

REQUIRING FINANCIAL RESPONSIBILITY FROM FOREIGN HOSPITALS SEEKING MEDICAL TOURISTS FROM THE UNITED STATES

*Melanie Khosravi**

I.	INTRODUCTION	148
II.	THE APPEAL OF MEDICAL TOURISM TO AMERICAN PATIENTS	150
III.	GENERAL CONCERNS WITH MEDICAL TOURISM	153
IV.	AMERICAN LEGAL EXPECTATIONS AND LOCAL CUSTOMS....	157
V.	U.S.-AFFILIATED HEALTH CARE FACILITIES	160
VI.	JOINT COMMISSION ACCREDITATION.....	163
VII.	LACK OF LEGAL ACCOUNTABILITY IN JCI ACCREDITED FACILITIES	166
VIII.	LEGAL CONCERNS FOR AMERICAN PATIENTS.....	169
	A. <i>Lack of Personal Jurisdiction</i>	170
	B. <i>Forum Non-Conveniens</i>	172
	C. <i>Choice of Law and Enforcement</i>	172
IX.	POSSIBLE SOLUTION FOR AMERICAN PATIENTS.....	173
X.	CONCLUSION.....	174

I. INTRODUCTION

Medical tourism is traveling outside one’s country of residence to seek healthcare with organizations that support or offer incentives for such travel.¹ The total annual global value of the medical tourism industry is

* Medical Malpractice Attorney. B.S. 2010, University of California, Los Angeles; D.O. 2017, Touro College of Medicine; J.D. 2021, Southwestern Law School. The author wishes to thank the members of the Southwestern Journal of International Law for their diligent editing and thoughtful comments.

1. Christie M. Reed, *Medical Tourism*, 92 MED. CLIN. N. AM. 1433, 1433 (2008).

approximately \$439 billion.² Every year, 1.4 million Americans travel offshore to receive various treatments, such as in vitro fertilization, dentistry, cosmetic, bariatric, orthopedic, and cardiac surgeries, as well as liver and kidney transplantations.³ Medical tourism is appealing to American patients, especially to uninsured individuals, self-insured businesses, and third-party payers, all of whom seek to save thousands of dollars for various medical procedures.⁴ Often, the total cost for hospitalization, physician fees, airfare, and accommodation for the patient and the spouse are far less than the cost of the procedure in the United States.⁵

Medical tourism is limited to those who can pay out-of-pocket expenses since insurance companies do not cover its cost.⁶ If the U.S. healthcare system would lower prices or offer universal healthcare at affordable prices, the need for American patients to seek treatment abroad would lessen, although it would not be completely eliminated. As deductibles and out-of-pocket costs for healthcare in the United States rise,⁷ a growing number of Americans are finding it more cost efficient to obtain their healthcare treatments abroad.⁸

As this article will show, cost seems to be the primary factor in choosing to travel.⁹ For example, U.S. Senator Rand Paul, M.D., an ophthalmologist of eighteen years,¹⁰ joined the rising number of American medical tourists by traveling to a hospital in Ontario, Canada, for a hernia repair surgery.¹¹ The surgery cost Senator Paul an estimated \$5,000 to \$8,000.¹² The same surgery in the United States would have cost him \$12,365 to \$19,179.¹³

2. James E. Dalen & Joseph S. Alpert, *Medical Tourists: Incoming and Outgoing*, 132 AM. J. MED. 9, 9 (2019).

3. *Id.*

4. Mike Mitka, *Surgical Tourism: Some US Patients Travel Abroad for Less Costly Surgery*, 302 [J]AMA 1519, 1519 (2009).

5. Dalen & Alpert, *supra* note 2, at 9.

6. Aaron Carroll, *Taking a Look at Medical Tourism*, JAMA NETWORK (Mar. 27, 2019), <https://jamanetwork.com/channels/health-forum/fullarticle/2759660?resultClick=1>.

7. *Id.*

8. Beth Braverman, *1.4 Million Americans Will Go Abroad for Medical Care This Year. Should You?* FISCAL TIMES, (Aug. 17, 2016), <https://www.thefiscaltimes.com/2016/08/17/14-Million-Americans-Will-Go-Abroad-Medical-Care-Year-Should-You>.

9. *See infra* notes 21-23. There may be other considerations like availability of procedures, quality, or privacy. *See infra* notes 24-33.

10. *About Rand*, SENATOR RAND PAUL, <https://www.paul.senate.gov/about-rand> (last visited Feb. 19, 2021).

11. Shawn Radcliffe, *Sen. Rand Paul Joins Rising Number of Americans Going Abroad for Healthcare*, HEALTHLINE (Jan. 24, 2019), <https://www.healthline.com/health-news/why-is-rand-paul-going-to-canada-for-surgery>.

12. *Id.*

13. *Id.*

In recent years, several U.S. medical centers have sought to capitalize on this growing trend by partnering with foreign medical centers.¹⁴ Simultaneously, displaying the names of their U.S. affiliates helps foreign healthcare facilities to not only attract local and regional patients, but to also draw in American medical tourists interested in the lower prices they offer.¹⁵ Such affiliations with domestic medical giants may offer American patients a false sense of security from the familiar names they recognize. These patients may assume that the U.S. medical standards of care and medical negligence laws apply to these institutions. Instead, victims of medical malpractice are often left without any legal recourse, because these foreign institutions cannot be held accountable in the U.S. courts.¹⁶ Besides, even if American patients could receive some relief in foreign courts, the obstacle-ridden process is often expensive, and the financial settlements are often not enough to fully compensate patients for the harm.¹⁷ Therefore, to protect American patients' interests, the U.S. legislature should require that any American health care institution that accepts American patients at its offshore affiliate hospital take financial responsibility when the treatment falls below the U.S. medical standard of care, which is defined as the level and type of care that a reasonably competent and skilled health care professional, with a similar background and in the same medical community, would have provided under the circumstances that led to the alleged malpractice.¹⁸

II. THE APPEAL OF MEDICAL TOURISM TO AMERICAN PATIENTS

Medical tourism is appealing to American patients because it is affordable and offers treatments that are not readily available in the United States.¹⁹ According to the United States Census Bureau, despite the enactment of the Affordable Care Act (ACA) in 2010, 8.5% or 27.5 million Americans were uninsured in 2018.²⁰ By the end of 2019, the percentage of

14. Jennifer B. Boyd et al., *Emerging Trends in the Outsourcing of Medical and Surgical Care*, 146 ARCH. SURG. 107, 108 (2011).

15. *The Globalization of Health Care: Can Medical Tourism Reduce Health Care Costs? Hearing Before the S. Special Comm. on Aging*, 109th Cong. (2006) (statement of Arnold Milstein, Chief Physician, Mercer Health & Benefits, Medical Director, Pacific Business Group on Health) Dr. Milstein testified that several large American employers have asked him to “assess the feasibility of using technologically advanced hospitals in lower wage countries to provide non-urgent major surgeries for their self-insured health benefits plans serving U.S. residents.”

16. Boyd et al., *supra* note 14, at 109.

17. *See infra* notes 83-95 and accompanying text.

18. NANCY J. NILES, BASICS OF THE U.S. HEALTH CARE SYSTEM (2019).

19. Carroll, *supra* note 6.

20. U.S. CENSUS BUREAU, P60-267, HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2018 (2019).

uninsured Americans increased to 11% or 35.7 million individuals.²¹ The high cost of medicine in the United States is the culprit behind the medical tourism industry that has forced Americans to seek cheaper life-saving alternatives. This is especially true for underinsured persons. For example, a heart bypass operation that costs \$100,000 in the United States is only \$12,000 in Thailand's Bumrungrad Hospital. The hospital employs more than 200 U.S.-trained, board-certified surgeons, which suggests that the quality of care should be similar to that in the United States.²² A cardiac patient could face a \$200,000 bill for a heart valve replacement surgery in the United States but would pay only \$6,700 in India.²³ Likewise, an orthopedic patient could be charged \$90,000 for a spinal fusion surgery in the United States, but would pay only \$7,000 in Thailand.²⁴ Some destinations have even become internationally known as specialized medical hubs. For example, Thailand is famous for sex-change operations, Singapore is a top-rated cancer treatment center, and many facilities in Brazil are known for cosmetic surgery.²⁵

Relatedly, since Canadian drug prices are 40% lower than their American counterparts, Canada offers Americans a better choice to purchase prescription medication, including post-operative pain medication.²⁶ Canada is not the only neighboring country where Americans travel for health care. Almost a million Californians alone travel to Mexico annually to receive medical care and purchase prescription drugs.²⁷ Approximately one million Americans and Canadians travel to Los Algodones, Mexico for dental care and oral and maxillofacial surgery every year.²⁸ These patients pay fees as

21. NAT'L. CTR. FOR HEALTH STAT'S, HEALTH INSURANCE COVERAGE: EARLY RELEASE OF ESTIMATES FROM THE NATIONAL HEALTH INTERVIEW SURVEY, JANUARY – JUNE 2019 (2020).

22. Boyd et al., *supra* note 14, at 108.

23. *Id.* at 111.

24. Mitka, *supra* note 4, at 1519.

25. Joseph L. Muzaurieta, *Surgeries and Safaris: Creating Effective Legislation Through a Comparative Look at the Policy Implications, Benefits, and Risks of Medical Tourism for the American Patient*, 29 TEMP. INT'L & COMP. L.J. 115, 122-23 (2015). South African clinics provide a variety of affordable treatments, such as renal transplantation surgery, reconstructive, orthopedic, general, and vascular surgeries, as well as Botox therapy and ophthalmic and cataract surgeries. Kristen Boyle, *A Permanent Vacation: Evaluating Medical Tourism's Place in The United States Healthcare System*, 20 HEALTH LAW 42, 43 (2008).

