

LAWS THAT ADMINISTRATOR IN TERTIARY INSTITUTION SHOULD KNOW IN PREVENTION OF DRUGS, ALCOHOL AND SUBSTANCE ABUSE

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ABSTRACT

The Ministry of Education Malaysia (formerly known as Ministry of Higher Education) has come out with a Guideline on the Prevention of Drugs, Alcohol and Substance Abuse. This is in accordance with the Malaysian Government Policy to be free from dangerous drugs abuse in higher education by 2015. Consistent and in addition with the Guideline, this paper aims to discuss the relevant policies, laws, rules and regulations that administrators in tertiary institution are expected to familiarise themselves with and for them to take the necessary intervention measures. With regard to the intervention measures, the relevant administrators must be mindful of the relevant policies, laws, rules and regulations that apply to their respective institution or entity. In this paper, how those laws such as Universities and University Colleges Act 1971 (Act 30), Private Higher Educational Institutions Act 1996 (Act 555), Universiti Teknologi Mara Act 1976 (Act 173), Education Act 1996 (Act 550) and Statutory Bodies (Discipline and Surcharge) Act 2000 (Act 605) apply are explained. Integral to the above laws, the importance of investigation and chain of custody and evidence, the basic principles of natural justice will also form part and parcel of the discussions especially when disciplinary action against the student or staff members is initiated.

INTRODUCTION

The Ministry of Education Malaysia (formerly known as Ministry of Higher Education) has come out with a Guideline on the Prevention of Drugs, Alcohol and Substance Abuse. This is in accordance with the Malaysian Government Policy to be free from dangerous drugs abuse in higher education by 2015. The Government is committed to fostering an environment conducive to the acquisition of knowledge and growth of individuals in the tertiary institutions that is free from drugs, alcohol and substance abuse. As such, each tertiary institution is expected to keep in line in preventing and combating the above menace. Such measures entail too that the actions taken are not only in accordance with the policies, rules and regulations of the institutions but also the law of the country. Drugs, alcohol and substance abuse are a serious concern of the Government and if their abuses are left uncontrolled, it surely threatens and undermines the social fabric of the country as students in tertiary education play pivotal roles later on in public as well as the private sectors.

A DRUG DEPENDANT

In Malaysia, any person including any student who is reasonably suspected to be a drug dependant may be taken into custody by any rehabilitation officer or any police officer pursuant to the Drug Dependents (Treatment and Rehabilitation) Act, 1983 [Act 283]. The Act provides for voluntary and compulsory treatment and

rehabilitation of drug dependants. The Act also requires a medical practitioner including a government medical officer to notify the Director General under this Act of any person who is treated by him for drug dependency. Failure to do so is an offence under the Act.

Under the Act, drug dependant means a person who through the use of any dangerous drug undergoes a psychic and sometimes physical state which is characterised by behavioural and other responses including the compulsion to take the drug on a continuous or periodic basis in order to experience its psychic effect and to avoid the discomfort of its absence.¹ Dangerous drugs are any drug or substance which is for the time being comprised in the First Schedule of the Dangerous Drugs Act 1952 (Act 234). In *Gopinathan a/l subramaniam v. Timbalan Menteri Dalam Negeri & Yang lain [2000] 1 MLJ 65*, the court held that a drug dependant is a person that has among others a strong inclining urge to take drugs on a continuous and periodic basis. In other words, one incident of drug taking by any person cannot by itself be taken to mean that the person is a drug dependant. He may be construed as drugs misuser or drug abuser, but surely not a drug dependant.

SUBSTANCE

There is as yet no Federal law in Malaysia making it an offence against any person who indulges in substance abuse such as substance inhaling, huffing, sniffing and snorting. Substances of abuse such as paint thinner, petrol and gum are normally licitly available in shops license to sell the same for industrial, agriculture and medicinal use. Generally, drugs that are not in the First Schedule of the Dangerous Drugs Act 1952 may be found under the First Schedule of the Poison Act 1952. The Poison Act 1952 (Act 366) regulates the importation, possession, manufacture, compounding, storage, transport, sale and use of poisons. The controlled substance ranges from precursors to dangerous drugs and liquids use for agriculture, industry and medical.

