

A LEGAL ANALYSIS ON SELECTED ISSUES IN MEDICAL NEGLIGENCE IN MALAYSIA

¹Haniwarda Yaakob*

¹Senior Lecturer, Faculty of Law, Universiti Kebangsaan Malaysia

Corresponding author: hani75@ukm.edu.my*

ABSTRACT

It is well-established that a doctor owes a duty to take reasonable care in treating their patients so as not to cause any harm. This duty is owed by the doctor as soon as a doctor-patient relationship is formed. However, in performing their professional duty to treat patients, doctors may encounter several obstacles that may impede the efficacy of their performance. These obstacles range from doctors' inexperience, lack of skill and even patients' own conduct. For example, a junior doctor may not have the same skill and ability as a more experienced doctor. Or, a doctor may need to perform procedures which are beyond his expertise. There may also be situations where a patient requests to be discharged before the completion of his treatment. Similarly, a patient may refuse to follow the doctor's advice to seek for further investigation. In addition, some hospitals may operate with limited resources or facilities and this may jeopardise patient safety. The law has set a standard on doctors in discharging their duty of care in treating patients. Nonetheless, a crucial question arises – does the law take into consideration the obstacles or situations encountered by doctors in the identified scenarios in determining whether there has been a breach of duty? This issue is critically analysed by referring to relevant Malaysian case laws. This discussion is essential to alert doctors on the legal requirements expected from them in order to prevent any legal impediment.

Keywords: Medical negligence; Duty to treat; Standard of care; Junior doctors; Discharge at own risk

INTRODUCTION

At this era, doctors undeniably encounter multiple challenges in performing their duties effectively which may result in a lawsuit being brought against them (Redwan Yassin et. al., 2025). The most common lawsuits commenced against doctors is a civil claim for medical negligence (Jeremy Balang, 2024). In discharging their duty to treat patients, doctors often face several situations which may require further attention. For example, how does the law consider situations where a patient requests to be discharged before his treatment is completed? What if the patient refuses a doctor's advice to be admitted into a hospital or to consult a specialist for further investigation? In addition, it must also be

ascertained whether the law imposes a 'lesser' or 'compromised' standard of care for junior doctors. Finally, some hospitals may operate with limited resources or facilities and this may compromise patient safety. These are some of the challenges that may be encountered by doctors and hospitals in their medical practice. It is fundamental for doctors to be aware of the legal position on these circumstances in order to avoid potential legal implications. This paper, thus, undertakes this task where the standard of care imposed on doctors in several identified situations are critically examined. The objective of this paper is primarily satisfied by adopting a legal doctrinal method where case laws from Malaysia as well as the United Kingdom are analysed. This is to identify the legal position taken by the

Malaysian courts on the chosen issues which may enhance doctors' understanding on what the law expects from them.

MEDICAL NEGLIGENCE LAW IN A NUTSHELL

To succeed in a claim for medical negligence, three elements must be proven by the patient/plaintiff:

- (a) the doctor owes the patient a duty of care;
- (b) the doctor has breached that duty; and
- (c) the said breach has caused injury to the patient (*Nur Zulaikha bt Dzulzali (Suing by her father and litigation Representative Dzulzali bin Muhammad Nor) v Medi-Circle Sdn Bhd & Ors* [2021] MLJU 31583).

A doctor generally owes a duty to his patient to take reasonable care in providing treatment so as not to cause any harm or injury to the patient. This duty of care is owed by the doctor as soon as 'doctor-patient' relationship is created (*R v Bateman* [1925] 2 All ER 4; *Foo Fio Na v Dr. Soo Fook Mun & Anor* [2007] 1 MLJ 593). Once duty of care is established, a doctor needs to ensure that he does not breach that duty when providing treatments to patients. In order to treat a patient, a doctor would need to diagnose, advise the patient on the treatments available and proceed with the necessary treatment when informed consent is obtained (*Dr Chandran a/l Gnanappah v Gan See Joe (suing as the administrator of the estate of Gan Hong Wee, deceased) & Anor and another appeal* [2025] 5 MLJ 216). A doctor is said to have breached his duty of care towards the patient if he fails to discharge the standard of care imposed by law on each of those duties, namely duty to diagnose, advise and treat the patient. For duty to diagnose and treat patients, the English cases of *Bolam v Frien Hospital Management Committee* [1957] 1 WLR 582 and *Bolitho v City & Hackney HA* [1997] 4 All ER 771 have been adopted by the Malaysian courts. Meanwhile, for doctors' duty to advise patients about the proposed treatment, the standard in an Australian case of *Rogers v*

Whitaker [1992] 16 BMLR 148 is applied as affirmed by the Federal Court in *Zulhasnimar bt Hasan Basri v Dr. Kuppu Velumani* [2017] 5 MLJ 461. This paper, however, focuses on the issues arising from doctors' duty to treat patients only. This analysis begins with a brief explanation on standard of care for doctors' duty to treat patients as adopted by the Malaysian courts.