26. Donald W. Light & Joel Lexchin, *Foreign Free Riders and the High Price of US Medicines*, 331 BMJ 958, 958 (2005).

27. AUSTIN CHAMBERS, USITC, TRENDS IN U.S. HEALTH TRAVEL SERVICES TRADE (2015), https://www.usitc.gov/publications/332/executive_briefings/chambers_health-related_travel_final.pdf.

28. Jeffrey Young, *Welcome to Molar City, Mexico, The Dental Mecca America's Health Care Costs Built*, HUFFPOST (Nov. 14, 2019, 5:45 AM), https://www.huffpost.com/entry/welcome-to-molar-city-mexico-the-dental-mecca-americas-health-care-costs-built_n_5dc5772ae4b0fcfb7f651721.

low as 60% of the prices in the United States.²⁹ This tiny border village, also known as Molar City, as it has affectionately been dubbed by dental tourists, has attracted many patients from across the border for the past two decades.³⁰ Molar City offers unparalleled prices. For example, a dental bridge containing four implants to replace lost teeth costs an average of \$21,500 in the United States compared to \$9,300 in Mexico.³¹ This notable difference explains why medical dental travel is an attractive option for the seventy-four million Americans who have no dental insurance,³² as well as two-thirds of Medicare beneficiaries, or nearly thirty-seven million people, who lacked dental coverage in 2019.³³ Even individuals with dental insurance may have difficulty affording such procedures because dental plans typically offer generous coverage for checkups and cleanings, yet require patients to pay out-of-pocket for other treatments, such as root canals and crowns.³⁴

Some patients travel for treatments that are not offered in the United States, are banned (such as stem cell therapy), or are still pending Food and Drug Administration (FDA) approval as they utilize new and not-yet-well-studied medical devices.³⁵ High hopes for tissue repair and regeneration for otherwise incurable diseases cause thousands of desperate patients to flock to open market clinics that charge tens of thousands of dollars for unproven therapies.³⁶ Not wanting his promising career to end by a neck injury, Peyton Manning, arguably one of the best quarterbacks in the history of the National Football League, traveled to Europe to undergo a stem cell procedure, which was banned in the United States.³⁷ Likewise, other famous athletes such as Tiger Woods, Rafael Nadal, and the late Kobe Bryant have received stem cell therapy abroad as well.³⁸

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. Chris Lee, *Most Medicare Beneficiaries Lack Dental Coverage, and Many Go Without Needed Care*, KAISER FAM. FOUND. (Mar. 13, 2019), <https://www.kff.org/medicare/press-release/most-medicare-beneficiaries-lack-dental-coverage-and-many-go-without-needed-care/>.

34. Young, *supra* note 28.

35. *Medical Tourism's Most Distant Outposts*, FORBES (May 21, 2009, 5:00 PM), <https://www.forbes.com/2009/05/21/stem-cell-parkinson-entrepreneurs-technology-tourism.html?sh=154afd11246f>.

36. George Q. Daley, *The Promise and Perils of Stem Cell Therapeutics*, 10 CELL STEM CELL 740, 740 (June 12, 2012).

37. Amanda L. Chan, *Peyton Manning Underwent Stem Cell Treatment for Neck Injury*, HUFFPOST (Sept. 19, 2011, 11:28 PM), https://www.huffpost.com/entry/peyton-manning-stem-cell-treatment_n_970763.

38. Liz Szabo, *Superstar Athletes Popularize Unproven Stem Cell Procedures*, KAISER HEALTH NEWS (Aug. 5, 2019), <https://khn.org/news/superstar-athletes-popularize-unproven-stem-cell-procedures/>.

Similarly, Rick Perry, former United States Secretary of Energy and Texas Governor, underwent stem cell treatment for a recurring back injury.³⁹ The laboratory that cultured Perry's stem cells was the Texas branch of the South Korean RNL BIO, stem cell biotechnology company.⁴⁰ Another state-of-the-art stem cell clinic well-frequented by Americans was the Xcell-Center for Regenerative Medicine with branches in Düsseldorf and Cologne in Germany.⁴¹ Xcell-Center was the largest stem cell clinic in Europe that offered stem cell therapies for various diseases, such as Parkinson's disease, cerebral palsy, multiple sclerosis, autism, and spinal cord injuries.⁴² After a patient died in 2010, the German government shut the centers down.⁴³ However, the Xcell-Center has reopened its doors in Lebanon and India under the name Cells4health, offering the same type of therapies.⁴⁴

III. GENERAL CONCERNS WITH MEDICAL TOURISM

The development of medical tourism has raised many ethical and legal issues pertaining to malpractice, consumer protection, organ trafficking, and alternative medicine.⁴⁵ Patients traveling abroad for medical care represent a vulnerable population that can succumb to unusual or resistant infections.⁴⁶ The risk of contracting hospital-associated and procedure-related infectious diseases after receiving medical procedures in foreign countries is elevated. For example, an investigation by the Centers for Disease Control and Prevention (CDC) and a subsequent inspection by the Secretariat of Health in Mexico linked thirty-one infected American patients suffering from a debilitating antibiotic-resistant infection after undergoing an invasive medical procedure, to a single Mexican hospital that had breached safety

39. Emily Ramshaw, *Perry's Adult Stem Cell Treatment Was Doctor's First Attempt*, TEX. TRIBUNE (Aug. 4, 2011), <https://www.texastribune.org/2011/08/04/perrys-stem-cell-treatment-was-doctors-first-attempt/>.

40. *Id.*

41. *Medical Tourism's Most Distant Outposts*, *supra* note 35.

42. Jared Yee, *Europe's Biggest Stem Cell Clinic Shut Down After Baby's Death*, BIOEDGE (May 14, 2011), https://www.bioedge.org/bioethics/europes_biggest_stem_cell_clinic_shut_down_after_babys_death/9524.

43. Tamara Abraham, *Europe's Largest Stem Cell Clinic Shut Down After Death of Baby*, TELEGRAPH (May 8, 2011), <https://www.telegraph.co.uk/news/worldnews/europe/germany/8500233/Europes-largest-stem-cell-clinic-shut-down-after-death-of-baby.html>.

44. Timothé Cynober, *Stem Cell Tourism Makes Big Promises But May End Your Life...*, LABIOTECH (Aug. 9, 2016), <https://www.labiotech.eu/in-depth/european-stem-cell-tourism/>.

45. Puteri Nemie J. Kassim, *Medicine Beyond Borders: The Legal and Ethical Challenges*, 28 MED. & L. 439, 440 (2009).

46. Ambar Mehta et al., *Global Trends in Center Accreditation by the Joint Commission International: Growing Patient Implications for International Medical and Surgical Care*, 24 J. TRAVEL MED. 1, 2 (2017).

protocols.⁴⁷ Likewise, in 2014, the CDC identified nineteen cases of women with antibiotic-resistant infections who received cosmetic surgeries in the Dominican Republic and contracted nontuberculous mycobacterial surgical-site infections as a result.⁴⁸ Thus, foreign hospitals seeking medical tourists from the United States should be held financially responsible when American patients are harmed while receiving care at foreign hospitals.

Many countries with prominent medical tourism sectors, such as India, China, and Thailand, currently have endemic levels of commonly known infections, such as malaria, dengue, and enteric fever.⁴⁹ Some have a high prevalence of tuberculosis, HIV, as well as hepatitis B and C.⁵⁰ Generally, international standard-based certified (i.e., JCI-certified) blood and blood products used during surgeries and transfusions are not screened for dengue and West Nile viruses.⁵¹ Additionally, receiving health care abroad carries an increased probability of acquiring infections with antibiotic-resistant organisms not commonly found in the United States. Medical tourists returning home with exotic or highly antibiotic-resistant organisms pose significant public health risks.⁵² They place others at risk of exposure to these infections, burden the American medical system,⁵³ and create potential biosecurity issues.⁵⁴

Although every procedure carries inherent risks, foreign medical standards of care may not reflect the same safety precautions that the U.S. standards of care requires.⁵⁵ The CDC has enumerated some risks specific to medical tourists.⁵⁶ It warned that these patients are likely to face various kinds of risks including communication barriers, antibiotic-resistant

47. See Bridget Kuehn, *Medical Tourism-Linked Infections*, 322 [J]AMA 108, 108 (2019). See also Ian Kracalik et al., *Verona Integron-Encoded Metallo- β -Lactamase-Producing Carbapenem-Resistant Pseudomonas Aeruginosa Infections in U.S. Residents Associated with Invasive Medical Procedures in Mexico, 2015–2018*, 68 CDC MORBIDITY & MORTALITY WKLY. REP. 463, 463 (2019).

48. See *When Medical Tourism Is No Vacation*, 311 [J]AMA 1848, 1848 (2014).

49. Lin H. Chen & Mary E. Wilson, *The Globalization of Healthcare: Implications of Medical Tourism for the Infectious Disease Clinician*, 57 CLINICAL INFECTIOUS DISEASES 1752, 1753 (2013).

50. *Id.*

51. *Id.*

52. See Valorie Crooks et al., *Ethical and Legal Implications of the Risks of Medical Tourism for Patients: A Qualitative Study of Canadian Health and Safety Representatives' Perspectives*, 3 BMJ OPEN 1, 6 (2013), <https://bmjopen.bmj.com/content/bmjopen/3/2/e002302.full.pdf>.

