LEGAL ASPECTS OF HEALTHY AGING IN THE NEXT DECADE- PROMISES, PROBLEMS, AND PROSPECTS.

By Dato Mahadev Shankar and Kishore Ramdas.[1]

ABSTRACT:

Until the nineties Malaysia had a medical track record of good health which was the envy of its regional neighbors. However changes in demographic patterns and political priorities resulted in a paradigm shift in its focus and objectives.

From being a traditional benevolent provider of healthcare to the general public it appears set to metamophorse into a mere facilitator of commercial healthcare marketed by selective corporatized entities to be paid for by the general public.

This move raises serious issues as to whether the legitimacy of this approach is questionable and whether alternative and more cost effective routes are readily available.

Even more critically are constitutional issues as to whether such a move is inimical to the legitimate expectations of the populace whose more vocal element are already questioning whether their Government is abdicating its constitutional responsibilities.

The lack of transparency by which matters have come to such a pass begs the question whether the time is ripe for a Bill of Rights making the right to healthcare non-derogable and equally whether a Freedom of Information Act is an essential pre-requisite of the democratic process.

1.0 Introductory remarks

1.1. It is indeed a signal honor to be invited to address this distinguished audience on a matter of life and death. The conference organizers, financiers, and contributors have put Malaysia on the world map as a key player in extending

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the horizons of healthy aging. Both for myself and my fellow Malaysians I record here my heartfelt gratitude.
1.2. I wish to single out for special mention our home-grown evangelists of healthy-aging Dr.Nathan Vythilingam and Ms Ranuga Bhaskaran for their Herculean efforts to make it this event the dazzling showpiece it has become. For them and all their dedicatee helpers let us give them a standing ovation.

Ladies and Gentlemen,

1.3. As for The Legal Perspectives Of Healthy-Aging, your speaker has spent a lifetime shaping his legal perspectives first as as a lawyer, then as a judge, then as a legal consultant, and currently as an Adjunct Professor entrusted with implementing a Diploma and Masters Course in Healthcare Law in Taylor's University. Law then is the lifeblood that runs in his veins.
1.4. "When lawyers are young they want to get on, as they get older they want to get 'onour, and when they get old they get honest![2]

1.5. Honestly, as young lawyers on our daily walk to the Supreme Court we had to pass a pub. There we tarried on our way back to celebrate our wins, or drown our losses, paying scant heed to a placard sitting above the mirror behind the bar. It read

"We squandered our health in search of wealth
We sweat, we toil, we save.
Then we squandered our wealth
in search of health
Only to find the grave."

1.6. I have got this far in one piece only because, in the last eighty years, I was served by heroic doctors mostly in

[2] **This quotation is from H.L.Mencken the Editor of the Baltimore Sun.**

Government service all of whom considered their profession a vocation.[3]

1.7. To name but a few, my family physician from birth Dr.M.Dicum, the surgeons Dr.Jumeaux, Mr.Al Hady, Tan Sri Mr. Abdul(Koko) Majid, and Datuk Tom Paraman, Datuk Jaswant Singh Sodhy head of the Anti TB Association of Malaya and then of the Templer Hospital, Dr. Ronny McCoy who delivered over 20000 babies including my son Ravi, Dr.Gopal Sreenivasan Urologist and the initiator of the Dialysis Center which carries his name and that towering pioneer of medical education Tan Sri Dr.T.J. Danaraj Emeritus Professor of Medicine University of Malaya where I served as ad hoc lecturer in medico-legal matters in conjunction with Dr. Low Kam Seng.

During their stewardship Malaysia had a public health service that was the envy of the world for the high standards achieved at comparatively modest costs.[4]

1.8. The point that has to be made now is that they were dedicated <u>public</u> servants and that the beneficiaries of their achievements were non- fee paying patients.

1.9. Since the nineties healthcare has become a very different story. The main victims of the changes in the recent past and now in the pipe line are the older people on static incomes. Aging is an inexorable reality from the womb to the tomb. We only stop aging when we die. Then in the immortal words of Lawrence Binyon:

"They shall not grow old,
As we grow old
And at the going down of the sun
We shall remember them……."

