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The Social Sciences 12 (11): 1956-1962, 2017 ISSN: 1818-5800 © Medwell Joumals, 2017 / Patient's Consent to Medical Treatment: An Overview of The Rights of Patients with regard to Advance Medical Directive (AMD) in Malaysia IMohd Zamre Mohcl Zahir, I Tengku Noor Azira Tengku ZainudIn, Ramalinggam Raj amanickam, 2Husyairi Harunarashid and 3Muhammad Hatta Faculty of Law, National University of Malaysia, 43600 Bangi, Selangor, Malaysia 2Tuanku Muhriz Medical Centre, Universiti Kebangsaan Malaysia (LIKM), 43600 Bangi, Malaysia Faculty of Law, Universitas Malikussaleh, Acheh, Indonesia / Abstract: Study on the rights of patients more often than not focuses on the rights as expressed in the Patient' s Chaffer of Malaysian Medical Association (MMA).

Each individual has the right to choose what he needs or does not have any desire to be done to his body. In this situation, the component of consent is an essential variable that must exists before a doctor is permitted to treat his patient. Advance Medical Directive (AMD) is a palticular archive contaming able patient's desires about his future medical alTangements in the event that he became Incompetent or Incapacitated to make decision regarding his body.

Awareness of patient's autonomy, especially in connection on his right to decline or withdraw treatment or choosing a specific treatment is the primary explanation behind creating and legalizmg AMD. For instance, in England there is a particular law relating to advance directive. This can be found under Sections 24, 25 and 26 of the Mental Capacity Act 2005.

In Malaysia, the practice of AMD is still moderately new and because of that the lawful position relating to the AMD is still unclear. This study aims to determine whether in Malaysia an adult patient can make his AM]) ill view of legal basis relating to it. The

method utilized as a part of this study is qualitative.

Thus, this study will give an overview with respect to the rights of patients in Malaysia relating to AMD. Key words: Advance Medical Directive (AMD), autonomy, consent, medical treatment, rights of patients /

IMRODUCTION Each individual in Malaysia has the right to feel and appreciate the development of the law.

According to Malaysian Federal Constitution they additionally have the right to life and remain healthy besides being able to choose what he wants to do and does not want relating to his health care and treatment (Study 5 1) of Malaysian Federal Constitution). Advance Medical Directive or AlvD and also known as Advance Care Directive and Advance Directive is one of the case to demonstrate that each individual in Malaysia including patients has the right to choose what he needs or lean towards identifymg with his health care and treatment.

AND as far as dialect alludes to "initial medical orders" or "advance directive' In terms of terminology, it refers to self-selection by a patient before he became futile or when the patient has no hope for survival and there's a need for an establishment of a power of attomey for someone who will have the power to decide for him when he became Incompetent to make decision due to his severe illness (Siamak and Nabili, 2015).

AMD is an oral (verbal) or written instruction about a patient's future medical treatment and health care in the event he becomes unable to commumcate or Incompetent (Htut et al., 2007). AMD is a document which contained directives by a patient indicating the sorts of treatment that he will permit to be administered to him and those that are not permitted when he had became Incapacitated (Zainudin et al., 2015).

AMT) empower patients to have a voice or a say circumstances when they no longer have control over what is being clone to them. Thus, it can be said that an advance directive gives a patient the power and right to choose and decide what he wants to be done to him treatment wise before he loses the mental capacity to do so In short, he is actually exerclsmg his autonomous right as an Individual before he eventually became Incapacitated / Corresponding Author: Mohd Zamre Mohd Zahir, Faculty of Law, National UniversiW of Malaysia, 43600 Bangi, Selangor, Malaysia _ _A patient who demands to make an advance directive must be legally competent.

An adult patient has the irrefutably right to refuse to give consent to medical treatment regardless of whether the decision is rational or not (Re (Adult) (1992) 4 All ER 649). In this way, any directive specified by a patient while he has capacity to refuse to give consent is legally binding and effective in the subsequent circumstances when he lost that capacity (Kennedy and Grubb, 1998). Nonetheless, in Malaysia the development of law with respect to AMD is still moderate.