53. See generally Kuehn, *supra* note 47.

54. See generally, C. Michael Hall & Michael James, *Medical Tourism: Emerging Biosecurity and Nosocomial Issues*, 66 TOURISM REV. 118-26 (2011).

55. Kuehn, *supra* note 47.

56. See *Medical Tourism*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://wwwnc.cdc.gov/travel/page/medical-tourism> (last visited Feb. 12, 2022).

organisms, low-quality and counterfeit medications, and deadly pulmonary embolisms due to their immediate postoperative flight home.⁵⁷ Lengthy air flights where the patient is in a fixed position for hours at a time can cause deep vein thrombosis in the lower extremities, which can travel to the lungs, and develop pulmonary embolisms, which could be deadly.⁵⁸ Additionally, unlike American facilities, foreign medical centers are not required to disclose quality reports, and most do not release outcomes of medical and surgical procedures to a central database.⁵⁹ Thus, patients cannot evaluate a center's specific short-term or long-term outcomes for their upcoming procedure.

Due to lack of international quality of care standards, patients suffer debilitating injuries during various procedures performed in distant medical facilities. For example, similar to their American counterparts, German patients who avoided long kidney transplant lists by visiting commercial transplantation centers in India and Pakistan, experienced higher mortality rates than they would in Germany due to substandard tissue matching practices.⁶⁰ Also just like American patients, Australian plastic surgery patients returning from inexpensive cosmetic surgeries in Bangkok suffered complications such as "hideous scarring" and infections from breast implants.⁶¹ On one occasion, a Rhode Island woman died of a blood clot due to post-surgical complications four days after she traveled to Wockhardt Hospital, an associate hospital of Harvard Medical International in India,⁶² for a tummy tuck and breast reduction.⁶³

Some Mexican plastic surgeons with questionable credentials operate in unregulated manners, with neither adequate licensing nor facilities, and cause disfigurement and fatal infections.⁶⁴ Consequently, secondary-repair surgeons in San Antonio, Texas, have witnessed an increased number of

57. See Frédéric Lapostolle et al., *Severe Pulmonary Embolism Associated with Air Travel*, 345 *NEW ENG. J. MED.* 779, 780 (2001). See also Ognjen Gajic et al., *Long-Haul Air Travel Before Major Surgery: A Prescription for Thromboembolism?*, 80 *MAYO CLINIC PROC.* 728, 728 (2005).

58. Diane York, *Medical Tourism: The Trend Toward Outsourcing Medical Procedures to Foreign Countries*, 28 *J. CONTINUING EDUC. HEALTH PROF.* 99, 101 (2008).

59. See Neil Lunt et al., *Are There Implications for Quality of Care for Patients Who Participate in International Medical Tourism?*, 11 *EXPERT REV. PHARMACOECONOMICS & OUTCOMES RES.* 133, 135 (2011).

60. Nicolas P. Terry, *Under-Regulated Health Care Phenomena in a Flat World: Medical Tourism and Outsourcing*, 29 *W. NEW ENG. L. REV.* 421, 463 (2007).

61. *Id.* at 463-64.

62. Elizabeth Gluck, *"Incredible [Accreditable] India": Trends in Hospital Accreditation Coexistent with the Growth of Medical Tourism in India*, 1 *ST. LOUIS U. J. HEALTH L. & POL'Y* 459, 465 n.48 (2008).

63. Kerrie S. Howze, Symposium, *Medical Tourism: Symptom or Cure?*, 41 *GA. L. REV.* 1013, 1030 (2007).

64. *Mexican Border Plastic-Surgery Clinics Booming*, FOX NEWS (Feb. 7, 2005), <https://www.foxnews.com/story/mexican-border-plastic-surgery-clinics-booming>.

emergency room visits due to botched plastic surgery procedures where women undergoing operations in Mexico are left with broken and slipping breast implants, infections, and large scars.⁶⁵

The fact that most American physicians are reluctant to care for patients with adverse results from operations performed abroad only aggravates the problem.⁶⁶ Likewise, most American insurance companies do not reimburse for follow-up care, especially in cases in which non-FDA approved materials, procedures, or medications are used.⁶⁷ Neither health care organizations in foreign countries nor the intermediaries that facilitate overseas medical tourism are bound by regulations and standards set forth by the Health Insurance Portability and Accountability Act (HIPAA).⁶⁸ This means that foreign providers are not bound to follow the strict personal health data privacy safeguards that are required in the United States.

The intermediaries or brokerages that promote and facilitate overseas medical travel for U.S. residents receive referral fees from the offshore providers for patient referrals.⁶⁹ Nonetheless, medical tourism companies have greater expertise in tourism than in medical dealings, and in many cases, may not have any medical expertise or personnel⁷⁰ to assess the fitness of candidates for the desired procedures.

Upon return to their home countries, some patients experience medical emergencies that impact their overall medical cost substantially. Although studies in this area are limited, a study from Alberta, Canada, reported that “more than \$560,000 was spent treating fifty-nine bariatric medical tourists by twenty-five surgeons between 2012 and 2013.”⁷¹ This study suggested that complication rates were considerably higher (42.2–56.1%) than similar surgeries performed in Alberta (12.3%).⁷² Thus, the combined number for all

65. *Id.* Similarly, a woman who visited Mexico for a plastic surgery experienced severe gangrene and her skin peeled off when emergency room doctors lifted her from one bed to another. *Id.*

66. Boyd et al., *supra* note 14, at 109.

67. *Id.*

68. See Purvi B. Maniar, *HIPAA Considerations for Intermediaries in Medical Tourism*, 2 MED. TRAVEL TODAY 1, 1 (2014), https://www.ebglaw.com/content/uploads/2014/06/21090_health-article-maniar-HIPAA_considerations_for_intermediaries_in_Med_Tourism-4-30-08.pdf.

69. Brandon W. Alleman et al., *Medical Tourism Services Available to Residents of the United States*, 26 J. GEN. INTERNAL MED. 492, 496 (2010).

70. Roy G. Spece, Jr., *Medical Tourism: Protecting Patients from Conflicts of Interest in Broker's Fees Paid by Foreign Providers*, 6 J. HEALTH & BIOMED. L. 1, 3 (2010).

71. David Kim et al., *Financial Costs and Patients' Perceptions of Medical Tourism in Bariatric Surgery*, 59 CAN. J. SURGERY 59, 59 (2016). Canadian data is provided as a parallel because such data for U.S. tourists is not available.

72. *Id.* at 60.

post-operative surgical emergencies has the potential to burden the home country's medical system for the harm inflicted abroad.

Notably, American patients are not the only ones at risk of harm by the medical tourism industry. There are international concerns about organ procurement⁷³ as the practice of international transplant tourism undermines the ethical principle of non-maleficence.⁷⁴ Reports from the World Health Organization (WHO) raise concerns about stories involving the hastened execution of Chinese death-row prisoners if they are found to be a matching organ donor⁷⁵ and Pakistani villagers living with a single kidney after selling the other kidney to a wealthy foreigner.⁷⁶ According to the Pakistani Supreme Court filings, kidney patients are visiting Pakistan for transplantation with vended organs.⁷⁷

Moreover, countries that attract many medical tourists could witness an increase in prices for available care and reduction in available domestic resources, especially for indigent citizens.⁷⁸ This results in a two-tier system of healthcare in the destination country, one tier for the local poor and one for medical tourists.⁷⁹ Thus, the tourism industry reduces available resources and increases prices of available care.⁸⁰ Some argue these countries benefit from medical tourism in the region because it provides access to new medical technology and foreign-trained doctors.⁸¹ In reality, these countries experience a "brain drain" of local talent into private, for-profit organizations.⁸²

IV. AMERICAN LEGAL EXPECTATIONS AND LOCAL CUSTOMS

American patients, who are accustomed to their domestic legal and healthcare systems, might not realize the gravity of the risk associated with

73. Boyd et al., *supra* note 14, at 109.

74. *Medical Tourism: Ethical Pitfalls of Seeking Health Care Overseas*, RELIAS MEDIA (Nov. 1, 2007), <https://www.reliasmedia.com/articles/107772-medical-tourism-ethical-pitfalls-of-seeking-health-care-overseas>.

75. Simon Denyer, *China Used to Harvest Organs from Prisoners. Under Pressure, That Practice is Finally Ending*, WASH. POST (Sep. 15, 2017), https://www.washingtonpost.com/world/asia_pacific/in-the-face-of-criticism-china-has-been-cleaning-up-its-organ-transplant-industry/2017/09/14/d689444e-e1a2-11e6-a419-ee8eff0835_story.html.

76. *Medical Tourism: Ethical Pitfalls of Seeking Health Care Overseas*, *supra* note 74.

77. *Several Villagers Living with One Kidney in Punjab: Report*, DUNYA NEWS, (May 23, 2017, 8:45 PM) <https://dunyanews.tv/en/Pakistan/389669-Several-villagers-living-with-one-kidney-in-Punjab>.

78. See C. Michael Hall, *Health and Medical Tourism: A Kill or Cure for Global Public Health?*, 66 TOURISM REV. 4, 9 (2011).

79. I. Glenn Cohen, *Medical Tourism, Access to Health Care, and Global Justice*, 52 VA. J. INT'L L. 1, 5 (2011).

80. See Muzaurieta, *supra* note 25, at 128.

81. See *id.* at 130.

82. *Id.* at 126.

receiving care abroad. The information available on the internet is often limited to unreliable anecdotal accounts. Alarming, there are only a few legal remedies available for American medical tourists when something goes awry.