STANDARD OF CARE FOR DUTY TO TREAT PATIENTS: THE TEST ADOPTED BY THE MALAYSIAN COURTS

In *Dr Chin Yoon Hiap v Ng Eu Khoon & Ors And Other Appeals* [1998] 1 MLJ 57, Abdul Malek Ahmad JCA stated that:

"...the standard of care expected of a medical practitioner is that he is not required to exercise the highest or a very high standard but only a fair and reasonable standard of care and skill in the treatment of his patients."

The law does not expect doctors to exhibit the highest level of skill in diagnosing and treating patients. What is required is merely a standard that is possessed by a reasonable doctor practising in that particular field. This "reasonable test" was derived from an English case of *Bolam Frien Hospital Management Committee* [1957] 1 WLR 582 and has been adopted by the Malaysian courts. The English court in *Bolam's* case stipulated:

"The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill. It is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art."

The crux of the *Bolam's* tests are:

- (a) A doctor need not possess the highest level of skill;
- (b) A doctor may be held negligent if he fails to perform according to what other

reasonable and competent doctor would have done in that situation or that field of practice; (c) A doctor may escape liability in negligence if his action is supported and accepted as proper by other reasonable and competent doctor in the same field. For example, an ophthalmologist is required to act or perform according to what other reasonable and competent ophthalmologist would do in that situation (*Loganathan a/l Thiagarajan v Dr Lee Mun Toong* [2025] MLJU 922).

Bolam's test places the determination on whether a doctor has breached his standard of care solely to the medical profession. As long as the doctor is able to produce expert medical opinion to support his action, he can be deemed as having fulfilled his standard of care. There is no opportunity for judges to scrutinise the reasonableness of the doctor's action. Nonetheless, the opportunity for the judiciary to evaluate or question medical opinion tendered by doctors have been allowed by another English court's decision in *Bolitho v City & Hackney HA* [1997] 4 All ER 77. In dealing with the expert evidence tendered by both parties, the UK's House of Lords accepted the Bolam's test enunciated in the earlier case of *Bolam v Frien Hospital Management Committee* [1957] 1 WLR 582 wherein a doctor may be considered to have discharge his standard of care by producing reasonable and competent expert evidence to support his action. Even so, the House of Lords in *Bolitho v City & Hackney HA* [1997] 4 All ER 771 further stipulated that the court may reject such expert opinion if it cannot withstand "logical analysis."

An example on the application of Bolam's test and the test in Bolitho's case by the Malaysian courts can be seen in *Dr Premitha Damodaran v GTK (a child suing through her father and litigation representative, Taranjeet Singh a/l Baghwan Singh & Anor and another appeal* [2022] 3 MLJ 484 (Court of Appeal). The first defendant, the obstetric and gynaecologist in

charge of the plaintiff's was found liable in negligence by the High Court but later appealed to the Court of Appeal. The Court of Appeal, having applied the test in *Bolam* and *Bolitho* found that the first defendant has discharged her standard of care in that particular situation when delivering the plaintiff. The Court of Appeal, accepted the first defendant's expert evidence and concluded that the first defendant's action in managing the situation by performing the McRoberts manoeuvre and by putting her hands into the mother's vagina to rotate and pull the baby out was "well within accepted medical practice." (*Dr Premitha Damodaran v GTK (a child suing through her father and litigation representative, Taranjeet Singh a/l Baghwan Singh & Anor and another appeal* [2022] 3 MLJ 484 (Court of Appeal).