Sale of drugs and their quality and safe use to the public is governed by the Sale of Drugs Act 1952 (Act 368) being any substance, product or article intended to be used or capable, or purported or claimed to be capable, of being used on humans or any animal, whether internally or externally, for a medicinal purpose. Medicinal purpose means any of the following purposes:

- (a) alleviating, treating, curing or preventing a disease or a pathological condition or symptoms of a disease;
- (b) diagnosing a disease or ascertaining the existence, degree or extent of a physiological or pathological condition;
- (c) contraception;

¹ Section 2 of Drug Dependants (Treatment & Rehabilitation) Act 1983 – Act 234.

- (d) inducing anaesthesia;
- (e) maintaining, modifying, preventing, restoring, or interfering with, the normal operation of a physiological function;
- (f) controlling body weight; and
- (g) general maintenance or promotion of health or well-being.

In addition to the Sale of Drugs Act 1952, there is the recently legislated Traditional and Complementary Medicine Act 2013 (Act 756) to register and regulate traditional and complementary medicine services and matters connected therewith. The scope includes health related practices designed to prevent, treat or manage ailment or illness, or preserve the physical or mental well-being of an individual and includes such practices as traditional Malay medicine, traditional Chinese medicine, traditional Indian medicine, homeopathy, and complimentary therapies, but excludes medical and dental practice used by a medical and dental practitioners.

ALCOHOL

Possession *per se* is not an offence under the law but any person who drives under the influence of alcohol is committing an offence under the Road Traffic Act 1987. Local government authorities may allow the sale of alcohol at licensed premises. However, the respective states in Malaysia have laws prohibiting Muslims from drinking intoxicants in any shops or public places, the manufacturing, selling, offer, exhibit for sale, keeping or buying intoxicants.²

PREVENTION IN TERTIARY INSTITUTIONS

In dealing with drugs, alcohol and substance abuse among students and staff at tertiary institutions, the ongoing issue that is always bugging or bogging the administrators is the appropriate lawful action to be taken against them. Should they, particularly the students, be brought before the relevant disciplinary authority of the institution or they are notified or referred to the enforcement agencies such as police? Tertiary institutions should be mindful that there are laws governing use and misuse or abuse of drugs, alcohol and substance. Be that as it may, if a student is found possessing, using or misusing drugs, alcohol and substance hence infringing the campus or university disciplinary rules, what are they to do about it? It is worth noting that various tertiary institutions are governed by their respective disciplinary rules and regulations, hence it is appropriate to highlight their legal governance and their enabling Acts.

² See for example section 19 of Akta Jenayah Syariah (Wilayah-wilayah Persekutuan) 1997.

ENABLING LAWS OF TERTIARY INSTITUTIONS

In Malaysia, tertiary education is mainly divided into two, namely:

- i) Public institutions consisting of public universities, polytechnics and community colleges;
- ii) Private institutions consisting private universities, private university colleges, foreign university branch campuses and private colleges.

There are currently 20 public universities, 40 private universities, 7 foreign university branch campuses and about 400 private colleges offering a wide variety of courses. These institutions are governed by their own enabling laws, and their own respective domestic disciplinary rules and regulations.

Save for public universities such as International Islamic University Malaysia (IIUM) whose governance is under the Companies Act, 1965 [Act 125], and the MARA University of Technology (UiTM) which is governed under the University Technology MARA Act 1976 [Act 173], other public universities in Malaysia are governed by the Universities and University Colleges Act 1971 [Act 30] or conveniently called UCCA in short. For polytechnics and community colleges their enabling Act is Education Act, 1996 [Act 550].

Universities and University Colleges Act 1971 [Act 30]

The Universities and University Colleges Act 1971 [Act 30] or UCCA is the foremost statute for public universities providing for the establishment, maintenance and administration of the public Universities and public University Colleges and for other matters connected with it. Under this Act, the term student is widely defined as a registered student at an institution allied to the University or University College, who is following a course of study, instruction, training or research of any description at the preparatory, undergraduate, postgraduate or post-doctoral level on full time or part-time basis in, by or from the University or University College and includes a distance-learning, off-campus, exchange and non-graduating student.

