approval (a)(6), (8)—(11), (13)—(16) and (19).


\(^{392}\) 31 Pa. Code § 152.6 § 152.6. Provider contracts.
The risk-assuming preferred provider organizations must present an annual report of their activities during the previous calendar year with specific requirements of the Secretary and the Commissioner\(^{393}\).

Pennsylvania law gives the broad scope of review for the regulatory in order to make the suitable discretion. Hence, the law does not stipulate the several specific rules.

**4.3 Laws and Regulation of California Relevant with Medical Tourism Facilitator**

The growth of health insurance significantly increased in the case where the salaries were limited but benefits were not. The employers provided benefits of workplace options relating to health care voluntarily. After that the extent of the U.S. coverage defined the general phenomenon in the medical care market which nearly two-thirds of the Americans held.

Regarding the rise in medical costs, the Governor Ronald Reagan tried to control the expenditure and investment of the managed care organization. Nevertheless, the expected result happened. The reduced expenses the enrollees paid leads to the poor medical treatment, misrepresentation of the operator, failure to complete the health care supply, and cancellation of coverage without reasonable grounds and notices. To solve these problems, the enactment of the federal laws reflected an attempt to stem the ‘crisis’ in the health care cost inflation\(^{394}\). However, the lack of specific regulatory organization in the federal level brought the insufficient legal measures on controlling managed care organization. As mentioned reason, the responsible sectors put their effort in the establishment of California laws that provided the greater and different consumer protection than the federal laws through faster resolution, completed access to health care service. Apart from the detailed regulations that guide the good practice for the entrepreneurs, the DMHC (Department of Managed (Health) Care) also exercise their power in the reviewing process in order to contemplate the appropriateness of health care service plans’ operations. The main consumer advocates include a guaranteed coverage, a disclosure of denying coverage, medical review to resolve disputes related to denials, delays, modifications of coverage, quality of care standard, contractual standard to assure the solvency, and specific mandated benefits.

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\(^{393}\) 31 Pa. Code § 152.19 § 152.19. Annual reporting requirements.

Notwithstanding DMHC stands for the one entity which respond for health service network review. Then, the lack of provisions on the coordination between authorities of insurance, health, and commerce may be occurred. As the consequence of the lack of supplementary control, Pennsylvania model law will solve this problem. In the perception of main legal measure, California model law may offer the effective controls.

Claiming the patient protection is most significant purpose, California serves strongly the restrictive regulation to maintain the quality of care in the medical service network and patient protection. Few stakeholders notably state that California has an effort to manipulate managed care organizations through managed care certification requirements in their statutes and rules. California treats the preferred provider organization programs the same as the other managed care organizations as seen in Knox-Keene Health Care Service Plan Act of 1975, combining with Regulations Applicable to California Licensed Health Care Service Plans of 2015. In this chapter, Knox-Keene Health Care Service Plan Act will be named briefly as ‘the Act’, while the Regulations Applicable to California Licensed Health Care Service Plans will be used as ‘the regulation’.

The requirement of health care service plans in medical practice area covers minimum provider type & number in the network, treatment guidelines, peer review function, physician training, occupational medical specialists, geographic access to care, and timely access to care. The requirements on business operation is composed of the conduct utilization review, medical conduct case management, internal dispute resolution, return to work programs, quality assurance (QA), safety services, financial disclosure, 24-hour info, specifies required data elements, advertising standards, reporting requirements, and on-site audits. Moreover, authorities have power to review managed care organizations’ contracts, advertisement, report, business operation and grievance system. The reason for choosing California laws and regulations is that it provides the guidelines and requirements which the medical facilitators shall follow in practical way. Therefore, the medical network system in California serves the strong patient’s rights and stability in medical care.

Having distinguished the regulation apart from other states, California sets the new definition of managed care organization. “Health care service plan” is placed instead of

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396 Dana Baroni and Amy Lee, supra note 125.
managed care organization and it referred to any person or entity that arranges for health care services to be provided to subscribers or enrollees, or to pay for or reimburse any part of the cost of those services, in exchange for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees. Pursuant to the California Health and Safety Code Section 1345, health care service plan or specialized health care service plan also means any person who undertakes to arrange for the provisions of health care services to subscribers or enrollees. To be assured, a preferred provider organization is one kind of health care service plans. At last, all health care service plans are subject to regulation by the department of managed health care.

4.3.1 Legal Status of Medical Tourism Facilitator

The entity who provides health care service plan must submit the application form with required information as required by Section 1349 of the Act and the Rule 1300.51.3 of the regulation for approval license. Without the exemption, a plan which only rearrange emergency ambulance services or advanced life support services, or operated by the State of California is not subject to the license approval. If there is any relevant information resulted from the non-compliance of the plan whether for himself or on behalf of affiliating or controlling persons, that information is deemed as a misconduct.

If the applicant satisfies the director in the application and the information obtained in any investigation, he shall be issued a license. When it comes to the license cost, it is a base amount plus an assessment based on the number of enrollees.

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401 Knox-Keene Health Care Service Plan Act of 1975 § 1349. Necessity of license
402 28 CCR § 1300.51.3, § 1300.51.3. Preparation and Amendment of Application for License As a Health Care Service Plan Under Section 1300.51.
403 28 CCR § 1300.51, § 1300.51. Application for License as a Health Care Service Plan or Specialized Health Care Service Plan.
404 Knox-Keene Health Care Service Plan Act of 1975 § 1349.2. Exemption of certain plans.
405 Id, § 1349.1. Exemptions.
406 Id, § 1351.3. Effect of noncompliance.
407 Id, § 1353. Applicants to satisfy provisions of chapter.
In addition to the license of the plan, the facilities (the place for medical conduct, but not limited to, clinics, hospitals, and skilled nursing facilities)\textsuperscript{409}, the personnel\textsuperscript{410} employed by or under a contract to the plan, and allied health professionals\textsuperscript{411} (a person responds for the furnishing of other health services) employed under the contract, must be licensed or certified.

After replacing health care service plan operation, any amendment to the plan application pursuant to subdivision (a) of Section 1352 of the Act shall be filed in the Department's Sacramento Office\textsuperscript{412}. Especially, if there is any change based on the personnel of the plan, of any management company of the plan, or of any parent corporation of such plan or management company, the more accurate information shall be submitted\textsuperscript{413}.

4.3.2 Business Operation of Medical Tourism Facilitator

On creating the guideline for preferred provider organizations, California regulation imposes several issues on business operation covering from the pre-medical treatment to the post-medical treatment as follows:

4.3.2.1 Advertising and Disclosure Control

For advertisements control, the health care service plans have to submit the proposed advertisement within the meaning of Section 1361 of the Act\textsuperscript{414} to the Director. If the ads contain the text of audio or audio, visual advertising, they should be indicated by any directions for the presentation, including voice qualities and the juxtaposition of the visual materials with the text\textsuperscript{415}.

To prevent the misunderstanding of the consumers, the advertisement guideline of the regulation provides the sample of misleading, inaccurate or deceptive specific term\textsuperscript{416}. Moreover, to make consumers understand the idea of advertisement easily, the fixed form of disclosure is

\textsuperscript{408}Id.,§ 1356. License processing, administration and enforcement; costs; reimbursement by health plans; payment amounts and methods.
\textsuperscript{409}Id.,§ 1367. Requirements (a)
\textsuperscript{410}Id.,§ 1367. Requirements (b)
\textsuperscript{411}Id.,§ 1367. Requirements (f)
\textsuperscript{412}28 CCR § 1300.52, § 1300.52. Amendments to Plan Application.
\textsuperscript{413}28 CCR § 1300.52.2, § 1300.52.2. Change in Plan Personnel.
\textsuperscript{414}West's Ann.Cal.Health & Safety Code § 1361, § 1361. Advertising; requirements; correction or retraction.
\textsuperscript{415}28 CCR § 1300.61, § 1300.61. Filing of Advertising and Disclosure Forms.
\textsuperscript{416}28 CCR § 1300.61.3, § 1300.61.3. Deceptive Advertising.
stipulated. However, the health care service plans also put more functions than the regulation, unless it against disclosure forms.\(^{417}\)

As for keeping an evidence of coverage for the consumers, the health care service plans shall give either an evidence of coverage or a copy of the plan contract which must conform to the requirements of this section to the patient.\(^{418}\)

Moreover, the plans shall disclose all evidences and shows how to obtain those services to the enrollees.\(^{419}\) In addition, the plans must have the capacity to furnish the standards for plan organization.\(^{420}\)

When it comes to medical report, health care service plans have a duty to submit the Federal Medical Loss Ratio ("MLR") in annual reporting form (CMS form-10418) to the federal Department of Health and Human Services ("DHHS"), and they must also submit the MLR Annual Reporting Form to the Department of Managed Health Care ("Department")\(^{421}\).

To collect the annual movement of the plans, the annual report required in plans pursuant to subdivision (c) of Section 1384 of the act\(^{422}\) shall include or be accompanied by the specified information to provide an adequate disclosure, such as a sufficient and appropriate supplemental information.\(^{423}\)

4.3.2.2 Quality of Care

The quality of care can be divided into two fundamental types: quality of health care and quality of management as below:

(1) Quality of Health Care

Health care service plans have to provide the basic health care services to their enrollees with the detailed requirements upon this provision, such as physician services, inpatient hospital services, ambulatory care services, diagnostic laboratory services, home health services,
preventive health services, etc. The provision also determines the furnished requirements for the provider, such as hospitals.

Basic health care services shall be provided in a manner, which provides continuity of care. Apart from the continuity of care, health care services need to comply with the completion of medical care conditions after the contractual termination as described in the Regulation. However, the continuity of care could be provided more than the provision requires. Moreover, the health care service plans shall follow the instruction of accessibility of services within reasonable proximity of the business or personal residences of enrollees, and is so located as not to result in unreasonable barriers to accessibility.

When the enrollees access to care, the plans shall provide or arrange the provision of covered health care services in a timely manner that is appropriate for the nature of the enrollees’ condition in consistent with good professional practice. Plans shall establish and maintain provider networks, policies, procedures and quality assurance monitoring systems and processes sufficient to ensure compliance with this clinical appropriateness standard.

(2) Quality of Management

In the term of communication skill in the organization, the regulation orders that each health care service plan has to develop and implement a language assistance program, which shall comply with the requirements and standards established by section 1367.04 of the Act and the Regulation. The language assistance program shall be documented in written forms of policies and procedures, and shall address, at a minimum, the following four elements: standards for enrollee assessment, standards for providing language assistance services, standards for staff training, and standards for compliance monitoring. The language assistance services shall describe, at least, the information outlined. To make the health care service plans’ staffs gain more knowledge, every plan shall implement a system with adequate training to all plans’ staffs who have routine contact with LEP enrollees (limited English proficient) regarding the indicated

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424 28 CCR § 1300.67, § 1300.67. Scope of Basic Health Care Services; § 1300.67.005. Essential Health Benefits.
425 28 CCR § 1300.68.2, § 1300.68.2. Hospice Services.
426 28 CCR § 1300.671, § 1300.67.1. Continuity of Care.
427 28 CCR § 1300.67.2, § 1300.67.2. Accessibility of Services.
428 28 CCR § 1300.67.04, § 1300.67.04. Language Assistance Programs (c) Language Assistance Program Requirements.
detail training upon the provision. To review the potential of a plan’s proposed language assistance program, the Department will evaluate the totality of the plan’s language assistance program with relevant operational and demographic factors to determine whether the program as a whole provides meaningful access for LEP enrollees.

4.3.2.3 Report of Business Operation

The health care service plans have the duty to furnish the special report apart from annual business report. For gathering more information and access to the investigation of business operation, the special reports shall include professional misconduct, Federal Medical Loss Ratio, medical records, financial data, management information systems, utilization reviews, annual disclosure of fees and commissions paid, information provided by plan denying coverage, payment and medical dispute resolution and quality assurance. The full formal report can be downloaded on the governmental website which leads to the systematical oversight.

4.3.2.4 Contractual Control

California law and regulation control all contracts in accordance with health care services: legal relationship between plans and patients, plans and medical providers, and plans and insurance. Both control of contractual format and substantive bodies can be clearly seen, so health care service plans could not exercise the freedom of contract as they desire.

The contract between the plans and the providers must fulfill the requirements, such as confidential treatment, medical record, payment, no concealment or misunderstanding of other terms and conditions of the contracts, and overestimated charged cost. The compliance with section 1379 of the Act and requiring that, upon contractual termination, cancellation, or change of the providers for any cause, such providers shall comply with the provisions of subdivision (a)(10) of section 1300.67.4. If any health care service plans against the law, the liabilities shall be on them, except vicarious liability for providers’ negligence and statutory liability for medical malpractice.

The contract between the plans and the patients must fulfill the following requirements, a description of specific contractual terms, the sanatorium, medical professionals, medical care expenses, medical coverage, self-management training, evidence of coverage, prohibited postclaims underwriting, intentional infliction of emotional distress, specific coverage, and other

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429 Id.
430 Id.
431 28 CCR § 1300.67.8, § 1300.67.8. Contracts with Providers.
fundamental elements. To escape from the complicated dispute settlement, health care service plans shall ensure that all arbitration decisions involving the plan and a current or former enrollee shall be provided to the Department\textsuperscript{432}. Plans shall comply with the provisions of the Act and the Regulation which require contractual termination, change, and cancellation of the plans for any cause. If any health care service plans against the law, the liabilities on the ground of breach of contract, negligence, direct liability, administrators’ negligence, bad faith liability, and no waiver by members shall be on the plans.

4.3.2.5 Grievance System

To protect the patients and create an internal review, the provision states that the plans have to establish a grievance system pursuant to the requirements of section 1368 of the Act for receiving enrollees’ complaints. Also, the Department has the ability to review the plan's grievance system, including the records, and assess the effectiveness of the plan policies and actions taken in response to grievances\textsuperscript{433}. In order to declare the risk assessment for consumer protection, the plans shall demonstrate fiscal soundness and assumption of full financial risk as provided. After then the Director will consider all relevant factors, but not limited to, the method of compensating providers, the terms of provider contracts, the methods by which the plans control and monitor the utilization of health care services, and the administrative expenses\textsuperscript{434}.

4.4 Conclusion

As mentioned, three countries and one association have been concerned with the control over medical tourism facilitators delivering the health care which is a meaningful matter for a human.

In the perspective of the Republic of Korea, the registration measure, which is a light legal control, is enacted for medical tourism facilitators. Thus, the legal framework expressly provides the information, operation, and quality of care in the first stage. However, post-medical treatment stage and consumer protection are not provided.

Being the private business sector, Medical Tourism Association tries to develop and introduces the best practice guidance for the medical tourism facilitators for offering the patients all around the world. The certification issued by MTA is able to express the minimum practical standard. With

\textsuperscript{432} 28 CCR § 1300.73.21, § 1300.73.21. Arbitration and Settlement Agreements.
\textsuperscript{433} 28 CCR § 1300.68, § 1300.68. Grievance System.
\textsuperscript{434} 28 CCR § 1300.75.1, § 1300.75.1. Fiscal Soundness, Insurance, and Other Arrangements.
worldwide MTA certification, the patient will be quite assured that such medical tourism facilitators have the potential ability in healthcare operation. Otherwise, medical tourism facilitators could be well-known organizations among the patients’ eyes and easily enters in the healthcare marketplace.

In the United States, a preferred provider organization, one kind of managed care organization, mostly has the same characteristics as a medical tourism facilitator depending on each state policy and regulations. Pennsylvania and California regulations are included on this study because of both extensive and light control and consumer protection measures.

On the side of Pennsylvania, the preferred provider organization is stipulated in the title of insurance on West’s Pennsylvania Administrative Code due to its partial function involving the insurance company. Legal measures which are founded in such regulation are an approval in organization establishment and contractual control. Being Risk assuming preferred provider organizations will be subject to the more strong financial and strict investigation method. However, the Pennsylvania regulation seems to place the lightened matters on the pattern of preferred provider organization with the flexible decision for business stakeholders.

Lastly, California imposes several legal measures through Managed Health Care of California Code of Regulations (CCR) and Knox-Keene Health Care Service Plan Act of 1975, such as licensing, advertising and disclosure, investigation procedures, internal review, grievous system, quality of care, contract, and management, etc. To be determined, California law and regulation provide concentrated control according to its exhaustive and practical guidance for the organization in order to support patient protection and business controlling.

Those three results show their own functions differently whether a light, moderate, and extensive measures on the medical facilitators. The strength and drawback of these existing provisions will lead us to generate and criticize whether which result is appropriate to solve the problem of medical tourism facilitators.
CHAPTER 5
ANALYSIS OF THE LEGAL MEASURES ON CONTROLLING
MEDICAL TOURISM FACILITATOR

It is accepted that the medical tourism facilitators have the primary influence on the
decision-making of the patients from all around the world. Without the medical tourism
facilitators, the patients would not receive the best care, the appropriate physicians and hospitals as
they imagine. On the other hands, in the aspect of the medical providers, the medical tourism
facilitators are the prominent key of the distributing channel of their outstanding medical skill and
qualified scientific technology. It is not surprised to learn that the medical tourism facilitators
become the outstanding variation among the world of competing for medical care market.

Notwithstanding the gray market in therapeutics turns the medical tourism facilitators to be
sellers who are attacking the patients for their commission from the medical providers. Rather than
putting the patients on the priority for their health, the medical tourism facilitators are converted to be
a weapon for some medical providers to gather money for feathering their nest. To illustrate, patients
with healthy lifestyle are searching for qualified doctors and hospitals, how much concentration of
gray medical tourism facilitators that may cause patients the poor medical treatment leading to their
death, disorder or injury?

Thai legal measures are not sufficient to protect the patients and also are not effective to
recover the bad reputation of medical tourism of Thailand. The reason beyond the ineffective
measures is that the laws do not stipulate the legal status of the medical tourism facilitators.
Besides, the obscure legislations only place loose requirements on the business operations of the
medical tourism facilitators which make them able to effortlessly manipulate the medical network.

With the respect of the scope of this study, the relationship between the medical tourism
facilitators, the patients, and the medical providers will be analyzed in the aspect of control
measures for complete and effective enforcement on this case.

The generally governing laws and regulations on legal status and business operation of
medical tourism facilitators are comprised of the law of contract and consumer protection law.
On the other hand, the laws and regulations specifically govern legal status and business
operation of the medical tourism facilitators are tourism law. Still, medical laws and regulations
will not be added to indicate the actual problem.
As emphasized earlier, three solutions of two countries are analyzed: the registration system of the Republic of Korea, the business operation with the compliance of horizontal provisions of Pennsylvania, and the compulsory detailed requirements of California. Those regulations have the same purpose of prevention to protect the patients from unqualified healthcare services, misleading information, and unfair contract which may result in the grievous accidents in the medical service network. With the pros and cons of the different measures, we need to consider that which measure is the most suitable solution for Thai legal system.

In the term of this chapter, we will deliberately discuss Thai laws on the topic of legal status, business operation, and responsibilities in order to indicate the limitation of governing laws. After the examination of Thai existing laws, we will compare the structure and characteristic of recent legal measures provided in the United States of America, and the Republic of Korea to seek the effective control measures on medical tourism facilitators in Thailand.

5.1 Legal Status of Medical Tourism Facilitator

The Legal status of medical tourism facilitators lacks the specifically effective law and regulation. It results in hazardous services and practices in connection with health, body, and life. In practices, Civil and Commercial Code of Thailand, Consumer Protection Law, and Tourism Act are applied on the legal status, especially its qualification, and prohibited characteristics. Otherwise, Tourism Act is imposed on legal status consideration as seen in medical tourism facilitator’s travel license. Still, the overlapped problem happens due to their limitation which this study will explain. From the barrier in the early part, the comparative study shall determine the solution to fill the loophole by using the Republic of Korea, California, and Pennsylvania laws as three model laws. The issues that will be discussed comprise the definition of medical tourism, license approval, qualification, and legal status on contractual nature as below:

5.1.1 Lack of Definition of Medical Tourism Facilitator

Medical tourism facilitators have been firstly found in Thailand many decades ago and have been the famous word among the businessmen. However, Thai regulations have never stipulated the terms of a medical tourism facilitator in any legislation. Actually, the core business is to deliver healthcare service to the patients. The nature of medical service system is combined with the medical providers, facilitators, insurers, and other facilities. Still, some Thais are frozen in traditional thinking
that medical tourism has the fundamental function of leisure tourism and medical option is only supplementary, such as spa, and Thai massage. The wrong understanding launches Thai governmental agency to determine the medical tourism facilitator as the travel broker.