The acceptance of the standard of care established by *Bolam Frien Hospital Management Committee* [1957] 1 WLR 582 and *Bolitho v City & Hackney HA* [1997] 4 All ER 77 on doctors' duty to treat patients was again reaffirmed and summarised by the Malaysian Court of Appeal in *Dr Chandran a/l Gnanappah v Gan See Joe (suing as the administrator of the estate of Gan Hong Wee, deceased) & Anor and another appeal* [2025] 5 MLJ 216. To determine whether a doctor can be held as negligence in treating a patient, three questions must be considered:

- (1) What is the opinion of the "general body of doctors" on the diagnosis and treatment given to the patient at that material time?
- (2) Can the opinion of the "general body of doctors" on the patient's diagnosis and treatment "withstand logical analysis"? and
- (3) If the second question/requirement above is satisfied, the next question is whether the defendant doctor's diagnosis and treatment was performed according to the opinion of that "General Body of Doctors." If this question is answered in the affirmative, the doctor can be said to have discharged his standard of care and, thus, is not liable for

negligence. If not, the doctor can be deemed to be negligent in exercising his duty to treat the patient. In defining the acceptable standard of practice, the court may refer to publications from the medical fraternities or by referring to expert medical evidence produced in courts (*Nur Fuziatun Binti Mohd Fadzli (Menyaman Melalui Bapa Dan Wakil Litigasi, Mohd Fadzli Bin Jamil) v. Gombak Medical Centre Sdn Dan 2 Lagi*. Rayuan Sivil W-02(NCvC)(W)-1327-08/2024.)

Additionally, to satisfy the threshold of a reasonably competent doctor, all doctors should be equipped with the required life-saving skills such as intubating a patient. This was the High Court's decision in *Datin Nor Rizam bt Abdul Wahab (menyaman sebagai pentadbir estet Dato' Ir Zainudin bin A Kadir) v Pusat Pakar Tawakal Sdn. Bhd. & Ors* [2024] MLJU 1291, where it was held that an ENT surgeon should have the appropriate skill to intubate patients as, "*This is a skill expected of any reasonably competent doctor, even from a houseman fresh from university. This skill should be ingrained in any reasonable doctor*". In this case, the court acknowledged that an ENT surgeon may not be as skilful as an anaesthesiologist in intubating patients. However, the court emphasised that intubation is a skill that any reasonably competent doctor should have. In summary, a doctor is expected by law to exercise reasonable skills as other competent doctors in the field in order to meet the standard of required for duty to treat patients. Nonetheless, there several situations that may be confronted by doctors in performing their duty to treat patients that requires further investigation.

STANDARD OF CARE OF JUNIOR DOCTORS

Presumably, junior doctors or less experienced doctors may not have the same level of expertise as senior or more experienced doctors. Thus, it is pertinent for junior doctors to be aware of the standard of

care expected from them by the law. This issue was considered in *Ang Yew Meng & Anor v Dr. Sashikannan a/l Arunasalam & Ors* [2011] 9 MLJ 153 where the standard of care required of a junior and inexperienced doctor who has undertaken the responsibility of treating the plaintiffs' son in an emergency situation was raised. In this case, the second plaintiff came to the second defendant's clinic with her son who was unconscious and had a high fever. The first defendant at that time, though yet to be registered, was a qualified doctor undergoing an internship at a government hospital and attachment at the second defendant's clinic. The first defendant was the only doctor available at the clinic when the second plaintiff came with her son. As he was under strict instructions not to treat any patient, the second defendant was reluctant at first to treat the plaintiffs' son. Eventually, he gave in to the second plaintiff's request and proceeded to treat the patient. As there was no improvement in the patient's condition, the second defendant advised the second plaintiff to take her son to the nearest hospital which she did. The plaintiff's son, however, died at the hospital and the plaintiffs sued the defendants for negligence.

During the trial, an issue was raised on the competency of the second defendant, a doctor who has just completed his medical degree, still undergoing internship and has yet to be registered as a fully qualified medical doctor. The court in this case concluded that the second defendant was a qualified doctor and the standard of care imposed on him is as stipulated in Bolam's test. In other words, incompetency or lack of experience does not compromise the standard of care imposed on doctors. As stated by the court:

"Thus, the unqualified practitioner or even a quack cannot claim to be measured by any lower standard of care than that which applies to the qualified man. The same is true of the first defendant in the present case. Though he may not be fully registered under the Medical Act or even if he were a quack, as the plaintiffs insisted he was, he still could

not be measured by any lower standard than the fully registered or qualified practitioner.” (Ang Yew Meng & Anor v Dr. Sashikannan a/l Arunasalam & Ors [2011] 9 MLJ 153; p. 176)

Hence, it can be summarised that junior or inexperienced doctors are placed with the same level of standard as any other competent doctor in the field. Inexperience is not recognised by law as grounds to place a lesser standard of care when treating patients.