In the United States, in addition to federal regulations, individual states implement guidelines on the practice of medicine through the licensure of physicians.⁸³ Unlike the United States, many international healthcare systems are not well-monitored or regulated.⁸⁴ For medical negligence suits in the United States, a jury of ordinary people from all walks of life determines whether a physician erred and what the patient's appropriate remedy, including the amount of the award for pain and suffering, should be.⁸⁵ In contrast, in India, for example, patients can sue either in civil courts, which can take fifteen to twenty years to resolve, or in special consumer courts, which do not grant awards for non-economic damages like pain and suffering.⁸⁶ Additionally, attorneys are not permitted to take such cases on contingency basis.⁸⁷ Even though India has many regulatory systems, such as the Medical Council of India, the Indian Medical Association, and various departments of health within the government, they are often ineffective and have little impact on the standard of medical care because they do not require any meaningful accountability for healthcare providers.⁸⁸ Consumer groups, the Indian Supreme Court, and even member physicians, have all publicly accused the Medical Council of India of corruption and incompetence in disciplining member physicians.⁸⁹

Medical negligence suits fare just as badly in Thailand, home to Bangkok's Bumrungrad International Hospital, which is the leader in medical tourism and the largest private hospital in Southeast Asia.⁹⁰ Although the Ministry of Public Health is responsible for regulating the national health care,⁹¹ it has traditionally failed to regulate the safety or quality of medical services. The Thai civil code for medical malpractice law

83. *Navigating State Medical Licensure*, AM. MED. ASS'N, <http://www.ama-assn.org/residents-students/career-planning-resource/navigating-state-medical-licensure> (last visited Oct. 4, 2021).

84. See generally Nathan Cortez, *Recalibrating the Legal Risks of Cross-Border Health Care*, 10 YALE J. HEALTH POL'Y L. & ETHICS (2010).

85. Bashir Mamdani, *Medical Malpractice*, 1 INDIAN J. MED. ETHICS 57, 58 (2004).

86. *Id.*

87. *Id.*

88. Muzaurieta, *supra* note 25, at 80.

89. *Id.* at 140-41.

90. Steve Finch, *Thailand Top Destination for Medical Tourists*, 186 CAN. MED. ASS'N J. E1 (2014).

91. Cortez, *supra* note 84, at 42.

is underdeveloped and essentially non-existent.⁹² A party seeking relief may only recover for negligence.⁹³ Additionally, patients' medical records often "disappear," judges prohibit pretrial discovery, and even if a patient is successful, the recovery usually does not exceed \$2,500.⁹⁴

Like Thailand, Mexico is a civil law country; tort litigation in Mexico is virtually non-existent, and the courts do not utilize jurors or *stare decisis*.⁹⁵ Additionally, like India, Mexico's new National Commission for Medical Arbitration provides some relief but the compensation averages around \$4,800 without recognition of non-economic damages, like pain and suffering.⁹⁶

Many countries do not require that their hospitals participate in international accreditation programs nor do they require that these hospitals report positive or adverse patient outcomes.⁹⁷ Some locations do offer minimal quality of care statistics, but since there is no uniformity in the methodology used to gather this data, these statistics do not provide the patients with much useful information.⁹⁸ Patients often rely on hospital mortality rates, but such numbers are a "crude measure of quality," as they do not accurately capture the actual risks involved at a certain facility.⁹⁹

Existing regulatory bodies are insufficient sources of information for medical tourists. Simply having access to non-uniform, unverified, and very limited data points is not sufficient for patients to make an informed decision regarding their care. Therefore, medical tourism destinations must ultimately provide data on quality controls and processes, equipment availability, and other key metrics that define the risk of care at a given facility. Similarly, doctors working at these tourism destinations should provide evidence of their education, training, and special skills required for procedures that they perform. This information should then be examined and scrutinized as the basis for licensing schemes for increased transparency and be presented in a manner that the average patient can easily digest. Although the malpractice insurance system creates a quasi-regulatory mechanism, in most countries other than the United States, insurance markets are typically non-existent,

92. *Id.* at 43.

93. *Id.* Although Thailand is a civil code country, no Thai statutes specifically address medical malpractice. Thus, patients most frequently claim damages under Section 420 of Thailand's Civil and Commercial Code, which requires any "person who, willfully or negligently, unlawfully injures the life, body, health, liberty, property, or any right of another person" to pay remuneration. Thus, Patients bear the burden of proving negligence in Thai courts. *Id.*

94. *Id.* at 44.

95. *Id.* at 68.

96. *Id.*

97. I. Glenn Cohen, *Protecting Patients with Passports: Medical Tourism and the Patient-Protective Argument*, 95 IOWA L. REV. 1467, 1489-91 (2010).

98. Muzaurieta, *supra* note 25, at 144.

99. *Id.*

and most citizens of destination countries tend to be unaware of their right to sue for receiving substandard care.¹⁰⁰

V. U.S.-AFFILIATED HEALTH CARE FACILITIES

Some U.S. clinics have joined the market of medical tourism by opening foreign affiliates or partnering with foreign local clinics engaged in medical tourism.¹⁰¹ A large number of Americans visit these facilities for their medical needs. For example, after the FDA sent Houston-based Celltex a warning letter in 2012 for not having the necessary clinical trials and regulatory approvals for the mesenchymal stem cell therapy it offered, the company shifted its clinical operations to Mexico.¹⁰² Today, Celltex operates out of Hospital Galenia in Cancun and caters mostly to American patients.¹⁰³

Many reputable U.S. university medical centers have also joined this growing trend in hopes of capitalizing on the local patient population as well as the medical tourism industry in foreign countries.¹⁰⁴ By lending their names to their foreign affiliates, these American medical giants profit enormously. For instance, Johns Hopkins Hospital opened a hospital in India¹⁰⁵ and manages the 461-bed Tawam Hospital in Abu Dhabi¹⁰⁶ with

100. Muzaurieta, *supra* note 25, at 141. On the other hand, medical error is the third-leading cause of death in the United States. Ray Sipherd, *The Third-leading Cause of Death in US Most Doctors Don't Want You to Know About*, CNBC (Feb. 22, 2018), <https://www.cnbc.com/2018/02/22/medical-errors-third-leading-cause-of-death-in-america.html>. American physicians collectively pay over six billion dollars annually for malpractice insurance to protect themselves from potential malpractice suits. Michael Klaus, *Outsourcing Vital Operations: What if U.S. Health Care Costs Drive Patients Overseas for Surgery?*, 9 QUINNIPIAC HEALTH L.J. 219, 229-230 (2006). In a recent national survey, seventy-five percent of American doctors admitted to ordering more tests and procedures than medically necessary to specifically reduce the risk of malpractice lawsuits. Hal Scherz & Wayne Oliver, *Defensive Medicine: A Cure Worse than the Disease*, FORBES (Aug. 27, 2013, 10:52 AM), <http://www.forbes.com/sites/realspin/2013/08/27/defensive-medicine-a-cure-worse-than-the-disease/>. Some argue the malpractice system causes health insurance companies to directly pass the cost on to patients and cause physicians to practice defense medicine. Klaus, *supra* at 235.

101. CHAMBERS, *supra* note 27.

102. Anna Azvolinsky, *Texas Stem Cell Law Opens Door for Controversial Treatments*, SCIENTIST MAG. (Mar. 27, 2018), <https://www.the-scientist.com/news-analysis/texas-stem-cell-law-opens-door-for-controversial-treatments-29901>.

103. *Id.*

104. Boyd et al., *supra* note 14, at 108.

105. *Id.*; see also *HCL Healthcare*, JOHNS HOPKINS MED. INT'L., https://www.hopkinsmedicine.org/international/international_affiliations/asia_pacific/hcl_healthcare.html (last visited Oct. 9, 2021).

106. *America's Top Hospitals Go Global*, FORBES (Aug. 25, 2008, 5:00 PM), https://www.forbes.com/2008/08/25/american-hospitals-expand-forbeslife-cx_avd_0825health.html#1ce9d67b2aa5 [hereinafter *Go Global*]. See also *In Depth: America's Top Hospitals Go Global*, FORBES (Aug. 25, 2008, 5:00 PM),

neonatal, fertility, emergency, oncology, intensive and cardiac care services.¹⁰⁷ Hopkins is also affiliated with Turkey's Anadolu Medical Center, a 209-bed acute care hospital, which it recognizes as "the best in Turkey, southern Eurasia and the Middle East," with services in cardiology, neurology, oncology and women's health.¹⁰⁸ It also provides medical services through *Pacífica Salud Hospital Punta Pacífica*, in Panama,¹⁰⁹ Singapore's 1,200-bed Tan Tock Seng Hospital,¹¹⁰ and has recently signed a consulting agreement with China Northwest International Medical Center to build a new world-class medical center in Xi'an, the largest city in the northwest region of China.¹¹¹

https://www.forbes.com/2008/08/25/american-hospitals-expand-forbeslife-cx_avd_0825health_slide.html#43b1ebed3548 [hereinafter *In Depth: Go Global*].

107. *Tawam Hospital*, JOHNS HOPKINS MED. INT'L., https://www.hopkinsmedicine.org/international/international_affiliations/middle_east/tawam_hospital.html (last visited Oct. 9, 2021).

108. *Anadolu Medical Center*, JOHNS HOPKINS MED. INT'L., https://www.hopkinsmedicine.org/international/international_affiliations/europe/anadolu_medical_center.html (last visited Oct. 9, 2021).

109. *Pacífica Salud Hospital Punta Pacífica*, JOHNS HOPKINS MED. INT'L., https://www.hopkinsmedicine.org/international/international_affiliations/latin_america_caribbean/hospital_punta_pacific.html (last visited Oct. 9, 2021).