According to the ambiguous definition of medical tourism, no provision in Thai Tourism and Tourist Guide Business Act, B.E. 2551 (2008) provides the term of such word. ‘Any other services’ in section 3 of Thai tourism law defines the definition of a medical tourism facilitator. That leads to the problem in choosing the applicable law. As mentioned structure of medical tourism network, the medical tourism facilitators shall not be subject to the definition of a tour guide or a tour entrepreneur. For example, Section 24 lays down the purpose to protect travelers through prohibiting a tourism business entrepreneur from causing any damage to tourism industry, tourist attractions, or visitors. It seems that the Act does not cover the particular kind of other travel, such as medical tourism. The medical providers and insurance companies are also capable of escaping from their liability.

On the other hand, the medical tourism is not stipulated in any medical law. As explained before, the narrow interpretation on medical professionals push the medical tourism facilitators to a freedom world on engaging in medical tourism network. Medical tourism facilitators have not been approved and reviewed by any public health sector because there is no license and registration system. The light controlling measure on business operation of medical service is more harmful to the patients. The overlap area of medical tourism facilitator cases motivates the doubtful ethic on medical treatment, and also makes it beyond liabilities and sanctions.

Compared with the Republic of Korea regulation as the model law, the medical tourism facilitators are provided in the article 27-2 of Medical Service Act. By using the word of ‘medical institution’, it refers to a person who is interested in transferring medical tourists for coming to its country that complies with medical tourism facilitator.

In the same way of Korean law, the United States considers the medical tourism facilitator as a manager of medical service network or a managed care organization. A managed care organization, especially a ‘preferred provider organization’, is specified in the law of managed care organization, health, and insurance. To pursue the efficient integration of all relevant divisions, the definition of preferred provider organization is deemed as a person in the engagement of the network of medical specialists, insurers, and other services for providing medical service to patients. In a short word, a preferred provider organization leases or rents his
system to the medical providers and insurance companies and earns a commission fee in return. California law places the definition of ‘Health care service plan’ in § 1345 of Knox-Keene Health Care Service Plan Act of 1975. While West’s Pennsylvania Administrative Code, § 152.2 rule the definition of ‘preferred provider organization.’ To pursue the clear specific meaning, California law inserts the exemption following the broad definition that makes all middle men in health care network subject to the legal control.

All model laws separate the medical tourism and leisure from each other and concentrate on health criteria instead. Because of the various scope of offering the quality of care, healthcare regulations become more appropriate than tourism laws. Even those laws use different words; the main characteristic is the duty to rearrange medical service to patients that reflects the purpose of facilitating in medical chain.

Compared to those laws, Thai regulation does not give the accurate meaning, principal characteristics or purposes, obligations, and rights of a medical tourism facilitator. It consequently results in wrong interpretations and confusing applicable laws.

In conclusion, to advise the issue of the applicable law for medical tourism facilitators, a new section shall be enacted in medical tourism facilitator law based on both California and Korean law. The definition of a medical tourism facilitator shall be on the ground of contractual purpose. Medical tourism facilitators define the business with coordination with health care and they are still on the progressive direction in the further years. The name of medical tourism facilitators might be changed while various business models are undertaken in dynamic. Still, the real function of medical tourism facilitator is the same. Nevertheless, the law shall distinguish which person is not subject to the newly launched law, following the California law example. In the perception of this study, the distance on transferring a patient from one place to the others does not matter. Patients, whether domestic or international, should be protected in a similar way under the same umbrella of controlling medical tourism facilitator.

Thus, the definition of a medical tourism facilitator should refer to any person who arranges the network of physicians, hospitals, and other providers, including insurers, employers, and third-party administrators, for providing medical service to patients in return for a prepaid or periodic charge paid by or on behalf of the subscribers.
5.1.2 Registration and License

The necessity of business operation approval of this section can be divided into three main points, which are required documents and relevant information, the type of license approval, and regulatory review as below:

General facilitator registration, which has been found in Thai regulation for an extended period, qualification, and guide license, is compulsorily issued by the Department of Tourism and Sport. The registration is created for enhancing the potential mobility on tourism with the global standard. It seems that the Tourism Business and Guide Act, B.E. 2551 (2008) is the only imposed law on the legal status of medical tourism facilitators.

From the tourism provisions, three measures are applied in this case. Firstly, the license approval for business operation is the most significant tool for any entrepreneurs for entering into tourism marketplace according to section 15. Secondly, the license approval for a tour guide refers to the first stage for the tourism specialists under section 49. Lastly, registration for a tour leader is deemed as permission for any person who is responsible for tourists traveling aboard following section 64.

With the understanding of section 15, the tour guides and tour leaders must be licensed. Logically, the licensing approach is usually imposed when the governmental sector wants to grants permission to any person to operate in an occupation. The great reason behind licensure is that the responsible agency can ensure the qualification of the applicants, such as the degree of competency, prohibited characteristics, and other meaningful manners. To protect public health, safety, and welfare, most authorities lay down the licensure approach in each Act, especially medical profession and tour guides. The nature and structure of medical tourism facilitators comprise with three principal branches: health, insurance, and travel (movement). Even though they just facilitates as middlemen in medical tourism chain; they are assumed and expected to be professionals who carry humans’ life all around the world. On the other hand, if a person without any approved qualification is capable of engaging in medical tourism chain, the health care protection would be impacted. In the point of view, the licensure shall be taken as a legal measure on controlling legal status of medical tourism facilitators.
Hence, in order to suggest the solution, a new section shall be added to medical tourism facilitator regulation, by using the perception of medical facilitator registration and license based on three model laws: Republic of Korea and the United States (California and Pennsylvania).

From the understanding of licensure approach, both of Pennsylvania and California regulations take the advantage from license method to approve the establishments of health care service plan, whereas the Republic of Korea uses the registration. Among three model laws, California and Pennsylvania serve the excellent control on medical tourism facilitators because of substantive creative legislations. As can be seen, the purpose of the regulation shall be deemed as being an instrument for collection and inspection of related information in the medical service network through the licensure.

The licensure can help the public sector in gathering the information of medical tourism facilitators. Unsurprisingly, licensure is an alternative channel to fulfill the loophole of healthcare network standards and increase the collaboration between public and private sector. However, to follow the complicated business in the future, the broad and opened requirement which relies on the specialized authorities’ perception shall be placed. The reason behind the using of license instead of registration in business approval is that illegal medical tourism facilitators in the Republic of Korea cannot absolutely be eliminated through registration. It shall be deemed that only registration method is not sufficient to solve the problem\(^\text{435}\), the license method, thus, shall be imposed. At this moment, California and Pennsylvania laws shall be used as model law on license application.

This principle makes the examination convenient and enhances the collaboration between the public and private sector. As well as the method of granting business operation, California applies license approach on both business operation and operating persons within such network. Still, the guidance on license approval of Pennsylvania law defines the specific authorities and the way of granting.

When it comes to the substantive drawback of Thai legislations, it requires the tourism entrepreneurs to submit the evidence on the ground of tourism elements, not medical service network. In the concept of the formal term, if the medical tourism investors furnish all information, they would be approved by licensure of business operation. If they want to participate in medical tourism network aboard, they can just complete registration. The competent officials who grant

\(^{435}\) Michael Song, *supra* note 358.
such approval are the specialist on tourism and investment, not medical treatment and insurance. The worst circumstance is that the competent officials do not have the certain guideline for approval consideration. As described, non-specialized professionals are capable of starting a medical tourism business. Obviously, California law exactly shows the stronger medical tourism facilitator control and the patient protection on both formal and substantive instruments. To resolve these problems, Thailand should consider those impacts as follow:

5.1.2.1 Required Document and Relevant Information

The next curious question after imposing licensing approach is the conditions of licensure attaining. Tourism Business and Guide Act provides the simple conditions of being a tour guide, such as prohibited characteristics (bankruptcy, age, unsound mind, incompetency or quasi-incompetency). Also, if the applicant is a juristic person, the company’s capital, unlimited liability partner, the location of business operation, and juristic personal registration have to be considered. From section 16-17, it reminds that the tourism law does not focus so much on approved requirements; still, it circles around the prohibited options instead. Thus, the law mostly gives freedom to entrepreneurs in the engagement of tourism activities. Compared to medical tourism area, tourism is in connection with a personal movement which is not essential as medical service deals with human’s life. In the aspect of concrete substantive law, medical tourism chain should be more ruled in full license requirements rather than prohibited characteristics for increasing consciousness and improving Thai medical tourism reputation. The vital issue of licensing approval shall be on the ground of all connections within medical tourism network to guide the authorities how they operate their business. The partners’ names of medical provider, insurers, accommodations, transportations, comprising with their license, certifications, registrations, or accreditations should be declared. The requirement of submitted contracts which stipulate the legal relationship between medical tourism facilitators, clients, and every provider in medical tourism chain should exist. The responsible sector needs to be concerned with the information which is available for their customers, partners, and public. The better the authorities know, the more secured the heaths of patients are.

Nonetheless, the registration and license have mainly focused on tourism brokerage industry, rather than a medical facilitator who provides the health care service network as the main purpose. In addition, the requirement of registration and license approval of Thai Tourism and Tourist Guide Business Act, B.E. 2551 (2008) do not contain the medical services and
facilities standard and insurance. It seems that tourism facilitator registration does not cover the medical service network that it brings no specific control on the quality of care and patients’ right to medical facilitator business.

For solving the compliance of all relevant information in the level of business approval, a new section shall be added to medical tourism facilitator regulation through the approach of medical facilitator requirement and relevant data based on three model laws: the Republic of Korea and the United States (California and Pennsylvania).

In the point of view of Korean law, the medical institutions need to submit materials in pursuant to the ordinance of the Ministry of Health and Welfare with the minimum capital. It can be clearly seen that the broad scope of the requirement is stipulated, without the clear guidance. Moreover, the regulatory sector has to exercise its power on reviewing the registration that may lead to the problems of non-exercise of power and blurred license approval.

On the other hand, even the licensure approval of the Pennsylvania and California regulations are stipulated in different criteria of law, which are insurance and managed care laws. They propose the same supplementary elements apart from insurance and capital scale. To describe, the United States concerns all following important issues, financial incentives, contracts between providers, insurers, and preferred provider organizations, relevant document, and evidence in order to make intensive medical service standard. Meanwhile, the moderate scope of the qualification can be found in Pennsylvania law. Like Korean law, Pennsylvania uses both broad scope and other requirements. The information which reasonably relates to its ability to establish, operate, maintain or underwrite shall be furnished by preferred provider organizations, such as;

(1) A description of the proposed medical service area, including geographic boundaries.
(2) A copy of every standard form contract with physicians and providers establishing preferred provider arrangements, health care insurers, and purchasers, and enrollees or groups of enrollees setting forth the preferred provider organization’s contractual obligations to provide, arrange for the provision of or pay for covered health care services.
(3) A description of the types of financial incentives
(4) A list of the preferred providers.
(5) A copy of procedures by the preferred provider organization.

When it comes to California law, the detailed description and the form of the license application are seen in the requirement of the qualification. The purpose of the law is to gather
the basic organization documents of the applicants, such as the articles of incorporation and association, partnership agreement, trust agreement, or other applicable documents and all amendments. In addition to Pennsylvania law, California law requires all main relevant issues: health care, insurance, and marketing channel. To meet the standard of medical service, California rules requires that the principal statement describing the plans shall include the health care delivery capabilities, such as

(1) Lists of full-time and part-time physicians and specialties of all non-primary physicians, the types of licensed or state-certified health care support staff, the number of hospital beds contracted for, and the arrangements and the methods.

(2) A statement describing the service area or areas to be served, including the service location for each provider rendering professional services on behalf of the plan and the location of any other plan facilities.

On the ground of insurance coverage, the applicant has to furnish the necessary materials as follows;

(1) Evidence of adequate insurance coverage or self-insurance to against losses of facilities and to respond to claims for damages arising out of the furnishing of health care services.

(2) The forms of evidence of coverage and the disclosure forms or material issued to patients must be submitted.

To integrate to the whole network together on completed market, the law uses the approach of disclosure, transparency, and compensation procedure as below:

(1) A description of the proposed method of marketing the plan

(2) A description of enrollee-subscriber grievance procedures

(3) A description of the proceedings and programs for internal review of the quality of health care

(4) Financial statements accompanied by a report, certificate, or opinion of an independent certified public accountant.

Roughly, Thai provision gives the broad scope of definition of tourism facilitator with some restricted characteristics, such as incompetency, bankrupt, Thai nationality, and age. The worst circumstance is that such competent officials do not have the certain guideline for approval consideration. Obviously, California law exactly shows the stronger medical tourism facilitator control and patient protection on both formal and substantive instruments. To amend problems of non-qualified medical tourism network, Thailand should be considered as follows:
Firstly, the required evidences and important documents of the applicants for business operation or professional approval should be more concerned. From all critical issues, Thailand should adopt the procedure and the guideline of approval of California law where they are relevant to business operation and special professionals. Therefore, the compliance with quality of care, medical service standard, list of the preferred providers, financial management, all information affecting patients’ decision, consent of service form, payment evidence, description of the proposed service area of the provider organization, standard form of contract with physicians and providers establishing preferred provider arrangements, description of the types of financial incentives for preferred doctors and providers, standard form contract with health care insurers, preferred provider organization’s contractual obligations to provide, contracts of three parties: medical tourism facilitator, provider, and insurer shall be submitted to the specific authority in healthcare for license consideration.

5.1.2.2 Type of License Approval

Time limitation of licensure is also the critical point on granting a professional to operate and enter into the marketplace. Due to the permanent permission, the specialized persons need to furnish all information at once when to apply for a license. After being approved, they will get a total freedom on business operation, unless there are submitted default cases of claimants or inspection from the competent officials. By the way, Thai authorities impose the passive examination approach that the medical tourism facilitators are able to escape from their undertreatment in medical service network. Regardless, there is no law or regulation to solve this problem whether Thailand and others. With the respect of a new draft of amendment of Thai Medical Professional Act, the 5-year renewal license will be applied for new medical professionals instead of the existing permanent license. The actual purpose of this amendment is to force the medical professionals to improve their knowledge in dynamic. Medical tourism facilitators are persons engaging in the medical network, so they need to work coordinately with medical professionals. The compliance of 5-year renewal license for medical professionals can

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affect their business operation in the term of approved medical requirement. Thereby, this study would suggest the 5-year renewal license discipline for medical tourism facilitator as well.

5.1.2.3 Regulatory Review

Under Tourism Business and Guide Act, B.E. 2551, the Committee of Tourism Board specializes in tourism, business investment, and commerce. Noticeably, the appointed persons in the medical professional and insurance organization areas are not including in the specific board. When the unspecialized authorities exercise their rights and power under the regulation, the existence of inadequate order, discretion, and policy can be seen.

Last point of legal status, the existing law gives the competent officials the power of examination on a completeness of documents, evidences, and compliance with the criteria and procedure prescribed in the Ministerial Regulation according to section 19. Nowadays, no ministerial regulation, declaration or rule is available for the public. It expresses that the committee have never exercised and concentrated on the control of medical tourism facilitator yet. Therefore, the applicants (medical tourism facilitators) would be curious about the guideline on license approval. If the obscure process of legal examination is applied to Thai medical tourism partners, the inconsistent practices of medical tourism facilitators could confuse the facilitators. At last, the consumers will bear a risk of peril of health care resulted from the unqualified license.

The lack of responsible regulatory can be amended through the established specific board or committee following three model laws: the Republic of Korea and the United States (California and Pennsylvania).

Korean regulation indicates that the registration shall be approved by the Korean Ministry of Health and Welfare. Moreover, the punishment of the violation of the medical facilitator regulations is the criminal offense (fine).

In order to protect the public against the threat of undertreatment or poor quality care, Pennsylvania law requires the authorities, comprising the Insurance Commissioner and the Secretary of Health, to be responsible for license approval and lay down the detailed practical guidance. While the California law shift the responsibility to the new ministry (Department of Managed Care).

The medical tourism network is the integration between a medical service, insurance, and management. The authorities who are responsible for the hybrid medical network should be familiar with all skill mentioned above. According to the Department of Managed Care in California, there are several competent personnel who are specialized in financial, administrative
services, medical licensing, technology and innovation, and insurance in the one-stop center of the government. With the system and experience in specific tasks, the Department of Managed Care becomes a leader and a model for other states. If the California organization structure is taken as a model for the responsible governmental agency in Thailand, the problems of improper discretion and unclear guidance of medical tourism facilitator could be reduced. When considering the Thai organizational structure, the Office of Insurance Commission represents the insurance review. Otherwise, in the medical decision-making, Medical Council of Thailand refers to the suitable organization which will inspect the license approval, medical standard, ethic of medical tourism facilitators, and the access to medical services. The last sector who controls the operation of medical tourism network shall be the Consumer Protection Board and (maybe) Tourism Board, in order to enhance Thai medical tourism.

Lastly, the guideline for specific competent officials on license approval defines the legal flexibility of the applications in the dynamic world. Without Thai guidance, both competent personnel and Thai medical tourism facilitators would be stuck in the blurred lines of which the great profile facilitators and medical network operation are. For the solving problem, the California law should be used as a model law by adding to the scope of review, guidelines, and power of the specialized authorities.

In conclusion, the substantive legislations can turn to be a practical guidance for the other person who interested in becoming medical tourism facilitator.

With the increase of horizontal and vertical legislation covering all significant factors in the license, it will be the efficient tool for Thailand in global healthcare standard upgrading and prevents the consumer from the damage in healthcare management.

5.1.3 Qualification of Medical Tourism Facilitator

As seen in the law relevant to the improper qualification, a medical tourism facilitator is construed as being a tourism agent and subject to the Tourism Business and Guide Act, B.E. 2551. Noticeably, the qualification of Thai medical tourism facilitator is the simple background for any entrepreneur who needs to enter into the business chain.

In addition, the laws generally governing the legal status of the medical tourism facilitators are the hire of work and brokerage contract laws. With the brokerage study’s perspective, when the adjudged incompetent or quasi-incompetent person turns to be a broker,
the transactions of brokerage contract are voidable. The adjudged incompetent person means a person of unsound mind while the quasi-incompetent person refers to an individual who have physical or mental infirmity, chronic prodigality or habitual intoxication or other similar causes. He makes himself incapable of managing his affairs, or causing a detriment to his property or family, including bankrupted or insolvent person. When it comes to medical tourism facilitators, adjudged incompetent or quasi-incompetent person shall not be involved in managing the health care which is an important matter for a human.

In the part of the hire of work contract, the law does not stipulate the requirements of qualifications of the contractor, so it depends on the employer in decision-making whether the work needs a person with the specialized manner or not. Nowadays, several medical tourism facilitators declare themselves as specialized persons in the field of medical network chain; even though they have never received any medical confirmation by the major medical institutions. ‘The consultant of beauty,’ a simple word that could make the patients confused that they may easily enter into medical network contract. Lack of medical qualification of the contractors can impact giving permission on patient transferring to sub-contractors. Also, the voidable of the contractual conclusion happens, if the patients consider such qualification as an essential one in the ordinary dealings without such mistake, the contract would have not been made.

With limited qualification and the misleading definition, the loophole of medical tourism facilitators’ qualification does exist.

On the ground of three model laws: Republic of Korea and the United States (California and Pennsylvania), the unclear qualification of medical tourism facilitator can be discussed for resolving resolution.