1.10. Aging is inevitable, yes! But <u>*healthy*</u> aging is a dual responsibility both of the State and the individual. I will say something about the individual at the end of this talk. That of the State can be treated under the following headings.[5]

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[3] **Dr.Lee Wei Ling currently the Head of the Neurological Science Institute in Singapore has published an article on what this means.**

[4] **The WHO statistics speak for themselves.**

PROMISES, PERFORMANCE, PROBLEMS, AND PROSPECTS.

2.0. PROMISES

2.1. The vision and mission of the Ministry of Health[6] reads as follows:

Vision

Malaysia will become a nation composed of individuals, families and healthy communities through health system fair and equitable, efficient, able to be made available and appropriate technology available, compatible and appropriate to the customer environment. This system will also satisfy the quality, innovation, health promotion, respect for human dignity and promote individual and community participation towards improving the quality of life.

Mission

The mission of the Ministry of Health is to lead and work in partnership:

- **To facilitate and support the people to:**
  - **attain fully their potential in health,**
  - **appreciate health as a valuable asset,**
  - **take individual responsibility and positive action for their health;**

- **To ensure a high quality health system that is:**
  - **customer centred**
  - **equitable**
  - **affordable**
  - **efficient**
  - **technologically appropriate**
  - **environmentally adaptable**

[6] See http://en.wikipedia.org/wiki/Ministry_of_Health_(Malaysia).

- innovative

- **With emphasis on:**
  - **professionalism, caring and teamwork value**
  - **respect for human dignity**
  - **community participation**

2.2. The Malaysian Travel Healthcare Council, a corporate entity established in July 2009 has made promises which are even more extravagant.[7] Since this is a commercial enterprise it calls for separate treatment.

3.0. PERFORMANCE

3.1. Globally mankind has been so prolific in replicating itself that there is little fear that the human race is about to go extinct.[8]

3.2. From less than a billion at the turn of the last century we are now 6.3 billion and set to double every five or so years.

3.3. The two bench marks to measure how well the population is coping are infant mortality and life expectancy.

3.4. Because of the success of our immunization programs and improved standards of ante and post natal care we have all but eradicated small pox, diptheria, measles, polio, and most of the other childhood perils.

3.5. Malaysia's central urban hospitals and the network of clinics and dispensaries in the rural areas have served us well and continue to do so despite shortages of manpower and material.

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[7] **See** http://www.yoursurgeryabroad.com/news/mhtc-established/
In association with selected entities in the private sector the MHTC **promises every incoming "medical tourist" substantially cheaper services than available in their home country plus the services of a travel agent, world class post operative and nursing care and a holiday in Malaysia with access to a gourmet's paradise. Our concerns with th malaysian travel healthcare corporation is segment has to be dealt with separately and what follows will be confined to the Ministry of Health's responsibility for general healthcare for Malaysians.**

[8] **That it has succeeded 'not wisely but too well" is demonstrated by the one child per family in China and the efforts of the International Planned Parenthood Federation in the face of religious and official opposition. Consider the backlash in some countries where zero population growth has now shifted to minus and frantic efforts are being made to increase the birth rate.**

3.6.. The Ministry of Health has built a number of new referral hospitals like Selayang and Putra Jaya which are prime examples of paperless and filmless Hospitals.
3.7. The continuation of this trend with proper maintenance and servicing should see a sustainable national integrated healthcare system nationwide.
3.8. The law has kept pace with this activity in primary health care with legislation initiated by the MOH since 1950:see Appendix One.
3.9. In the last six decades even its fiercest critics must concede that the MOH has substantially lived up to its vision and mission.
3.10. What is causing alarm is the perception that from a service oriented organization the MOH is surely but surely changing into an institution driven by a thirst for a profit.

4.0 LEGAL ASPECTS OF PERFOMANCE.

4.1. Averaged statistics on infant mortality and life span may be a good indicator of the terminal points of human existence. It says precious little about what is really going on in between.
4.2.Changes in urban migration, life style, work patterns, environmental degradation and so on have brought in its wale exponential stresses on our health care personnel in the public service.
4.3. There was also a sea-change in the killer diseases they were now confronted with like Cancer, cardiac problems, diabetes , respiratory and renal ailments. These are not diseases which can be treated with a stethoscope and "the mixture as before- shake well!" Ultra sound, Cathscan and MRI machines, Dialysis machines, blood diagonostic equipment and the like all cost humungus amounts of money.
4.4. Changes in ethnic profiling of the top echelons of the public service also brought in its train political and personality issues resulting in many of our top medical specialists leaving the public sector and migrating or setting up Private hospitals and Clinics in the urban areas. The ones who remained in public service now had to establish their credentials.