This proposition is rooted in an English case of *Wilsher v Essex Area Health Authority* [1988] 3 BMLR 37. Here, the English court held that a junior doctor owes the same standard of care as a senior doctor. However, a junior or inexperienced doctor is deemed to have discharged his standard of care by referring to or consulting a senior doctor, specialist or his superior. Nonetheless, further reference must be made to another English case of *George Andrews Pursuer Against Greater Glasgow Health Board Defender*, 2019 Scot (D) 23/3 where, contrary to the decision in *Wilsher v Essex*, the English court in *George Andrews Pursuer Against Greater Glasgow Health Board Defender*, 2019 Scot (D) 23/3 decided that the fact that the junior doctor had consulted a senior doctor before discharging the patient did not relieve the junior doctor from liability in negligence. Nonetheless, the decisions in these English cases on whether a junior doctor may be deemed to have discharged his standard of care upon consulting a senior doctor remain persuasive and yet to be binding on the Malaysian courts due to section 3(1) of the Civil Law Act 1956. Section 3(1) of the Civil Law Act 1956, inter alia, allows the application of English common law decided as at 7 April 1956 for Peninsular Malaysia, 1 December 1951 for Sabah and 12 December 1949 for Sarawak, if there is a lacuna in the Malaysian law and subject to suitability to local circumstances. English common law decided after the said dates are merely persuasive on the Malaysian courts and will only become part of the Malaysian law when adopted by

the Malaysian courts. At the time of writing, which of the two conflicting approaches taken by the said English cases that is adopted by the Malaysian court is yet to be decided as this situation has not reached our courts.

At this point, it can only be summarised that a junior doctor owes the same standard of care as other reasonably competent doctor in the field – inexperience or incompetency does not lower the standard imposed on them as decided in the Malaysian case of *Ang Yew Meng & Anor v Dr. Sashikannan a/l Arunasalam & Ors* [2011] 9 MLJ 153 explained above. Hence, junior doctors should be mindful so as not to undertake treatments or procedures that they are not competent to perform. The same proposition equally applies to all doctors as elaborated below.

LACK OF EXPERTISE

Another important aspect that doctors should consider when treating patients is whether they possess the requisite expertise. Doctors should be able to draw a line between conditions that fall within and beyond their specialty and expertise. If doctors choose to treat patients, knowingly that the conditions suffered by the patient is not within their scope of ability and expertise, liability for negligence is likely to be imposed should any harm occur during the treatment. The High Court in *Lai Ping @ Lai Wai Ping v Dr Lim Tye Ling & Ors* [2015] 8 MLJ 62 cautions:

“I accept that the proposition of law that where a doctor is wanting in the requisite specialty and is unable to treat the patient, he will be under a duty either to seek advice from an appropriate specialist or to refer the patient to another specialist. If he attempts to diagnose or treat the patient himself he is, in effect, undertaking work beyond his competence, and will be liable if harm results.” [at p.77]

Another example was seen in *Adam bin Hamil v Dr Chiam Tee Kiang* [2025] 8 MLJ 691 where the defendant doctor was

held liable in negligence for performing nose implant procedures that were outside his scope of expertise and license. The court reminded doctors not to undertake procedures that are not within their qualification and licensing even though they have the confidence to perform the procedure.

DISCHARGE AT OWN RISK

In performing their duties, doctors may encounter requests from patients to discharge themselves from the hospital before treatment is completed (Govindaraju S et.al., 2023). In some instances, patients may also wish to transfer to another hospital. Discharging patients at own risk has been a routine practice in hospitals as adult patients who are competent to make their own decisions, generally, cannot be made to stay in the hospital against their free will. When a patient requests to be discharged from the hospital, doctors should be aware of their legal obligations before authorising the discharge. Doctors must ensure that reasonable treatments have been administered prior to the discharge and that the patient has been satisfactorily advised on the risks and implications of an early discharge. It is insufficient to merely request the patient to sign the discharge form without ensuring that the patient truly understood the consequences of his action.

In *Dr KS Sivananthan v The Government of Malaysia & Anor* [2001] 1 MLJ 35, the patient was first brought to a public hospital (first hospital) following a motor vehicle accident. The next day, he requested to be discharged from the first hospital and sought treatment from another hospital. The court found the first hospital liable for their negligence in providing adequate and timely treatment while the plaintiff was under their care. The first hospital was also held liable for failure to adequately advise the plaintiff of the potential risks to his injury if he leaves the hospital the next day. According to the court:

“The respondents had subsequently discharged the plaintiff, albeit at his own risk (AOR), at 9.45 am that morning. No medical advice or warning, was given to the plaintiff or his brother as to the risk he may be taking. It was not disputed that it is the hospital's duty to do so, and the failure to give any advice to the patient in the circumstances is contrary to its practice. In fact, no evidence was adduced to indicate that the plaintiff was ever attended to or seen by any medical doctor that morning before he was discharged. Thus, the respondents were also negligent in failing to give any proper advice to the plaintiff upon his discharge from the hospital.” [at p.41]

On the other hand, a patient who has been sufficiently advised but subsequently discharged himself may not succeed in totally blaming the doctor or the hospital for the injury caused. Instead, the patient may be deemed to be contributorily negligent as seen in *Suzilawati bt Ali (suing in her personal capacity, as lawful mother and dependant for Child A, a minor (deceased)) & Anor v Dr Alif Al Ain bin Mohd Fathilah (medical officer, Hospital Changkat Melintang) & Ors* [2023] 8 MLJ 110. Here, the child's parents who made their own arrangements to transfer their child to another hospital against doctor's advice was held to have contributed to their child's death and a portion of liability was apportioned to them. The court found that the plaintiffs have been advised of the risks that were involved if they proceeded to transfer their child to another hospital when the child was in a serious condition as he was at that time.

Finally, the Ministry of Health, Malaysia has issued a guideline on procedures to be adopted when patients request to be discharged while still on treatment. The said guideline requires doctors to advise the patient on the potential risks if the patient leaves the hospital and the need for the patient to complete the treatment. Other than that, several other matters should also be adhered to by doctors and/or healthcare workers prior to

discharging patients at their request, including ensuring that:

- (a) the patient is not suffering from contagious or communicable diseases, in which case the doctor should inform the nearest health authority for further action;
- (b) the patient's clinical condition should first be stabilised before the discharge;
- (c) the patient should be provided with sufficient medications; and
- (d) the patient should be given the next appointment date for follow-up check-up (Surat Pekeliling Ketua Pengarah Kesihatan Bil 11/2013).

PATIENT REFUSE FURTHER INVESTIGATION

There may be instances where a doctor, usually a general practitioner or a medical officer in a hospital seeing the patient at the first instance, advises the patient to be admitted into a hospital or to consult a specialist for further investigation but the patient refuses to do so. In this scenario, can the doctor be held legally responsible if the patient's condition deteriorates? This issue was addressed by the Malaysian court in *Ahmad Thaqif Amzar bin Ahmad Huzairi (Claiming through his mother and legal representative, Majdah bt. Mohd Yusof) v Kuala Terengganu Specialist Hospital Sdn. Bhd. & Ors* [2021] 9 MLJ 10. In this case, the patient, a minor was first taken by his parents a private hospital ("the first hospital") complaining of fever and swelling in the neck. They were attended to by a medical officer (D2) who examined the child and prescribed some medicine. The medical officer (D2) informed the parents to bring the child back if the swelling still subsides. A couple of days later, the parents brought their child back to the hospital where D2 discovered that the swelling has enlarged. He then advised the child's parent to admit the child to the hospital to be further examined

by a paediatrician/ear-nose-throat specialist. Nonetheless, the child's parents refused to do so due to financial reasons and instead brought their child home. Several days later, the child's parents took him to a private clinic where they were again advised to take their child to a hospital. They then took their child to a public hospital ("the second hospital") but the child's condition severely worsened causing him to suffer permanent brain damage. The parents sued both the doctors in the first and second hospital and both hospitals.

The High Court found all defendants liable for negligence while the parents were also liable for contributory negligence (*Ahmad Thaqif Amzar bin Ahmad Huzairi (Claiming through his mother and legal representative, Majdah bt. Mohd Yusof) v Kuala Terengganu Specialist Hospital Sdn. Bhd. & Ors* [2021] 9 MLJ 10). These findings of liability were affirmed by the Court of Appeal in *Kuala Terengganu Specialist Hospital Sdn Bhd & Anor v Ahmad Thaqif Amzar bin Ahmad Huzairi (claiming through mother and her litigation representative, Majdah bt Mohd Yusof) and other appeals* [2023] 1 MLJ 281. The medical officer at the first hospital was held liable for his failure to advise the parents on the urgency and importance of taking the child to a specialist soonest which has aggravated the child's condition. Quoting the High Court's judgment:

"...there arises a fundamental duty for an attending doctor to persuade patients and their family members regarding the necessary procedure and/or treatment to be adopted taking into account the seriousness of the patient's health condition...The second defendant had in my considered opinion failed to demonstrate the urgency to subject Thaqif to further examination as to his condition which had resulted in the aggravation of the plaintiff's condition causing the plaintiff to suffer the permanent disability." [at pp.35-36]