All of three model laws impose the compliance with required documents and the important information. On the other hand, those model laws provide businessmen with the opportunity to enter into the health care network unless they commits any act against the law. The restriction on individuals, firms, associations, organizations, partnerships, business trusts, foundations, corporations, and limited liability companies, cannot be found.

Nevertheless, Pennsylvania model law draws the purpose of being a preferred provider organization that the elected or appointed person has to command the trust of the public and warrant the belief that the preferred provider organizations operates honestly and efficiently.
Moreover, the Commissioner can determine a proper investigation on an officer or a director of a preferred provider organization to review the qualifications.

Notwithstanding the general discipline of Thai qualification based on license approval that requires age of twenty years old or more, Thai nationality, and a residence in the Kingdom of Thailand. However, the exemptions in the subsection constitute the prohibited characteristics, such as bankrupt or under a receivership, unsound mind, mental infirmity, incompetency, or quasi-incompetency, and being a person whose tourism business license is on suspension.

To generate the concern on medical tourism facilitators, mere specific qualification of medical tourism facilitators could not reflect the suitable characteristics. The addition of the perception of patient protection, such as the honest and efficient operation with other motivating factors (the requirements and reviews from the responsible regulatory agency) could indicate the concrete control on the legal status of medical tourism facilitator.

To sum up, the qualification of medical tourism facilitator should add the perception of the honest and efficient manner as the general discipline, following the three model laws.

5.1.4 Liability of Illegal Status of Medical Tourism Facilitator

This liability shall be against two persons, including a medical tourism facilitator and third party who involves with the illegal medical tourism facilitator.

5.1.4.1 Liability for Medical Tourism Facilitator

Due to the inadequate laws and regulations, the sanction against tourism organization and agency is applied to medical tourism facilitators. As commonly known, Thai tourism law gives medical tourism facilitators the criminal sanction whether fine, imprisonment, or both of them on the illegal business operation, tour guide, and tour leader. Mentioned illegal activities refer to persons who do not have given permission for tourism business operation or being the professional with specialized tourism. The criminal sanction, comprising imprisonment and fine, is used for the business model. In worse situation, the regulatory agency has the power to inspect the tourism management and other leisure activities, not medical care and insurance. Therefore, the medical tourism facilitators who operate their medical treatment chain with lower standard can escape the administrative penalties and criminal sanction.
According to the three model laws stipulating the numerous sanctions, California law and regulation shall be deemed as the most proper model law in order to consider the greater resolution on Thai amendment law.

The competent officials may suspend or revoke any license given to a health care service plan after appropriate notice of an opportunity for a hearing. Otherwise, administrative penalties may be addressed if the Director determines that the licensee has committed any of the acts or omissions constituting grounds for disciplinary action. The significant factors on the appropriate amount of the penalty include, but not limited to, the nature, scope, and gravity of the violation, good or bad faith of the plan, plan's history of violations, willfulness of the violation, nature and extent to the plan cooperation with the Department's investigation, financial status of the plan, financial cost of the health care service that was denied, delayed, or modified, and amount of the penalty necessary to deter similar violations in the future.

The most interesting issue is the civil penalty that is adopted in the health care service plan cases following the modern business world. The violating persons have to be liable for a civil penalty which does not exceed two thousand five hundred dollars ($2,500) for each enrollee harmed by a violation.

When it comes to Thai law, the criminal fine and imprisonment could lead to the unsatisfied result to the injured person. The injured persons receive nothing to recover from their damage, except to bring the case to the courts. Moreover, the medical treatment and insurance reviews, which are the significant element for the determination of administrative penalty, do not exist in the scope of review for the regulatory agency.

Hence, in order to suggest the resolution, civil penalty and the scope of review on medical and insurance shall be added to the law governing the medical tourism facilitator according to the California model law.

5.1.4.2 Liability for Third Party Conspiracy with Illegal Medical Tourism Facilitator

Noticeably, the responsibility of the third party involving with illegal facilitators is mostly on the ground of tourism legislations or the specifically governing law. The fundamental law of Thailand commonly indicates the rights, obligations, and liabilities of the contractual parties and consumers. So, there is no liability for the third parties, even though they conspiracy with the contractual parties.
Compared to the other model laws, Korean law is the only model law which rules the liability of the third party. Hospitals and clinics, who conclude a contract with unregistered medical tourism agencies for attracting foreign patients, will be prohibited to accept foreign patients for two years. The reason behind this provision is to prevent the collaboration between illegal medical tourism facilitators and other parties in society. Thereby, the other providers in medical tourism network try to escape from this liability through the conclusion of contract with legal medical tourism facilitators. This mindset is capable of the consciousness rise among the citizen resulting in fewer medical errors or defaults in medical tourism management.

Because the Thai law does not lay down the principle third parties’ liability, the partners in medical tourism marketplace do not pay attention on the risk the patients must bear. It is essential to launch the law by using this concept.

Hence, in order to suggest the solution, the liability for the third persons who are involved with the illegal medical tourism facilitators shall be added in the law governing the medical tourism facilitator according to Korean model law.

5.1.5 Fiduciary Duty

To gain the most suitable law on the application on medical tourism facilitator cases, the governing laws, both generally and specifically, shall be criticized.

The law of brokerage contract states that the broker is the intermediary person in indicating and procuring of the contractual conclusion; he, thus, has no legal relationship in the main contract between the principal and the third party. On the contrary, a medical tourism facilitator is referred to as the middleman in medical network chain, and also as a person who enters into the main contract. According to his creative package of medical tourism, he innovatively starts and rearranges the program for both other providers and himself. Thereby, the obligation of the medical tourism facilitator is not limited at the inducing stage. The nature of medical tourism network contract is the substantial matter when we consider which law shall be suitably applied. As can be seen, the main structure of medical tourism network is that each party is subject to the one main contract that sometimes, is referred to as a quasi-brokerage contract. If the law of brokerage contract is selected to be applied in this case, the overlapping matter would start.

The agent in brokerage contract is not involved with the main contract. Thus, when the main contract has been concluded, the broker has the right to proclaim his commission fee from
this principal. It has a distinguishing factor from the medical tourism contract. Within the medical tourism network contract, patients have the right to select the optional medical providers, insurers, and subsidiary providers as the medical tourism facilitator provides. The commission fee the latter receives depends on the fee of service system. Even he makes an advertisement and offers to the providers; he does not gain remuneration from every subsidiary party within his network, except the insurance company. As the result, the providers who have not been chosen can refuse to pay the commission fee to the medical tourism facilitator. On the other hand, the medical tourism facilitator itself can acclaim his revenue from the patients in the form of the package cost. Consequently, if the brokerage law imposes on this situation, the medical tourism facilitator will be suppressed under the remuneration gained from the unilateral side. It may result in unfair condition for his business.

Due to the medical tourism package, the medical tourism facilitator gains the total payment from patients, including medical record and other stuff and then he must send them forward to other providers. The brokerage law, which presumes that the medical tourism facilitator has no authority to receive on behalf of the other parties’ payments or other performances, makes no senses in this situation.

Owing to the nature of bilateral contract, in the hire of work, the employer and contractor are bound under the hire of work contract. If the contractor hires the third party to complete the work, the sub-contractor and he are bound with the second hire of work contract. Noticeably, the legal relationship between the third party (sub-contractor) and the employer does not exist, thus there is no liability of the third party to the employer. If the exact obligations have not been written in both contracts, the benefit of the employer may be affected. For example, in the case of a medical record, if the first contract does not require the employer (patient) to send his health record, the third party (medical provider) cannot force the former to submit it. Otherwise, during termination of the insurance package, the patient may face the trouble that the insurance company may refuse the reimbursement without any notice. Of course, some insurers give such notice to the medical tourism facilitator. However, the medical tourism facilitators may refuse to pass it to their patients because of the fear of much more liability they might hold or the contractual termination by the patient.

Consequently, the contractor has to be responsible for the completed work, even though the sub-contractor may willingly or negligently omits to do. In the health care topic, the medical
tourism facilitator’s main obligation is to facilitate the most convenient medical program to patients. He does not have the medical or financing skill, so he could not complete the medical service when the breach of contract by a medical provider or an insurer occurs. Fortunately, the contract may rule that new medical partner has to complete in order to secure the patients. If not, health care of patients would be hanged on ambiguous contract.

From the whole of this Code, the legal perception shows no requirement on the fiduciary duty of medical tourism facilitators. Thai regulation does not impose the medical tourism facilitators with the fiduciary duty to exercise their service with the high caring standard. A new section shall be added to medical tourism facilitator legislation by the settlement of fiduciary duty approach based on the United States model.

Preferred provider organization is one of health care service plans in corresponding of integrating health care services. When health care service plans exercise discretionary control over the administration of the plans and for the payment of benefits, the United States courts hold it as fiduciaries under ERISA. The fundamental duties on the ground of fiduciary approach can be found into two duties.

First one is the obligation to act with the sole interest of the plans’ participant (patients). The health care plans are required to discharge their functions with respect to the interest of the participants for the exclusive purpose and defraying reasonable expenses of administering the plans.

Another duty of ERISA, duty of disclosure, imposes on the fiduciaries as to avoid affirmative misrepresentations. At last, the plans cannot constitute any financial interest representing a conflict of interests in the investments and medical providers. Besides, the health care service plans need to furnish the report of commission fee and other revenue gaining from the medical providers to the governmental sector.

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In the other word, fiduciaries have the obligations to provide complete and correct information, without misrepresentation\textsuperscript{441}, which extend to a duty of affirmative disclosure\textsuperscript{442}. Because of the health care, the failure of information disclosure can easily cause harm to patients.

Compared to Thailand, the fiduciary duty principle which combines with the duty of disclosure and benefits providing is not inserted in any code. That leads medical tourism consumers take more health care risk. To enhance the interests of patients and commercial stability, the standards of conduct, liability, and obligation of medical tourism facilitators shall be established with the respect to the fiduciary duty.

The scope of fiduciary duty shall be based on the duty of loyalty and the duty of care. On the duty of loyalty, the medical tourism facilitators have to treat their patients in loyal and transparent manner. For example, they need to declare the conflict of interests in the relationship of themselves and medical providers. Therefore, medical tourism facilitators shall operate and handle the completed care without transferring medical cases to others. Thus, the duty of loyalty is the key in pursuing the best patient benefit. Another duty, the duty of care, defines the level of care in legal obligations of the medical tourism facilitators. Compared with other careers on the medical network, the medical tourism facilitators have to perform the acts that could potentially harm patients through medical provider selection and health care management. So, they have to exercise the standard of reasonable care exceeding the reasonable man.

5.2 Business Operation of Medical Tourism Facilitator

According to the limitation in the early part, the comparative study shall determine the solution for fulfilling the loophole by using the Republic of Korea, California, and Pennsylvania law as three model laws. The issues that will be discussed comprise of the advertising and disclosure control, quality of care (quality of management and quality of healthcare), report of business operation, contractual control, and grievance system as below:

\textsuperscript{441} Peoria Union Stock Yards Co. v. Penn Mut. Life Ins. Co., 698 F.2d 320, 326 (7th Cir. 1983).
5.2.1 Advertisement and Disclosure of Information

In this part, the discussed topic could be separated into two parts: advertisement and disclosure of information. An advertisement will be prior explained, following with the release of information.

5.2.1.1 Advertisement

According to the purpose of tourism protection, the Code uses the narrow interpretation of the name, location and license, service fee, payment method, the vehicle used for travel, and destination, accommodation. It is deemed that the necessary factors in the ads relevant to merely travel itinerary. Thereby, the medical tourism facilitators are not bound by the declaration of medical providers and insurance stuffs (name, license, and place) Besides, section 26 can reflect the inflexibility of tourism law that it does not impose the last article on other important issues causing fundamental misunderstanding which is unfair to be unknown tourists.

After discussing substantive matter, the formal matter of printed or written advertisement should be contemplated. Being the patients, they could be confused by too much data of medical tourism package. To gain more protection, the methods to highlight the essential phrases, cautions, and the benefits of the patients need to be concluded, such as the expanded size of the letter, interesting font, underlining cautions, warning pictures, colored sentences of entitled rights and benefits of patients. To illustrate, if a plastic surgery package is made of the usual letters on the simple brochure and another document with colored cautions, underlined benefit the patient gains, a hotline for national examination at the end of the paper, and horrible picture of a surgical mistake, which one is the most interesting? In addition, if the advertisement is intentionally expressed to the handicapped person (blind, deaf, mental disorder), comprising unsound mind person, and incompetent person, the common requirements of this Code cannot wholly secure the patient’s safety. The beneficial programs with flawless comments from the ex-customers and adorable image could lead unreasonable man falls into a trap.

If such advertisements are available for the public, it shall be pre-submitted to the powerful agency to make the approval. Otherwise, when the false or exaggerative commercial ads are released to the public, it is not restrained or prohibited by any authorities (except the Committee of Consumer Protection). Noticeably, the Code lacks both of pre-approval and post-approval methods on controlling advertisement.
Apart from specifically governing law, Civil and Commercial Code, the generally governing law shall be criticized. The brokers have a freedom to disclose the name of their principal to the third parties. Noticeably, the medical tourism transaction is not the simple contract anymore because it coordinates with humans’ life. The patients will look forward to know and inspect the optional medical providers available in the lists, according to the credential and transparency theory. In the same direction, the medical tourism facilitators have been assumed to disclose their partner, if not, they will be at risk in health business. It seems that the name of partners in medical tourism network becomes an essential element of the contract. If the medical tourism facilitators hide the key factor, medical tourism contract shall be void pursuant to section 156.

On the ground of advertisement in the aspect of consumer protection, the law tries to support patients through the requirement of origins, conditions, qualities or characteristics of goods or services. Nevertheless, the qualification of the business operator is not subject in this measure. On the other hand, the law focuses on the safety of goods and services and pays less attention to the options of the person who handles such goods and services. Medical tourism facilitators have been restricted by the qualified service relevant to medical tourism package. Unfortunately, they have not been controlled by the condition of qualification. Hence, being medical tourism facilitators is known as an effortless career causing the hazard in medical tourism chain of Thailand. When the persons who are not familiar with therapeutic area become the gatekeeper, the patients could be misled about the medical service and be caught in wicked health care.

The tough law on controlling human behaviors should impose both formal and substantive measures. Substantive law defines the rights and obligations of individuals, comprising what individuals may or may not do. Differently, formal law lays down the ways and means by which substantive law can be enforced. A single type have caused the imbalance on enforcement and decreased the consciousness of individuals. As can be seen, the consumer protection on advertisement rules the aim of protection by prohibiting the statement causing fundamental misunderstanding among consumers. The broad scope has been placed without guideline for both business operators and the authorities who hold the power to examine business operation. The business operators cannot imagine how to make an exact advertisement legally and save patients from unsafe services. Also, the law does not impose the formal measures on making an appearance of advertisements, such as font, color, size, sound, tangible object, or any matter affecting
communication skill. Besides, the law does not concentrate on the protection of the special individuals, such as a handicapped person, and children. It may result in jeopardized situation.

In conclusion, as it has been found in Thai legal system that the main measures of advertisements controlling for the services is imposed in Consumer Protection Act B.E. 2522 (1979). In order to prevent the consumers from harmful business, the fundamental provisions provide the broad scope of advertisements. On the ground of the prohibited characteristics, caution of false or exaggerated statements or statements which can cause misunderstanding in the essential elements concerning services, is constituted as controlled factors. Otherwise, the advertisements of such services shall also disclose the facts which can affect the consumers’ decisions on choosing services. Apart from the fundamental law (consumer protection law), the specifically governing law (Tourism and Tourist Guide Business Act 2008) rules the scope and essential matters which the medical tourism facilitators have to provide. As having mentioned the weakness of non-compliance of the purpose of travel and medical tourism, the tourism law takes mere approach on the tourism matters. Thus, the patients cannot access to the medical and insurance information. On the administrative review aspect, the competent officials exercise their power after complaints of default advertisement or reasonably suspected circumstances are filed.

Naturally, in the medical tourism industry, numerous and complicated information becomes an obstacle for the patients to understand and access into the whole process of medical service network: care, financial risk assuming, legal procedure relevant medical service abroad, and consent giving method. Apart from the specific wording in global healthcare, the foreign patients will face a tough decision related to the different legal system, business network, and culture. Even though, the general provision could be the base for all consumers’ decision; the lack of mandatory article or element found in the advertisement will create the blank space for the best practice of medical tourism facilitators. The medical tourism facilitators might be able to escape from the announcement of the significant information by claiming that they do not know what the major information is. Also, when the medical tourism facilitators do not provide the obvious enough advertisement, the confused patients pay less attention to Thai medical tourism and dare not take the risk of medical error.

Neither Korean law nor Pennsylvania statutes require the facilitating person in the medical network to furnish the advertisement examples and contained wordings to the authorities for prior review. In another word, both legal measures are based on the discretion of specialized
competent officials. It leads to indifferent result when compared to Thai legislation. Thus, both advertisement controls cannot be used as a model law to decrease the problems of advertisement of Thai medical tourism facilitator.

When it comes to the advisement for amendment law by using the concept of California regulation as a model law, it imposes advertisement control on the health care service plan through indicating the topic and scope of significant information that the patients should know, such as principal benefits and coverage, principal exclusions and limitations on benefits, other charges, choice of physicians and providers, facilities, termination of benefits, rights of cancellation, rights of the health plan to change benefits, subsequent providers, definitions for the words by public general usage, and dispute settlement, etc. For more efficient advertisement control, the significant information on health care arrangement shall be combined with the presumption of “preventing the consumer from any untrue, misleading or deceptive information”. California regulations always lay down the general disciplines in every first sentence of each provision, and then followed by the prohibited acts. It seems that the health care service plans still have freedom, except against the illegal activities. The medical tourism facilitators alternatively can recreate the new kind of advertisement, but the presumption of clear, concise, accurate, easily understood, and easily readable information shall be applied for the purpose of patient protection. Additionally, to make patients be able to summarize the benefits and cautions, the law constitutes formal, pattern, or styles of advertisement as a requirement. The font text, presentation, or sound used in an advertisement shall be made in clear, concise, easily understood language and be presented in an easily readable format.

Before the health care service plans release their advertisement, they must submit the advertisement to the competent officials for prior review and granted approval. The concept of prior review is the universal disciplines in order to create the flexibility and suitable discretion among dynamic societies.

Applying preventive measures on an advertisement, the specific authorities, whether specialize in health and insurance area, have the capacity to review. Also, they can approve such requirements alternatively. Nevertheless, the board and committee composed with the specialists from the integration of medical treatment, insurance, and other commerce.

As described, the comparative study can express the different between Thai and California regulations. Obviously, California law accurately shines on medical tourism facilitator
controlling and patient protection on both formal and substantive instruments. To amend these problems, Thailand should consider as follows:

Firstly, the broad scope of general disciplines of Thai consumer protection law serves the purpose of patient safety and the heart of advertisement. Even though the ads of the medical tourism facilitators are developed and changed from time to time; those ads are still base on the fundamental understanding. Nevertheless, the scope of advertisement limits on tourism area, not the specific data relevant to medical treatment and insurance. To solve this problem, California law shall be used as a model law by constituting the vicinity of information on advertisement, such as coverage, limitations on benefits, facilities, choice of physicians and providers, rights of cancellation, subsequent providers, limitation and termination of benefits, principal exclusions, and general usage stuff for decision-making of patients.

Secondly, the prohibited factor in the advertisement of medical tourism facilitator of Thai law does not exist. In contrast, California law concentrates on the systematic legislative as seen in the prior fundamental principle and the followed prohibition. The indicated hazardous factors and samples will guide the excellent overview of illegal activities and prevent the others from such acts. The inadequate reimbursement and coverage exceeding the experience cost and default medical treatment from the real operation shall be put in the subsection under the fundamental principle or follow the hazardous disciplines after the fundamental principle.

