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Imposition of Good Samaritan Laws to Improve Professionalism among Medical Practitioners

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Abstract: This paper discusses a legal-moral conflict that exists in the medical field which pertains to the duties of medical practitioners toward their patients. More specifically, it deliberates on paradoxical situations where medical practitioners are “legally permitted” to refuse rendering their services to the needy due to the principles entrenched in the law of negligence. This legal conundrum has created a moral ‘neglect’ on the part of the medical practitioners toward their patients who are in dire need of medical treatment. Hence, this paper argues that the concepts inherent in the Good Samaritan laws should be imposed on medical practitioners in Malaysia, particularly, since neglecting patients who urgently require medical attention transgresses the Islamic principle of helping ones neighbours and the needy, contravenes the Hippocratic Oath and infringes the conscience of a morally upright individual.

Keywords: Good Samaritan laws, medical practitioners, law of negligence, Hippocratic Oath, Islamic principles

Abstrak: Kajian ini membincangkan terhadap konflik undang-undang/moral yang terdapat dalam bidang perubatan yang mana pengamal-pengamal

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perubatan berperanan untuk melakukan sesuatu terhadap pesakit-pesakit mereka. Secara khususnya, ia membincangkan secara mendalam keadaan paradox yang mana pengamal-pengamal perubatan dibenarkan secara undang-undang untuk menolak bagi memberikan khidmat kepada mereka yang memerlukan, berdasarkan prinsip-prinsip yang mantap dalam undang-undang kecuaiian. Rundingan undang-undang ini telah mewujudkan isu ‘pengabaian’ moral pada pihak pengamal-peramal perubatan terhadap pesakit mereka yang amat memerlukan rawatan perubatan mereka. Oleh itu, kertas kerja ini membincangkan konsep-konsep yang termaktub dalam Undang-undang Samaria yang sepatutnya ditekankan terhadap pengamal-pengamal perubatan terutamanya di Malaysia. Ini adalah kerana mengabaikan pesakit yang memerlukan rawatan perubatan dengan sengaja melanggar prinsip Islam untuk membantu jiran serta mereka yang memerlukan. Hal ini juga turut melanggar Angkat Sumpah Hippocratic serta turut juga menyinggung perasaan dan hati nurani individu yang tinggi moralnya.

Kata Kunci: Undang-undang Samaria yang baik, pengamal perubatan, undang-undang kecuaiian, Angkat Sumpah Hippocratic.

Introduction

The medical profession is undoubtedly one of the most revered professional fields. Its prominence is very much related to its vocation which is mainly to assist those in need and to preserve life. According to Wikipedia, most medical practitioners are bound by the Hippocratic Oath which among others states that:

I will use treatment to help the sick according to my ability and judgment, but never with a view to injury and wrongdoing...Into whatsoever houses I enter, I will enter to help the sick, and I will abstain from all intentional wrongdoing and harm, especially from abusing the bodies of man or woman, bond or free.

From the excerpt above, it is obvious that the main responsibility of medical practitioners is to utilise their professional skills and knowledge in the most appropriate manner to assist those seeking treatment from them.

Having said that, one fundamental question begs an answer. Are medical practitioners bound by the law to render their services to those who are not “legally” their patients? To put it more explicitly, does a doctor owe a duty of care to the person having a heart attack in the same

flight as the doctor? Or does a doctor owe a duty of care to his favourite athlete who sustains severe injuries during the course of playing in a stadium where the doctor is a spectator?

Unfortunately, the answers to all the above questions lie in the negative mainly because from the legal perspective, medical practitioners are “protected” by law from any legal suits or prosecution should they choose not to render their services to those who are not considered their patients. The element of “protection” is imbued in the law of negligence which falls under the Tort Law.