The case of *Ahmad Thaqif Amzar bin Ahmad Huzairi (Claiming through his*

mother and legal representative, *Majdah bt. Mohd Yusof*) v *Kuala Terengganu Specialist Hospital Sdn. Bhd. & Ors* [2021] 9 MLJ 10; *Kuala Terengganu Specialist Hospital Sdn Bhd & Anor v Ahmad Thaqif Amzar bin Ahmad Huzairi (claiming through mother and her litigation representative, Majdah bt Mohd Yusof) and other appeals* [2023] 1 MLJ 281 reminds doctors to properly explain the seriousness of the patient's condition and the urgency for the patient to seek further treatment. Patients without any medical knowledge may not fully appreciate the need to get further treatment or investigation immediately. It, therefore, falls upon the doctor to ensure that the patient understand the graveness of the situation. Failure to do so may expose the doctor to liability in negligence if the patient condition worsens.

UNAVAILABILITY OF SPECIALISTS AND LACK OF FACILITIES

Among the pressing issues surrounding healthcare services in Malaysia are shortage of manpower (CodeBlue, 2024) and lack of facilities (Azrul Talib, 2024). Several Malaysian case laws have clearly stipulated that system failure in hospitals does not prevent liability for negligence to be imposed on doctors and the hospital involved. For example, in *Lim Zi Hong v Pengarah Hospital Selayang & Ors* [2013] MLJU 1613, the court found the hospital and its director liable in negligence for failing to provide a safe obstetric system. In this case, there was a delay in performing emergency caesarean section on the plaintiff's mother when foetal distress was detected. Furthermore, there should have been a specialist to attend to a high-risk patient like the plaintiff's mother. As a result of this system failure, the plaintiff was born with cerebral palsy and sued for negligence.

When the hospital does not have the necessary facility to treat the patient's condition, swift measures must be taken to transfer the patient to another healthcare facility. In *Suzilawati bt Ali (suing in her*

personal capacity, as lawful mother and dependant for Child A, a minor (deceased)) & Anor v Dr Alif Al Ain bin Mohd Fathilah (medical officer, Hospital Changkat Melintang) & Ors [2023] 8 MLJ 110, the court found the hospital ("HSM") liable for the patient's death. Despite not having a CPAP/BIPAP machine, HSM has failed to arrange a proper treatment plan and failed to transfer the patient to another hospital with the said machine when the patient was in a stable condition. A similar decision was delivered by the Court of Appeal in 2025 which hold a private medical centre and its person in charge liable in negligence for their failure to provide a specialist neo-natal paediatrician on call or for consultation and for the delay in transferring the baby (the plaintiff) to another healthcare facility having adequate neo-natal intensive care facilities (*Nur Fuziatun Binti Mohd Fadzli (Menyaman Melalui Bapa Dan Wakil Litigasi, Mohd Fadzli Bin Jamil) v. Gombak Medical Centre Sdn Dan 2 Lagi*. Rayuan Sivil W-02(NCvC)(W)-1327-08/2024). These catastrophes, according to the Court of Appeal, indicates a system failure at the said medical centre in which the hospital and its person in charge were legally accountable for. Two important points can be gleaned from the decisions in the above cases:

- (a) A hospital/medical centre should ensure a timely access to a specialist when the patient's condition calls for; and
- (b) A hospital/medical centre should have a proper and adequate system to ensure a smooth and apt transfer to another healthcare facility if the required equipment is not available in their hospital/medical centre.

The issue of lack of facilities, particularly life-saving equipment should not be taken lightly by hospitals and the person in charge or hospital director. For example, in *Datin Nor Rizam bt Abdul Wahab (menyaman sebagai pentadbir estet Dato' Ir Zainudin bin A Kadir) v Pusat Pakar Tawakal Sdn Bhd & Ors* [2024] MLJU 1292,

the hospital was found to have breached its duty of care due to its failure to ensure the availability of appropriate medical facilities in the ward. In this instance, the oxygen link or oxygen adaptor was missing at the ward when the patient was discovered to be cyanosed and the said equipment was only found later. According to the court:

“Therefore, the failure by the 1st Defendant to have the said oxygen link ready in the ward shows that the hospital was negligent. The hospital should have ensured that all necessary equipment was ready and available in the said ward, more so when the patient / deceased had been discharged from the operating theatre and there was a possibility that such risks would be faced by the patient.”

