

**A CRITICAL STUDY ON THE DUTY TO REFER IN THE LIGHT
OF
TRADITIONAL AND COMPLEMENTARY MEDICINE ACT 2013**

By

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ABSTRACT

This research has been conducted to analyse the existing legal framework in Malaysia governing the traditional and complementary medicine practice. The research aims to analyse the inadequacy of the law of traditional and complementary medicine in Malaysia specifically in the Traditional and Complementary Medicine Act (TCMA) 2013 (the Act).

The main concern of this research is the issue on the suitable standard of duty of care specifically duty to refer of TCM practitioner in light of section 30 of TCMA 2013. Section 30(1) of the Act imposed the obligation to the practitioners for referring their patient in two situations. The first situation is where the TCM practitioner need to refer patient to the medical practitioner if the patient experiencing an acute medical emergency and second, where the ailment or condition of the patient is beyond the skill, competency or their expertise of the TCM practitioner. Failure to comply, the practitioners shall be liable for breach of duty and may be subjected to penalty or if the patient wish, he may bring the case to the court.

The focus shall be given to the action where the patient may bring the case of breaching the duty of care to court. Therefore, the researchers will highlight the suitable standard of care and approaches to be used in court. Different cases such as *Bolitho v City & Hackney Health Authority*, *Abdul Rahman bin Abdul Karim v Abdul Wahab bin Abdul Hamid*, etc shall be referred to.

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CHAPTER ONE

INTRODUCTION

1.0 Introduction

This chapter sets the background of the research by discussing in general the arising legal issue of duty to refer under Section 30 of Traditional and Complementary Medicine Act (TCMA) 2013.

1.1 Research Background

The Traditional and Complementary Bill 2012 was first carried out on June 2012 Parliament session. After going through the second and third reading in Houses of Parliament, the Royal Assent had been obtained on the 5th February 2013 and on the 8th February 2013, the TCMA 2013 is gazetted.¹ Its purpose is to regulate the traditional and complementary medicine services in Malaysia and to establish the Traditional and Complementary Medicine Council. The Act contains 63 provisions and binding on all the TCM practitioners.

This research will look into the standard of duty of care of TCM practitioner in light of Section 30 of TCMA 2013. Section 30(1) imposes legal obligation on the registered TCM practitioners to refer their patients to the medical or dental practitioners if the patient experiencing an acute medical emergency or if the ailment or condition of the patient is beyond the skill, competency or their expertise. If they failed to do so, they

¹ Official Portal of Traditional and Complementary Medicine Division. *Traditional Medicine or Complementary Medicine. What is it?* Retrieved September 7, 2013, from http://tcm.moh.gov.my/v4/modules/mastop_publish/?tac=29