Even though study 17 and 18 of Consent for Treatment of Patients by Registered

Medical Practitioners of Malaysian Medical Council (MI'IC) provides a general guideline that mentions about AMD but it is still very vague. Pursuant to this, this study will provide an overview of the rights of patients in Malaysia with regard to AMD and also the laws relating to it.

ADVANCE DIRECTIVE: THE ENGLISH LAW AND COMMON LAW POSITION In common law case, Re (Adult), T, a 20 years old pregnant lady who was Injured in a car accident and developed complications that required a transfusion of blood to her body. In the beginning, the patient agreed to the blood transfusion, conversely, after spending some time with her mother who was a practising Jehovah's Witness, she decided to decline the treatment.

The court of appeal believed that T had been influenced by her mother and that her ability to decide about the transfusions was further impaired by the drugs that she was being treated. The court allowed the blood transfusions to proceed. The court held that a patient's consent to a particular treatment will not be valid if it is given under pressure or duress exerted by another person even by a mother.

According to Re (Adult), it is clear that a competent person can refuse treatment even if without the treatment he possibly dies. However, the decision must not due to pressure by someone else. To force such treatment on someone could tantamount to a battery or a tort as per Jonathan HelTing (Jonathatu 2008).

A competent patient has an absolute right to refuse treatment. This appears to be the position taken by the law. In St George's Health Care Trust v S 3 All ER 673, the woman was entitled to refuse treatment even though without it, she and her unborn child would die. Although, the law respects the right to a patient to refuse treatment, it is noteworthy in Re B EAWC 429 how carefully the court considered the issue of competency.

In additional common law case, Re C (Adult, refusal of treatment) I All ER 819, previously C was detained in Broadmoor secure hospital and had a problem of paranoid schizophrenia. Schizophrenia is a serious disorder which affects how an individual between what is real and what is Imagmary, may be unresponsive or withdrawn and may have difficulty expressmg normal emotions in social situations (MHA, 2016).

C however developed gangrene in his leg but refused to agree to an amputation which doctors considered was necessary to save his life. The Court upheld C's decision. In this case, the fact that a person has a mental illness does not automatically mean they lack capacity to make a decision about medical treatment Patient who has capacity (that is

who can understand, believe, retam and weigh the necessa1Y information) can make their own decisions to refuse treatment even if those decisions appear ilTational to the doctor or may place the patient's health or his life at risk (Norchaya, 2002/ The court's decision in Re T (Adult) must be given effect on grounds of patient autonomy. Patient has the right to make his own decision and the decision must be made voluntarily and not because of a third party influence.

\'Thile based on Re C (Adult, refusal of treatment), the advance directive is valid and enforceable as long as the directive does not instruct the comrmsslon of an illegal act or what is deemed as being medically Inappropriate (Norchaya,/ Norchaya Talib mentioned that the House of Lords Select Committee on Medical Ethics (report of the select committee on medical ethics) in England endorsed the use of an advance directive as a way of enabling patient to express advance their individual preferences and priorities for medical treatment in the event that they should subsequently became Incompetent (Norchaya, 2002).

The legal validity of an advance directive rests on the premise that it is a general principle of law and medical practice that all adults have the right to consent to or refuse medical treatment. The ANIL) is a resource for patient to exercise that right by anticipatmg a time when they may lose capacity to make or communicate a decision.

The common law has long smce recognised an individual's right to self-determination over his own body. This right is said to express the prmciple of autonomy. Central to this right is the doctrine of consent and the reason why any unauthorized touching of another, strictly speaking constitutes an assault and battery as per 3 All ER 374 and Re T (Adult). Kennedy opined that the one of the basic elements of the common law is respect to the right of individual freedom.

Medico-legal wise, this means that the law protects the right of patients to make their own decision m matters affecting their bodies (Kennedy and Grubb, 1998). Currently in England, AMD has been formally legalised and codified Sections 24, 25 and 26 of Mental Capacity Act, 2005. Hence, pursuant to that Act, under the English law where a person has made an effective advance dlrectlve stating that he does not consent to treatment, it would then be unlawful for a doctor to give that treatment as stated under Section 24 of Mental Capacity Act 2005.

This is so even if without the medical treatment, the patient will die. Section 25 of Mental Capacity Act 2005 is a provision on the validity and applicability of an advance directive. An advance directive will no longer be valid if the patient has withdrawn the decision at a time when he had capacity to do so.