There are also several legislations in Malaysia that impose a statutory duty on hospitals to have vital life saving measures and emergency procedures in place (for example, s.38 Private Healthcare Facilities and Services Act 1998 (PHFA 1998); Regulation 75 of the Private Healthcare Facilities and Services (Private Medical Clinics or Private Dental Clinics) Regulations 2006; Regulation 230 of Private Healthcare Facilities And Services (Private Hospitals And Other Private Healthcare Facilities) Regulations 2006).

The landmark Federal Court decision in *Siow Ching Yee v Columbia Asia Sdn. Bhd.* [2024] 4 CLJ 173 succinctly concluded that a hospital owes a non-delegable duty and is personally liable to their patients for the treatment and care provided, including the effectiveness of the premises. Other than that, the director of a public hospital and the person in charge of a private hospital within the meaning of s. 31(1)(a) of the PHFA 1998 should be aware that they could be personally and directly liable to patients for the harm/injury suffered. This principle was illustrated in the above Court of Appeal decision in *Nur Fuziatun Binti Mohd Fadzli (Menyaman Melalui Bapa Dan Wakil Litigasi, Mohd Fadzli Bin Jamil) v. Gombak Medical Centre Sdn Dan 2 Lagi*. Rayuan

Sivil W-02(NCvC)(W)-1327-08/2024 discussed earlier. In this case, the Court of Appeal referred to the case of *Pengarah Hospital Selayang v Ahmad Azizi Abdullah James* [2012] 5 MLJ 679 which decided that the director of a public hospital directly owes a duty of care to patients. As such, the Court of Appeal in *Nur Fuziatun Binti Mohd Fadzli (Menyaman Melalui Bapa Dan Wakil Litigasi, Mohd Fadzli Bin Jamil) v. Gombak Medical Centre Sdn Dan 2 Lagi* held that same duty is also owed by the person in charge of a private hospital. To sum up, hospitals and the person in charge or hospital director must ensure the efficacy of the healthcare services provided which include having effective standard operating procedures and the necessary equipment/facility to avoid harm to patients which they can be legally responsible for.

CONCLUSION

In performing their daily duties, doctors often meet multiple challenges that may expose them to liability in medical negligence. This paper has, thus, undertaken the task of analysing the legal stance on some arising issues through an analytical discussion of relevant case laws decided by the Malaysian courts. From this analysis, several points can be deduced. First, junior or inexperienced doctors should be more vigilant in carrying out their duty as inexperienced is not legally accepted as a defence for negligence. Instead, the law imposes the same standard of care as placed on any other reasonably competent doctor in the field. On the same note, all doctors are reminded not to perform procedures/treatment that they are not qualified or licensed for or those that are outside the scope of their specialty. In addition, before discharging patients, albeit at their own risks, or when patients refuse to be admitted for further investigation, doctors should do the needful including appropriately advising the patient on the risks that might occur. Finally, it is incumbent upon hospitals and the person in

charge or hospital director to ensure a safe delivery of healthcare services to patients. It is hoped that the analysis provided in this paper may assist doctors in effectively discharging their duty in treating patients and avoid possible legal pitfalls.

ACKNOWLEDGEMENTS

The author wishes to thank the Faculty of Law, Universiti Kebangsaan Malaysia for providing funds for the publication of this article.

CONFLICT OF INTEREST

There is no conflict of interest involved in the writing and preparation of this article.

AUTHOR'S CONTRIBUTION

The author solely contributed to the writing and preparation of this article.