110. *Johns Hopkins Singapore*, JOHNS HOPKINS MED. INT'L., https://www.hopkinsmedicine.org/international/international_affiliations/asia_pacific/singapore_international_medical_centre.html (last visited Oct. 9, 2021).

111. There are many examples of these large U.S.-based hospitals moving abroad. Harvard and Boston Universities have partnered with the United Arab Emirates (UAE) to create the 500-acre Dubai Healthcare City. Boyd et al., *supra* note 14, at 108. In collaboration with non-profit Partners HealthCare International (PHI), a subsidiary of Harvard University, they developed the Harvard Medical School Dubai Center, home to the Institute for Postgraduate Education and Research and the center of Dubai Healthcare City's education programs. Cohen, *supra* note 97, at 1472; see also PARTNERS HEALTH CARE INT'L, <https://international.partners.org> (last visited Feb. 19, 2021). Partners HealthCare is home to five Harvard Medical School-affiliated teaching hospitals, including Brigham and Women's Hospital, Massachusetts General Hospital, Massachusetts Eye and Ear, McLean Hospital, Spaulding Rehabilitation Network and, community hospitals such as Newton-Wellesley Hospital and North Shore Medical Center. PARTNERS HEALTH CARE INT'L, <https://international.partners.org> (last visited Feb. 19, 2021). Harvard University has also partnered with India's Wockhardt Hospital, which is a group of nine multispecialty hospital system with a total bed capacity of 1,200 and locations in Mumbai, Nashik, Rajkot, and Nagpur. *Wockhardt Hospital Group, India*, MEDICAL INDIA TOURISM <https://www.medicalindiatourism.com/wockhardt-hospital-group-in-india.html> (last visited Oct. 9, 2021). Cleveland Clinic, which has a campus in Toronto, has partnered with the 1,600-bed King Faisal Specialist Hospital & Research Center in Riyadh, King Faisal Specialist Hospital & Research Centre, <https://www.kfshrc.edu.sa/en/home/about> (last visited Feb. 19, 2021), and holds 1.8 percent minor equity and affiliation with Jeddah's 300-bed International Medical Center in the Kingdom of Saudi Arabia. Shannon Mortland, *Clinic Takes Stake in New Saudi Hospital*, CRAIN'S CLEVELAND BUS. (Mar. 8, 2004, 1:30 AM), <https://www.crainscleveland.com/article/20040308/SUB/403080721/clinic-takes-stake-in-new-saudi-hospital>. Cleveland Clinic has also opened its UAE branch of 364-bed multidisciplinary Luxury Cleveland Clinic Abu Dhabi hospital, with all western-trained and North American/European board-certified consultant physicians. *Go Global, supra* note 105; *Physician Careers*, CLEVELAND CLINIC ABU DHABI, <https://www.clevelandclinicabudhabi.ae/en/careers/career-opportunities/physician->

In total, Johns Hopkins Hospital has eighteen partnerships, Cleveland Clinic has ten, Mayo Clinic has five, and Massachusetts General Hospital has four.¹¹² Many of these facilities contain state-of-the-art technology, employ U.S.-trained physicians, and are located in developing countries, where labor and overhead costs are significantly lower than in the United States.¹¹³ To accommodate foreign patients, some of these offshore hospitals employ U.S.-trained and board-certified physicians, apply to receive internationally accepted accreditation,¹¹⁴ provide luxury amenities, such as translation services, and enhance communications with physicians in home countries to maintain the continuity of care.¹¹⁵ There are also many healthcare brokers available in the United States and abroad that readily arrange air travel and hotel accommodations, provide tourist information, and arrange admission to various hospitals and access to physicians throughout the world.¹¹⁶

The leaders of these American treatment centers and teaching institutions often mention a desire to improve local healthcare as their motivation, but they also stand to make a significant amount of money in return from their investments.¹¹⁷ Concerns persist about these private hospitals that entice local physicians to treat foreign medical tourists rather

careers/pages/default.aspx (last visited Feb. 19, 2021). Additionally, Cleveland clinic is affiliated with major medical centers in the Bahamas, Dominican Republic, Guatemala, El Salvador, India, Panama, Honduras, and Costa Rica. *Locations & Representatives*, CLEVELAND CLINIC, <https://my.clevelandclinic.org/patients/international/locations> (last visited Feb. 19, 2021). Mayo Clinic is affiliated with the International Medical Center in Saudi Arabia, Rhoda Madson, *International Medical Center in Saudi Arabia Joins Mayo Clinic Care Network*, MAYO CLINIC: NEWS NETWORK (Mar. 21, 2018), <https://newsnetwork.mayoclinic.org/discussion/international-medical-center-in-saudi-arabia-joins-mayo-clinic-care-network/>, Sir Run Run Shaw Hospital in Hangzhou, China, Rhoda Madson, *Sir Run Run Shaw Hospital in China Joins Mayo Clinic Care Network*, MAYO CLINIC: NEWS NETWORK (Sept. 7, 2017), <https://newsnetwork.mayoclinic.org/discussion/sir-run-run-shaw-hospital-in-china-joins-mayo-clinic-care-network/>, Centro Médico Puerta de Hierro, in Guadalajara, Mexico, Rhoda Madson, *Centro Médico Puerta de Hierro in Mexico Joins Mayo Clinic Care Network*, MAYO CLINIC: NEWS NETWORK (Feb. 20, 2019), <https://newsnetwork.mayoclinic.org/discussion/centro-medico-puerta-de-hierro-in-mexico-joins-mayo-clinic-care-network/>, St. Luke's Medical Center in Taguig City, Philippines, Rhoda Madson, *St. Luke's Medical Center in the Philippines Joins Mayo Clinic Care Network*, MAYO CLINIC: NEWS NETWORK (Oct. 19, 2016), <https://newsnetwork.mayoclinic.org/discussion/st-lukes-medical-center-in-the-philippines-joins-mayo-clinic-care-network/>, and Raffles Medical Group in Singapore, Rhoda Madson, *Raffles Medical Group First Member in Asia Joins Mayo Clinic Care Network*, MAYO CLINIC: NEWS NETWORK (July 28, 2015), <https://newsnetwork.mayoclinic.org/discussion/raffles-medical-group-becomes-first-member-from-asia-to-join-the-mayo-clinic-care-network/>.

112. Mehta et al., *supra* note 46, at 2.

113. Boyd et al., *supra* note 14, at 107.

114. Mitka, *supra* note 4, at 1519.

115. Carroll, *supra* note 6.

116. Dalen & Alpert, *supra* note 2, at 9

117. *Go Global*, *supra* note 106.

than the local population in hospitals built for and dedicated to the local communities.¹¹⁸ The combination of reputable names and cheap prices attracts many American patients to these off-shore facilities. This is evident by an increasing trend of reputable American hospitals opening their doors abroad after the terrorist attacks of 9/11, which caused a decline in the number of international medical travelers,¹¹⁹ especially those from the wealthy Arab countries, due to discrimination and difficulty obtaining visas.¹²⁰ Before the attacks, the U.S. Department of Commerce reported revenues of more than one billion dollars annually from inbound travel to the United States for medical care.¹²¹ Not wanting to forego the steady stream of cash from the Middle Eastern patients, some U.S. hospitals decided to bring their services to these patients by lending their names and resources to their foreign counterparts¹²²—all while asserting a desire to improve local healthcare.

Additionally, these countries provide generous tax incentives, because they realize that by partnering with prestigious American hospitals or medical schools, their own facilities attain instant credibility and can become regional draws for economic development.¹²³ For example, Dubai Healthcare City is a tax-free zone.¹²⁴

VI. JOINT COMMISSION ACCREDITATION

Within the United States, the Joint Commission (JC) accredits and certifies domestic healthcare facilities and programs.¹²⁵ The JC is a Chicago-based non-profit tax-exempt private corporation that has inspected and accredited more than 22,000 U.S. healthcare organizations and programs on behalf of the U.S. government.¹²⁶ In 2019, the JC reported \$182,737,650 in

118. Boyd et al., *supra* note 14, at 109-10.

119. Leonard Karp, *Medical Travel: Global Impact and Local Response*, 21 HEALTH POL'Y NEWSL. (2008).

120. Finch, *supra* note 90, at E1.

121. Karp, *supra* note 119.

122. *See id.*

123. Nur Syafiqah Abd Mutalib et al., *Medical Tourism: Ethics, Risks, and Benefits*, 50 INDIAN J. PHARMACEUTICAL EDU. & RES. 261, 267 (2016).

124. *See* Cohen, *supra* note 97, at 1472; *see also* *Dubai Healthcare City*, INVEST IN DUBAI, <https://freezones.invest.dubai.ae/en/dubai-healthcare-city/about> (last visited Feb. 19, 2021).

125. *Facts About the Joint Commission*, THE JOINT COMMISSION, <https://www.jointcommission.org/about-us/facts-about-the-joint-commission/> (last visited Feb. 19, 2021) (facilities that can earn JC's accreditation include hospitals (general, psychiatric, pediatric, and rehabilitative), dental and medical practices, dialysis centers, imaging centers, and nursing homes).

126. *History of The Joint Commission*, THE JOINT COMMISSION, <https://www.jointcommission.org/about-us/facts-about-the-joint-commission/history-of-the-joint-commission/> (last visited Feb. 18, 2022). *See also* Wilson Huhn, *A New Frontier: A Constitutional Perspective on "Socialized Medicine,"* 15 MICH. ST. UNIV. J. MED. & L. 297, 302 (2011).

total revenue.¹²⁷ The JC was created in 1951 and is comprised of a twenty-one member Board of Commissioners.¹²⁸ The JC accreditation is a condition of licensure for the receipt of Medicaid and Medicare reimbursements in the United States.¹²⁹ The JC accredited 80% of U.S. hospitals,¹³⁰ including hospitals in the U.S. Department of Veterans Affairs, the federal Bureau of Prisons, and the Indian Health Services. According to the Deloitte Center for Health Solutions, the annual healthcare market spending in the United States is estimated to be \$4 trillion.¹³¹ This makes the JC caretaker to a substantial amount of money.