Thirdly, Thai law is not concerned with the formal or appearance of the advertisement; even Thai society pays attention to ‘image’ rather than the description of such image. Notwithstanding, California law tries to control both appearance and form of advertisements to save more patients from medical error and overpriced treatment. The indirect solution is to offer more protection on disable, incompetent, blind and deaf person, including children. Because those people have less capacity on risk assuming and medical understanding, the clear and material advertisement will enable them to easily know the whole of the business. As the result, California law shall be applied as a model law on formal advertisement control by adding any particular type size, boldface type, caption, subscription, heading, design, order, or format for experimental use.

Fourthly, prior review of the specific governmental agency is the efficient instrument according to the discretion of specialists. The submitted and approved advertisement is deemed as the safety product released to Thai consumer. The more reviews conducted on advertisement control, the fewer medical errors, and legal disputes would take place. Nowadays, the medical
tourism facilitators tend to use the abuse of ads attracting more patients. To restrain the
dangerous medical tourism facilitators’ commercial ads, California law shall be applied as a
model law through stipulating the power of specific board or committee to obtain the pre-
advertisement and make the prior review.

Lastly, the ethic of medical treatment defines an essential scope of medical tourism
facilitators’ operation. Medical tourism facilitators have to coordinate with doctors. So, the
medical tourism facilitators need to bear in mind that physicians have to follow rules of medical
professional in accordance with ads qualification. The purpose of such provisions is to provide
freedom for the patients to obtain medical treatment without any bias and deceived acclaiming.
Nevertheless, to escape from their strict duty, medical professionals may use medical tourism
facilitators to distribute their operation. Medical tourism facilitators are not subject to medical
regulations and the examination of both Medical Council and any other governmental agency.
When the law offers so much freedom on the advertisement, it might bring lethal weapons to the
front of patients’ house. Medical practitioners cannot make the exaggerating advertisements,
unless they are able to declare their certification or accreditation\textsuperscript{443}. The climax prohibition is to
refrain from use, hire, or order the third person to make his or other’s advertisement of medical
treatment and specialist skill\textsuperscript{444}. However, they are entitled to declare their names, locations of
medical practitioners, certifications, and license numbers\textsuperscript{445}. In the same direction, the medical
tourism facilitators shall adopt this discipline. With the respect to medical practitioner rules,
medical tourism facilitators should have a right to make an advertisement on sanatorium
location, medical certification or accreditation, medical license. Nevertheless the medical
professionals’ name should be hidden to help patients’ decision-making.

Thai provision states that the Committee on Advertisement is enabled to create the new
and crucial element or the fact which attacks the consideration of the consumer under Section 25

\textsuperscript{443} Ethic of Medical practitioner rules B.E. 2549 (2006), chapter 3 and 7, article 13, 36 and
Declaration of Ministry of Public Health No.11 B.E. 2549 (2006): Principle, procedure,
condition of sanatorium advertisement, Declaration of Medical Council No. 50/2549: Prohibited
word in advertisement,article4.
\textsuperscript{444} Ethic of Medical practitioner rules B.E. 2549 (2006), chapter 3 and 7, article 8 and 9.
\textsuperscript{445} Ethic of Medical practitioner rules B.E. 2549 (2006), chapter 3 and 7, article 10, 11, 12 and
of sanatorium advertisement, Declaration of Medical Council No. 50/2549: prohibited word in
advertisement, article 3.
of Consumer Protection Act B.E. 2522 (1979). It shall be amendment by adding the specific declaration issued by the specialist committee on a new law governing the medical tourism facilitators. Otherwise, the medical tourism advertisement may alternatively be published by the regulation or declaration of Thai Ministry of Public Health and Medical Council. Such declaration will create the clear practical guideline in an advertisement in both national and international stage and brings more attention from global patient’s coming for Thai medical hub. As for advisory on amendment medical tourism advertisement, the California should be used as the model law.

5.2.1.2 Disclosure of Information

The facts by status and other details concerning business operators shall be reviewed by the Committee of Advertisement if such entity requires. The mentioned detail must be proposed on the announcement. The weakness of this measure is a narrow scope of the application and there is no requirement for submitting information. The way of gaining knowledge in consumers’ perspective conveyed on an advertisement, report, and other contractual evidence. The patients may ask the medical tourism facilitators to provide them with receipts, case reports, medical records, and other materials during the conclusion of the contract. It does not limit the consumers to take the knowledge of medical service package on the advertisement merely. When the law imposes the requirement on a narrow scope, the overlapping result could occurs in any data disclosure. Even the medical tourism business are booming in Thailand with rumors of fewer facts available, the medical tourism facilitators still freely provide the positive news for encouraging their business. Therefore, the patients are stuck with the thinking of excellent medical service world, rather than accept both positive and negative information leading mistakes on making a decision.

When it comes to the disclosure of information, the coincidence between advertisements and disclosure of information is to provide the essential data for patients. However, the latter has to furnish information to the governmental agency and the third party as well. Taking basic approach and understanding of California law, this study suggests adding the duty of disclosure in the same provision of advertisement, especially information requirement on an ad, prior review, and examination of information disclosure.
5.2.2 Quality of Care

The quality of care defines two criteria: management and health care. The quality of management refers to the qualified proceeding and process of facilitating in medical tourism network. Otherwise, quality of health care means the qualified medical treatment, sanatorium, proper medical instruments, and tools.

On the proposal of the hire of work contract, the work with high quality refers to goods or services that suitably fulfill the desire of the employers (the employer’s benefit). Noticeably, the law places a broad scope on the meaning, so the parties need to interpret it in each case differently. Those medical tourism packages rely on contractual dealing. Unfortunately, the medical tourism facilitator contracts have mostly been drafted by the medical tourism facilitators themselves to bring the benefit to only their side. Sometimes, the patient’s right is impacted by careless wording, or specific word without exact explanation. The certification of high quality and qualified medical standard from the reliable institution through accreditation, license, or other guaranteed evidence will put the patients on the safe side.

It seems that the governing law applicable to quality of care case is merely the hire of work. The consumer protection, tourism, and Civil and Commercial Code of Thailand cannot apply to medical tourism facilitator cases.

5.2.2.1 Quality of Management

Medical tourism marketplace of Thailand is famous and well-known among Thai citizen and investing foreigners. However, according to assessment on global medical tourism of Chapter 2, the marketing indicator declares the patients’ satisfy on Thai medical tourism packages and figure out the weakness of Thai distributing channel. As expected, Thai staff is afraid of using English and ruin the communication with the international client which, wholly or partially, induces the foreigners to set the serious question about Thai medical tourism. When Thai government has tried to push a developed plan for integration of medical service network since several years ago, the efficient legal measures for qualified and affluent employees has not been drafted. Thus, Thai law is not available for application of this problem.

In the aspect of famous destination countries, the most severe drawback in medical tourism marketplace is the incomprehensive communication. Thus, language assistance measure becomes the main keys to solve the problems. The Republic of Korea launches the practices of
the medical entrepreneurs for training their employees through completed program at least 12 credits yearly, ranging from workshops, online training, lectures, publications, symposiums, and conferences. Still, it does not constitute the effective legal measures yet.

With the distinctive character of California law, the purpose of settlement of quality on management, especially communication skill and knowledge staff, is to fulfill the whole background of the medical service network. Patients are absolutely capable of thoughtful decision-making and giving consent based on the accurate information. Owing to the harmonization of communication between different languages, the trained staff, and certified capacity shall be installed. Language assistance measures contain four elements, assessment, providing language assistance services, staff, and compliance monitoring standards. Also, medical tourism network needs to provide adequate training to all planning staffs. For enhancing the efficient management, the medical tourism facilitators shall provide emergency health care services, and certified specialists. When it comes to the form of the training program, language assistance program, it shall be documented in written policies and procedures, and be addressed, at a minimum. The following four elements are standards for enrollee assessment, standards for providing language assistance services, standards for staff training and criteria for compliance monitoring. The significant term refers to adequate training to all planning staffs that have routine contact with LEP enrollees (limited English proficient).

If Thailand needs a legal measure on controlling medical tourism facilitator’ communication and management skill, the California law should be adopted as a model law. Korean practice cannot be used due to its ineffective practice that should be opted out from the consideration. The distinctive factor which Thailand has never defined is the quality of management and communication. Moreover, the purpose of California law is suitable for Thai societies, and current problem which leads to the apprehended resolution.

Thereby, Thai law shall be amended through the constitution of four elements of language assistance measure, language assistance program, and trained staff for limited English proficient, and added a program for third language user.

5.2.2.1 Quality of Health Care

In medical criteria of Thai legal system, all medical practitioners under Medical Service Act shall comply with medical cure standards. However, the middle men coordinating with doctors are not subject to the medical law. From the overview of limitation of non-imposing
medical regulations, medical tourism facilitators freely escape from license approval, medical sanctions, liabilities, and examination from Thai Ministry of Public Health and Medical Council, and the Practice of the Art of Healing Commission. When the physicians are subject to medical inspection, they might order medical tourism facilitators to do illegal transaction or act against medical practitioner rules. Even though, some of the medical tourism facilitators voluntarily adopt the medical standard with the respect to consumer protection and competitiveness in the global medical market. Nevertheless, all of the medical tourism facilitators are not legally obliged to follow the medical service and facilities. It seems that the lack of the quality of care standard of medical tourism facilitators may not be sufficient to maintain patients’ safety, and effective standard of management and health care.

In the point of view of Korean law (Medical Service Act 2010, Article 63), the remote medical treatment and appointed persons who are responsible for safety control on radiation generator for diagnosis and special medical equipment do exist. If the medical institution, willingly or negligently, avoids the compliance with those factors, the Ministry of Healthcare can exercise its power on investigation and reconsiders the license status. For enhancing the medical tourism marketplace, Korean government inserts an annual mandatory 8-hour training course on healthcare laws, immigration procedures and general affairs.

Compared with the United States regulation as the model law, the regulation of Pennsylvania gives the horizontal scope of compliance with medical standards by the quality and appropriate utilization of services without deep requirements.

Rather than the horizontal provision, the regulation of California provides both horizontal and vertical provision. The general conditions on medicinal quality refer to facilities, certified or licensed staff, licensed or registered equipment, continuity of care, readily available at reasonable times, telehealth service, dispute resolution, and basic health care services. With short time of health care access, the legislation develops indicators of timeliness of access to care with standards of clinical appropriateness, nature of the specialty, and urgency of care. For the medical integration, the law requires all of the contracts issued, amended, renewed, or delivered care of health care service plan to comply with Public Health Service Act and related rules and regulations. Health care service plan has to furnish information to subscribers on the background of the cost range of procedures at the hospital or facility or the quality of services performed by the hospital or facility. On the scope of the specialized practitioner, it detailed specification on numerous medical doctors, such as physician
services, inpatient hospital services, ambulatory care services, diagnostic laboratory services, home health services, preventive health services. Moreover, without medical description, the patient cannot give the actual consent and understand all of the processes. To create the right understanding among patients, the advice on applying the United States regulation, especially California, may help to increase the confidential among the patients.

The different elements from a comparative study on Thai and California law point out an essence of amendment of Thai law. Having qualified medical restriction, medical tourism facilitators can establish and maintain provider networks, policies, procedures and quality assurance monitoring systems and processes sufficient to ensure compliance with appropriateness standard. Thus, California legislations shall be adopted as a model law through stipulating medical standard, the scope of the basic health treatment program, timeless of access, medical description, and facilitating accessibility.

5.2.3 Report of Business Operation

Among Thai system, no existing law provides that the medical tourism facilitators shall submit the information about management of medical service network to the responsible public sector. According to section 26, the code requires the medical tourism facilitators to declare the changing information only to patients. Thus, the legal perspective is limited to one party (patients), but not to the governmental sector which has the duty of gathering medical tourism information. It reflects the weakness of medical tourism integration between the private and governmental party. The governmental agencies will gain fewer data leading to a fewer patient safety inspections; consequently, Thai medical tourism cannot develop as much as it could.

With this critical trigger point, the medical tourism facilitators may have no self-conscious on medical service network and Thai medical tourism industry. Whatever they do will not be suspected or inspected, even if the subpar medical service standard is established. On the other hand, the general authorities will find the hardship in seeking the insider truth which the medical tourism facilitator tries to keep as secret. Moreover, they could not know what the medical tourism facilitators are going to do or have done with medical service network. The less information governmental authorities have, the more risk in medical service the patients take. The less coordinated information the private sector gets, the more difficult in imposed control measures
undertake. The way of gathering information from medical tourism facilitators should be a concern from the comparative study from three model law: Korean, Pennsylvania, and California.

With the collection of information modules, the Korean-registered medical institution shall report the business performance of the previous year as same as Pennsylvania Code. When it comes to the contents of furnished information, both countries do not require the specific elements, but merely the broad scope of important information which affects the medical service management. With unclear requirement, there is still a question of which information is the significant one that shall be proposed. In addition, Pennsylvania Code intentionally requires the risk-assuming preferred provider organizations to submit an annual report of their activities during the prior calendar year. Otherwise, if the preferred provider organizations are not involved in risk assessment, they have no duty to submit any report, apart from business operation report.

In contrast, California module law imposes the strong control by an indication of managed care content in the form of full and truthful reports. The main element of the report is consisting of professional misconduct, Federal Medical Loss Ratio, medical records, financial data, management information systems, utilization review, annual disclosure of fees and commissions paid, information provided by plan denying coverage, payment and medical dispute resolution and quality assurance. If any details are provided, the managed care organizations must submit such information annually.

Apart from an annual business report of medical tourism facilitators, they are not subject to provide a report to any governmental agency. In the other word, they can escape from the investigation of Thai authorities, such as Medical Council and Office of Insurance Commission. The indirect effect of non-compliance of their report is weakening the integration of Thai medical tourism because the government cannot grab any information for the development and inspection of such kind of business.

As a critical issue, the specific requirement for the annual report can share the significant information of the medical service network with the public sector for the investigation. Still, the general requirement also fills the loophole when the considerable information is not covered by such specific requirement provision. The duty of information for the compliance of complete information of medical service network submission shall be on all parties: facilitator, provider, and insurer.

Therefore, as for solving the lack of information among public and private level, a new section shall be added by using the extreme module of the California as it require the annual report of both business operation and other mentioned specific matter. Apart from applying annual report only
to the medical tourism facilitators, the moderate module from the Republic of Korea stipulates that the providers shall submit the annual health report for compliance of health information.

5.2.4 Contractual Control

The medical tourism facilitator contract has the purpose of health care service delivery for the patient. Therefore, the medical tourism facilitators enter into both contracts with the providers and patients. Having the new hybrid contract between brokerage and service contract in the specific medical area, the facilitators themselves draft their terms and by offering medical service management, quality of care, and medical standard. Even, the medical quality may comply with the code of medical practitioner voluntarily; the medical tourism facilitators have no legal duty on the medical standard law. In nature, a medical tourism facilitator is a business man dealing with the medical quality and expense. There is no guarantee to assure that the patients will obtain the appropriate medical care, and the facilitators will maintain their health delivery network standard. Most of the medical tourism facilitators try to escape or limit their liability. If the medical tourism facilitators keep doing unfair act in medical tourism contract, negligently concern in medical standard, and hide all risk from taking medical care abroad, the practice of medical tourism facilitators would be distorted. It leads to tremendous opportunity against the health and welfare which defines the most important thing of being human. In practices of contractual conclusion, the medical tourism facilitators conclude the unilateral contract with the terms of non-referral service, no maintenance of medical staff, no recovering process, and limitation of their liabilities. Thus, the unfair contract above does not protect the consumers from the limitation of their responsibilities. When the law does not impose the control on medical tourism facilitators, contractual parties need to rely on the freedom of contract. Even the patients are not satisfied with unfair terms; they have no choice and need to enter into the medical tourism contract.

On the other hand, the Republic of Korea tries to offer the patient safety through controlling contracts of medical tourism facilitators with broad disciplines, such as patients’ choice in choosing the medical doctors, collected cost in each and every certificate, providing the scope of treatment, and dispute settlement after medical care. The responsible committee has to exercise its power on review and investigation, thus, a legal measure on contractual control is based on authorities’ discretion. In the same direction, Pennsylvania takes discretion approach
and set the freedom for preferred provider organizations to draft their contracts unless it is against the public health law and insurance law.

The perception of California law determines the unique in both horizontal and vertical legal measures. To pursue the guideline of contract and secure patient safety, Thailand needs a law to instill the consciousness, high concerned healthcare, and collaboration among medical service integration. Fortunately, California law serves the firm control with a touchable legal measures for health entrepreneurs leading to systematical pattern of business operation. The efficient and systematical pattern can bring a clear understanding to patients and effective investigation to a governmental agency. When California is used as a model law, it can be divided into three contractual controls: contractual relationship between health care service plans and patients, medical providers, and insurance. In this study, the previous two controlled contract on medical and management will be concerned. For the suggestion of the alternative solution on contractual control measures, there are several titles as followed:

5.2.4.1 Contractual Relationship between Medical Tourism Facilitator and Patients

As mentioned in the analysis of brokerage, service contract, and obligation, those laws give only fundamental rights and duties of the contract, horizontal liability on breached contract, and general termination which do not cover the particular element of the medical service network. Meanwhile, tourism legislation indicates the general term of brokers’ remuneration and the cancellation of tourist either causes an inadequate number of cases of tourists following section 26(8) or resulted from the fault of medical tourism facilitator. At any time upon the contract, the medical tourism facilitators cannot change any information, unless they get the consent of tourists or the result of force majeure. If, with tourists’ personal reason, tourists cancel the tour which they already paid for, medical tourism facilitators who completely do not make the failure need to return the money back. They cannot charge other expense rather than specified in advance. As said, these conditions become an improper measures to cover all area of medical tourism network. Even the law states that the tours and insurance coverage shall be combined together, it draw merely principle, but not detailed insurance requirement.

At present, medical tourism facilitator contracts is not included in the compulsory forms of contract issued by the Committee of Contract, even though such contract usually be made in written form. As far as known, health care and insurance define the complex system for ordinary
people to understand. Besides, the different cultures and languages additionally turn to be the obstacles for international patients. Unfortunately, the Committee of Contract does not exercise its power on the indication of specific contractual terms. The common concept of the rules merely states the purpose and the method of interpretation, excluding the necessary examples and conditions. In addition, the form of contract does not exist, so that business operators can take a chance on selfish contract against patients. Moreover, the Committee of Contract is not entitled to examine the medical tourism facilitator contracts because the law does not require the business operators to submit the contracts and relevant documents to any authorities.

The brokerage law does not require parties to make neither written contract nor evidences. However, in the practice of international transaction, the evidences are a critical thing to prove the existence of contractual terms and conditions. The parties might forget or omit their rights and obligations which lead to the root of the breach of contract. Moreover, the culture and language become the obstacle in communication as well. Even the conclusion of a contract can be initiated through verbal manner; the contract still should be made in written evidence. Hence, the brokerage law could overlap when to govern this case.

In the part of insurance, the insurance companies are substantial partners who provide coverage and pay a compensation for any loss or damage resulting from accident. Absolutely, medical tourism facilitators combine insurance companies in their network to reduce the risk of medical tourism. Even, the medical tourism facilitators are partially involved in the operation of the insurer; they are not subject to the insurance law and cannot be investigated by the Office of Insurance Commission. Because the medical tourism facilitators act as the middlemen who are not either sponsored by the insurance company or being an insurance agent and broker.

If any coverage introduced by the medical tourism facilitators has been cancelled by the insurer, the medical tourism facilitators have no legal binding to response for that. In the worst case, if medical tourism facilitators themselves cancel the coverage without reasonable cause, the patients will be affected. Consequently, the patients whose coverage was canceled need to claim the compensation from the medical accident; they will face the loophole. They cannot ask for the compensation of the insurer because the insurers are not involved in the cancellation. At last, the patients have to pay more than the determined cost or total of overestimated expense.