4.5. These then were some of the major challenges the MOH faced as it moved into the nineties and beyond.[9] Corporatisation was now seen as the panacea for administrative problems.

4.6. In 1992 the MOH set up the Institute Jantung Negara, or the National Heart Institute where private sector patients had to pay for services. This was followed by the privatization of the Medical Stores and the laundry and cleaning services in 1995.

4.7. The I.J.N.has its critics on what it charges its fee-paying patients, but there is universal praise for its quality of personnel and service.

4.7. There was a move in the mid-nineties to privatize the whole of Malaysia's health care system and transfer it to selected privateers.

4.8. The Malaysian Medical Association put up such a spirited resistance to this proposal that Government shelved it indefinitely.[10]

4.9. Also running in parallel was a proposal to pass an Act to regulate all private health care facilities but that move too was not followed though perhaps for the same reason.

4.10. It was to resurface again in 2006 as the Private Healthcare Facilities And Services Act 1998 (Act 586). The Director General is a plenipotentiary in this Act, and private practitioners were made liable to draconian penalties for relatively minor infractions when compared to serious offences against the person or property prescribed in the Penal Code.[11]

4.11. No similar legislation is there to bug the medical practitioners in the Public health sector. The medical profession now had to face an exponential rise in medical negligence cases. With the advent of the Internet, and better

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[9] See " Bridging the gap in ageing: Translating policies into practice in Malaysian Primary Care.Krishnapillai S Ambigga ET AL: http://www.apfmj.com/content/10/1/2. This article contains the references to all the other articles published locally up to that time and was invaluable. It was very sympathetic to the serious difficulties the MOH was facing in carrying out its mission.

[10] The episode is the subject of a formal report published by the Malayan Medical Association called HEALTH FOR ALL-Reforming Health Care in Malaysia 1999.

[11] Members of the medical profession were left to wonder if the bureaucracy was taking revenge on them for standing in the way earlier!

education the Malaysian public has very high expectations when they go to see their doctors.
4.11.The current picture then is that everybody can still get affordable treatment at the public hospitals but those who can pay go to private practitioners of their choice.
4.12. In its desperation to retain Specialists in the public sector the Ministry has permitted them to divert patients prepared to pay to adjacent Private clinics.[12]
4.13. Employees covered by the Employment Act may have added medical benefits from the employers' panel of doctors, and those who qualify can also obtain health insurance.
4.14. Overall the system though not perfect has stabilized after a fashion.
4.15. Taking note of the shortage of doctors Government has initiated measures to produce 85,000 doctors by the year 2020.
4.16. The burning issue now is whether the Ministry of Health should be allowed to say that it can no longer realize its Vision and Mission statement unless it is permitted to franchise out its obligations to some independent franchisees who will be left free to levy such charges as may be agreed between them, to be paid for by a flat rate of taxation on all income earners regardless of whether they will use the services so provided. Is the bogey the M.M.A. attempted to exorcize in 1999 now about to reappear in the guise of as a benevolent monopolist institution?
4.17. Judging by some of the strident protests in the media it is obvious that legal challenges will be mounted to block this move:see Appendix 3
4.18. Let us now examine what shape these challenges could take.

6.0 ENFORCEMENT OF CONSTITUTIONAL OBLIGATIONS

6.1. This quotation appears in an Article by Dr.Hsu Da Ren[13] which reads as follows:

[12] **There are issues of conflict of interest and undue influence here which remain unresolved.**

In the Seventh Malaysia Plan (1996-2000), it was stated that "the *Government will gradually reduce its role in the provision of health services* and increase its regulatory and enforcement functions. A health financial scheme to meet health care costs will also be implemented. However, for the low income group, access to health services will be assured through assistance from the government" .[14]

6.2. Is this not an abdication of its constitutional responsibility which it so eloquently articulated in its Vision and Mission statement?
6.3. There is a concept in law under the heading of promissory estoppel which will lend aid to legal action to enforce the promises aforesaid.[15]

6.4. A Government's duty to its people is based on mutual obligations to uphold the Constitution. That duty is the substance of the oath Ministers and Judges take when appointed to office. A citizen who relies upon the Government's promises has a legitimate expectation to see those promises fulfilled.