The Joint Commission's Washington, D.C. office works with a variety of government entities from the legislative branch (Congressional offices, MedPAC), the executive branch (Centers for Medicare and Medicaid Services, FDA, CDC, Department of Veterans Affairs, Department of Defense, and others), the federal oversight bodies (Government Accountability Office, Offices of Inspectors General), and the national stakeholder groups and coalitions.¹³²

Under authority of section 1865 of the Medicare Act, an amendment to the Social Security Act of 1935, hospitals accredited by the JC are

127. 2019 IRS Form 990, THE JOINT COMMISSION, <https://www.jointcommission.org/about-us/policies-and-financials/financial-statements/>. The salary of the JC CEO was about \$1 million in 2013 and \$1,630,910 in 2018. Stephanie Amour, *Hospital Watchdog Gives Seal of Approval, even After Problems Emerge*, WALL ST. J. (Sept. 8, 2017), <https://www.proquest.com/docview/1936595782?accountid=6749>. See also *Joint Commission on Accreditation of Healthcare Organizations*, NON PROFIT LIGHT, <https://nonprofitlight.com/il/oakbrook-terrace/joint-commission-on-accreditation-of-healthcare-organizations> (last visited Feb. 18, 2022); see also *Joint Commission on Accreditation of Healthcare Organizations*, NON PROFIT LIGHT, PROPUBLICA, <https://projects.propublica.org/nonprofits/organizations/362229255> (last visited Oct. 21, 2021); see also 2018 IRS Form 990, THE JOINT COMMISSION, <https://www.jointcommission.org/-/media/tjc/documents/about-us/financial-statements/2018-form-990-tjc-pdc-no-salaries.pdf> (individual salaries are redacted on the public disclosure tax forms published on the Joint Commission's website).

128. *Facts About the Joint Commission*, *supra* note 124.

129. *Federal Deemed Status*, THE JOINT COMMISSION, <https://www.jointcommission.org/resources/news-and-multimedia/fact-sheets/facts-about-federal-deemed-status/> (last visited Oct. 21, 2021).

130. Paige Minemyer, *Investigation: Joint Commission Rarely Revokes Accreditation from Hospitals that Put Patients at Risk*, FIERCE HEALTHCARE, (Sept. 11, 2017, 9:15 AM), <https://www.fiercehealthcare.com/regulatory/investigation-reveals-joint-commission-unlikely-to-revoke-accreditation-from-hospitals>.

131. Dan Munro, *Annual U.S. Healthcare Spending Hits \$3.8 Trillion*, FORBES (Feb. 2, 2014, 11:03 PM), <https://www.forbes.com/sites/danmunro/2014/02/02/annual-u-s-healthcare-spending-hits-3-8-trillion/?sh=799b8e4b76a9>.

132. *Federal Relations and Public Policy*, THE JOINT COMMISSION, <https://www.jointcommission.org/about-us/federal-relations-and-public-policy/> (last visited Feb. 19, 2021).

automatically “‘deemed’ to have met all the regulatory requirements specified in the Act, except for a rule concerning utilization, the psychiatric hospital special conditions, and the special requirements for hospital providers of long-term care.”¹³³

To earn and maintain the Gold Seal of Approval from the JC, hospitals and healthcare facilities undergo an on-site survey every three years.¹³⁴ The JC has significant power to revoke or suspend the accreditation and to sanction healthcare organizations.¹³⁵ However, often in case of a violation, most hospitals retain their accreditations even when Centers for Medicare and Medicaid Services (CMS) determines that their violations were significant enough to cause, or likely cause, serious patient injury or death.¹³⁶ For example, after three patients in Cooley Dickinson Hospital in Northampton, Massachusetts, died as a result of medical neglect, as determined by the CMS, the JC did not change the status of the hospital’s accreditation.¹³⁷

To attract medical tourists and show their credibility, offshore medical facilities highlight their status as approved by an internationally accepted accreditation organization.¹³⁸ One of these accreditation organizations is the Joint Commission International (JCI) or, as it was formerly known, the Joint Commission on Accreditation of Hospitals.¹³⁹ JCI is the global arm of the JC.¹⁴⁰ JCI began to evaluate, inspect, and accredit offshore hospitals in 1998.¹⁴¹ In 2009, there were 270 JCI accredited hospitals in thirty-eight countries.¹⁴² By July 2016, 939 foreign hospitals in sixty-six countries had been accredited.¹⁴³ Since then, this number has increased by 20% every year.¹⁴⁴ Among the sixty-six countries that partake in the JCI accreditation program, five contain nearly half of all such centers; with United Arab Emirates amounting to 17%, Saudi Arabia 11%, China 8%, Brazil 6%, and

133. INSTITUTE OF MEDICINE, *MEDICARE: A STRATEGY FOR QUALITY ASSURANCE: VOLUME II SOURCES AND METHODS* 119 (Kathleen N. Lohr ed., 1990).

134. *Facts About the Joint Commission*, *supra* note 125.

135. James R. Goldberg, *The Joint Commission’s Unpoliced Tax Exempt Status Has a Staggering Effect on the Economics of Medicine*, AM. MED. MONEY MACHINE (May 18, 2015), <https://www.theamericanmedicalmoneymachine.com/the-joint-commissions-unpoliced-tax-exempt-status-has-a-staggering-effect-on-the-economics-of-medicine/>.

136. Minemyer, *supra* note 130.

137. Stephannie Armour, *Hospital Watchdog Gives Seal of Approval, Even After Problems Emerge*, WALL ST. J., (Sept. 8, 2017, 12:45 PM), <https://www.wsj.com/articles/watchdog-awards-hospitals-seal-of-approval-even-after-problems-emerge-1504889146>.

138. Gluck, *supra* note 62, at 478.

139. Dalen & Alpert, *supra* note 2, at 10.

140. Boyd et al., *supra* note 14, at 107.

141. *Id.*

142. Mitka, *supra* note 4, at 1519.

143. Mehta et al., *supra* note 46, at 2.

144. Dalen & Alpert, *supra* note 2, at 10.

Thailand 6%.¹⁴⁵ The average cost of a full JCI survey in 2010 was \$46,000.¹⁴⁶ The majority of facilities requesting JCI accreditation are hospital programs (62%), followed by ambulatory care programs (14%), academic medical center hospital programs (8%), and clinical laboratory programs (7%).¹⁴⁷ The remaining are primary care programs (4%), long-term care programs (3%), home-care programs (2%), and medical transport programs (1%).¹⁴⁸

Foreign hospitals are not alone in advertising their facilities and services as JCI-accredited to attract more revenue. AARP's spokesperson and CEO of Patients Beyond Borders, Josef Woodman, has also used JCI-accreditation to advertise medical tourism.¹⁴⁹ According to Mr. Woodman, many "leading private hospitals in Mexico and Costa Rica have been awarded full accreditation by the . . . JCI, the same agency that accredits hospitals like Johns Hopkins, Cleveland Clinic, and Mayo here in the US."¹⁵⁰ What Mr. Woodman, and by extension AARP, failed to mention is the significant difference in accountability and standard of accreditation between U.S.-based and foreign institutions.

VII. LACK OF LEGAL ACCOUNTABILITY IN JCI ACCREDITED FACILITIES

JCI accreditation should give patients confidence that their chosen international healthcare provider is held to higher standards and regularly monitored.¹⁵¹ For example, Dubai Healthcare City (DHCC) on its website claims, that "[a]ccredited hospitals and clinics in Dubai Healthcare City strive to help people heal better and feel better."¹⁵² In regard to medical negligence, DHCC's CEO, Dr. Ramadan Al Beloushi, asserts that all complaints of medical malpractice within DHCC are investigated by the Dubai Healthcare City Authority-Regulation (DHCR) "to ensure that health

145. Mehta et al., *supra* note 46, at 2.

146. *JCI Accreditation*, HEALTH-TOURISM, <https://www.health-tourism.com/jci-accreditation/> (last visited Feb. 12, 2022).

147. Mehta et al., *supra* note 46, at 2.

148. *Id.*

149. See Kate Hays, *Good News: Your Medical Options Now Include Latin America*, AARP (Sept. 20, 2011, 11:40 AM), <https://blog.aarp.org/healthy-living/good-news-your-medical-options-now-include-latin-america>.

150. *Id.*

151. See *Why Seek Out a JCI-Accredited Hospital*, WORLD HOSP. SEARCH, <https://www.worldhospitalsearch.org/the-value-of-jci-accreditation/why-seek-out-a-jci-accredited-hospital/> (last visited Feb. 19, 2021).