REFERENCES

- Adam bin Hamil v Dr Chiam Tee Kiang [2025] 8 MLJ 691.
- Ahmad Thaqif Amzar bin Ahmad Huzairi (Claiming through his mother and legal representative, Majdah bt. Mohd Yusof) v Kuala Terengganu Specialist Hospital Sdn. Bhd. & Ors [2021] 9 MLJ 10.
- Ang Yew Meng & Anor v Dr. Sashikannan a/l Arunasalam & Ors [2011] 9 MLJ 153.
- Azrul Talib. (2024, September 20). *Modernising Malaysia's healthcare infrastructure*. FMT. <https://www.freemalaysiatoday.com/category/opinion/2024/09/20/modernising-malaysias-healthcare-infrastructure>.
- Bolam Frien Hospital Management Committee [1957] 1 WLR 582.
- Bolitho v City & Hackney HA [1997] 4 All ER 77.
- Civil Law Act 1956
- CodeBlue. (2024, May 28). *Health Care Manpower Shortage Crisis: The Why and The Potential Solution — Dr Miguel*. CodeBlue. <https://codeblue.galencentre.org/2024/05/health-care-manpower-shortage-crisis-the-why-and-the-potential-solution-dr-miguel/>
- Datin Nor Rizam bt Abdul Wahab (menyaman sebagai pentadbir estet Dato' Ir Zainudin bin A Kadir) v Pusat Pakar Tawakal Sdn. Bhd. & Ors [2024] MLJU 1291.
- Dr Chandran a/l Gnanappah v Gan See Joe (suing as the administrator of the estate of Gan Hong Wee, deceased) & Anor and another appeal [2025] 5 MLJ 216.
- Dr Chin Yoon Hiap v Ng Eu Khoon & Ors And Other Appeals [1998] 1 MLJ 57.
- Dr KS Sivananthan v The Government of Malaysia & Anor [2001] 1 MLJ 35. Available from
- Dr Premitha Damodaran v GTK (a child suing through her father and litigation representative, Taranjeet Singh a/l Baghwan Singh & Anor and another appeal [2022] 3 MLJ 484 (Court of Appeal).
- George Andrews Pursuer Against Greater Glasgow Health Board Defender, 2019 Scot (D) 23/3.
- Govindaraju S, Azmi S, Muhammad Zain MZ, Kamal SM, Van Rostenberghe H, Ilias MI, Mohamad N, Nasir A, Taib F, Hazlan SNH, Ali SH. (2023). "AOR" discharge in paediatrics: an ethical conundrum. *Education in Medicine Journal*, 15(1), 123–129. <https://doi.org/10.21315/eimj2023.15.1.10>.
- Jeremy Balang. (2024, September 10). *Medical negligence and medico-legal litigation in Malaysia*. MahWengKwai & Associates. Advocates and Solicitors. <https://mahwengkwai.com/medical-negligence-and-medico-legal-litigation-in-malaysia/>.

- Lai Ping @ Lai Wai Ping v Dr Lim Tye Ling & Ors [2015] 8 MLJ 62.
- Lim Zi Hong v Pengarah Hospital Selayang & Ors [2013] MLJU 1613.
- Loganathan a/l Thiagarajan v Dr Lee Mun Toong [2025] MLJU 922.
- Nur Fuziatun Binti Mohd Fadzli (Menyaman Melalui Bapa Dan Wakil Litigasi, Mohd Fadzli Bin Jamil) V. Gombak Medical Centre Sdn Dan 2 Lagi. Rayuan Sivil W-02(NCvC)(W)-1327-08/2024.
<https://ejudgment.kehakiman.gov.my/ejudgmentweb/SearchPage>.
- Nur Zulaikha bt Dzulzali (Suing by her father and litigation Representative Dzulzali bin Muhammad Nor) v Medi-Circle Sdn Bhd & Ors [2021] MLJU 3158.
- Private Healthcare Facilities and Services (Private Hospitals and Other Private Healthcare Facilities) Regulations 2006.
- Private Healthcare Facilities and Services (Private Medical Clinics or Private Dental Clinics) Regulations 2006
- Private Healthcare Facilities and Services Act 1998.
- R v Bateman [1925] 2 All ER 4; Foo Fio Na v Dr. Soo Fook Mun & Anor [2007] 1 MLJ 593)
- Redwan Yasin & Hassan Basri Jahubar Sathik & Wan Amir Azlan Wan Haniff & Zulhazmi Yusof. (2025). Medical negligence, workforce migration, and the sustainability crisis in Malaysia's public healthcare system. *International Journal of Asian Social Science, Asian Economic and Social Society*, 15(7), 150-155.
- Siow Ching Yee v Columbia Asia Sdn. Bhd. [2024] 4 CLJ 173.
- Surat Pekeliling Ketua Pengarah Kesihatan Bil 11/2013. Prosedur Mengenai Pesakit Yang Ingin Discaj Dari Hospital Atas Risiko Sendiri.
https://www.moh.gov.my/index.php/database_stores/store_view_page/10/246.
- Suzilawati bt Ali (suing in her personal capacity, as lawful mother and dependant for Child A, a minor (deceased)) & Anor v Dr Alif Al Ain bin Mohd Fathilah (medical officer, Hospital Changkat Melintang) & Ors [2023] 8 MLJ 110.
- Wilsher v Essex Area Health Authority [1988] 3 BMLR 37.
- Zulhasnimar bt Hasan Basri v Dr. Kuppu Velumani [2017] 5 MLJ 461.