6.5. The vision and the mission statement are the Ministry's solenm declaration on behalf of the Minister and the Government to the people of what its duties and responsibilities are under the Constitution.

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[13] **"MALAYSIAN HEALTHCARE :Where are We Heading? A critical look at the proposed National Health Financial Scheme: by Dr. Hsu Da Ren: http://hsudarren.files.wordpress.com/2006/10/malaysian-healthcare-a-critical-look.pdf**
Another article which also helped me to understand the issues was " Bridging the gap in ageing: Translating policies into practice in Malaysian Primary Care.Krishnapillai S Ambigga ET AL: http://www.apfmj.com/content/10/1/2.

[14] **Government of Malaysia (1996).** ***Seventh Malaysian Plan 1996-2000*****. Kuala Lumpur: National Printers.**

[15] **see the judgment of Gopal Sri Ram JCA in the Federal Court decision in Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd [1995] 3 MLJ 331 and the judgement of Edgar Joseph Jr FCJ in the Federal Court decision in Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor Dengan Tanggungan [1991] 3 MLJ 1**

6.6. Article 74 and 77 of the Constitution are relevant as is Item 14 in the Ninth Schedule Federal list, which enumerates the functions of the Minister as follows:

> **14. Medicine and Health including statistics in the Federal Capital and including**
>
> **(a) Hospitals, clinics, and dispensaries: medical profession: maternity and child welfare: lepers and leper institutions:**
>
> **(b) Lunacy and mental deficiency, including places for reception and treatment:**
>
> **(c) Poisons and Dangerous Drugs: and**
>
> **(e) Intoxicating drugs and liquors:manufacture and sale of drugs.**

6.7 .The other relevant provisions here are Article 43 which provides for the Prime Minister's appointment and that of his cabinet and Article 132 under which public health come under the general heading of "public services .

6.8.. Next by Article 133 all persons enjoined in the performance of public services are deemed to be public servants under the Public Authorities Protection Act 148 which makes such authorities liable to action but provides personal immunity for acts done in good faith.

6.9. S.3 of the Medical Act 1971 created the Malaysia Medical Council and made the Director General of Health its all powerful President . All the Malaysian statutes which are listed in Appendix 1 come under his purview. The Minsister of Health is at the top of this pyramid.

6.10. In practice the D-G of Public Health controls all public hospitals: See for example the directive issued by him about the delay in submitting medical reports issued in 2004. http://jrp.hukm.ukm.my/0411.pdf

7.0 -HEALTH AS A HUMAN RIGHT.

7.1. On the 8th day of the 8th month in the year '88 a Tribunal approved by the then Tun Dr. Mahathir saw the deposition of the Chief Justice of Malaysia Tun Salleh Abas. On the 9th day of the 9th month in the year '99 Tun Musa Hitam, one time Deputy Prime Minister inaugurated the Human Rights Act as its Founder Chairman. It was a boost to the Fundamental Liberties enshrined in the Federal Constitution by providing that in all matters related to Human Rights regard should be had to the Universal Declaration of Human Rights .

7.2.2. The negative injunction in Article 5 of the Constitution was now bolstered by the positive provisions in Article 25 of the UDHR which reads:

- (1) Everyone has the right to a standard of living **adequate for the health and well-being of himself and of his family,** including food, clothing, housing **and medical care and necessary social services**, and the right to security **in the event of unemployment, sickness, disability,** widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) **Motherhood and childhood are entitled to special care** and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

7.3. The full text of Section 4 of the Human Rights Commission Act 1999 is set out in Appendix 2. For the present purposes the following words in it are relevant:

> **Functions and powers of the Commission**
> **4. (1) In furtherance of the protection and promotion of human**
> **rights in Malaysia, the functions of the Commission shall be—**
> ***(a)* ……;**
> **(*b)* to advise and assist the Government in formulating legislation and administrative directives and procedures and recommend the necessary measures to be taken;**