It is also not valid if the patient had, under a lasting power of attorney created after the advance directive was made, conferTecl authority on the clonee or if more than one, any of the clonees to give or refuse consent to the treatment to which the advance directive relates. It is also not valid if the patient has clone anything else which is clearly inconsistent with the advance directive previously made.

Meanwhile, Section 26 of Mental Capacity Act, 2005 is a provision on the effect of an advance directive. If the patient has made an advance directive that is valid and applicable to a treatment, the decision has effect as if he had made it and had capacity to make it at the time when the question arises whether the treatment should be calTied out or continued.

Should a dispute arises pertaming to the directive, then the court may make a declaration as to whether the AMD exists, valid and applicable to a treatment. While there appears to be a growmg desire for person to be able to control the manner and time of their passing, there is also a growmg wish for death to be "natural". There is much fear of over-medicalised death and some would agree with F. Nietzsche that: "In a certain state it is indecent to go on living.

To vegetate on m cowardly dependence on physicians and medicaments after the meaning of life, the right to life has been lost ought to entail the profound contempt of society"/ ADVANCE MEDICAL DIRECTIVE (AMD) (THE ALALAYSLXN POSITION) As for the circumstances in Malaysia, research shows that at this moment, there is no a specific guideline or law in relation to AMD Shaikh Mohd Saiffuddeen in his study entitled "Islamic Bioethics on the Issue of Advance Medical Directive (AMD)" said that there is no specific guideline issued by the Ministry of Health (MoH) of Malaysia for implementing AMD.

This issue is a problem that will leave patients with no clear direction should they desire to have an AMD. This scenario might be due to the fact that in Malaysia, the use of AMD is a novel concept (Jahn and Alias, 2015). This factor could be attributable to the lack of exposure on the subject matter of AMD in Malaysia (Jahn and Alias, 2015).

Htut, Shahnll and Poi have conducted a qualitative descriptive study on advance directive and advance care planning in 2004 and selected fifteen elderly subjects with ages ranging from 65-83 years representing different ethnics and religious groups m Malaysia (Htut et al., 2007). The research found that not even one of the respondents had heard of advance directive and advance care planning (Htut et cm, 2007 • Jahn and Alias, 2015).

Although, the majority of the subjects agreed on the significance of planning for future medical management and havmg open discussion on end of life issues, however they felt it unnecessary to make a formal written advance directive. Most of them felt that the future is best left to fate or the Almighty Power. Noor Naemah Abdul Rahman also stated in her conference study that every patient has the right to make his AMD so as to save his life and not to disturb other person's life Norchaya Talib in her book fulther explains the concept that the practice of AMD is still unfamiliar and rarely used in Malaysia (Norchaya, 2002).

There is no local case law or statutory provlslon relating to AMD. That being the ct11Tent situation in Malaysia, a report entitled "Death with Dignity" in the Star news study dated 8th December 2014 had called for a rev lew regardmg the issue of ANIL). She stated that for patients who has reached the terminal phase and is dying, it should be lawful under the law if they wish to die with dignity.

Therefore, a patient is allowed to provide guidance to the doctor to exercise his right as contained in the AMI) made by the patient himself. Mageswari also reported on the concept of ANIL), terminal illness and the four advantages of AIVID. The four advantages are: AMD is a desire of a patient and should be respected by family members • AMD practices can avoid conflict in the family when making tough decisions; to protect the medical practitioners from legal action and to assist patients who wish to donate their organs to other patients.

At this l_ntewal, it is important to note that being a commonwealth country; Malaysia applies the common law when there is a gap in its law. This means that as a commonwealth country, the English common law IS applicable where there are no written laws or statutes in that particular area, taking into consideration the culture and norms of the country.

Section 3 and 5 of Civil Law Act shows that Malaysia may apply the common law of England and the rules of equity as administered in England (Sections 3 and 5 of Civil Law Act 1956 (Act 67). Therefore, the Malaysian courts can always adopt the stand taken by the English courts on the issue of AMD should it be brought to the coult.

The Malaysian courts could adopt the English precedents such as the principle decided in the cases of Re T (Adult) and Re C (Adult, refusal of treatment) which had rendered the notion of AMD and anticipatory refusals enforceable respectively, at common law. Hence forth, followmg the prmciple in common law, the law that a mentally competent patient has the right to refuse treatment is applicable in Malaysia.