In tourism perception on controlling business operation, some sections provide the logical senses in patient’s protection. The clauses of prohibited charges beyond the noticed service fee
and available liability after termination of business operation are the example of an effort to protect the patients strongly. Nevertheless, this Code dismisses some matters, such as a notice to the patients before the cancellation of the contract and remedial measures after contractual termination. Tourism business protection fund is a traditional instrument serving to secure a payment to the tourists who have been damaged by a failure to comply with a tourism business agreement. However, it is currently not the efficient resolution. It is also limited to the conditions and amount of fund. Sometimes, the Tourism Ministry itself urges the tourists to prepare the insurance package instead of such fund.

Owing to the lack of conditions and limitations of cancellation and method of notification, unspecific contract, formal contract, and evidence, the patients will obtain more risk from changing, limiting, cancelling coverage without their consent and recognition. As for finding the solution to solve this problem, the study uses California regulation: Managed Health Care of California Code of Regulations and Knox-Keene Health Care Service Plan Act of 1975 as model law. Otherwise, the cancellation requirement is not stipulated in relevant Korean and Pennsylvania regulation.

In the point of view of California law, the contractual relationship between health care service plans and patients should be contemplated. In the aspect of patients, the law tries to give the freedom on the contract without any prohibition or restriction in connection with any health facilities. At present, several diseases and defected disorders or symptoms are widespread in the society. To secure more information and best contractual conditions, the law also stipulates the specific contractual terms for particular case depending on each disease, such as diabetes, cancer, surgery, and maternity program. Besides, all existing elements in such contract must cover hospital, medical, or surgical expenses. In addition to health care terms, the coverage, equipments and supplies for the operation should be provided if necessary, even though the items are available without a prescription. Moreover, the law rules the good healthy habit of outpatient through self-management training, education, and medical nutrition therapy which are necessary to enable enrollees to use the equipments, supplies, and medications properly. As can be seen, the legislation tries to provide the health care service plans’ obligation for the efficient and qualified medical treatment and also set the indirect preventive measures for the patients from disease and defected disorder as well. In the point of view of evidence of coverage, the imposed disciplines are the same as advertising, disclosure forms, and contract forms. The patients have the right to view the evidence of coverage and to keep the evidence with full detailed description.
The fast, fair and cost-effective dispute resolution must be established in the contract to process and resolve contracted and non-contracted provider disputes.

According to California, legislations stipulate the fundamental elements and principles of contract, such as a benefit, a cancellation, a description and a definition. In addition, the written contract with conforming style requirements, such as font expanded the size, highlight, or underlining on such caution and benefit can make patients confident and give the true consent freely.

Providing that the subscription shall not be cancelled, except fraud or an intentional misrepresentation of material fact as prohibited by the terms of the contract, the patients will be safe from the unknown cancellation of coverage initiated by the health care service plans or insurers. Besides, in the case where health care service plans need to adjust the health service network, they will be obliged to provide new health care service plan contract by providing notice of the decision prior the indicated period of discontinuous coverage or the effective date of the rescission. On any cancellation, the health care service plans shall provide the reason for the intended rescission in the form of writing, electronic, or another mutually agreeable accessible method of transmission that can provide the patients an access to their information. The cancellation of coverage and medical service network arrangement also needs to be concluded in the pre-existing contract and health care service plans’ guideline. In conclusion, with limited reasonable causes, the cancellation need to be made in the compulsory form of notice by providing reason for the cancellation, effective date of the cancellation, a clear and concise explanation of the right to submit a request for review, including the language, and any notice required.

Compared to Thai situation, Thailand does not specifically have a law and regulation applicable to scope, element, and purpose of medical tourism facilitator contract. The fundamental laws, such as Civil and Commercial Code of Thailand and consumer protection law, have no connection with medical care concern. It reflects excessive freedom of medical tourism facilitator’s contract. To solve the legal vacuum of contractual control, California law shall be imposed as a model law through the imposition of fundamental elements of the contract, prohibition, form and style of the contract, and special term on the specific medical case in the new launching medical tourism facilitator law.

This control method could be another choice to secure the patients’ right and to manage the risk of medical tourism of Thailand on claiming the coverage. Prospectively, the weakness of
medical tourism will be lower, and the patients presently feel comfortable with medical service network in Thailand.

5.2.4.2 Contractual Relationship between Medical Tourism Facilitator and Medical Provider

As far as being known, the group of medical laws does not regulate any provision in relation to medical tourism facilitators. Thus, it is not surprised to learn that the legal relationship between medical tourism facilitators and the medical providers does not exist. In the other word, Thailand lacks the control of the contract between medical professionals and the middlemen. Without this control measure, medical practitioners could commit any act against the rules of medical ethic through the medical tourism facilitators to make their advertisements, to induce more patients or to reduce the medical standard for maximum profit.

As described above, the broker of brokerage contract is not involved in the main contract. Thus, whether the main contractual parties breach the contract or not, the broker still has no liability. It is mostly different from the medical tourism contract. The medical tourism facilitators are a party in such contract; they shall be responsible for their fault according to the main contract from the beginning until sending the patients to origin country. Otherwise, if the fault of the other providers in both of main or subsidiary contracts takes place, the medical tourism facilitators shall not be liable for that, except the contract requires them to do so. Logically, the brokerage law will limit the responsibility of the medical tourism facilitators, so they will respond for the inducing level that leads to a non-confidential transaction and no secured measure among patients. Besides, the law protects the employers through providing the responsibility of the contractors after health delivery time following section 600. Thus, health care is a rendered service (work) which falls under one-year liability. Nevertheless, human lives are deemed as the complicated system comprising thousands of individual systems, such as skeletal, nervous, and blood and cardiac system to sustain life. The situation of health care professionals may be a complex and puzzling dealing with serious issues of well-being, life, and death. However, some of the medical cares are not complex when compared with the level of technological instruments and drugs. It depends on each case. The one-year limitation on liability will destroy the flexibility and proper medical operation.

Moreover, the party who can claim the damages is the patients. This passive mindset will make the patients become the only partner who are concerned with the medical resolution. The medical tourism facilitators and other providers will wait for such claim without the
consciousness in the following checkup of its medical chain. Without legal measures after delivering health care, medical tourism facilitators in Thailand will pay less attention to consumer’s safety and qualified medical treatment.

From the study of California law, the contractual relationship between health care service plans and the medical providers is the critical issue. Providing that all disclosures of data shall comply with all applicable state and federal laws for the protection of the privacy and security of the data. The medical providers are to be bound to conclude the contract with the disclosure of claimed data related to health care services. In the other word, they cannot restrain the right of the patients to know the information. California legislations imposes the fundamental elements and principles of contract, such as written contract without concealment or misunderstanding of other terms and provisions of the contract, at least two-years maintenance of records and provide such information to the plan (such obligation is not terminated upon a termination of the agreement), access at reasonable times upon demand to the books, records and papers of the provider relating to the health care services provided to subscribers and enrollees, overestimated charged cost, and compliance of termination of the contract. Noticeably, the perspective of the contract between health care service plans and the medical providers complies with the patients’ contract. During medical operation proceeding, health care service plans have to provide continuity of care, such as primary care physicians who will be responsible for coordinating, maintenance and medical records. Health care service plans also needs to maintain staffs, including health professionals, administrative and other supporting staffs on the ground of an adequate referral system to assure that the patients will obtain medical conduct with timely and appropriate manner, especially the follow-up process. The monitoring of the follow-up of enrollees’ health care documentation shall be in the responsibility of the health care service plans and associated health professionals. Otherwise, in the case where the medical providers do not complete their medical conduct, the health care service plans shall provide for the completion of covered services for an acute condition, serious chronic condition, pregnancy, terminal illness, and care of a newborn child between birth and age 36 months by requiring terminated provider to do so. If the terminated providers refuse, they has to compensate the patients at rates and methods of payment similar to those used by the plans or the providers for currently contracting providers.

Compared with California law, Thailand does not specifically have legislation and regulation applicable to scope, element, and purpose of medical tourism facilitator contract. The
fundamental laws, such as Civil and Commercial Code of Thailand and consumer protection law, are not applicable to medical care and ethic concern. In the completed medical market, medical professionals turn to play the role of a third party to compete in health care market. With poor medical ethic, the patients hold a risk of medical errors, undertreatment care, or overpriced care. The contract tends to be on the ground of the freedom of contract strongly. The legal instruments which Thailand needs are transparency, the pattern of the contract, and the compliance with medical laws and regulations. To ensure the ethic of medical providers, the written agreement between the providers and the medical networks must contain confidential treatment, access to the books, records, and papers of the provider relating to the health care services, and prohibition from any conduct which leads to undertreatment or poor quality health services. Moreover, the approach of continuity of care and health care completion will help to follow up the medical errors after medical conducts. For solving the loophole of contractual control, California law shall be governed as a model law through stipulating fundamental elements of the contract, the disclosure of claims data and conflict of interests, continuity of care, prohibition, and special term on the specific medical case in the new launching medical tourism facilitator law.

### 5.2.5 Grievance System

In the part of a review from the patients, many patients who are interested in medical tourism network usually seek for comments from ex-patients who entered into medical tourism network. However, most of the medical tourism facilitators do not offer the review system because they afraid that it could reduce the patients’ confidence in using their networks in the future. The flattered advertisement and suggestion without providing the risk information or medical accident makes the patients find themselves in the hard decision. Unfortunately, Thailand does not give the review system in any legislation.

Following California model law, the regulations indicate that the managed care organization must create the grievance system which contains appeal utilization review decisions resulting from denial of access to medical services, undertreatment, and alleged poor quality of care, including any expression of dissatisfaction regarding to quality of care concerns and management whether in written or oral evidence. The health care service plans have to response to grievances by giving a determination. Then, health care service plans have to maintain the evidences for five years, including a copy of all medical records, documents, evidences of
coverage and other relevant information upon which the plans relied in reaching its decision. Moreover, records and the solution of grievance system shall be placed in annual reports to the Department of Managed Health Care.

Meanwhile, Pennsylvania model uses the grievance system and annual report generally. However, the specific requirements, which could make the medical tourism facilitator blanks from the suitable data, shall be submitted. In this issue, Korean regulation does not grant any grievance system for patient protection.

Three laws represent the different approaches on review system of the private sector; however, California law is the most appropriated legal measure which shall be applied as a model law. The ex-patients can make a review on medical treatment on both negative and positive experiences; on the other hand, the new patients can make the decision on the ground of such comments. Moreover, the medical tourism facilitators can explore and inspect themselves on how properly they offer their services. This approach can reduce the medical cases from the hands of committee, and it can also maintain efficient care programs.

In order to restore the problem of medical tourism facilitators, using grievance system with an annual report regarding California model law could solve rating system that the consumers can trust that they will be serviced by a reliable medical tourism network.

5.3 Conclusion

From the understanding of existing laws and regulations relevant to the control of medical tourism facilitator, this study finds the limitations on generally governing law because of unsystematically and inefficient legal measures. Implicitly, the laws do not provide the consumer protection and business operation control in the aspect of hybrid contract, especially medical tourism network. Moreover, medical tourism is the new activity which has the purpose of transferring patients across the world for medical services. Among Thai medical market, medical tourism is a reputable business which facilitators need to join the engagement of medical service chain. Nevertheless, medical tourism facilitators know the weakness of overlapping results of Thai laws and escape from both criminal and civil liabilities. Hence, accidents and medical errors are increasing every year.

Noticeably, Thailand does not have the law which specifically governs medical tourism facilitators which is the hybrid medical network among several specialized knowledge. Nowadays, Tourism and Tourist Guide Business Act shall be referred as the governing law of
medical tourism facilitators’ behavior. Nevertheless, having the fundamental purpose of the control of tourism agency and operator, Thai tourism law only affects the management of the tourism network, but not the qualified operation of the medical service network. Hence, tourism law shall not be deemed as the specifically governing law because of its inadequate control measures. The applied laws, comprising Consumer Protection Act, Civil and Commercial Code, and Tourism and Tourist Guide Business Act, also provide the inefficient measures on both of formal and substantive control.

The comparison of Thai legal measures and foreign law can establish the several unfit causes on the legal application. The weakness of inadequate measures on the ground of legal status includes the definition, license approval, qualification, liability for illegal status, and fiduciary duty. While the improper measures on business operation is composed of the advertisement and disclosure of information, quality of care on both management and health care, report of business operation, contractual control, and grievance system. As mentioned, the amendment legislation shall be concerned to promote the consciousness of patient safety and appropriate guideline on business operation of medical tourism facilitators. This study will propose the substantial problems and the resolution through promulgated laws and regulations as seen in the conclusion of the next chapter.
CHAPTER 6
CONCLUSIONS AND RECOMMENDATIONS

Medical tourism facilitators, who are primary entities specialized in competitive market of the whole medical service chain, fundamentally play the role of attracting the global patient. Nevertheless, the commission basis becomes the motivating factor for medical tourism facilitators and ‘phenomenon of medical care sale’ consequently. Without the restriction on legal status and business operation, medical tourism facilitators have the freedom of the attraction to international and domestic patients. In order to anticipate the worse situation, the physicians and insurance companies have no responsibility and liability for the collaboration between themselves and medical tourism facilitators in the case of illegal status and unfair contractual terms against the patients. The main problems of medical tourism facilitator cases are legal status and business operation. The reflection of weak cross-border health care can be explicitly seen in adhesion contractual terms and conditions and the medical errors which are resulted from the medical tourism facilitators’ operation.

In the point of view of ineffective remedial measures, the patients may not gain the protection when suffered from low standard supply of medical care of the medical tourism facilitators regarding several bad circumstances in the courts. Providing that the patients take the preventive measures which stipulate rights and obligations between themselves, medical providers, and medical tourism facilitators, the existence of inadequate legal measures appear. Therefore, the lack of specific control measures will affect the whole medical tourism of Thailand. Presently, the modern and hybrid characters of medical tourism contract may not be governed by the general laws and regulations. Thus, the legal loophole of inadequate legal measures impacts Thai medical tourism consequently.

From the limitations of Thai laws and regulations in connection with controlling medical tourism facilitator, the existing substantive legislations is not appropriate to be applied on the cases because they do not provide some essential principles. Necessarily, a comparative study between Thai and foreign legislations shall be undertaken to indicate the development and perfect legal measures in effect. The appropriate laws can bring more consumers’ safety and the growth of Thai medical tourism. The differences between existing legislations of the Republic of Korea, the United States, and Thailand will attained with a deep knowledge of the legal systems.
For solving medical networks’ problems, the purpose and methods from other countries may fulfill Thai legal vacuum if those laws match with Thai circumstances, society, and culture.

Recently, Korean medical service regulation has been launched with the new measures to control the medical tourism facilitators’ behavior. However, the United States has enacted the regulations which are governing the managed care organization, especially preferred provider organization several years ago. As far as studied, preferred provider organizations have the similar characteristics as the medical tourism facilitators. Compared to those countries, Thailand does not provide any law for medical tourism control, except public policy on the integration of medical practitioners, insurance companies, and travel agencies. Thai general provisions are also not appropriately applied to medical tourism issues due to the loophole on the specific application.

As highlighted earlier, there are various legislative approaches in response to the control of medical tourism facilitators or managed care organizations in foreign countries. It is necessary to meticulously study those to seek the suitable system for Thai law and find other alternatives for Thailand. To improve, the proper and efficient laws can restrain the problems since the beginning stage, except the litigation.

6.1 Conclusion

After the consideration of laws and regulations on controlling medical tourism facilitators, the existence of problems and obstacles are located as below:

6.1.1 Problems of the Lack of Laws and Regulations Specifically Governing on Medical Tourism Facilitator

At the present, Thailand lacks the specific legal measures on controlling medical tourism facilitators when compared to other countries, such as the Republic of Korea, Malaysia, and the United States. Usually, the medical tourism facilitators need to apply for license approval on the ground of Tourism Business and Guide Act, B.E. 2551 (2008) due to the interpretation of Thai Tourism Ministry. The movement of patients entering into Thailand for the aim of medical treatment is deemed as one kind of tourism. However, tourism law does not govern the medical care conditions and the hybrid contract.

The moderate legal measures are another effort of the fundamental instrument on governing medical tourism facilitator, especially Civil and Commercial Code and Consumer Protection Law.
Unfortunately, both legal action cannot bind the gap as seen medical errors in daily news. The drawback of unfit law allows the medical tourism facilitators, willingly or negligently, to pay less attention to patient’s safety and be greedy on reaping most profit.

6.1.2 The Existence of Inadequate Legal Measures in Laws and Regulations

The applied laws, comprising Consumer Protection Act, Civil and Commercial Code, and Tourism and Tourist Guide Business Act, provide the inefficient measures on both of formal and substantive oversight. The main criticized issues are legal status and business operation of medical tourism facilitator as below:

6.1.2.1 Legal Status of Medical Tourism Facilitator

The lack of medical tourism facilitators’ status brings the blurred interpretation among the businessmen, patients and governmental sectors that leads to unclear control methods and business guidelines for medical tourism marketplaces. Moreover, the tourism registration cannot stop illegal facilitators and inadequate medical tourism services. Being medical tourism facilitators, the low qualification, restricted capital, prohibited characters, and insurance, shall be complied according to tourism law bringing the more freedom on medical care business and the drawback to patients. As seen in Thai societies, the consciousness of legal compliance are still located in the low level. The patients’ safety mindset are not installed in medical providers, insurance companies, and other administratives. When every partner of health care network holds no responsibilities to operate their qualified business, patients take more risks.

The last concern is the fiduciary duty. The medical tourism facilitators do not bear the duty of loyalty and the duty of care because of legal vacuum. Even they are the coordinators in the medical service chain who need to take responsibility for health care. They are still obliged to perform acts with a standard of reasonable care which is lower than the professionals in medical care markets.

6.1.2.2 Business Operation of Medical Tourism Facilitator

As mentioned, the laws do not require the medical tourism facilitators to provide the specific information, the form of advertisement, prior review of ads, disciplines of defected advertisement, and ethic on the advertisement. Similarly, the disclosure of information is not enacted in any legislation which results in the significant data and exaggerate formal to consumers.

The broad scope of quality of care comprising management and health care, is indicated in legal instruments. The essential elements of management, such as affluent staffs and the
access to the management system, are not inserted in the compulsory guidelines. Not only the lack of qualify of management but plenty of medical qualities does not also appear to conform to the compulsory practice of medical tourism facilitators. The relevant medical requirements include the location, licensed medical staffs, the qualified equipment, basic health care services, the compliance with medical laws, time of medical service, access to medical service, the continuity of care and recovering methods in the case of occurred medical errors.

The medical tourism facilitators have the duty to provide the business report to the regulatory organization, however; they are not obliged to submit other vital data. With the non-compliance of relevant information among business operators, patients, and governmental sectors, it is hard to control undertreatment network. The other important materials are composed of professional misconduct, financial data, loss ratio, medical records, the disclosure of fees and commissions, resolved disputes on medical, management and coverage, and utilization review.

In the point of view of contractual terms and conditions, the laws do not govern the controlled contract on medical tourism facilitators’ operation. Thereby the medical tourism facilitators need to be responsible for the medical accidents and damages on the ground of the freedom of contract. The unilateral contracts of medical tourism facilitators always stipulate the mere benefit and less liability for medical tourism facilitators themselves more than the patient safety. The international patients cannot exercise their rights for the best medical care and have to entrust their life into the hands of medical tourism facilitators. The medical tourism chain is the combination between insurance and medical services; still, the other laws do not govern the legal relationship of medical tourism facilitator and other partners (insurance companies and medical providers). These reasons bring the uncertain control measures and affect the health of patients consequently.

The medical tourism facilitator is one type of facilitators who needs to coordinate with others in market. The thing they have to keep in their minds is to obtain feedback from their partners. The review or consumers’ opinions can be referred to a partial decision-making of the public. Without this strategy, the medical tourism facilitators cannot be suspected which leads to the non-transparency in medical tourism markets.
6.2 Recommendation

Nowadays, the expanded medical tourism is definitely found in Thai marketplace. However, the legal measures on controlling medical tourism facilitator have not been constituted in order to prevent the losses and damages resulted from catastrophic medical tourism operation. The injured patients have to rely their health on the uncertain litigation of Thailand and unilateral contracts which benefit the medical tourism facilitators. This study will suggest the alternative results as below:

6.2.1 Formal Law Specifically Governing on Medical Tourism Facilitator

To sum up, this part will explain the necessity of specifically governing law and the status of laws and regulations consequently.