This is the controversial and conflicting issue pertaining to the duty of care in doctor-patient relationships that this paper tries to deliberate. It argues that the concepts inherent in the Good Samaritan laws should be imposed on medical practitioners in Malaysia, particularly, since neglecting patients who are in need of medical attention transgresses the Islamic principle of helping ones neighbours and the needy, contravenes the Hippocratic Oath and infringes the conscience of a morally upright individual.

Law of negligence in the medical field

The ground-breaking law of negligence, which is in force until today, was established by the famous “snail in the bottle case” or better known as the case of *Donoghue v Stevenson*. This case discussed the liability of a manufacturer due to the presence of a dead snail in the drink which he manufactured. In delivering his judgment, the Honourable Lord Atkin (1932: 8) states that:

The rule that you must love your neighbour becomes, in law, you must not injure your neighbour; and the lawyer’s question, “Who is my neighbour?” receives a restricted reply. You must have reasonable care to avoid acts and omissions, which you can reasonably foresee, would be likely to injure your neighbour. Who then, in law is my neighbour? The answer seems to be – persons who are closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to acts or omissions which are called in question.

The concept of “neighbour” as defined in this landmark case refers to various relationships that exist between a manufacturer and a consumer, an employer and an employee or even a doctor and a patient. This

case provides that foreseeability and proximity should be present for duty of care to exist upon ones “neighbour”. According to the law of negligence, these two main rules of law must be applied to the different relationships, which are fiduciary in nature or may be classified as “neighbours” of each other and this includes the relationship between medical practitioners and patients.

The above case has established the general principle that a duty of care is owed by medical practitioners towards the patients. This means that where elements of duty of care, namely foreseeability and proximity do not exist, there is no duty of care imposed on the medical practitioners. The Federal Court case of *Lok Kok Beng & 49 Ors v Loh Chiak Eong & Anor* established the threshold test in determining the existence of duty of care, which is whether damage to someone in the plaintiff’s position was a reasonably foreseeable consequence of the defendant’s negligence. In this case, the appellants (purchasers) filed an action of negligence against the respondents (architecture firm) for the delay in delivering their industrial units developed by the defendants. The Court, in its judgement, mentioned that a man ought to have foreseen certain consequences if he created a real risk for them. Applying the standards of the reasonable man, the Court was of the view that the respondents (architecture firm) could not have foreseen any liability for consequential financial loss to the appellants (purchasers) arising from their action in submitting the original layout plan and amending the same leading to the undue delay in completing the building. If we apply this to the context of medical practitioners and patients, a doctor as a reasonable man will know that any damage to his patient caused due to his negligent treatment is a reasonably foreseeable consequence of his negligent act.

The case of *Lok Kok Beng & 49 Ors v Loh Chiak Eong & Anor* also provides that reasonable foreseeability does not in itself lead to duty of care, but there should also be a close and direct relationship of proximity. The most famous case on proximity is the case of *Bourhill v Young*, where the Court held that the deceased defendant was not negligent towards the pregnant woman who suffered nervous shock after seeing the aftermath of the accident caused by the defendant, but not the actual accident. This was because the woman was not in proximity to the defendant so he could not reasonably foresee that his action of riding the motor cycle negligently would affect her. Unlike this case, there is

proximity between a doctor and his patient in the form of proximity in relationship due to the fiduciary duty that a doctor has towards his patient.

However, if we are to consider a situation existing between a doctor and a person in need of medical attention, even though it is evident to the doctor that the person needs medical care, he may not be familiar with the type of injury suffered by the person due to insufficient knowledge about the history or information about the person. In that case, it may not be reasonably foreseeable for the doctor present that the worsening of the condition of the person was a consequence of him not attending to the person. Since there is no pre-existing relationship between the doctor and the person, it can be said that the doctor has no fiduciary duty towards the person.

This has led to many medical practitioners not assisting those in need of help just because they are not his patients. The reason for this is the possibility of being liable to negligence for causing more harm to the patient in the course of treatment (Jaeck et al., n.d).