In addition to that, a person inclusive of whether he is a patient or not has the liberty to life according to Study 5 of the Malaysian Federal Constitution and to remain healthy by choosing what he wants to do relating to his health care and medical treatment. According to Lee Ewe Poh v Dr. Lim Teik Man and anor 1 Ins 1162, the High Court of Penang held that the patient is protected by the rights inclusively the doctor cannot take patient's picture without his consent (Salleh, 2014). The right is stated in Study 5 (1) under the right of life also explained the person's autonomy.

If to take a patient's picture also needs consent from him, it is even more so when it involves his life. This shows that the life of a patient is greater than his picture and doctors need to ask for the penmssion from that patient. This scenano IS /the same where a doctor plans a medical procedure for his patient relating to his medical treatment and care, the doctor must obtain the patient's permission. If that patient refuses to give consent then the doctor must abide by that refusal.

The principle would be the same where the refusal is communicated by way of an AMD. A doctor has a great responsibility towards his patient. In England, according to ethical guidelines from the General Medical Council's Good Medical Practice dated May 2001, a doctor should be responsible for maintaming "a good standard of practice and care and to show respect for human life" (Malcolm et al., 2002).

Pursuant to Study 17 of the Consent for Treatment of Patients by Registered Medical Practitioners remarks the Refusal to Give Consent for Treatment. In general, every person is entitled to refuse medical treatment A legally competent person has a right to choose what arises with respect to his or her own person. For such persons, the right to refuse medical treatment exists, regardless of the reasons for making the choice whether they are rational, iTTational, unknown or even non-existent. Forcing treatment on a competent patient who has validly refused such treatment could be tantamount to an assault or battery.

However, if the patient's circumstances change significantly, any prior refusal of medical treatment may not remain valid and may need to be reviewed with the patient. Parallel to consent to medical treatment, refusal of treatment may be expressed or implied and may be in writing or given verbally. The refusal of treatment by a patient should also be recorded in detail and in writing in the medical record or the medical practitioner's case notes and where possible, signed and Uted by the patient.

In instances where patients refuse some life-savmg procedures (such as blood transfusion) on religious beliefs or native custom and where the possibility of such

emergency life-savmg procedures becommg necessary are high in the course of treatment, the practitioner may seek a court's decision to protect himself from future action (Study 17 of the Consent for Treatment of Patients by Registered Medical Practitioners, Malaysian Medical Council (N'fr'IC) Guideline).

Pursuant to Study 18 of the Consent for Treatment of Patients by Registered Medical Practitioners states the Advance Care Directives (or Living Wills). A medical practitioner should refrain from providing treatment or performmg any procedure where there is an unequivocal written directive by the patient that such treatment or procedure is not to be provided in the circumstances whichnow apply to the patient (Advance Care Directive).

However, this does not apply where the patient's directive contams msfructions for illegal activities such as euthanasia or the termination of pregnancy. Should there be an Advance Care Directive; the medical practitioner should consider whether it is sufficiently clear and specific to apply to the clinical circumstances which have arisen.

The medical practitioner should also consider the currency of the directive, whether it can be said to be made in contemplation of the ct11Tent circumstances (for example, whether the directive was made before or after the diagnosis of the culTent illness). Whether there IS any reason to doubt the patient's competence at the time that the directive was made or whether there was any undue pressure on the patient to make the directive, are factors that should be considered.

In an emergency, the medical practitioner can treat the patient in accordance with his or her professional judgment of the patient's best interests, until legal advice can be obtained on the validity or ambit of any Advance Care Directive that may have been given by the patient. Where there are concerns about the validiw or ambit of an Advance Care Directive m a non-emergency situation, the medical practitioner should consult the patient's spouse or next of kin and the medical practitioner should also consider the need to seek legal advice and to discuss the issue with his or her colleagues or other clinicians involved the patient's care.

Such discussions should be documented in the patient's medical case notes (Study 18 of the Consent for Treatment of Patients by Registered Medical Practitioners, Malaysian Medical Council (MMC) Guideline). The Malaysian Medical Council (XTMC) on the same message had issued a general guideline about AMI) entit led "Consent for Treatment of Patients by Registered Medical Practitioners" pursuant to Study 17 and 18.