Under UCCA, the disciplinary authority of the University in respect of every student shall be the Vice-Chancellor. The Vice-Chancellor shall have the power to take such disciplinary action and impose such disciplinary punishment as may be provided under its disciplinary rules. In performing his functions, the Vice-Chancellor may delegate his powers to any Deputy Vice-Chancellor, employees or committees of the University. UCCA provides to the Board of Directors of the institutions to make students disciplinary rules or regulations.

Private Higher Educational Act 1996 [Act 555]

Like UCCA, the Private Higher Educational Act 1996 [Act 555] provides for the establishment, registration, management and supervision of, and the control of the quality of education provided by private higher educational institutions and for matters connected therewith. The private higher educational institutions shall be managed in strict accordance with its constitution. On matters pertaining to students' discipline, the Act provides that the chief executive of the institution shall be responsible for the discipline and conduct of its students.

Educational Institutions (Discipline) Act 1976 [Act 174]

Educational Institutions (Discipline) Act 1976 [Act 174] is a specific legislation that governed the matters related to discipline in educational institutions such as UiTM, polytechnic and community colleges in this country. This Act provides that the disciplinary authority in respect of every student of an Institution shall be the Students' Affairs Officer or where applicable, any person or board delegated by the Students' Affairs Officer with disciplinary functions, powers and duties. Under this Act, Students' Affairs Officer shall have power to take such disciplinary action and impose such disciplinary punishment.

Drugs, alcohol and substance abuse is a serious offence under the Act and any student who is found guilty of the offence, he may be dismissed from the institutions. The Students' Disciplinary Rules made under this Act prohibits possession, custody, offering and supplying of any drug or poison:

- i) No student shall have in his possession or under his custody any drug or poison;
- ii) No student shall have in his possession or under his custody or control any utensil, instrument, apparatus or other article which in the opinion of the disciplinary authority is designated or intended to be used for consuming any drug or poison orally, or by smoking or inhaling or by introduction into body by injection or in any other manner whatsoever;
- iii) No student shall give, supply, provide or offer or propose to give, supply, provide or offer any drug or poison to any person;
- iv) No student shall consume orally, or smoke or inhale or introduce into his body by injection or in other manner whatsoever, any drug or poison;
- v) Nothing in this rules shall be deemed to prevent a student from undergoing any treatment by or under the prescription of a medical practitioner registered under the Medical Act 1971 [Act 50];
- vi) Any student who is found using or taking or abusing or addicted to any drug or poison shall be guilty of a disciplinary offence.

In relation to consumption or possession of liquor and drunkennes, the Rules provides that no student shall, within the campus, consume or have in his possession or under his custody or control any liquor. Any student who is found in a state of drunkenness within the campus shall be guilty of a disciplinary offence.

It is thus clear that in tertiary institutions, particularly in public tertiary institutions, there are disciplinary rules against drugs, alcohol and substance. The ongoing problem is how the administrators go about preventing or enforcing it so that it is in accordance with law and their own disciplinary rules.

DOMESTIC TRIBUNAL – NATURAL JUSTICE

Domestic Tribunals for disciplinary action in tertiary institutions or workplace are not subject to the strict rules of procedure and evidence but suffice if they are conducted with fairness by complying with principles of natural justice i.e. giving the accuser his right to be heard (*audi alteram partem*), and the panel members sitting in the Tribunal should have no personal interest in the case (*nemo iudex in causa sua*). The rule against bias is one thing. The right to be heard is another. Those two rules are essential characteristics of what is often called natural justice. For personal bias, the test is that the adjudicator must not be reasonably suspected or show a real likelihood of bias. The likelihood of bias is sufficient. A decision maker who is 'biased' should recuse himself from hearing the case, unless the decision-maker discloses the personal interest and the parties agree to the person's continued involvement. The tribunals too must be delegated with the jurisdiction and to act within its jurisdiction.

The principles of natural justice is a common law doctrine that provides important procedural rights in administrative decision making such as disciplinary proceedings. It is to ensure fairness and impartiality in providing the manner of arriving at decisions. If a person or a body exercising judicial or quasi-judicial functions fails to observe the rules of natural justice, its orders or decisions would be liable to be quashed on certiorari by the superior court. In *Russel v. Duke of Norfolk* [1949] All ER 118 Tucker LJ highlighted three requirements under the principle of right to be heard. He stated that -

“Stating it broadly and without intending it to be exhaustive, rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given an opportunity of cross-examining the witnesses examined by that party; and that no material should be relied upon against him without his being given an opportunity of explaining them.”