On the other hand, proximity does not always exist in the form of proximity in relationship, but it can also be physical proximity in the sense of space and time and also casual proximity in the sense of closeness or directness between the act and the injury sustained. In this respect, even though the relationship of doctor and patient has not been established yet, there is physical proximity between the doctor and the person in need of medical care as well as casual proximity where the doctor shall be aware that he not attending to the person at all will worsen his condition. This can be an argument for the notion that there is a duty of care on the doctor towards the one in need of medical care. Some jurisdictions have tried to solve this problem by enacting Good Samaritan laws.

Good Samaritan Laws

According to Lee (2015), Good Samaritan laws are designed to encourage people who witness an emergency situation to help those in need, by protecting those who respond, from legal consequences if there is a negative outcome despite the responder's best efforts. Good Samaritan laws were introduced under the parable related in the New Testament, Gospel of Luke 10: 25-37 which is a universal moral

concept, supporting and encouraging people to assist and rescue ones in need. These laws reduce the doctor's hesitation to treat for fear of being sued or prosecuted for negligence.

Good Samaritan laws may be of two types. Firstly, there are laws that protect ones who provide help voluntarily and in good faith to emergency victims (Lee, 2015). These types of laws are mainly practised in the United States where all 50 states and the District of Columbia have some types of Good Samaritan laws. This can be seen in Section 74.001 (a) of Texas Good Samaritan Act, where a person who in good faith administers emergency care at the scene of an emergency or in a hospital is not liable in civil damages for an act performed during the emergency unless the act is willfully or wantonly negligent.

Secondly, there are laws which impose a duty on those witnessing an emergency situation to assist the victim where they are competent or able to do so (Lee, 2015). These types of laws are most prominent in Europe and Australia. For instance, Section 323 of the German Criminal Code imposes penalty on those who fail to provide help in cases of disaster although their help is necessary and does not cause danger to others. Bird (2008) also highlights that in Australia, the states of New South Wales and the Australian Capital Territory impose a legislative duty on medical practitioners to provide assistance on request.

Nevertheless, in England under the common law, there is no legislation which attempts to incorporate the moral duty which motivates the Good Samaritan into a legal duty upon medical practitioners to assist those in medical emergencies. This means that medical practitioners are not legally bound to assist those in need of medical attention if they are not his patients. Unfortunately, this rule is also applied in Malaysia since pursuant to Section 3 of the Civil Law Act 1956 the common law of England comes into force in the absence of any written law on a matter.

However, Malaysia is a country which is different in its culture and tradition from that of England. Farid Suffian (2009) in writing on the issue of whether English common law should continue to dominate the development of Malaysian common law opined that the "inapt position of the English law in a land rich in her culture and heritage, and the impracticability of keeping up with her mercantile law of a foreign land, suggests a need to wean off the law of mother England" (p. 158). This

raises the question of why a country, with close-knit communities like Malaysia who help each other in their daily lives, does not impose a legal duty on the privileged medical practitioners who can help those in need of medical attention.

This paper believes that Malaysia should impose a legal duty on medical practitioners to be Good Samaritans since not assisting a stranger in need of medical attention transgresses the Islamic principle of helping ones neighbours and the needy, contravenes the Hippocratic Oath and infringes the conscience of a morally upright individual.

Islamic Principle of Helping Neighbours and the Needy

The concept of *hablun minan nas* which is the relationship between human beings in Islam urges mankind to be kind and considerate in their treatment towards their neighbours irrespective of race, colour, wealth or religion. Acting wrongly towards our neighbour is forbidden and will decrease our Iman, where our level of Iman is measured by good deeds that we do. These deeds also bridge the gap between us and Allah (s.w.t.). These principles of helping neighbours take into account the needs and feelings of the society as a whole. Moreover, for a multicultural country like Malaysia, these principles are deemed essential in preserving the harmony and peace of the country. The importance of neighbourhood principle is mentioned in the Qur'an 4:36:

Worship Allah and associate nothing with Him, and to parents do good, and to relatives, orphans, the needy, the near neighbour, the neighbour farther away, the companion at your side, the traveller, and those whom your right hands possess. Indeed, Allah does not like those who are self-deluding and boastful.