6.2.1.1 Necessity of Specifically Governing Laws and Regulations

The absence of specifically governing laws and regulations causes the problems on controlling of business operation of the entrepreneurs. Medical tourism is the miscellaneous coordination between medical services and risk assessment of insurance. It involves with several specialized branches, such as medical skill, finance, facilitation, transportation, accommodation, and health care. The modern legislation that can solve a complicated problem does not exist. On the other hand, the fundamental law (consumer protection law) which serves preventive measures will be imposed when the suspected cases are brought. Another basic law, Civil and Commercial Code of Thailand governs rights and obligations of contractual parties without any preventive instrument. Nevertheless, applications of basic laws still have limitations that impede proceedings on controlling medical tourism facilitators because of the lack of provisions on technical and specialized services.

As cited above, it is necessary to have the laws and regulations that specially govern medical tourism facilitator. In implicated perception, the medical tourism facilitators are deemed as professionals in medical service chain. Their duties are including network engagement, medical provider selection, coordination on risk assessment, and other services. Thus, they are assumed to be persons who should take the responsibility to prevent the accidents and damages from medical errors. Both domestic and foreign patients, who are not familiar with advanced technology and complicated bodies, entrust their lives in the hands of medical tourism facilitators. The patients
also expect and believe in safety and efficient medical service that the medical tourism facilitator proclaims. If the burden of the legislations has not been placed on the shoulders of medical tourism facilitators, the medical tourism contracts cannot be controlled. The indirect inputs that resulted from suitable legal measures are to increase the confidence of patients and develop Thai medical tourism reputation. When Thai medical market becomes stronger, Thai medical tourism facilitators will turn to be the competitive player in Southeast Asia and global marketplaces. As far as known, the preventive and control measures will create the greater result than litigations.

The law specially governing on medical tourism facilitator, Tourism Business and Guide Act, B.E. 2551 (2008), tries to bring all travelling business under the control of Tourism Ministry by the license approval and the inspection. However, the tourism law does not provide the technical terms and conditions of medical and insurance. Besides, the restriction on license approval and license suspension give too much freedom for medical tourism facilitators. When it comes to business review, tourism law also does not enact specialized competent officials in medical and insurance terms. The license approval and guidelines of standard examination on license approval need to be handled by the specialists. Tourism Board Committee is composed of specialized from Tourism Council, Tourism Ministry, and tourism entrepreneurs. Noticeably, those may not be familiar with the network of medical treatment. From the limitation of responsible organizations, it is not suitable to rule ministerial regulations and practice rules in connection with the standard of conducting medical tourism business on the ground of tourism law.

Combined with the fundamental laws, such as Civil and Commercial Code and Consumer Protection Act, the legal vacuum still occurs. Even medical tourism network is one kind of medical treatments; the group of medical laws has never been applied on cases because of the distorted interpretation of Tourism Ministry and other competent officials.

Medical tourism refers to an intricating network that comprises the high-technology, humans’ bodies, and the rigorous endeavor of the understanding. Tourism entrepreneurs mainly concentrate on leisure activities, not memorizing many data regarding single bones, muscles, and nerves. The facilitators who deal with medical specialists and insurance companies should not be subject to tourism legislation.

It seems that legal measures on controlling medical tourism facilitator should be regulated separately from tourism law. The Board and committee should be medical tourism specialists from
all layers (medical services, insurance companies, investment entrepreneurs, and tourism sectors) as for making suitable discretion in license approval and examination of business operation.

6.2.1.2 Status of Laws and Regulations

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.

(1) Medical Tourism Facilitator Control Act

Firstly, it is necessary to impose the law on controlling medical tourism facilitator specifically through the name of “Medical Tourism Facilitator Control Act” as to impose the efficient preventive measure for patients and explicit guidelines for the medical tourism facilitators.

(2) The Addition of Definition of Medical Tourism Facilitator

Secondly, to complete the integration of medical service and insurance, the definition of ‘medical tourism facilitator’ shall be inserted in the applicable laws, and also add the condition of “subject to Medical Tourism Facilitator Control Act” respectively. The relevant law shall include Consumer Protection Act, Medical Profession Act B.E. 2525 (1982), Healing Arts Practices Act, B.E. 2542 (1999), and Sanatoriums Act, B.E. 2541 (1998), and other insurance laws and regulations.

6.2.2 Substantive Law Specifically Governing on Medical Tourism Facilitator

In order to solve the existence of an unsuitable measures on controlling medical tourism facilitator, this study proposes that the relevant laws should be amended on the ground of legal status and business operation of medical tourism facilitators. The substantive body of Medical Tourism Facilitator Control Act shall be complied with the legal measures of the other countries based on two measures, comprising legal measure and supplementary measure.

6.2.2.1 Legal Measures

The legal measures contain three issues, comprising the indication of medical tourism facilitators’ definition, legal status, and business operation of medical tourism facilitator as follows:

(1) Indication of the Definition of Medical Tourism Facilitator

The contractual purpose in connection to the broad scope of rendered services shall be adopted as the fundamental element for the definition of medical tourism facilitator.

Thus, the definition of medical tourism facilitator should refer to any person who arranges the network of physician, hospital, and another provider, including an insurer,
employer, and third-party administrator, for providing medical service to patients, in return for a prepaid or periodic charge paid by or on behalf of the subscriber. Furthermore, the exemption of the definition shall be stipulated regarding California and Pennsylvania model law. The strength of contractual structure imposing is to cover all middle men who engage in medical service networks in the edge of dynamic society.

(2) Legal Status of Medical Tourism Facilitator

The legal status of medical tourism facilitators has four issues including licensure, qualification, the sanction of non-compliance of legal status, and fiduciary duty.

1. License of Medical Tourism Facilitator

The medical tourism facilitators or any organizations which deal with medical tourism service shall apply for the license approval with respect to California model law.

1.1 Formal Pattern (5-years Renewal License)

Any person who intends to arrange or arranges the network of physician, hospital, and another provider, including an insurer, employer, and third-party administrator, for providing medical service to patients shall apply for 5-years renewal license.

1.2 Substantive Body (License Approval)

The applicant shall apply for a medical tourism license through the submitted application form with required information specified in the licensure approval section.

1.2.1 General Requirement

All information reasonably which relates to facilitators’ ability in establishment, operation, and maintenance shall be informed.

1.2.2 Specific Requirement

Specific requirement shall include, but not limited to, such as:

1.2.2.1 Proposed Medical Service Description

Geographic boundaries, certified medical equipment and sanatoriums include the service location for each provider rendering professional services on behalf of the plan and the location of any other plan facilities which assures the quality of health care.

1.2.2.2 Copy of Every Standard Form Contract

- between medical tourism facilitator and physicians or medical providers establishing medical tourism arrangements.
- between medical tourism facilitator and health care insurers establishing medical tourism insurance for any loss and damages.
- between medical tourism facilitator and enrollees or groups of enrollees setting forth the medical tourism facilitator’s contractual obligations to provide, arrange for the provision of or pay for covered health care services.

1.2.2.3 Financial Incentive Documents

Financial incentive documents refer to any description of the types of financial incentives accompanied by a report, certificate, or opinion of an independent certified public accountant.

1.2.2.4 Lists of Full-Time and Part-Time Physicians and Specialties

Lists of full-time and part-time physicians and specialties shall be proposed, including types of licensed or state-certified health care support staff, the number of hospital beds contracted for, and the arrangements and the methods.

1.2.2.5 Lists of Insurance Companies and Other Administrators

It describes applicants’ administrative arrangements to monitor the proper performance of such contracts. There are also the provisions which are included in them to protect applicant, its plan business and its enrollees and providers in the event where the failure of performance or the contract is terminated.

1.2.2.6 Copy of procedures of medical tourism facilitator

Medical tourism facilitators assure that the proposed method of marketing meets the quality of management and policy. The descriptions provide details of the applicants’ standards with respect to the accessibility and its procedures for monitoring the accessibility of services.

1.2.2.7 Evidence of Adequate Insurance Coverage or Self-Insurance

An evidence of adequate insurance coverage or self-insurance shall be stipulated against losses of facilities and responds to claims for damages arising out of the health care services.

1.2.2.8 Forms of Evidence of Coverage and Disclosure Forms

Any material issued to patients must be submitted. If the disclosure forms vary in text, format and arrangement in a manner which may make it difficult to identify and compare alternatives and their effect upon the contract, include an explanation which indicates how such difficulties will be avoided.
1.2.2.9 Grievance Procedures
Copies of the compliant forms and the written explanation of its grievance procedure shall be made available to enrollees and subscribers.

1.2.2.10 Certification or Accreditation of Medical Tourism Facilitator
An appropriate measure of the providers’ capacity provides health care service, the existing utilization of such services by other than enrollees of the medical tourism facilitators and the projected use of the services by enrollees.

1.2.2.11 Advertisement
Each proposed advertisement indicates the contracts by name and by exhibit numbers to which said advertisement relates and identify the segment of the public to which the advertisement is directed.

1.2.3 Declarations of Sample Medical Tourism Facilitator Standard and Prohibited or Defected Characters
In order to illustrate the qualified medical tourism facilitators, the competent officials should rule the declarations of sample medical tourism facilitators’ standard and their prohibited or defected characters. Besides, the legal flexibility of approval application should be found in the scope of review, guidelines, and the power of the specialized authorities.

1.3 Responsible Regulatory Agency (Specific Board)
Specific board which is appointed by Medical Tourism Facilitator Control Act, are comprising the competent officials from the Office of Insurance Commission, Medical Council of Thailand, Consumer Protection Board, and other governmental sectors who enhances medical tourism of Thailand.

2. Qualification of Medical Tourism Facilitator
The addition of the perception on patient protection, such as the honest and efficient operation, shall be considered. Nonetheless, the specific qualification on the restriction of age and Thai residence shall be the same following Tourism Business and Guide Act, B.E. 2551 (2008) of Thailand. Besides, the prohibited characters in accordance with bankrupt, unsound mind, and suspended license are also deemed as the significant factors in legal status review and should be drafted in the new law.
3. Liabilities of Illegal Status of Medical Tourism Facilitator

Those liabilities shall be available for two persons, including medical tourism facilitator and the third parties who conspiracy involves with illegal medical tourism facilitator as follows:

3.1 Liabilities for Medical Tourism Facilitator

Three measures on the determination of medical tourism facilitators’ liabilities can be described below:

3.1.1 Administrative Penalties

The competent officials may suspend or revoke any license to medical tourism facilitators or assess administrative penalties if the director determines that the licensee has committed any of the acts or omissions constituting grounds for disciplinary action.

3.1.2 Civil Penalty

The violating medical tourism facilitators have to liable for civil penalty not to exceed two thousand five hundred dollars ($2,500) for each enrollee harmed by a violation.

3.1.3 Factors for Administrative Penalties

Factors set forth administrative penalties include, but not limited to, the nature, scope, and gravity of the violation, good or bad faith of the medical tourism facilitators, medical tourism facilitators’ history of violations, willfulness of the violation, nature and extent to which the medical tourism facilitator cooperated with the specific boards’ investigation, financial status, and financial cost of the health care service that was denied, delayed, or modified. In addition, the amount of the penalty shall be considered to deter similar violations in the future.

3.2 Liability for Third Party Conspiracy with Illegal Medical Tourism Facilitator

Two-year suspension shall be available for any medical provider and insurer where he, willingly or negligently, knows the illegal status of medical tourism facilitator and enters into the contract.

4. Fiduciary Duty

The existence of fiduciary duty does not appear in any law and regulation on facilitator because of its common business structure. However, the medical tourism facilitators are deemed as the specific kind of middle men who involve in health care market. With their health professional skill, they should take more responsibility and raise their standard of reasonable care
exceeding the reasonable man for patients’ safety. On the point of view of California model law, two duties should be enacted as follow:

4.1 Duty of loyalty
Medical tourism facilitators perform their obligation in loyal and transparent manner.

4.2 Duty of care
Medical tourism facilitators have to perform acts that could foreseeably harm patients with the exceeding the reasonable man standard of care, such as the disclosure of commission fee.

(3) Business Operation of Medical Tourism Facilitator
The recommend on business operation shall be divided into three phrases as follow:

1. Pre-Medical Treatment Process (Advertisement and Disclosure of Information)
The disclosure of information and advertisement shall be in the same disciplines. The essential information with the restriction on substantive and formal pattern, and prior review should be submitted to the governmental sector and the public according to California model law.

Three approaches should be established in advertisement on the scope of formal pattern, substantive body, and prior review as below:

1.1 Formal Pattern (Format of Advertisement)
The restrictions on formal pattern should be contained. The fundamental concept needs to be clear, concise, easily understood language and be presented in an easily readable format for the public. Furthermore, subsections stipulate the following format. For example, the text shall be printed in at least 10-point block type whereas titles and captions shall be in at least 12-point to 15-point bold face type. Noticeably, it requires particular type size, boldface type, caption, subscription, heading, design, order, picture, image, sound, or format for experimental use.

1.2 Substantive Body
The feature and detailed advertisement, and disclosure of information can be controlled in four directions.

1.2.1 General Requirement
On the ground of substantive matter, the law should rule the general perception of advertisement control in that the significant information on health care arrangement shall be
combined with the presumption that “preventing the consumer from any untrue, misleading or deceptive information”.

1.2.2 Specific Requirement

The law should indicate the essential information which effect to patients’ decision-making and the vital acknowledgement, including, but not limited to

1.2.2.1 Proceeding of Medical Tourism Package

The descriptions of medical tourism proceeding since the beginning stage (medical program consulting and consent giving) till the final stage (medical recheck) shall be available for patients and the public.

1.2.2.2 Principal Benefits and Coverage

The caption of principal benefits and coverage should be followed by a description of such benefits and coverage.

1.2.2.3 Exclusion and Limitation of Benefits

The caption of principal exclusions and limitations on benefits should be enacted and followed by a description of the principal exclusions, exceptions, reductions and limitations, apply, and arranged in a uniform manner with the preceding section of the form.

1.2.2.4 Discharge Fees

The caption of other charges has been followed by a description of each co-payment, co-insurance, or deductible requirement that may be incurred by the member or the members’ family in obtaining coverage under the medical tourism package.

1.2.2.5 Lists of Certified Staff, Insurers and Medical Provider with Their Certification or Accreditation

The caption of choice of physicians and providers should be followed by a description of the nature, extent and circumstances under which choice is permitted.

1.2.2.6 Termination of Contract

The caption of the termination of benefits should be stipulated and followed by a statement of the terms and conditions for cancellation or termination of benefits, including a statement as to when benefits shall cease in the event of nonpayment of the prepaid or periodic charge and the effect of nonpayment upon a member who is hospitalized or undergoing treatment for an ongoing condition.
1.2.2.7 Rights of The Health Plan to Change Benefits

The law should contain, at a minimum, the following information, such as the conditions for and any restrictions upon the members’ right to renewal or reinstatement.

1.2.2.8 Rights of Cancellation

An enrollment or a subscription shall not be canceled or not renewed except for

(1) nonpayment of the enrollees after the individual has been duly notified and billed for the charge.
(2) fraud or an intentional misrepresentation of material fact under the terms of the medical tourism contract by the individual or employer.
(3) withdraw of medical tourism program from the market with all of the satisfied conditions.
(4) where the individual subscriber has no longer resides, lives, or works in the area of business operation, but only if the coverage is terminated uniformly without regard to any health status related factor of covered individuals.

The conditions upon which cancellation may be effected by the medical tourism facilitators or by the members, and a statement that a subscribers or enrollees who allege that an enrollment or subscription has been cancelled or not renewed because of the enrollee's or subscriber's health status or requirements for health care services may request a review of cancellation by the specific board.

1.2.2.9 Quality of Management, Location, and Equipment

The caption of the facilities has been followed by a statement of the principal facilities that are available under the contract, including their location and descriptions of the services. The hours of availability of both emergency and nonemergency services should be indicated, whether specifically or generally description.

1.2.2.10 Access to Medical Treatment and Operating Time

The time and date, or occurrence upon coverage that take effects including the specification of any applicable waiting periods should be addressed. Also, it should declare the time and date or occurrence upon which coverage will be terminated.

1.2.2.11 Recovering Process for Medical Error

The exact procedure for obtaining benefits including the procedure for filing claims should be proclaimed. The procedure for filing claims must state the time by which the claim must be filed, the form in which it is to be filed and the address at or to which it shall be delivered or mailed. It also should include the address and telephone number designated by the
medical tourism facilitator to which complaints from members are to be directed, and the description of the medical tourism facilitators’ grievance procedure.

1.2.2.12 Disputed Settlement

The contract should contain the disputed settlement. The procedures require to be followed by the member in the event any dispute arises under the contract, including any requirement for arbitration.

1.2.3 Declarations of Defected and Mislead Advertisement

To describe the illegal activities and stop the other facilitators from defective ads making, the samples of hazardous factors should be expressed on the declarations issued by the specialized authorities or specific board, such as

1.2.3.1 Cold Lead Advertising

As used in this section, "cold lead advertising" means making use directly or indirectly of a method of marketing that fails to disclose in a conspicuous manner that a purpose of the marketing is medical treatment solicitation and that contact will be made by medical tourism facilitator, or representative of medical tourism facilitator.

1.2.3.2 Representation of the Reimbursement in Full Charge for Services

It represents that reimbursement is provided in full for the charge for services, unless the payment by the medical tourism facilitators fully satisfies the liability to the providers.

1.2.3.3 Representation of the Reimbursement for Customary Charges for Services

It represents that reimbursement is provided for the customary charges for services, unless the actual experience of the medical tourism facilitators is that there is no balance billed for covered services.

1.2.3.4 Representation of Medical Tourism Facilitator or any Provider or Other Person (Licensed or Regulated by Medical Tourism Board or Other Governmental Agency)

It represents that medical tourism facilitator or any provider or other person associated therewith is licensed or regulated by the Medical Tourism Board or other governmental agency, unless such statement is required by law or regulation or unless such statement is accompanied by a satisfactory statement which counters any inference that such licensing or regulation is an assurance of financial soundness or the quality or extent of services.
1.2.4 Ethic on Medical Advertisement (Hidden Medical Professional’s Name)

Lastly, the ethic on medical advertisement refers to the conflict between medical providers and medical tourism facilitators. The physicians can avoid ads making conflicts through hiring medical tourism facilitators. Thus, the law should draft the prohibition of the declaration on medical professionals’ name.

1.3 Responsible Regulatory Agency (Prior Review)

The competent officials of the specific board, who is appointed by medical tourism facilitator control act, should be a part of advertisement approval through prior review before commercial ads launching.

2. During Medical Treatment Process

The medical tourism facilitator should have three main functions on the ongoing medical treatment as below:

2.1 Quality of Care

The quality of care contains two measures comprising the control on management and health care.

2.1.1 Quality of Management

The enhancement of medical tourism facilitators’ communication and management skill define the successful competitors in the ASEAN medical tourism market. However, the foreigners keep complaining on our underestimated communication skill. Based on California model law, the required functions on system management shall combine the following methods.

2.1.1.1 Language Assistance Principle

All of the written translations shall meet the standard which is required for the English language version of the document to ensure the quality and accuracy.

The English language documents shall determine the rights and obligations of the parties, and the translated documents shall be admissible in evidence.

The medical tourism facilitator should install the requirements for individual enrollee to access to interpretation services and the standards to ensure the quality and timeliness of oral interpretation services.

2.1.1.2 Language Assistance Service

Language assistance service includes, but not limited to
(1) All Points of Contact
All points of contact need for language assistance may be reasonably anticipated.