***(c)* …….; and**
(*d)* to inquire into complaints regarding infringements of human rights referred to in section 12.
(2) For the purpose of discharging its functions, the Commission may exercise any or all of the following powers:
***(a)* to promote awareness of human rights and to undertake research by conducting programmes, seminars and workshops and to disseminate and distribute the results of such research;**
(*b)* to advise the Government and/or the relevant authorities of complaints against such authorities and recommend to the Government and/or such authorities appropriate measures to be taken;
***(c)* to study and verify any infringement of human rights in accordance with the provisions of this Act;**
(*d)* …….;
***(e)* to issue public statements on human rights as and when necessary; and**
***(f)* …...**
(3) ……
(4) For the purpose of this Act, regard shall be had to the Universal Declaration of Human Rights 1948 to the extent that it is not inconsistent with the Federal Constitution."

7.4. The obiter dicta of the Federal Court in Mohd.Ezam bin Mohd.Noor v Ketua Polis Negara [2002] 4 M.L.J. 449 that the words "shall have regard " did not impose an obligation to implement the UDHR should be understood only as a decision on its own facts because that was a case dealing with the Internaal Security Act.
7.5. Article 25 of the UDHR is wholly consistent with the Federal Constitution. Indeed it could be forcefully submitted that on all maters where the Constitution not expressly probibited or provided for the UDHR should prevail. This document merely encapsulates the universal moral basis which is expected of a civilized people. And any law which does not underpinned by a moral foundation does not deserve to exist.
7.6. In addition to direct action in the Constitutional Court it would appear that aggrieved parties can also initiate action by making a formal complaint to the Human Rights Commission.

8.0 PROSPECTS

8.1. Critics like Dr.Hsu Da Ren and the M.M.A. have advanced cogent arguments to show that the present system can easily be up-graded by a reasonable injection of much needed funds and that the system is underperforming because the current expenditure is far below what it should be. They have also shown that the proposed corporatized system has been tried and dismally failed in other countries.

8.2. It is not counter-productive to think that anything and everything that the Government does is suspect.[16] Transparency in public administration is the best way to scotch the rumors and conspiracy theories which now abound. The politics of confrontation must be replaced with a culture of consensus.

8.3. Dr.Hsu refers in his article to the reluctance of the MOH to disclose the reports made by the experts it commissioned. Who are the individuals to whom the MOH intends to franchise out its responsibilities and how are they to be selected? Healthcare is a very emotive and complex issue. The Government is not helping itself by deliberately declining to disclose relevant information. To be done, Justice must be seen to be done. Official evasion of such questions do not sit easily with its stated obligations in the last limb of its mission statement, to wit:

- **With emphasis on:**
  - **professionalism, caring and teamwork value**
  - **respect for human dignity**
  - **community participation**

8.4. Persistent non-disclosure of relevant information and ignoring human rights may lead to a justifiable demand that Parliament enact a Freedom of Information Act, and a Human Rights Charter which will make fundamental rights non-derogable.

8.5. The Minister of Health may well claim that the MOH cannot provide the highest attainable standard of health care without

[16] **Appendix 3 reproduced a number of articles in the media. I do not endorse these statements one way or another except to take note that they are there and have to be responded to. Government needs to explain why it is doing what it does and to ensure transparency.**

proper funding. The public is entitled to ask why other Ministries do not seem to have difficulty in finding vast funds for the purchase or military hardware and other projects of less urgency like the NFC which has caused such acute unhappiness recently.

9.0.INDIVIDUAL RESPONSIBILITY

9.1. The individual can vastly minimise his need for public health care by telling himself DON'T FALL SICK. We have had plenty of advice on how this can be achieved from the experts in this Conference.

9.2. This is a good place to look at the Malaysian Health Promotion Board Act 2006 (Act 651)

9.3. It would be good if the MOH can give the public a full report of the funds it has disbursed to date and the identity of the recipients. This could do much to enhance the image of the Government and the MOH if those funds have been disbursed with full community participation.

9.4. Instead of spending huge amounts in producing more doctors would it not be better to attack the problem at its source by emphasizing the ways we can preserve good health. Clean air, water nutritious food, exercise and measures to enhance self-worth can work wonders.