152. *Dubai Healthcare City*, *supra* note 124.

standards are maintained in the free zone.”¹⁵³ Dr. Al Beloushi claims that DHCR has “a transparent and fair mechanism to encourage patients to come forward for medical-related complaints.”¹⁵⁴ On its face, once a complaint is received, a formal investigation is initiated and the findings are sent out to an independent committee comprising of specialists from outside the UAE to determine the validity of the complaint.¹⁵⁵

However, it appears that there is a conflict between patients’ interest and DHCA’s interest, as DHCA’s primary aim is to promote medical tourism and create new income streams for Dubai.¹⁵⁶ Complete transparency might not be a feasible business practice. For example, when a patient suffered from medical negligence in Dubai Healthcare City, the UAE government was quick to suppress the story on the internet.¹⁵⁷ In 2016, Mohammad Imran Hussain, a Canadian citizen, underwent a successful heart operation at Mediclinic, one of the main hospitals in DHCR.¹⁵⁸ As part of his postoperative care, to monitor and stabilize any abnormalities in Mr. Hussain’s heart rhythm, his surgeon used a temporary epicardial pacing wire, which was subsequently removed in anticipation of his discharge.¹⁵⁹ Possible complications of epicardial pacing wire removal include bleeding, wire fragment migration, and infection secondary to retained wire fragments.¹⁶⁰ Meanwhile, cardiac-surgery patients should be closely monitored by the nursing staff for any signs of complications, and appropriate emergency equipment should be readily available to intervene immediately upon emergencies.¹⁶¹ There is no evidence that Mr. Hussain was closely monitored by a capable or informed nursing staff, or that emergency

153. Suchitra Bajpai Chaudhary, *Dubai Healthcare City and Medical Malpractice Procedures*, GULF NEWS (May 15, 2016) <https://gulfnews.com/going-out/society/dubai-healthcare-city-and-medical-malpractice-procedures-1.1813051>.

154. *Id.*

155. *Id.* Once the complaint form and the supporting documents are obtained by CPU, then the complaint is logged, and an investigation is opened. The investigation process takes between three to six months. If the complaint is out of its scope, the case is referred to the authority concerned, and the complainant is informed of the action. *Id.*

156. Radha Stirling, *Family to Sue Mediclinic for \$55m.*, LINKEDIN (Aug. 8, 2017), <https://www.linkedin.com/pulse/family-sue-mediclinic-55m-dubai-medical-negligence-law-radha-stirling/> (last visited Feb. 19, 2021).

157. Nick Webster, *Dubai Surgeon Suspended After Patient Left Brain Damaged*, NAT’L NEWS (Nov. 9, 2016), <https://www.thenationalnews.com/uae/health/dubai-surgeon-suspended-after-patient-left-brain-damaged-1.225032>.

158. *Dubai Mediclinic Negligence Law Spotlighted After Patient Left Brain Damaged due to Alleged Mediclinic Violation*, DETAINED IN DUBAI, <https://www.detainedindubai.org/medicalnegligence> (last visited Feb. 19, 2021).

159. *Id.* Other complications include pericardial or mediastinal tamponade and ventricular dysrhythmias. *Id.*

160. Lourie G. Johnson et al., *Complications of Epicardial Pacing Wire Removal*, 7 J. CARDIOVASCULAR NURSING 32, 32 (1993) (discussing the potential complications of epicardial pacing wire removal).

161. *Id.* Such complications include changes in hearth rate, blood pressure, and breathing. *Id.*

equipment was placed by his bed.¹⁶² When Mr. Hussain developed a pericardial tamponade and the subsequent hemodynamic compromise, no one noticed until it resulted in heart and multi-organ failure.¹⁶³ Although he was resuscitated, Mr. Hussain sustained permanent brain injury due to diminished blood flow to his brain tissue because of the delay in his care.¹⁶⁴ Mr. Hussain's injuries have left him disabled and incapable of caring for himself.¹⁶⁵

Mr. Hussain's family sued Medclinic in UAE courts for \$55 million after DHCA found that the hospital breached international standards of care and that there was a clear "mismanagement in dealing and recognizing the main complication (cardiac tamponade)."¹⁶⁶ Although DHCA initially found that Medclinic had mismanaged Mr. Hussain's case, it issued only a letter of warning and ruled to suspend the cardiac surgeon's license for three months.¹⁶⁷ This is because Medclinic is the largest DHCA investor.¹⁶⁸ Medclinic suspended Mr. Hussain's surgeon for three months.¹⁶⁹ Medclinic then appealed DHCA's mismanagement decision and tried to avoid liability by shifting blame onto its sub-contracted staff.¹⁷⁰ Medclinic's appeal was accepted, without the possibility of making further submissions.¹⁷¹

162. DETAINED IN DUBAI, *supra* note 158.

163. *Id.*

164. Webster, *supra* note 157.

165. Stirling, *supra* note 156.

166. *Id.* It is standard international practice to plan for procedures and interventions, preparing the patient and responsible health care teams to carefully monitor for potential complications. No physician works in a vacuum. Particularly with complex procedures like heart surgery, a competent health care team is required to properly care for the patient and minimize complications. The team is composed of the primary treating physician and all other hospital staff members charged with the responsibility of caring for the patient. *Id.* There are three methods to seek remedy for a medical malpractice or negligence claims in the UAE. One can apply to the Dubai Health Authority for a misconduct ruling; open a criminal case against the alleged negligent party; or take civil action through the courts. In all scenarios though, the courts rely heavily on evidence provided by the DHA. Thus, if the DHA's findings are unsatisfactory or biased, the claimant has little recourse, even if action is taken via an alternative remedy path. It is important to allow truly independent reviews and compensation to victims. The UAE is known to "cover up" human rights violations and censor any criticism of government bodies via their Dubai Media Office and Telecommunications Regulatory Authority where it is deemed to be in the best interests of the government. Journalism is largely restricted, and criticism is criminalized. In line with the government views of negative publicity, of course the DHCA has not been inclined to rule in the favor of claimants because this could negatively impact the country's image. In fact, it is obliged to protect and promote the UAE's reputation, even where it is unfair and to the detriment of victim claimants. *Id.*

167. Webster, *supra* note 157.

168. DETAINED IN DUBAI, *supra* note 158.

169. Webster, *supra* note 157.

170. Stirling, *supra* note 156.

171. DETAINED IN DUBAI, *supra* note 158.

This is clear evidence that JCI accreditation should not provide peace of mind when it comes to accountability. A goal of the JCI-accredited facilities is to promote medical tourism, so any adverse judgments regarding negligence will negatively impact their reputation. Thus, they have an incentive to suppress similar stories.

VIII. LEGAL CONCERNS FOR AMERICAN PATIENTS

By expanding abroad, particularly to the Middle East and Asia, American treatment centers and teaching institutions are building not only their brands, but also enlarging their bank accounts, especially because they are not bound by the U.S. legal system.¹⁷² In the United States, medical negligence is defined as:

the failure by a doctor, hospital or other provider of medical services to provide that service with the degree of skill and care generally accepted among providers of such services as the standard required in providing it that either injures a person who would have been served by the provider or risks injury to a person in the position of that person.¹⁷³

A medical malpractice action is defined as “a claim in tort or in contract for damages because of the death, injury, or monetary loss to any person arising out of any medical, dental, or surgical diagnosis, treatment, or care by any provider of healthcare.”¹⁷⁴ In the United States, medical malpractice laws are designed to “1) deter unsafe practices, 2) compensate victims of negligence, and 3) exact corrective justice.”¹⁷⁵

Even with these laws and extensive regulations, an average of 250,000 people in the United States die from medical errors every year.¹⁷⁶ Other reports indicate that this number is as high as 440,000.¹⁷⁷ Among the Medicare beneficiaries, the Office of the Inspector General for Health and Human Services has reported that U.S. hospitals contribute to the death of 180,000 Medicare patients annually.¹⁷⁸ Such studies are not available regarding medical tourists, as foreign institutes are not required to publish any quality control measures or data. However, one might suspect a higher incident of medical negligence in countries with no governmental quality of

172. *In Depth: America's Top Hospitals Go Global*, *supra* note 106.

173. STEPHEN M. SHEPPARD, *THE WOLTERS KLUWER BOUVIER LAW DICTIONARY* DESK EDITION (2012), LexisNexis.

174. *Todd v. Johnson*, 965 So. 2d 255, 256 (1st Cir. 2007).

175. Klaus, *supra* note 100, at 235.

176. Sipherd, *supra* note 100.

177. *Id.*

178. DANIEL R. LEVINSON, *DEP'T HEALTH & HUM. SERV.'S, ADVERSE EVENTS IN HOSPITALS: NATIONAL INCIDENCE AMONG MEDICARE BENEFICIARIES*, at ii (2010).

medical care directives due to the lack of accountability in the cases of medical mishaps.

Injured American patients can pursue international malpractice claims by either suing the foreign providers in the foreign jurisdiction or in U.S. courts.¹⁷⁹ The likelihood of obtaining meaningful relief in a foreign court is low.¹⁸⁰ Some countries like Thailand and Mexico have underdeveloped medical negligence laws.¹⁸¹ Litigation in some countries such as India may take up to twenty years.¹⁸² In other countries, courts do not generally rule against a governmental entity such as the Dubai Healthcare City or Malaysia's Ministry of Finance, which runs the medical tourism industry in the country—instead of ministry of health.¹⁸³ Additionally, many foreign hospitals do not carry malpractice insurance, and if they do, the financial settlements are so low that they do not compensate patients to the same degree as in the United States.¹⁸⁴

Suits against foreign providers in U.S. courts also present many legal obstacles for American patients, such as lack of personal jurisdiction, forum non-conveniens, choice of law, and enforcement.