(2) Informing Process of the Availability of Language Assistance Services
At a minimum, these processes shall include the notice required by all vital documents, availability of free language assistance services and how to access them, and interpretation services at points of contact at no cost.

(3) Ensuring Processes for Language Assistance Program
To ensure the language assistance program, the processes conforms to the requirements of a grievance filing. Moreover, processes ensure that contracting providers are informed regarding the medical tourism facilitators’ standards and mechanisms providing language assistance services at no charge to enrollees.

(4) Translation Services
Processes and standards provide translation services including, but not limited to a list of the types of standardized and enrollee-specific vital documents, and a description of how the medical tourism facilitator will provide or arrange for the provision of translation of vital documents.

(5) Medical Tourism Facilitator’s Policies and Standards
Medical Tourism Facilitator’s policies and standards ensure the proficiency of the individuals providing translation and interpretation services. Medical tourism facilitators may develop and apply appropriate criteria for ensuring the proficiency of translation and interpretation services or may adopt certification by an association acceptable to the Medical Tourism Board at the time of certification.

2.1.1.3 Trained Staff for Limited English Proficient
The training shall include instruction on giving knowledge of the medical tourism facilitators’ policies and procedures for language assistance, and understanding the cultural diversity of the enrollee population including the sensitivity to cultural differences relevant to delivery of health care interpretation services. On working with limited English program enrollees, the guidance and the interpretation in person shall provide including video, telephone, and other media, as may be applicable.
2.1.2 Quality of Health Care

The lack of the medical oversight on medical tourism operation, the patients can be harmed by the accident resulted from undertreatment standard. Following California model law, the law should draw general conditions on the following issues.

2.1.2.1 Licensed

All facilities, personnel of both specialized practitioners and non-specialized practitioners, and equipment required by law to be licensed or certified must be so licensed or certified.

2.1.2.2 Giving Consent

The consent forms, including any form by which an enrollee authorizes or consents to any action by the medical tourism facilitator shall be provided.

2.1.2.3 Medical Record

Every medical tourism facilitator shall establish and implement a procedure by which an enrollee may receive a standing referral to a specialist. Moreover, the conditions or diseases that require specialized medical care over a prolonged period of time and is life-threatening, degenerative, or disabling which may need the expertise in treating the condition or disease shall be informed. The described determinations shall be made by the enrollee or the enrollee's primary care physicians, and all appropriate medical records and other items of information necessary to make the determination are provided.

Medical tourism facilitator shall complete the maintenance and ready for the availability of medical records, with sharing within the medical tourism facilitator of all pertinent information relating to the health care of each enrollee.

2.1.2.4 Maintenance of Provider Networks, Policies, Procedures, and Quality Assurance Monitoring Systems

Medical tourism facilitators shall provide or arrange for the provision of covered health care services in a timely manner appropriate for the nature of the enrollees’ condition in consistent with good professional practice. Medical tourism facilitators shall establish and maintain providers’ networks, policies, procedures and quality assurance monitoring systems and processes sufficient to ensure the compliance with this clinical appropriateness standard.

2.1.2.5 Continuity of care

The medical tourism facilitators must furnish services in a manner providing continuity of care and ready referral of patients to other providers when required by good professional practice.
2.1.2.6 Availability
All services must be readily available at reasonable times to all enrollees.

2.1.2.7 Timeliness
All services must be readily available at reasonable times to each enrollee consistent with good professional practice which bases on the standards of clinical appropriateness, nature of the specialty, and urgency of care.

2.1.2.8 Capability
The medical tourism facilitator must have organizational and administrative capacity to provide services to their subscribers and enrollees, including being able to demonstrate that medical decisions are rendered by qualified medical providers, unhindered by fiscal and administrative management.

2.1.2.9 Basic Health Care Services
Basic health care services shall be provided, such as physician care, inpatient hospital care and ambulatory care services, diagnostic lab tests, therapeutic radiologic services, home health services, preventative health services, and emergency health care, including ambulance and out-of-area medical treatment.

2.1.2.10 Compliance of Medical Tourism Facilitators’ Operation and Other Medical Laws and Regulations
To the extent required by involving law, a group or individual contract, which issued, amended, renewed, or delivered, shall comply with Medical Professional Act B.E. 2525 (1982), Healing Arts Practices Act, B.E. 2542 (1999), and Sanatoriums Act, B.E. 2541 (1998).

2.2 Report of Business Operation
Thailand faces the problem of non-coordination in medical tourism market that is resulted from the lack of sharing information among public and private level. Owing to California model law, the medical tourism facilitators have to furnish the report of business operation in connection to the following issues.

2.2.1 Formal Pattern (Annual Report)
Medical tourism facilitators shall report annually and comply with the standards in a manner specified by the Medical Tourism Board. The patients will able to compare the performances or changes of medical tourism facilitators’ operation and their medical providers by following the report.
2.2.2 Substantive Body

Sufficient and appropriate supplemental information shall be provided for adequate disclosure of at least the following issues.

2.2.2.1 Medical Record

Medical record includes copy of all of the enrollees’ medical records in the possession of the medical tourism facilitator or their contracting providers relevant to medical condition, being provided medical treatment, and disputed medical treatment. Moreover, the report should show the design, implementation and effectiveness of the internal quality of care review systems, including review of medical records and medical records systems. A review of medical records and medical records systems may include, but is not limited to, stated diagnosis, awareness of current therapies, the important diagnoses, drug allergies and idiosyncratic medical problems, and pathology, laboratory and other information. Besides, the details of responsibilities of health professional, necessary consultation and progress notes shall be stated. Finally, it needs to indicate the maintenance of an appropriate system for coordination and availability of the medical records of the enrollees, including referral services and significant telephone consultations.

2.2.2.2 Medical Loss Ratio

Medical tourism facilitators shall maintain a medical loss ratio of 85 percent for the bridge health care product and shall report their medical loss ratio as well.

2.2.2.3 Financial Data

Financial data is required to be audited or be accompanied by the opinion of a certified public accountant or public accountant. Such accountant shall be independent of the licensee.

2.2.2.4 Medical Procedure Report

The medical tourism facilitators shall report the medical procedure, deficiency and describe the action taken to correct the deficiency and the results of such action. The report contains the procedures for obtaining health services including, but not limited to, the scope of basic health care services, the availability and adequacy of facilities for telephone communication with health personnel, and emergency care facilities. Besides, the report should revise the overall performance of the medical tourism facilitators in providing health care benefits, such as qualifications of health professionals and other personnel, incentives for, and participation in continuing education for health personnel, the adequacy of all physical facilities, and the practices and appropriate functioning of health professionals and allied personnel in a functionally integrated manner.
2.2.2.5 Grievance System with Remedial Process

The report should indicate the grievance procedure, including the availability to enrollees and subscribers of grievance procedure information, the time required for and the adequacy of the response to grievances and the utilization of grievance information by medical tourism facilitators’ management.

2.2.2.6 Annual Disclosure of Fees and Commissions

Medical tourism facilitators shall annually disclose the fee and commission report to the Medical Tourism Board. The report of fee and commission is composed of the subscriber of a group contract, the name and address of, and amount paid to, any medical provider and insurance company, or individual to whom the medical tourism facilitator paid fees or commissions.

2.2.2.7 Management Information Systems

The medical tourism facilitators shall report management system, particularly internal policies and procedures related to cultural appropriateness in education of medical tourism facilitators’ staffs, evaluation of health care programs and services, and collection of data regarding the enrollee population. Moreover, the report should review advising enrollees of the procedures, including the hours of operation, location and nature of facilities, types of care, telephone and other arrangements for appointment setting, and the availability of qualified personnel at each facility. It should also write continuity of care, including the ability of enrollees to select a physician, staffing in medical specialties or arrangements, the referral system (including instructions, monitoring and follow-up), and the maintenance and ready availability of medical records.

2.2.2.8 Information on Denying Coverage, Payment and Medical Dispute Resolution and Quality Assurance

Medical tourism facilitators cannot deny the coverage and payment, unless the written conditions in the contract. Nevertheless, the medical tourism facilitators can deny any coverage to an enrollee with a terminal illness, which for the purposes of an incurable or irreversible condition that has a high probability of causing death within one year or less, for treatment, services, or supplies deemed experimental.

2.2.2.9 Summary Explanation of Coverage

The report has to stipulate, for each product, such as professional services, hospitalization services, emergency health coverage, ambulance services, durable medical equipment, mental health services, residential treatment, and custodial care and skilled nursing facilities.
2.2.3 Responsible Regulatory Agency (Medical Tourism Board)

Those sheets are required to submit to Thai authorities, such as Medical Council, Office of Insurance Commission, or Medical Tourism Board.

2.3 Contractual Control

The contracts between medical tourism facilitators and their patients, and medical tourism facilitators and medical providers shall be concerned as follow:

2.3.1 Contractual Relationship between Medical Tourism Facilitator and Patients

Usually, medical tourism facilitators draft the unilateral contracts which favor their benefits and eliminate necessary terms and conditions for the patients. The fix formal contracts turn to be an instrument for medical tourism facilitators and harm patients’ health care instead. Without controlled contract, the freedom of contract principle refers to the main background of legal binding.

2.3.1.1 Formal Pattern (Style Requirement)

The font shall be restricted, such as font, expanded size, highlight, or underlining on such caution and benefit in the printed legibly materials.

2.3.1.2 Substantive Body

In order to solve this problem, the controlled contract shall be established as follow:

(1) Specific Contractual Terms and Description

The contract should make descriptions and definitions for the particular disease, symptoms, and disorder, including medical treatment proceedings.

(2) Description of the Sanatorium, Medical Professionals, Medical Care Expenses, Medical Coverage

The descriptions can be seen into several terms, such as the sanatorium, medical professionals, medical care expenses, medical coverage including certified equipment and supplies for the management and treatment as medically necessary. Even if the items are available without a prescription.

(3) Self-management Training

Self-management training is necessary for the education and medical nutrition therapy in order to use the equipment, supplies, and medications properly.
(4) Evidence of Coverage
For the usage of the same disciplines as advertising, the disclosure and contract forms shall be enacted. Besides, the enrollees have the prior right on evidence of coverage review and right to obtain the evidence with full detailed descriptions.

(5) Dispute Resolution
Medical tourism facilitators need to indicate the dispute resolution for fast, fair and cost-effective result.

(6) Fundamental Element of the Contract
The fundamental elements of the contract comprise the benefit, cancellation by patients, cancellation by medical tourism facilitator, act of God, termination of contract, payment, medical record, follow-up process, language, evidence, exceeding charges, and the disclosure of information.

(7) A Cancellation of Contract or Coverage
Medical tourism facilitators should stipulate the contractual cancellation in fraud or an intentional misrepresentation of material fact as being prohibited terms. Moreover, other factors shall be concerned, especially the notification of cancellation, reasons for the intended rescission, clear and concise explanation of the right to submit a request for review, and effective date of the cancellation in the form of paper, electronic, or another mutually agreeable accessible method of transmission.

(8) Change of Contract with Patients’ Consent
Medical tourism facilitators cannot change the contractual terms and conditions, unless the notification of contract is issued and provided new contract prior the indicated period of discontinuous coverage or the effective date of the rescission.

(9) Postclaims Underwriting Prohibited
Medical tourism facilitators must not engage in postclaims underwriting, which is defined as rescinding, canceling or limiting of a contract due to its failure to complete medical underwriting and resolve all reasonable questions arising from written information submitted on or with an application before issuing the contract unless it can demonstrate either

(i) the misrepresentation or omission was willful or
(ii) it had made reasonable efforts to ensure the subscriber's application was accurate and complete as part of the pre-contract underwriting process.
The prohibition against postclaims underwriting does not limit a medical tourism facilitators’ remedies upon a showing of willful misrepresentation. Besides, medical tourism facilitators may act in bad faith if it rescinded a subscriber's contract “unreasonably” or “without proper cause.

(10) Intentional Infliction of Emotional Distress

Medical tourism facilitators may liable for intentional infliction of emotional distress if they act in an outrageous manner by obtaining information entitling it to rescind but deliberately delays rescission until after a subscribers have suffered a serious illness or injury.

(11) Specific Coverage

The numerous specific coverages must be offered (or may not restrict), especially alcoholism, drug use and nicotine dependency (breast cancer screening, diagnosis and treatment, and reconstructive surgery incident to mastectomy.

2.3.1.3 Liabilities of Medical Tourism Facilitator

Medical tourism facilitators have to responsible for any failure from the delay in furnishing medical treatment and benefits on several issues below.

(1) Breach of Contract

Medical tourism facilitators who fail to provide benefits and necessary services may liable for breach of contract.

(2) Negligence

Medical tourism facilitators have the duty to fulfill, such as

(i) Selection and supervision of providers: including procedures in place to audit the quality of those providers, and may be liable for harm resulting from breach of that duty.

(ii) Employee negligence: medical tourism facilitators may be vicariously liable for negligence committed by an agent or employee acting within the scope of employment under the doctrine of respondeat superior.

(3) Direct Liability

Medical tourism facilitators who fail to exercise ordinary care and denies, delays, or modifies health care services must liable for harmful acts to the enrollees.

(4) Administrators’ Negligence

Staffs of medical tourism facilitators have to exercise due care to prevent the enrollees from physical injury caused by their negligence in making benefit determinations under the contract and need to liable for the harm resulted from physical injury caused by negligence.
(5) **Bad Faith Liability**

Medical tourism facilitators have the liability for the breach of the implied covenant of good faith and fair dealing, in the other word, unfair or misleading conduct in claims handling.

(6) **No Waiver by Members**

Any waiver of liability by a subscriber is contrary to public policy and shall be unenforceable and void.

**2.3.2 Contractual Relationship between Medical Tourism Facilitator and Medical Providers**

When medical providers enter into a contract with medical tourism facilitators, less medical ethic and more risks for patients are mostly found, especially in the cases of medical error, undertreatment, or overpricing care. The resolution on controlled contract should be as follow:

**2.3.2.1 Substantive Body**

The controlled contracts between medical tourism facilitators and medical providers shall be established as follow:

(1) **Disclosure of Claims Data**

Medical providers have to disclose the data which relates to medical tourism facilitators and provide them to the subscribers.

(2) **Two-year Maintenance of Records**

Medical providers must provide health information, including the access at reasonable times upon demand to the books, records, and papers of the providers relating to the medical tourism.

(3) **Written Contract without Concealment or Misunderstanding of Other Terms and Provisions**

Written contracts shall be prepared or arranged in a manner which permits confidential treatment by the specific board rendered or to be rendered to the providers without concealment or misunderstanding of other terms and conditions of the contracts.

(4) **Overestimated Charged Cost**

Medical providers shall not claim for overestimated charged cost, including referral fee and commission. The contract shall prohibit surcharges for covered services and provide that whenever the medical tourism facilitators receive notice of any such surcharge it shall take appropriate action.
(5) Compliance of Contractual Termination

The contracts shall contain provisions requiring that, upon termination of the contract of the providers for any cause. Medical providers shall liable for covered services rendered by such providers to a subscribers or enrollees who retain eligibility under the applicable medical tourism contracts or by the operation of law under the care of such providers at the time of such termination until the services are completed. Unless the medical tourism facilitators make reasonable and medically appropriate provision for the assumption of such services by contracting providers, the prior medical providers shall not liable for covered services.

(6) Continuity of Care

The medical providers and medical tourism facilitators shall furnish services in a manner providing continuity of care and ready referral of patients to other providers at times as may be appropriate consistent with good professional practice, including but not limited to:

(a) The availability of primary care physicians, who responsible for coordinating the provision of health care services to each enrollee;
(b) The maintenance and ready availability of medical records, with sharing all pertinent information relating to the health care of each enrollee;
(c) The maintenance of staffs, including health professionals, administrative and other supporting staffs, directly or through an adequate referral system. It is sufficient to assure that health care services will be provided on a timely and appropriate basis to enrollees;
(d) An adequate system of documentation of referrals to physicians or other health professionals. The monitoring of the follow up of enrollees' health care documentation shall be the responsibility of the medical tourism facilitators and associated health professionals.

(7) Completion of Covered Services

Medical tourism facilitators have to complete the covered services for an acute condition, serious chronic condition, pregnancy, terminal illness, and care of a newborn child between birth and age 36 months after the termination of contract.

2.3.2.2 Liabilities of Medical Tourism Facilitator

Medical tourism facilitators and medical providers have liabilities on several theories from the failure to fulfill medical treatment below:
(1) No Vicarious Liability for Providers’ Negligence

Medical tourism facilitators are not vicariously liable for the negligence of a person or entity with whom it contracts to provide medical care for members or to perform utilization review to decide whether a member's request for medical care will be provided.

(2) Joint Liability

Medical tourism facilitators and medical providers may include joint and several liability if both contribute to a subscribers’ harm.

(3) No Statutory Liability for Medical Malpractice

Medical tourism facilitators do not respond for any new or additional plan liability for harm attributable to medical negligence by treating physicians or other health care providers.

3. Post-Medical Treatment Process (Grievance System)

The medical tourism facilitators should have a main function on the post-medical treatment as below:

3.1 Grievance System

Medical tourism facilitators are required to maintain grievance procedures approved by the Medical Tourism Board, and to resolve grievances, explaining in writing the reasons for any delay or denial of medical treatment automatically.

The non-reliable of the untrue polls and exaggerate advertisements lead patients lose their confidence for participating in medical tourism network. In order to restore the problem of medical tourism facilitator, the use of grievance system with an annual report regarding California model law could amendment rating system and make consumers’ trust in the reliable medical tourism network respectively.

If there is a serious threat to the patients’ health, the grievance may be submitted to the Medical Tourism Board for review in a fast manner.

The grievance procedure is in addition to any other available remedy, and therefore, a patients’ failure to utilize such procedure does not affect their rights to use any other remedy provided by law.

Medical Tourism Board will send written a notice of its final disposition of the grievance and the reasons, therefore, to the subscribers or enrollees within 30 calendar days of receipt.
3.2 Administrative Penalties

If the Medical Tourism Board determines that coverages and payments under medical tourism programs was delayed, denied or modified by a medical tourism facilitators, or by one of their contracting physicians, on the grounds that the service was not medically necessary, and that determination was not communicated to the enrollees along with notice of the right to participate in the independent medical review process, the director of the Medical Tourism Board may assess administrative penalties against the medical tourism facilitators.