10.0. CONCLUSION

10.1. There is a universal debate going on today between advocates of a free Healthcare service and opponents usually from the richer segments of society who say that any individual who needs healthcare should pay for it himself or go and die..
10.2. In the US this has become a core issue between the Republicans and the Democrats which may decide the fate of President Obama. Indeed it is now a legal issue in the U.S.Supreme Court with Chief Justice Robertson presiding.
10.3. In the UK after strong endorsement of Health as a Human Right in 2007 a Coalition cabinet struggling to keep the economy

afloat is making noises about dismantling the hallowed National Health Service Act.[17]

10.4. And in Australia too there is considerable disquiet as to whether the private sector shares the aspirations of the Government despite the raft of laws passed to achieve free or subsidized health care for all.[18]

10.5.The last word on this subject has yet to be heard and we Malaysians must keep in the forefront of their minds that Malaysian problems need Malaysian solutions.

10.7. Putting new life into the Vision and Mission Statement of the MOH would be a good start .

APPENDIX ONE

1. Medical Act 1971 (Act 50)
2. Medical Assistants (Registration) Act 1977 (Act 180)
3. Medical Device Act 2012 (Act 737) – NOT YET IN FORCE
4. Medical Device Authority Act 2012 (Act 738) – NOT YET IN FORCE
5. Medicines (Advertisement And Sale) Act 1956 (Revised - 1983) (Act 290)
6. Telemedicine Act 1997 (Act 564)

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[17] **The Lancet: The right to health: from rhetoric to reality- Published Online: 10 December 2008 and The Lancet, Volume 379, Issue 9820 published online 24 February 2012-Defending democracy and the National Health Service by John Ashton.**

[18] See ***www.health.gov.au.*****GUIDE TO CHANGES TO THE REGULATORY FRAMEWORK for aged care:December 2008.**

7. Estate Hospital Assistants (Registration) Act 1965 (Revised - 1990) (Act 435)
8. Private Healthcare Facilities And Services Act 1998 (Act 586)
9.Mental Health Act 2001 (Act 615)
10.Occupational Safety And Health Act 1994 (Act 514)
11.Nurses Act 1950 (Revised - 1969) (Act 14)
12. Malaysian Health Promotion Board Act 2006 (Act 651)

APPENDIX 2.

8 *Laws of Malaysia*

ACT 597

Human Rights Commission of Malaysia.

Functions and powers of the Commission

4. (1) In furtherance of the protection and promotion of human rights in Malaysia, the functions of the Commission shall be—

(a) to promote awareness of and provide education in relation to human rights;

(*b)* to advise and assist the Government in formulating legislation and administrative directives and procedures and recommend the necessary measures to be taken;

(c) to recommend to the Government with regard to the subscription or accession of treaties and other international instruments in the field of human rights; and

(*d)* to inquire into complaints regarding infringements of human rights referred to in section 12.

(2) For the purpose of discharging its functions, the Commission may exercise any or all of the following powers:
(a) to promote awareness of human rights and to undertake research by conducting programmes, seminars and workshops and to disseminate and distribute the results of such research;
(*b)* to advise the Government and/or the relevant authorities of complaints against such authorities and recommend to the Government and/or such authorities appropriate measures to be taken;
(c) to study and verify any infringement of human rights in accordance with the provisions of this Act;
(*d)* to visit places of detention in accordance with procedures as prescribed by the laws relating to places of detention and to make necessary recommendations;
(e) to issue public statements on human rights as and when necessary; and
(f) to undertake any other appropriate activities as are necessary in accordance with the written laws in force, if any, in relation to such activities.
(3) The visit by the Commission to any place of detention under paragraph 2(d) shall not be refused by the person in charge of such place of detention if the procedures provided in the laws regulating such places of detention are complied with.
(4) For the purpose of this Act, regard shall be had to the Universal Declaration of Human Rights 1948 to the extent that it is not inconsistent with the Federal Constitution.