Study 18 describes among other things, "a medical practitioner should refrain from

providing treatment or performing any procedure where there is an unequivocal written directive by the patient that such treatment or procedure is not to be provided in the situations which now apply to the patient". Even though there are some private hospitals that provide a general guideline on AMD on its website it can be seen that there is no specific guideline and standard regarding AMD used in the local govemment hospitals in Malaysia. Malcolm et al.

(2002) mentioned that doctors must put the interests of patients and respect the rights of their patients first so that they are fully involved in decision-making regarding their health care. In Malaysia, the rights of patients and the duties of doctors have yet to be explicitly preserved in any law. A patient's charter which listed down the patient's rights and responsibilities has no legal bearing but had nevertheless been voluntarily adopted by the Malaysian Medical Association (MMA), the Medical Dental Association (IVDA) and the Malaysian Pharmaceutical Society (MPS) which emphasizes that every patient has the rights which have been listed. In fact, The Malaysian Medical Association (MMA) had listed down the eight rights of patients that must be protected.

Among the eight rights, three of them are applicable to AMD. The three relevant rights are as follows. The right to health care and humane treatment: The right to health care and humane treatment applies to everyone who has access to his health care and medical treatment Irrespective of age, gender, religion, race, economic aspect, political perspective or social class.

The health care services must provide clinical need regardless the duty to pay is under govemment. Each patient must be dealt similarly without discriminate of any kind. All drugs dispensed shall follow the standard of quality and monitored by Drug Control Authority of Malaysia.

Every patient shall have the right to rapid emergency first aid treatment from the nearest govemment or private hospital and clinic. Patient shall be interviewed and observed as to design his confidentiality and privacy. Once a child is admitted to hospital, he has the right to be accompanied by a parents and guardian according to Malaysian Medical Association (NINA, 2016).

In addition his rights for confidentiality and privacy must be protected by the hospital. The right to choice of care: A patient has the right to a subsequent opinion at any time and at any stage. Patient ought to likewise have the right to give permission in writing to any other health professional so as to obtain a copy of the same medical report.

A patient should at each time possible have the right to be treated in a hospital of his

choice and should be refe1Tecl to a consultant of his choice. A patient who has received sufficient information about his cun•ent state during the consultation shall have the right to accept or refuse treatment. If the patient's health professionals refuses to allow another health professional to be called in and/or breaches any other of provisions of this charter, the patient has the right to discharge that health professional and seek other health professional services according to Malaysian Medical Association (MMA/ A patient must be given the opportunity to choose whichever option that will provide the best treatment to him. No one can deny this right since the patient has the autonomy to choose.

The right to adequate information and consent: A patient should have the right to be acquainted with the identity and professional status of individuals providing services to him and to know which health professional is primarily responsible and accountable to his care and medical treatment. All medicines should be properly labelled and should include Intemational Non-Proprieta1Y Name (INX) of the medicines, dosage and frequency of medication to be taken.

In addition, patient should be informed of the remedies including the pulpose of her medication, possible side effects, avoid any foocL drinks alcohol or other medicines, the time required for any medication prescribed and measures what to do if a dose is forgotten or if the overdose. A patient has the right to recewe a detailed statement after such treatment or consultation and to have this clarified.

A patient in any hospital or health care facility has to consult with the health ser,ïlce provider such as hospital if he wants to transfer to other facilities. In situation if it is appropriate for the patient's condition or treatment, the patient shall be given advice on self-care, medicine's administration, special precautions, may be necessary or desirable and there is a special union, the facilities, equipment or appliance that might help according to Malaysian Medical Association (NMA, 2016). Indeed, a patient's consent is required before any procedure and in the case of a child prior pemussion shall be obtained from his parent or guardian.

If the patient is unconscious and delays would be dangerous, the doctor has the right to cany out any treatment or surgery if it is needed. It is very vital for a patient to have adequate information before he makes a decision to proceed with treatment or not. The information that he has will affect his decision.

A patient shall have the right to obtain information about every factor of medications and drug /such as the right to acquire adequate information and understand the prescribed and purchased medicines. Moreover, a patient's consent is required for the

insertion of patient in any research. In every perspective, a patient must be adequately updated of the objectives, procedures, anticipated benefits and any potential risk and perils of the study and the worry that may be involved.