6.2.2.2 Supplementary Measures

Without the collaboration among relevant sectors in medical tourism market of Thailand, the development of business operation is slightly found in medical tourism facilitators’ operation. In order to enhance the steady progress systematically, Thai governmental authorities should launch the training practices and 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 control measures on medical tourism facilitators in particular with the relationship between medical tourism facilitators, patients, and medical providers. 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. 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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APPENDIX
## APPENDIX A

Table of Comparing Legal Measure on Controlling Medical Tourism Facilitator

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<tr>
<th>Issue</th>
<th>Thailand</th>
<th>The Republic of Korea</th>
<th>Pennsylvania</th>
<th>California</th>
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<tr>
<td><strong>Legal Status of Medical Tourism Facilitator</strong></td>
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<tr>
<td>2. Legal Status Approval</td>
<td>• Business Approval of Tourism and Tourist Guide Business Act 2008</td>
<td>• Registration of Medical Services Act 2010, article 27-2</td>
<td>• License of West’s Pennsylvania Administrative Code 1998, § 152.3.</td>
<td>• License of Knox-Keene Health Care Service Plan Act of 1975, § 1349</td>
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<td></td>
<td>o Business operation license, section 15 para.1</td>
<td>o Compliance of specific requirements of Medical Services Act 2010, article 27-2</td>
<td>• Compliance of specific requirements of West’s Pennsylvania Administrative Code 1998, § 152.3.</td>
<td>• Compliance of specific requirements of Knox-Keene Health Care Service Plan Act of 1975, § 1351</td>
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<td></td>
<td>o Tour guide license, section 49</td>
<td>o Sanction: a maximum three years in jail or a fine of up to 10 million won (US$9,093)</td>
<td>• Exemption for approval of West’s Pennsylvania Administrative Code 1998, § 152.2.</td>
<td>• Exemption for license of Knox-Keene Health Care Service Plan Act of 1975, § 1349.1, 1349.2., combining with Regulations Applicable to California Licensed Health Care Service Plans of 2015, Chapter2, Article 1</td>
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<td></td>
<td>o Tour leader register, section 64</td>
<td></td>
<td>• Scope of approval review of West’s Pennsylvania Administrative Code 1998, § 152.4, § 152.5 and § 152.11</td>
<td></td>
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<tr>
<td>3. Changing Information after Legal Status Approval</td>
<td>• Any change in standard form contracts, such evidence must be submitted of Tourism Licensure Ministerial Regulation 2013, chapter 2</td>
<td>-</td>
<td>• Any change in standard form contracts, such evidence must be submitted to the Secretary for review of West’s Pennsylvania Administrative Code 1998, § 152.3. (e)-(g)</td>
<td>• Any change based on the personnel of the plan, of any management company of the plan, or of any parent company of such plan or management company, the more specific information shall be submitted of Knox-Keene Health Care Service Plan Act of 1975, § 1352</td>
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</table>
• Prohibited character of juristic person of Tourism and Tourist Guide Business Act 2008, section 17 | - | - | - |
<p>| 5. Qualification of Medical Tourism Facilitator | - | - | • Risk-assuming preferred provider organization also has to maintain its admitted assets in excess of liabilities by at least the | - |</p>
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<tr>
<th>6. Liability for Third Person Who Coordinates with Illegal Medical Tourism Facilitator</th>
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<tr>
<td>• Hospitals and clinics, which contract with unregistered medical tourism agencies for attracting foreign patients, will be punished from two years accepting foreign patients</td>
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| minimum capital and surplus required of a stock casualty insurer with accident and health powers of West’s Pennsylvania Administrative Code 1998, § 152.3., § 152.10 | Knox-Keene Health Care Service Plan Act of 1975, § 1395 (g)  
• No representative of a participating health, dental, or vision plan or its subcontractor representative shall in any manner use false or misleading claims to misrepresent itself, the plan, the subcontractor, or the Healthy Families or MediCal program while engaging in application assistance activities that are subject to this section. |
## Business Operation of Medical Tourism Facilitator

### 1. Advertisement

| 1.1 General Disciplines | Consumer Protection Act  
B.E. 2522 (1979), section 22  
- May not contain a statement which is unfair to consumers or may cause adverse effect to the society as a whole.  
- Give the caution of false or exaggerated statements or statement which will cause misunderstanding in the essential elements concerning services, notwithstanding it is based on or refers to any technical report, statistics or anything which is false or exaggerated | Medical Service Act 2010  
- Prohibition, etc. of Medical Service Advertisement, Article 56 | Knox-Keene Health Care Service Plan Act of 1975 and California Licensed Health Care Service Plans of 2015  
The fundamental disciplines will be constituted in every first sentences of sections below |

| 1.2 Information Requirement on Advertisement | Tourism and Tourist Guide Business Act 2008, Section 26  
- Has to contain the following list in his advertisement | - | - |

Knox-Keene Health Care Service Plan Act of 1975  
- Disclosure forms; contents; uniform
| 1.3 Prohibition of Advertisement | - | Medical Service Act 2010  
- Prohibition, etc. of Medical Service Advertisement, Article 56 | - | Knox-Keene Health Care Service Plan Act of 1975  
- § 1361.1 Unfair business practice; solicitor selling or negotiating health care coverage products; cold lead advertising; use of an appointment  
California Licensed Health Care Service Plans of 2015  
- Deceptive Advertising, § 1300.61.3. |
| 1.4 Form of Advertisement | - | Medical Service Act 2010  
- Process and method of elective treatment, restricted | - | California Licensed Health Care Service Plans of 2015  
- Disclosure Form, |
| 1.5 Prior Review on Advertisement | Medical Service Act 2010  
- Each advertisement to be run by any medical corporation, medical institution, or medical person shall pass a prior review of the Minister of Health and Welfare in regard to its details, method, Article 56  
- An act to attract a patient by individually obtaining prior approval from the head of the competent  
- Si/Gun/Gu for reasons of economic conditions, etc. of the patient, such as the economic condition  
- Submit and receive prior approval from the Department and the Department of Health of advertising, marketing and enrollee literature which adequately explains the role of the primary care gatekeeper and the limitations of coverage. | Knox-Keene Health Care Service Plan Act of 1975  
- Director’s approval of advertisement, § 1358.19  
California Licensed Health Care Service Plans of 2015  
- Filing of Advertising and Disclosure Forms for advertisement approval, § 1300.61.  
- Experimental Disclosure, § 1300.63.  
Combining Knox-Keene Health Care Service Plan Act of 1975  
- Filings and findings prior to specified acts, § 1352.1 (a)  
- New or revised advertisements; Filing§ 1361 (a),(c) |
<table>
<thead>
<tr>
<th>1.6 Inspection of Advertisement after Released to the Public</th>
<th>Consumer Protection Act B.E. 2522 (1979)</th>
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<tr>
<td>• Committee on Advertisement shall have the power to prohibit the advertisement and require the correcting of such advertisement, section 27</td>
<td></td>
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<tr>
<td>• Committee on Advertisement has a reasonable cause to suspect that any statement used in an advertisement is false or exaggerative under section 22 paragraph two (1) and exercise his power, section 28</td>
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<tr>
<td>Medical Service Act 2010, Article 63</td>
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<tr>
<td>• performance of corrective order from the Minister of Health and Welfare or the head of a relevant Si/Gun/Gu</td>
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<td>West’s Pennsylvania Administrative Code 1998, § 152.4 (a)(4)</td>
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<tr>
<td>Knox-Keene Health Care Service Plan Act of 1975</td>
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<td>and California Licensed Health Care Service Plans of 2015</td>
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<td>The competent power will be constituted in every last sentences of sections above</td>
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<th>1.7 Ethic on Advertisement against Restricted Medical Rule</th>
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<tr>
<td>Knox-Keene Health Care Service Plan Act of 1975</td>
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<tr>
<td>• Contract to restrict health care provider’s advertising, § 1395.5, (a)-(c)</td>
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<tr>
<td>2. Disclosure of Information</td>
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</tbody>
</table>
| **2.1 Information Requirement on Advertisement** | Tourism and Tourist Guide Business Act 2008, Section 26  
- Has to contain the following list in his advertisement: name and license number of medical tourism facilitator, payment system, nature and type of transportation and accommodation, tourist destination, tour guide, and the minimum visitors for tours  
Consumer Protection Act B.E. 2522 (1979)  
- Prescribe that the advertisement of such goods or service and others contain information for patients | Medical Service Act 2010, Article 63  
- performance of corrective order especially  
  - Necessary procedure and report relevant with the operation and management  
  - Transparent accounting standards  
  - Medical records  
  - Laundry | - | Health Care Service Plans of 2015  
Evidence of Coverage, § 1300.63.1.  
Combined Evidence of Coverage and Disclosure Form, § 1300.63.2.  
- Fix form of notice such contract, and any related disclosure form, evidence of coverage, printed material, and advertising, contains no untrue information regarding the emblem and does not otherwise violate this subsection. |
| **2.2 Prior Review on Advertisement** | - | - | - | Knox-Keene Health Care Service Plan Act of 1975  
- Disclosure forms; contents; uniform health plan benefits |
| 2.3 Inspection of Advertisement after Releasing to the Public | Consumer Protection Act B.E. 2522 (1979)  
  - Committee on Advertisement shall have the power to | Medical Service Act 2010, Article 63  
  - performance of corrective order from the Minister of Health and Welfare | West’s Pennsylvania Administrative Code 1998,  
  - Scope of Department of Health review of a preferred provider | Knox-Keene Health Care Service Plan Act of 1975 and California Licensed Health Care Service Plans of 2015  
  - Filing of Advertising and Disclosure Forms for advertisement approval, § 1300.61  
  - Filings and findings prior to specified acts, § 1352.1 (a)  
  - New or revised advertisements; Filing§ 1361 (a),(c)  
  - Combining Knox-Keene Health Care Service Plan Act of 1975  
  - Combining California Licensed Health Care Service Plans of 2015  
  - Disclosure Form§ 1300.63.

California Licensed Health Care Service Plans of 2015

- Filing of Advertising and Disclosure Forms for advertisement approval, § 1300.61.
- Filings and findings prior to specified acts, § 1352.1 (a)
- New or revised advertisements; Filing§ 1361 (a),(c)

Medical Service Act 2010, Article 63

- performance of corrective order from the Minister of Health and Welfare

West’s Pennsylvania Administrative Code 1998,

- Scope of Department of Health review of a preferred provider

Knox-Keene Health Care Service Plan Act of 1975 and California Licensed Health Care Service Plans of 2015

Combining California Licensed Health Care Service Plans of 2015

- Disclosure Form § 1300.63.

Combining Knox-Keene Health Care Service Plan Act of 1975

- Filings and findings prior to specified acts, § 1352.1 (a)
- New or revised advertisements; Filing § 1361 (a),(c)
<table>
<thead>
<tr>
<th>3. Quality of care</th>
<th>3.1 General Requirement on Medical Standard</th>
<th>Medical Service Act 2010, Article 63</th>
<th>West’s Pennsylvania Administrative Code 1998, § 152.4.(a)(1) Scope of Department of Health review of a preferred provider organization.</th>
<th>Knox-Keene Health Care Service Plan Act of 1975</th>
<th>The competent power will be constituted in every last sentences of sections above</th>
</tr>
</thead>
<tbody>
<tr>
<td>prohibit the advertisement and require the correcting of such advertisement, section 27 Committee on Advertisement has a reasonable cause to suspect that any statement used in an advertisement is false or exaggerative under section 22 paragraph two (1) and exercise his power, section 28</td>
<td>or the head of a relevant Si/Gun/Gu organization, § 152.4 (2)(a)(ii) Review of application by the Commissioner, § 152.11</td>
<td>Remote medical treatment Appointed person responsible for safety control on radiation generator for diagnosis and special medical equipment An annual mandatory 8-hour training course on healthcare laws,</td>
<td>Arrangements or provisions which may lead to undertreatment or poor quality care include</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Knox-Keene Health Care Service Plan Act of 1975 |

- § 1367 located facilities, certified or licensed staff, licensed or registered equipment, continuity of care, readily available at reasonable times, telehealth service,
<table>
<thead>
<tr>
<th>3.2 Compliance with medical law and regulation</th>
<th>immigration procedures and general affairs</th>
<th>dispute resolution, and basic health care services. Combining with California Licensed Health Care Service Plans of 2015 • § 1300.67. Scope of Basic Health Care Services, • § 1300.67.1. Continuity of Care</th>
</tr>
</thead>
<tbody>
<tr>
<td>-</td>
<td>-</td>
<td>Knox-Keene Health Care Service Plan Act of 1975 • § 1367.002 Compliance with Public Health Service Act and related rules and regulations</td>
</tr>
<tr>
<td>3.3 Timeliness of Health Care Access</td>
<td>-</td>
<td>Knox-Keene Health Care Service Plan Act of 1975 • § 1367.03. Regulations to ensure access to needed health care services in timely</td>
</tr>
</tbody>
</table>
Combining with California Licensed Health Care Service Plans of 2015

- § 1300.67.2. Accessibility of Services
- § 1300.67.2.2. Timely Access to Non-Emergency Health Care Services

| 3.4 Information Furnishing in connection with Medical Treatment | - | - | - | Knox-Keene Health Care Service Plan Act of 1975
§ 1367.49. Ability of health care service plan to furnish information to subscribers or enrollees concerning cost range of procedures or quality of services at hospital or facility; contractual |
<table>
<thead>
<tr>
<th>4. Quality of Management</th>
<th>-</th>
<th>Governmental Investment Plan on Korean Medical Tourism</th>
<th>-</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>• Complete at least 12 credits of training yearly, ranging from workshops, online training, lectures, publications, symposiums, and conferences</td>
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<td></td>
<td></td>
<td>Knox-Keene Health Care Service Plan Act of 1975</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>• § 1367.04. Access to language assistance; regulations and standards; assessment of linguistic needs of enrollees; biennial reports</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• § 1367.041 Health care service plan; advertising or marketing in non-english language; specified documents to be provided in same non-english language; translators</td>
<td></td>
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<td>Combining with California Licensed Health Care Service Plans of 2015</td>
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<tr>
<td></td>
<td></td>
<td>• § 1300.67.04. Language assistance programs</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• § 1300.67.2. Accessibility of services</td>
<td></td>
</tr>
</tbody>
</table>
| 5. Report of Business Operation | - | Medical Service Act 2010, Article 63  
- Report the business performance of the previous year to the minister of health and welfare by the end of March each year | West’s Pennsylvania Administrative Code 1998  
- 152.19. Annual reporting requirements.  
- Risk-assuming preferred provider organization still shall submit annual report of its activities during the prior calendar | Knox-Keene Health Care Service Plan Act of 1975  
- Submit the Federal Medical Loss Ratio in annual reporting form and also the MLR Annual Reporting Form  
- § 1367.003 annual rebate; premium revenue expended; minimum medical loss ratios; amount of rebate; compliance with federal law; exceptions  
- § 1367.07. report by health care service plan regarding internal policies on cultural appropriateness  
- § 1367.08 annual standards |
<table>
<thead>
<tr>
<th>§ 1368.1</th>
<th>information provided by plan denying coverage to enrollee with terminal illness; conference to review information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Combining with California Licensed Health Care Service Plans of 2015</td>
<td></td>
</tr>
<tr>
<td>§ 1300.67.003</td>
<td>state medical loss ratio annual report</td>
</tr>
<tr>
<td>§ 1375.4</td>
<td>risk-bearing organizations; administrative and financial capacity; report</td>
</tr>
<tr>
<td>§ 1300.67.59</td>
<td>format for reporting loss ratio experience</td>
</tr>
<tr>
<td>§ 1300.75.4.3</td>
<td>plan reporting</td>
</tr>
<tr>
<td>article 12. Reports</td>
<td>disclosure of fees and commissions paid; requirements</td>
</tr>
</tbody>
</table>
### 6. Contractual Control

#### 6.1 Contract between Medical Tourism Facilitator and Patient

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>• Section 26, General term of broker's remuneration payment</td>
<td>• Patients’ choice in choosing the medical doctor</td>
<td>• § 1365 Enrollment or subscription; cancellation or non-renewal; review; preexisting contracts; guidance</td>
<td>• § 1367.5. Health service plan contract restrictions</td>
</tr>
<tr>
<td>• Section 27, During trips, the medical tourism facilitator cannot change any information, unless he gets the consent of tourists or the result of force majeure.</td>
<td>• Dispute settlement after medical care</td>
<td>• § 1367.51,54, 6, 61, 62</td>
<td>• §1363 Uniform health plan benefits and coverage matrix; uniform summary of benefits and coverage</td>
</tr>
<tr>
<td>• Section 28, If, with tourist’s personal reason, tourists cancel the tour which he already paid for, medical tourism facilitator who completely does not make the failure on his tour business needs to return the money back</td>
<td></td>
<td>• Ensure that all arbitration decisions involving the plan and a current or former enrollee shall be provided to the Department</td>
<td>• Fix form of information personal sheet and consent to services</td>
</tr>
<tr>
<td>• Section 28, Cancellation of tourist either causes</td>
<td></td>
<td></td>
<td>Combing with California</td>
</tr>
</tbody>
</table>
inadequate number of cases of tourists following section 26(8) or resulted from the fault of medical tourism facilitator, such medical tourism facilitator has to return all the money to the tourists

- Cannot charge other expense rather than specified in advance.
- Provide insurance for tourists

<table>
<thead>
<tr>
<th>6.2 Contract between Medical Tourism Facilitator and Medical Provider</th>
<th>Medical Services Act 2010, section 63</th>
<th>West’s Pennsylvania Administrative Code 1998</th>
</tr>
</thead>
<tbody>
<tr>
<td>-</td>
<td>Collected cost in issuing each and every certificate, and furnishing the scope</td>
<td></td>
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<tr>
<td></td>
<td>Any change in standard form contracts, such evidence must be submitted to the Secretary for review</td>
<td></td>
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</tbody>
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<thead>
<tr>
<th>Licensed Health Care Service Plans of 2015</th>
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</thead>
<tbody>
<tr>
<td>§ 1300.67.4. Subscriber and Group Contracts</td>
</tr>
<tr>
<td>§ 1300.71.38. Fast, Fair and Cost-Effective Dispute Resolution Mechanism</td>
</tr>
</tbody>
</table>

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<tr>
<th>Knox-Keene Health Care Service Plan Act of 1975</th>
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</thead>
<tbody>
<tr>
<td>§ 1367.50. Disclosure of claims data to enrollee or subscriber not to be restricted by contract between plan and provider or supplier; application of federal law; definitions</td>
</tr>
<tr>
<td>§ 1379. Contracts; necessity of writing; liability for plan's debts; actions</td>
</tr>
</tbody>
</table>
| 6.3 Contract between Medical Tourism Facilitator and Insurer | - | - | - | Knox-Keene Health Care Service Plan Act of 1975  
- § 1365 Enrollment or subscription; cancellation or non-renewal; review; preexisting contracts;  
- § 1300.67.8. Contracts with Providers  
- § 1300.67.11. Disclosure of Conflicts of Interest |  
- § 1373.96 Completion of covered services to be provided by health care service plan; request of enrollee; covered conditions; compliance with specified terms and conditions by terminated providers, or nonparticipating providers, whose services are continued; payments Combing with California Licensed Health Care Service Plans of 2015 |
| § 1372 Contracts; use of evidence of coverage; exception |
| § 1373.622. Continuation of coverage provided under § 1373.62 after program termination; notice of health care service plan termination and availability of individual coverage; annual reconciliation reports; emergency regulations |
| § 1373.65. Termination of contracts; enrollee block transfer filing; notification of enrollees; option for enrollees to return to provider upon renewal of agreement with terminated provider or agreement not to terminate; contents of notification statement |
| § 1374.20. |
| 7. Internal Review and Grievance System | - | - | Prohibitions on changing premium rates of health care service plan; exemptions
- § 1374.22. Written notice; mailing; contents
- § 1374.23. Time of delivery of notice for specified plans
- § 1374.24. Limitation on liability of plan
- § 1374.28. Suspension of authority of plan to transact business

Combing with California Licensed Health Care Service Plans of 2015
- Article 6. Appeals on Cancellation, § 1300.65, § 1300.65.1, § 1300.65.2, § 1300.66

West’s Pennsylvania Administrative Code 1998,
- § 152.105. (2) Delivery system and quality of care

Knox-Keene Health Care Service Plan Act of 1975
- § 1368. Combining with California Licensed Health Care Service Plans |
| 8. Conflict of interests | - | - | - | Knox-Keene Health Care Service Plan Act of 1975 § 1341.7. Conflict of interest |

oversight
- § 152.4.(2)(iii) An adequate grievance system exists which permits enrollees to appeal utilization review decisions which result in denial of payment or denial of access to health care services or which concern alleged poor quality care or undertreatment by a preferred provider.

of 2015
- § 1300.68. Grievance System for receiving enrollee’s complaint
**BIOGRAPHY**

<table>
<thead>
<tr>
<th>Name</th>
<th>Miss Kanparpat Noppharesksawat</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of Birth</td>
<td>May 19, 1990</td>
</tr>
<tr>
<td>Educational Attainment</td>
<td>2012: Bachelor of Law, Thammasart University</td>
</tr>
</tbody>
</table>

**Work Experience**

<table>
<thead>
<tr>
<th>Year Range</th>
<th>Position</th>
<th>Organization</th>
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</thead>
<tbody>
<tr>
<td>2016 – Present</td>
<td>Legal Consultant</td>
<td>Suvarn Law Office</td>
</tr>
<tr>
<td>2015 – 2016</td>
<td>Researcher</td>
<td>Foreign Law Bureau, Office of the Council of State</td>
</tr>
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</table>