APPENDIX 3

1.*"The Malaysian Insider* reported yesterday that the national healthcare proposal will be made mandatory for all Malaysians, in an admission that is likely to fuel further controversy." - **http://www.themalaysianinsider.com/malaysia/article/1-care-a-done-deal-despite-ministry-assurances-source-says/**

2. Are non-tax paying patients exempt from this scheme? This desire to privatize the medical sector for profits goes deeper than you may think. Medical education institutions have been popping around Malaysia over the

past decade or two as well. Even these institutions are profit driven. In 2011, there were 24 institutes in Malaysia offering medicine as a discipline. The ratio of institutions to the population is 24:28mil.**Australia (19:22mil), Taiwan (11:23mil), Canada (17:34mil), Thailand (12:67mil). With more institutions coming up, Malaysia may soon join the ranks of countries like Germany (41:82 mil), Italy (42:60mil) and United Kingdom (44:62mil).Malaysia's ratio appears imbalanced at first glance, and this ratio does not include the 50 accredited foreign institutions that contribute to the number of doctors in Malaysia, as well as doctors from non-accredited institutions who sit, and pass the Medical Qualifying Exams. From this, we know that there are excessive medical students, all either paying fees or being funded by the government.**

3. The following is an excerpt from Lim Kit Siang's blog regarding the current position of the Medical Qualifying Examinations:

"More importantly though, now that Chua has proposed a qualifying examination in line possibly similar to Britain's PLAB (Professional and Linguistic Assessments Board) or the USA's USMLE (United States Medical Licensing Examination) it boggles the mind if our lot of council members are really up to it in conducting examinations of this complexity.Needless to say the current Unscheduled Universities Examination under Section 12(1) (aa), Medical Act 1971 is so hopelessly biased especially in the clinical sections, that, like the legal profession's CLP where there is an incredibly high failure rate, it gives rise to suspicions that the examination is yet another tool to discriminate and meet political agendas to right racial imbalances in the profession.More alarming is its selective application on foreign graduates but not on local graduates who today are mainly responsible for our notorious healthcare deliver systems."

5. Sunday January 9, 2011 Quality first, not quantity By Dr MILTON LUM, The Star Online, http://thestar.com.my/health/story.asp?file=/2011/1/9/health/7748012&sec=health

6. **Too Many Doctors in Malaysia, By Mong Palatino December 20, 2010, The Diplomat, http://the-diplomat.com/asean-beat/2010/12/20/too-many-doctors-in-malaysia/**

7.. **Qualifying exams for new docs by AZK, 3 June 2007, Lim Kit Siang for Malaysia, http://blog.limkitsiang.com/2007/06/03/qualifying-exams-for-new-docs/**

8. **http://www.malaysiahealthcare.com/** What follows is taken directly from this website.
"MEDICAL TOURISM

"The Complete Network offers an easy and effective pathway to the perfect healthcare experience as it networks all treatment and holiday related requirements by

- **Partnering with the top notch hospitals in Malaysia**
- **Partnering with reputed tour operators in Malaysia**
- **Partnering with finance and insurance companies**

Incorporating safety and security mechanisms in all online and offline information transfer.

Value for your money: In the current scenario of international medicine, where the cost of medical treatment is skyrocketing in the U.S. and Europe, Malaysia's healthcare service comes as a relief to patients all over the world. With highly specialized hospitals and medical faculties trained in some of the most esteemed medical institutions in the world, Malaysia confidently claims of a medical care that supersedes in quality and affordability. Common cosmetic surgeries such as the rhinoplasty and tummy tuck, costs the patient around 5000-6000$(USD) in the U.S., while in Malaysia the same would come up to only 600-1400$(USD). The disparity is proof of the cost-effective nature of Malaysian procedures.
This leaves scope for incorporating a vacation along with the treatment for the holiday seekers. And what's more you still spend only lesser than

what you would have, in order to undergo the medical treatment alone in the U.S. or U. K.

Hospitality: The facilities are complemented by equally proficient nursing faculties offering round the clock service to the patients. Hospitality and service being the keywords of our practice, a comfortable stay in fully equipped and luxurious rooms is assured. The biggest advantage is perhaps the fact that the faculties of the hospitals are English speaking, facilitating proper communication and interaction. Also the medical staffs hail from various parts of the world, hence erasing any alien feeling for the foreign patient, who has opportunity to relate with an identical nationality.