This verse makes it clear that helping neighbours and those in need is an obligation upon the Muslim Ummah. It explains the importance Islam gives to helping neighbours and people in need. This is because the concept of helping others is mentioned immediately after worshipping Allah and not associating anything with Him.

Similar concept is further accentuated in a hadith narrated by Abu Hurairah (r.a.) where the Prophet (s.a.w.) mentions:

Whosoever removes a worldly grief from a believer, Allah will remove from him one of the griefs of the Day of

Judgment. Whosoever alleviates [the lot of] a needy person, Allah will alleviate [his lot] in this world and the next. Whosoever shields a Muslim, Allah will shield him in this world and the next.

The hadith above highlights the fact that Allah looks highly upon those who remove worldly grief or alleviate pain of a needy person that they will be rewarded handsomely in this world and in the hereafter. This corresponds with the maxim that harm shall not be inflicted nor reciprocated. It implies prohibition of all public and private harms, where harm must be forestalled before its occurrence and removed if it has occurred.

In the medical field, medical practitioners are people possessing special skills, training and knowledge where they can provide the necessary aids to anyone in need of medical attention in ways that a normal person cannot. This means that a person who needs treatment from a doctor falls under the ambit of “neighbour” or needy in the ayah and hadith above, irrespective of whether he is the doctor’s legal patient or not.

Moreover, Islam regards life as a gift from Allah (s.w.t.) to mankind. The priority given to life can be seen from the perspective of the Maqasid-al-Shariah since after the protection and safeguarding of the Islamic religion, Muslims should give utmost importance to the protection of their lives and those around them. Those in the medical profession are regarded with esteem in Islam since their main occupation is the protection of life. This is clearly mentioned in the Quran 5: 32 that, “And whoever saves one - it is as if he had saved mankind entirely.”

In Islam, in addition to taking care not to harm the patients, medical practitioners should also protect them from any harm that befalls them. This can be seen in a Sahih Bukhari hadith narrated by Saad bin Malik Al-Khudari where the Prophet SAW states that, “There should be neither harming nor reciprocating harm.”

All the arguments above clearly show that Islam gives such high regard to life and it does not tolerate harm. This basic tenet of Islam blends beautifully with the premise put forth by the Good Samaritan law that encourages people to assist and rescue those in need. Thus, indirectly this indicates that there is an Islamic obligation on Muslim medical practitioners to be Good Samaritans.

Irrespective of whether a person is an admitted patient or not, medical practitioners should offer their help whenever the person requires medical attention and treatment. By applying the principle of *hablun minan nas*, failure by doctors to provide care to those in need of such assistance, results in failure to protect the rights between the humans. There will be certain consequences of not caring for these rights, such as jeopardising the good relationship between one another and having a negative impact on societal life. Furthermore, in the eyes of Islam, when medical practitioners fail to provide their professional services in times of need, they shall be made accountable for such acts. This is because in practicing medicine, Muslim medical practitioners are bound by their professional ethics and the Islamic directives issuing from their belief. Therefore, in order to abide by the Islamic principles of helping the neighbours and the needy, being Good Samaritan doctors by assisting those in need of medical attention must be made a legal obligation upon those in the medical profession in Malaysia.

Hippocratic Oath

The Hippocratic Oath is one of the most momentous and long lasting codes of ethics which has formed the basis of the medical occupation. It provides medical practitioners with a framework of the moral code of conduct to maintain harmony between medical practitioners and patients. One of the principles mentioned in the Hippocratic Oath is that medical practitioners will apply “dietic” measures for the benefit of the sick according to the best of their ability and judgment and they will keep the sick from harm and injustice. It also goes on to promise that whatever houses they may visit, they will always come for the benefit of the sick and that they will fulfil the oath and not violate it. This principle of applying measures for the benefit of the sick is about the duty of the medical practitioners.