A. *Lack of Personal Jurisdiction*

One of the legal obstacles which American patients face in suing foreign providers in the U.S. courts is the absence of personal jurisdiction, which bars a plaintiff from hailing a foreign provider into the U.S. court. Personal jurisdiction is established when defendants avail themselves by having “minimum contacts” with the forum state either through some purposeful contacts or through a substantial and continuous connection with the forum.¹⁸⁵ Additionally, the long-arm statutes of states may not reach foreign healthcare providers because jurisdiction is limited to a tortious conduct by act or omission committed within the forum state.¹⁸⁶ Traditionally, U.S. courts have been reluctant to find personal jurisdiction over foreign physicians.¹⁸⁷ For example, in *Gatte v. Ready 4 a Change, L.L.C.*, the District Court for the Western District of Louisiana found insufficient contacts to

179. Muzaurieta, *supra* note 25, at 157-58.

180. Boyd et al., *supra* note 14, at 109.

181. Cortez, *supra* note 84, at 43, 68.

182. *Id.* at 2.

183. *DETAINED IN DUBAI*, *supra* note 158; Carroll, *supra* note 6.

184. Boyd et al., *supra* note 14, at 109.

185. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 413-14 (1984); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980).

186. Muzaurieta, *supra* note 25, at 158-59.

187. *Id.* at 158.

establish specific jurisdiction and granted defendants' motion to dismiss in a wrongful death action arising from medical negligence on the part of medical practitioners who performed reconstructive surgery on a patient in Mexico.¹⁸⁸

The only other avenue to establish minimum contacts is through the presence of brokers engaging in business in the forum state or through advertising services over the Internet. Under the Corporate Negligence doctrine, not only does plaintiff need to demonstrate that the foreign healthcare provider was unfit or incompetent, but also that the U.S. company knew or should have known about the incompetence based on some pattern of misconduct.¹⁸⁹ Thus, the majority of U.S. courts are reluctant to hold medical tourism firms incorporated in the United States accountable for the negligence of foreign physicians operating independently of the medical tourism firms.¹⁹⁰ Nevertheless, foreign healthcare providers could be hailed into the U.S. court system when they regularly solicit business, engage in any other persistent course of conduct, or derive substantial revenue from goods used, consumed, or services rendered in the states.¹⁹¹ For example, in *Gatte v. Dohm*, the U.S. Court of Appeals for the Fifth Circuit found one of the co-owners of the Minnesota-based medical tourism company, Ready 4 A Change, liable because the deceased patient had used its services to schedule a post-weight loss contouring and body sculpting surgery at a clinic in Mexico.¹⁹²

Using the "Zippo sliding scale" test, courts have held that the greater a website's commercial nature and level of interactivity, the more considerable its purposeful availment of the forum state's jurisdiction.¹⁹³ Websites that simply make information available are characterized as passive and websites that facilitate or conduct business transactions are characterized as interactive. In *Romah v. Scully*, the U.S. District Court for the Western District of Pennsylvania held that a Toronto hospital was not bound by jurisdiction in Pennsylvania because the hospital's mere advertisements of its medical services in Philadelphia and Pittsburgh were insufficient to meet the minimum contacts burden.¹⁹⁴ Suits that involve foreign providers in U.S. courts and personal jurisdiction laws are fact-specific, so it is difficult to

188. *Gatte v. Ready 4 A Change, L.L.C.*, No. 11-CV-2083, 2013 WL 12347069, at *1, *3 (W.D. La. Sept. 16, 2013).

189. Cortez, *supra* note 84, at 15.

190. Philip Mirrer-Singer, *Medical Malpractice Overseas: The Legal Uncertainty Surrounding Medical Tourism*, 70 L. & CONTEMP. PROBS. 211, 216-17 (2007).

191. Linda Sandstrom Simard, *Hybrid Personal Jurisdiction: It's Not General Jurisdiction, or Specific Jurisdiction, But Is It Constitutional?*, 48 CASE W. RES. L. REV. 559, 562 (1998).

192. *Gatte v. Dohm*, 574 F. App'x 327, 332 (5th Cir. 2014).

193. *See Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).

194. *Romah v. Scully*, No. 06-698, 2007 WL 3493943, at *1, *7-*8 (W.D. Pa. Nov. 13, 2007).

predict the outcome of a case and to determine whether a U.S. court would assert personal jurisdiction over a foreign provider.¹⁹⁵

B. *Forum Non-Conveniens*

Even if personal jurisdiction can be established, U.S. courts have discretion to dismiss a case if venue is more proper in a foreign forum where the medical procedure was performed, witnesses reside, and evidence is more readily available.¹⁹⁶ For example, in *Jeha v. Arabian American Oil Co.*, the U.S. District Court for the Southern District of Texas dismissed a medical negligence suit against a Saudi-based oil company, because the critical evidence and witnesses were all located overseas.¹⁹⁷ And, although lengthy judicial delays in foreign courts may be acceptable to gain access to the judicial system, receiving measly recoveries from foreign courts is not an adequate reason to bypass forum non-conveniens concerns.¹⁹⁸ For example, in *Gonzalez v. Chrysler Corp.*, the U.S. Court of Appeals for the Fifth Circuit held that a \$2,500 maximum recovery in Mexico was not an adequate reason to bypass forum non-conveniens concerns.¹⁹⁹

C. *Choice of Law and Enforcement*

Even if an American patient successfully overcomes the hurdles of personal jurisdiction and forum non-conveniens, the healthcare provider will insist that the law of the foreign country where the medical procedure was provided should govern.²⁰⁰ Unfortunately, the laws in most destination countries favor the healthcare provider and patients are often left with no recourse.²⁰¹ Notwithstanding the choice of law, foreign courts are often reluctant to enforce the decisions of their U.S. counterparts.²⁰² Therefore, any judgment against a foreign healthcare provider without assets in the United States will be difficult to enforce.²⁰³

195. Cortez, *supra* note 84, at 10-11.

196. See *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257 (1981).

197. See *Jeha v. Arabian Am. Oil Co.*, 751 F. Supp. 122, 127 (S.D. Tex. 1990).

198. Cortez, *supra* note 84, at 13.

199. *Gonzalez v. Chrysler Corp.*, 301 F.3d 377, 383 (5th Cir. 2002).

200. In practice, the two most common ways U.S. courts resolve the issue of foreign law are (1) not to apply it, whether concluding that it does not apply under a conflicts analysis or dismissing the case on forum non-conveniens grounds; or (2) to rely on party experts in what at best they make of foreign law in a mixed issue of fact and law. Vivian Grosswald Curran, *Federal Rule 44.1: Foreign Law in U.S. Courts Today*, 30 MINN. J. INT'L L. 231, 251 (2021).

201. Muzaurieta, *supra* note 25, at 161.

202. Cohen, *supra* note 97, at 1503.

203. *Id.*

IX. POSSIBLE SOLUTION FOR AMERICAN PATIENTS

Medical tourism rules should be altered to allow patients to make fully informed decisions about their healthcare needs based on providers' full disclosure.²⁰⁴ Although the parties involved in the medical tourism industry such as insurers, brokers, and foreign facilities certainly understand the risks associated with medical tourism, they are not quick to disclose these risks to vulnerable patients. Instead, they shield themselves from liability by utilizing release forms, waivers, and other contractual measures that do not specify the risks involved and do not provide full disclosures as customary.

It is nearly impossible for American courts to force foreign medical institutions to accept liability for medical mishaps that affect American patients. However, the U.S. government could exercise its authority by extending its reach to the U.S.-based tax-exempt JCI. The U.S. government should require that the JCI accredit only those foreign hospitals that show adequate liability insurance from internationally recognized insurance firms. Additionally, the U.S. government could require that the JCI, as a condition of accreditation for these offshore hospitals,²⁰⁵ demand that American hospitals who lend their names to foreign affiliates assume full financial responsibility by acquiring insurance for any medical mishaps abroad. The U.S. government could also, as a condition for accreditation, require that the JCI publicly report the outcomes of any procedure at the foreign facilities, including surgical site infections, length of stay, or need for re-operation.

In the alternative, CMS could extend its reach to the U.S. hospitals that allow their names to be used abroad. For example, an investigation after a patient's suicide, who had been on suicide watch at the Timberlawn Behavioral Health System in Dallas, revealed that the JC oversight failed to deliver safe conditions, based on evidence of rape and overcrowded hallways.²⁰⁶ Following these discoveries, the CMS cut off the hospital's Medicare funding, reasoning that the violations were "an immediate jeopardy to patient safety and health."²⁰⁷ Similarly, in medical malpractice cases abroad, the CMS should withhold Medicare funding from U.S.-based hospitals, located in the United States, that lend their names to foreign institutions, which in turn lure American patients to their offshore facilities.

Additionally, the U.S. government could mandate that the American affiliates of these hospitals, that are reaping the benefits of this unaccountability, require their host institutions to place disclaimers on their websites indicating that such affiliation does not translate into liability in U.S. courts.

204. Muzaurieta, *supra* note 25, at 133.

205. *See id.* at 142.

206. Armour, *supra* note 137.

207. *Id.*

X. CONCLUSION

Sacrificing potential legal remedies in exchange for life-prolonging medical care may sometimes be the only option American patients have for care that otherwise they could not afford. Lower costs incentivize American patients to travel to offshore U.S.-affiliated hospitals and medical facilities to seek care. However, they are often left without any recourse when faced with medical negligence. These facilities use their U.S. affiliation to attract more revenue but are not accountable for medical mishaps.

The United States has little political influence to force other nations to implement specific regulatory frameworks in their healthcare systems. Therefore, the U.S. government cannot directly demand that these foreign institutions disclose their lack of accountability to American patients. However, the U.S. government should exercise its authority and require that the U.S.-based JCI or the U.S. affiliates accept full financial liability. The legislature could accomplish this goal by demanding full proof of internationally recognized medical malpractice insurance for American patients from U.S.-based institutions that lend their names to foreign medical centers—especially when esteemed institutions feature as guarantors of quality in the foreign medical facilities' advertising.