

REGULATING ONLINE MEDICAL RECORDS IN MALAYSIA:
CONFIDENTIALITY OF INFORMATION

BY

MOHD SHAZMEER BIN ZAMHARI (2009278472)
NUR ELISSA BAHARUDIN (2009624058)
NURUL ATIKAH BINTI SAMAD (2009891152)
SITI NURFADZILAH BINTI MOHD NOH (2009611156)

Research is submitted to partial fulfillment of the requirements for the
Bachelor of Legal Studies (Hons)

Mara University of Technology
Faculty of Law

December 2011

Authors/writers confirm that the work submitted is their own and that appropriate credit has
been given with reference that has been made to the work of others.

CHAPTER ONE: INTRODUCTION

1.1 Background of Study

Medical confidentiality is a familiar issue in the medical world. The general common law duty is, it is imposed on a doctor to respect the patient's confidence bestowed upon them, as was seen in the case of *Stephens v. Avery*.¹ Disclosure of confidential information is part of the legal process. This is seen as there are case laws showing that the law protects the medical confidentiality of patients, and that the doctors are obliged to not disclose the information they have on their patients. One of the established cases is the case of *Hunter v Mann*.² This was at the time where medical information was on paper.³ Basically, the confidential information is in written form, documented in other words. However, nowadays, due to globalization and the advancement in technology, medical information has seen to progress in terms of its accessibility thus provide efficiency in work done as less time needed to access the database. Today, there is online medical database. The term 'medical' relates to the study and practice of medicine, which concerns about maintaining and restoring health by the prevention and the treatment of illnesses whereas 'online database' is a database accessible from a network, including the internet.⁴ Hence, online medical database is where medical records are accessible online via the internet. Due to this, there are several issues or concerns which arise. Online medical record is open to abuse by an unauthorized and irresponsible person such as hackers and this is one of many issues which may arise.⁵ Moreover, the argument on making medical information more accessible seems to defeat the purpose for the people in rural areas because of their lack of exposure to internet accessibility.⁶ Another issue that could be at hand is when this particular service is prone to be abused by politicians to play their propaganda game as they may use the personal information which is obtained unlawfully to deteriorate the status of a politician from opposition party.⁷

1 [1988] 2 All ER 477.

2 [1974] 2 All ER 414.

3 Ibid.

4 Callens, *E-health and The Law* (Kluwer United Kingdom 2003).

5 "Concern Over Abuse of Online Medical Records", *New Straits Times* 23 February 2011 at 12.

6 Ibid.

7 Ibid.

ACKNOWLEDGMENTS

Alhamdulillah. First of all, we would like to thank God as finally we were able to finish our project paper on **“Regulating Online Medical Records in Malaysia: Confidentiality of Medical Information”**.

We have put in much effort in this project paper. However, it would not have been possible without the kind support and help of our beloved supervisor. We would like to acknowledge the advice and guidance of DR. SIVABARATHI A/P MARIMUTHU (SHARLENE). Without her assistance, guidance and suggestions, we could not have accomplished this project paper. Thank you for your constant supervision as well as for providing necessary information regarding the project; and also for your moral support in completing the project.

We also would like to express our gratitude to Dr Sheela Jayabalan for helping and teaching us in legal research methodology and for without her suggestion, we would not have come up with this subject of study. We also acknowledge Assoc. Prof Siti Hajar Mohd Yassin for her idea and information relating online database protection in Malaysia.

Finally, thank you to our beloved friends that have always worked hard in producing a good assignment with combined effort and responsibility. We hope that all our effort will give benefit to us as well as our group project. Million thanks we wish to our classmates because of their assistance. They have always given us ideas and comments on our project so that we can improve our project in many ways.

Most of all, we would like to thank our family members for supporting and encouraging us in completing this project paper. Without them, we would not have finished this paper.

All in all, we hope this project paper would offer ideas and guidelines for the betterment of our law regarding online medical records, especially Telemedicine Act 1997 (Malaysia).

TABLE OF CONTENTS

Acknowledgements	i
Chapter One: Introduction	
1.1 Background of Study	1
1.2 Problem Statement	2
1.3 Objective of Study	3
1.4 Research Methodology	4
1.5 Scope and Limitation	5
1.6 Significance of Study	5
Chapter Two: Literature Review	
2.1 Introduction	6
2.2 Literature Review	6
Chapter Three: Violation of Privacy, Lacunas and Loopholes of Existing Laws in Malaysia and An Analysis of Existing Laws in Foreign Country	
3.1 Introduction	10
<u>Part 1: Problems Arise When the Privacy of Individuals Are Violated</u>	
3.2 Implication on the Cases and Situations	11
<u>Part 2: Discussion on Relevant Current Laws in Malaysia</u>	
3.3 Lacunas and Loopholes of Existing Laws in Malaysia	14
3.3.1 Summary of Lacunas and Loopholes of Existing Laws in Malaysia	19
<u>Part 3: Discussion on the Existing Laws in Foreign Country</u>	
3.4 Analysis of Existing Laws in Foreign Country	19

3.4.1	United Kingdom: Data Protection Act 1998	19
3.4.1.1	Table of Summary of Existing Law in United Kingdom	23
3.4.2	Australia: Australia Privacy Act 1988 (Victoria State Health Record Act 2001)	24
3.4.2.1	Table of Summary of Existing Law in Australia	28
3.4.3	New Zealand: New Zealand Health Information Privacy Code 1994	29
3.4.3.1	Table of Summary of Existing Code in New Zealand	31
3.4.4	Province of Alberta, Canada: Health Information Act Province of Alberta, Canada	32
3.4.4.1	Table of Summary of Existing Law in Province of Alberta, Canada	36
3.4.5	United States of America: Health Insurance Portability and Accountability Act	38
3.4.5.1	Table of Summary of Existing Law in United States of America	41
3.4.6	Table of Summary of Existing Laws/Code United Kingdom, Australia, New Zealand, Province of Alberta (Canada) and United States of America	42