Applying the rights of the patient as abovementioned, first, patients have the right to health care and they must be treated equally without discrimination of any kind. Second, the right to choice of care is also related to AMD since every patient has the right to choose whatever treatment to be done to his body. Nobody can prejudice this right. The patient has the right to know about any medical treatment and the results of the medical treatment relating to him.

Third, the right to adequate information and consent is also related to AMT). A patient's consent is required before any procedure of treatment is to be conducted. In the case of a child, the consent from his parent or guardian is needed. Thus, all the rights of the patient should be protected and secured. No one can harm these rights. In the meantime, a patient has twelve responsibilities as listed by the Malaysian Medical Association (MMA).

The most relevant responsibility of a patient in connection to AMD is that a patient must be sure that he knows and understands what his rights are and shall exercise those rights responsibly and reasonably. According to the Patient's Charter of Malaysian Medical Association (MMA), the patient's rights and responsibilities should be preserved.

The Malaysian Ministry of Health (MoH) must monitor all hospitals to comply with the Patient's Charter. The patient shall ensure that he knows and understands what a patient's rights are as stipulated above and exercise those rights responsibly and reasonably. A patient can lodge a complaint to the hospital if he is being denied of his rights.

It is crucial to certify that patients are not being victimized and discriminated by anybody or anything. Their rights must be balanced with the law to ensure that justice will be upheld. To ensure that the rights of patients are managed sufficiently, the need for AMD in this country must be addressed and be properly organized.

AMD is one way to protect the patient's right according to the MMA's Patient's Charter on Patient's Rights under the right to health care and humane treatment, right to choice of care and right to adequate information and consent. Those three rights and one responsibility stated above are the basic items that should be protected but it is also important to remember that they are merely ethical guidelines and therefore have no

legal tooth. Nevertheless It can be concluded that in Malaysia, patients do have the right to make a written or oral AMD.

However, as it can be seen that there IS culTently no specific written law on the practice and regulation of AMD should the issues on AMD be contested the Malaysian courts, resort can be made to the legal principle enunciated in the English common law cases. CONCLUSION AMD can be flaunted as a crucial tool in calÄY1ng out the autonomous power of a patient.

Even though in Malaysia AMT) is still relatively unfamiliar and it is still laggmg compared to other developed countries such as the United Kingdom, it cannot however be denied that there are now patients that have the awareness on the availability of preparing their own AMD. As enlightened earlier, the Star newspaper dated 8th December 2014 had called for a step to be taken to provide specific guidelines and legal provlslons to govern the practice of AMD in Malaysia.

In response to that call, the Malaysian Institute of Islamic Development (IKIM) had rounded up academicians and medical professionals for a discussion on the current position of AMD in Malaysia, the rights of patients to prepare an AMD and the need for a move fonvard in regulating its practice. In general, an adult patient can make his AMI).

As had by th1S tune been stated before, there is no standard and specific guideline relating to AMD in Malaysia's hospitals. Indeed, there is no specific statute that governs the practice of ANIL) Malaysia. Nevertheless, m Malaysia the need for AMD legislation has become increasmgly apparent (Jah_n and Alias, 2015).

Although, the current position in England on advance directive provides a feasible regulatory framework that can be referred to the Malaysian legislators would need to ensure that the codification of legal standards is suited to the local circumstances. Among the major aspect that would need to be considered are the culture and religion of the various ethnic in the country that could be significant to the acceptance of the Malaysian society towards AMD.

For that reasoru it IS crucial to educate legislators and general society on the significance and use of AMD so as to facilitate statutory reform. In order to effectively address the issue of AMD in Malaysia, any effort taken should Involve medical practitioners, academicians, lawyers, religious authorities and relevant govemment bodies together with the Ministry of Health (MoH) to contribute their skill, knowledge and expertise towards the growth of a practical and sustainable AMD model in Malaysia. As what the English and Scottish Law Commission had statecL the laws should be up to

date.

"One of the hallmarks of an advance society is that its laws should not only be just but also that they should be kept up-to-date and be readily accessible to all who are affected by them" (HMSO, 1965). With that in mind, it is submitted that the growth of laws in Malaysia should be matching with the groN\th of its economy, social and political aspects.

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