Hippocratic Oath has lasted, with over-riding power, the test of time since it addresses the inherent nature of medicine. Rosenhek (2009) and Tung & Organ (2000) as cited in Qidwai (2004) explain that Hippocratic Oath is sworn in graduations of medical students in majority of universities. However, those who do not support the relevance of Hippocratic Oath in the modern era argue on the basis that not all medical schools use it in their graduation ceremonies. This is not relevant since the Hippocratic Oath contains principles such as gratitude, compassion,

integrity, confidentiality which apply to modern dilemmas in medicine and uncertainties about its relevance is due to lack of understanding of its content. According to Rosenhek (2009) and Qidwai (2004), while some aspects of the oath have been a subject of dispute, many agree that the gist is undeniably fundamental, and even those who reject parts of it accept that it is an important representation of medical ethics. This is why the moral message of the Hippocratic Oath, which states that each physician must hold himself to the highest possible standard of conduct, has exhibited remarkable resilience throughout the ages.

Duties under the Hippocratic Oath have always been referred to as the responsibilities of the medical practitioners towards the sick and how they must take all measures they are capable of for the benefit of the sick and that they will come for the benefit of the sick. In no place does it mention that the duty of the doctor is towards his patients and the patients alone.

However, despite this position under the Hippocratic Oath, courts have in many cases decided that a doctor does not owe a legal duty to anyone not admitted as a patient. This is clearly depicted in the case of *Capital and Counties plc v Hampshire CC*, where the Court decided that if a road accident occurs in a place that a doctor was present, it is highly probable that the doctor will render medical help but he is not legally bound to do so and it does not formulate a doctor patient relationship between them. Moreover, in the case of *Bishara v Sheffield Teaching Hospital NHS Trust*, where Bishara while in a meeting with a doctor had a migraine attack and asked the doctor to call for an ambulance but he left her in a state of collapse on the staircase, the Court held that there was no duty of care by the doctor to Bishara.

In the above cases, the Court decided that no duty of care was owed because the victim of the road accident and Bishara were not patients of the medical practitioners at the scene of events and did not consider that they fall under the “sick” category in the Hippocratic Oath.

These are common law cases and as stated before, Malaysia unfortunately follows this position. Although there have not been any such cases in Malaysia until today, this means that there is still a window for Malaysia to amend the law in a way that conforms to the Hippocratic Oath.

The significance of the Hippocratic Oath stems from the fact that it shapes the social contract between medicine and society. Thus, one of the important reasons to amend the Malaysian law in ensuring that medical practitioners are legally bound to assist strangers when the needs arise is so that it would conform to the values entrenched in the Hippocratic Oath. This noble aim can be achieved by enforcing the Good Samaritan laws on medical practitioners. In fact, the imposition of the Good Samaritan laws are highly feasible because it does not contradict the essence in the Hippocratic Oath as both entities are built on a similar thrust which is to assist those who are in need.

Conscience of a morally upright individual

For medical practitioners who have not taken the Hippocratic Oath, the main reason for them to aid a stranger who needs medical help is because their conscience or morality does not allow them to do otherwise. This is because whether or not a person is a Muslim, or the doctor is bound by the Hippocratic Oath, every action of a person is driven by his morality or ethical values embedded in him. These moral values are always bestowed upon humans from a superior authority or being.