Excellence in patient care, comfort and hospitality

Our medical care follows the latest trends in medical practice on the technology as well as treatment levels. The facilities are complemented by equally proficient nursing faculties offering round the clock service to the patients. The biggest advantage is perhaps the fact that the faculties of the hospitals are English speaking, facilitating proper communication and interaction. In addition, the medical staff hail from various parts of the world, hence erasing any alien feeling for the foreign patient, who has the opportunity to relate with an identical nationality

Hospitality and service being the keywords of our practice, a comfortable stay in fully equipped and luxurious rooms is assured. The treatments are carried out in state of the art facilities that have been furnished to meet international standards. The high quality in treatments is thus maintained at the technology as well as professional levels."

9. One would have thought that thinking public would have applauded the MOH for taking the initiative to boost our economy and show the flag. The huge number of foreigners coming is testimony to our comparative excellence and competitive edge.**In 2007, 341,288 foreigners came for treatment in Malaysia. That is triple the numbers from 2002.Medical receipts within that time quadrupled to RM 253.84 mil. During the first 9 months of 2008, 282,000 foreigners visited Malaysia for medical holidays. This amounted to RM222.25 mil. At the time of this article,**

"Malaysian Medical Tourism Growing", 35 private facilities were running the Medical Tourism program. But there are rumblings in the community questioning why the Government is emphasizing the benefits to the Medical tourist whilst not at the same time up-grading the public health sector for Malaysians to match what we are offering to foreigners. Query the position of foreign illegal immigrants who may pose a health risk to the resident community.

APPENDIX 4

LIST OF STATUTES AND REFERENCES IN AUSTRALIA UK AND US.

AUSTRALIA

Aged Care Act 1997 (Cth)

The Act aims to, amongst other things, promote a high quality of care and accommodation for the recipients of aged care services that meets the needs of individuals

Guardianship and Management of Property Act 1991 (ACT)

An Act to provide for guardianship, and management of the property, of certain (aged people receiving critical, long term treatment?) people.

Health Records (Privacy and Access) Act 1997 (ACT)

An Act to provide for the privacy and integrity of, and access to, personal health information, and for related purposes.

Medical Treatment Health Directions Act 2006 (ACT)
An Act to provide for directions about the withholding or withdrawal of medical treatment, and for related purposes.

UNITED KINGDOM

The Local Government and Public Involvement in Health Act 2007

The Local Government and Public Involvement in Health Act 2007 received Royal assent on 30 October 2007. It is an Act to make provision: with respect to local government and the functions and procedures of local authorities and certain other authorities; with respect to persons with functions of inspection and audit in relation to local government; to establish the Valuation Tribunal for England; in connection with local involvement networks; to abolish Patients' Forums and the Commission for Patient and Public Involvement in Health; with respect to local consultation in connection with health services.

NHS Redress Act 2006

The NHS Redress Act 2006 received the Royal Assent on 8 November 2006. The Government's objective was to reform the way lower value clinical negligence cases are handled in the NHS to provide appropriate redress, including investigations, explanations, apologies and financial redress where appropriate, without the need to go to court, thereby improving the experience of patients using the NHS. (Gateway reference 5646).

Health Act 2006

The Health Act 2006 received the Royal Assent on 19 July 2006. It is an Act to make provision for the prohibition of smoking in certain premises, places and vehicles and for amending the minimum age of persons to whom tobacco may be sold; to make provision in relation to the prevention and control of health care infections; to make provision in relation to the management and use of controlled drugs; to make provision in relation to the supervision of certain dealings with medicinal products and the running of pharmacy premises, and about orders under the Medicines Act 1968 and orders amending that Act under the Health Act 1999; to make further provision about the National Health Service in England and Wales and about

the recovery of National Health Service costs; to make provision for the establishment and functions of the Appointments Commission; to make further provision about the exercise of social care training functions.

NHS Reform and Health Care Professions Act 2002

The Act reformed the distribution of functions between Strategic Health Authorities and Primary Care Trusts, extended the role of the Commission for Health Improvement, reformed the structures for patient and public involvement in the NHS, provided for joint working between NHS bodies and the prison service.; and reformed the regulation of the health care professions, including the establishment and functions of the Council for the Regulation of Health Care Professionals.

Care Standards Act 2000

The Care Standards Act 2000 established a major regulatory framework for social care to ensure high standards of care and will improve protection of vulnerable people. Implementation led to the establishment of the independent National Care Standards Commission (NCSC).