From a theological perspective, all religions give utmost importance to promote good conduct and virtuous beliefs. For instance, Hinduism lays great emphasis on ethical discipline where Lord Krishna says in the *Bhagavad Gita*, “Scriptures alone are your guide as to what should be done and what should not be done. Therefore, Arjuna you should perform all the actions as prescribed by scriptures” (Ch. XVI-24). This means that all Hindus are obliged to do what is right as determined by their scriptures. Lord Krishna in the *Bhagavad Gita* also provides, “In the beginning the creator created human beings together with selfless service (Seva, Yajna, sacrifice) and said: By serving each other you shall prosper and the sacrificial service shall fulfill all your desires.” This means that Hindus have a duty to help each other in good faith and that they will be rewarded for it.

Moreover, philosophical and ethical system of Confucianism which is sometimes described as a religion also provides moral principles that their followers must conform to. Shea (2009) highlights that Confucius once said, “Be respectful to parents, be conscientious in official affairs. Be loyal and honest to friends. These three moral principles can never be defied anywhere” (p.241). The principle of being conscientious in

official affairs can be applied to mean practicing the highest level of professionalism in performing ones duties.

From the above examples, it can be deduced that for one to be successful in their religion, he or she must adhere to the ethical values that are advocated by that religion. Therefore, irrespective of the religion or beliefs, all persons must abide by the moral code since morality is a universal concept. On this note, the responsibility “to do good” is greatly demanded upon medical practitioners as highlighted by Puteri (2014), since medical practitioners belong to an honourable profession which attaches a certain aura of unselfishness and intrinsic value onto them. This means that there is an expectation of the society that a doctor will attend to a person in need of dire attention though he or she is not legally obliged to do so. Apart from the expectations of the society, as reasonable human beings, medical practitioners too would feel emotionally perturbed if they leave a person who needs their medical help suffering by himself or herself. As people who have been blessed with specialised skills, it would not be morally and commonsensically right should medical practitioners only make use of those skills for people who are capable to pay them for their services. Utilising those skills unconditionally and altruistically to help people who really need them would make them better individuals and enhance their professional stature.

Since medical practitioners confront ethical dilemmas on a consistent basis, it is crucial that institutional approaches to ethics are implemented. The laws which aim to regulate the behaviour and the standard of care must also take into account the moral duty afforded by the medical practitioners to their patients. Even though the duty to assist strangers is a moral duty by itself, it should be made a legal duty because as mentioned by Mooney (1983), law is a minimum and necessary standard. This means that if this moral duty is codified as a legal duty, it is only the minimum that a doctor is obliged to do in such a situation and the moral duty would carry more weightage than the legal duty. Hence, aiding a stranger who needs medical treatment should be a legal duty for a doctor as his conscience and the law itself would not allow him to do otherwise. This moral duty of medical practitioners to provide their assistance unconditionally and altruistically should be instituted via the imposition of the Good Samaritan laws.

Conclusion

Rendering medical services to someone in need is a kind of duty that any doctor should not ignore. A Muslim doctor has an obligation to treat anyone who needs medical attention, since this falls under the Islamic principle of helping neighbours and the needy. Apart from this, all medical practitioners who have taken the Hippocratic Oath must abide by its provisions which state that medical practitioners must treat any sick person. It does not differentiate between sick people who are admitted as patients and those who are not. Furthermore, irrespective of the religion the doctor embraces or the oath he takes, all medical practitioners have a duty to provide medical treatment to anyone who is in need since acting otherwise would not conform to the moral values that a human being must follow.

Since it is clear that such a moral duty does exist, amendments to the Malaysian legislation should take place in order to ensure that all medical practitioners in Malaysia fulfil their obligations. The amendments must include a codification of the moral duty to a legal duty by enacting the Good Samaritan laws, where non-compliance will subject medical practitioners to some kind of retribution. In this way, it can be assured that the society is being provided with the best standard of care where no one is deprived of this basic need. More importantly, it is believed that the imposition of the Good Samaritan laws will enhance the professionalism of the medical profession since neglecting patients who are in need of medical attention transgresses the Islamic principle of helping ones neighbours and the needy, contravenes the Hippocratic Oath and infringes the conscience of a morally upright individual.

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