To ensure that those rights are respected, the deciding authority must give the parties concerned the opportunity to prepare and submit his case. In the Malaysian case of *Surinder Singh Kanda v. The Government of the Malaya* [1962] 1 LNS 14, the Appellant had been dismissed without being given a reasonable opportunity of being heard. Lord Denning explained as follows:

“If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him; and he must be given a fair opportunity to contradict them...”

In *Glynn v Keele University* (1972) QBD a student was seen sunbathing nude but he was not given a hearing at all, instead he was sent a letter fining him £10 and was suspended. Although the student had not suffered any injustice, he should have been given the opportunity to test the evidence.

In *Fauzilah Salleh v. UMT* (2012) 4 CLJ 601, the Plaintiff was not given her right to be heard and thus was unfair. The disciplinary inquiry was merely a question and answer session on a matter that was not stated. Moreover, not only was the Plaintiff denied of the incriminating report that Plaintiff had plagiarised her thesis, there were no allegation and show cause notice made against the Plaintiff. The Committee of Inquiry that was set up was to determine whether there is in the Plaintiff's thesis plagiarism and not for taking disciplinary action against the Plaintiff. Thus the Committee of Inquiry had no jurisdiction or exceeded its jurisdiction by proceeding with disciplinary action against the Plaintiff.

In *Rohana bt. Ariffin & Anor v USM* [1989] 1 MLJ 487 the applicant applied for an order for certiorari to quash the decisions of the University where the applicant was denied fair representation. It was held by the Court that the proceedings before the disciplinary authority were contrary to natural justice owing to the presence of the registrar of the respondent university, the complainant in the case of both the applicants, during the disciplinary deliberation. The registrar was very far from being a mere nominal complainant and had shown active partisanship in the proceedings before the disciplinary authority. Further, the disciplinary authority had refused to accede to the requests of the applicants' solicitors and counsel for pre-trial discovery tantamount to breach to natural justice.

In *Sazali bin Abdullah v Ketua Polis Negeri Perak & Yang lain-lain* [2007] 2 MLJ 370, the High Court in Ipoh held that the tribunal was only authorised to examine, make findings and if necessary to question any witnesses at any time. It exceeded its jurisdiction when it proceeded with disciplinary action by charging and proving the allegation against the plaintiff. The Committee had not only acted outside

its jurisdiction but had also acted with bias or unfairly when the panel members themselves acted as the prosecution and as judge against the Plaintiff.

UCCA stipulates that in any disciplinary proceedings against any student, the student shall be informed in writing of the grounds on which it is proposed to take action against him and shall afford him a reasonable opportunity of being heard. Further, a student shall be allowed to be represented by an employee or another student of the University in any disciplinary proceedings taken against him. This requirement no doubt is in line with the principles of natural justice i.e. to act in fairness, the accuser must be given his right to be heard and the tribunal panel members must have no personal interest in the case. It also goes without saying that the tribunal must have the jurisdiction and act within its jurisdiction.

CIVIL NATURE OF DISCIPLINARY PROCEEDINGS

Important to note is, in a domestic tribunal, the allegations are not criminal in nature but are civil in nature, hence the standard of proof required to prove the allegation is on the balance of probability. In investigating and determining a disciplinary charge, the disciplinary committee or tribunal only carrying out an administrative function and not conducting a criminal prosecution. In the English case of *R v. White* (1963) 109 C.L.R 665, the High Court held that an administrative tribunal charged with the duty of dealing with breaches of discipline does not sit as a court of law and that “offences” created by disciplinary rule are not “criminal” offences. It is submitted that the disciplinary procedure is inquisitorial rather than adversarial i.e. to investigate and to determine whether a disciplinary offence has been infringed and to then impose the appropriate disciplinary punishment as provided under the disciplinary rules.

CUSTODY & CHAIN OF EVIDENCE

The custody & chain of evidence are intertwined and crucial. It is to ensure that (i) the incriminating evidence and the accuser are linked, (ii) the evidence to be adduced was not fabricated i.e. taken from either the accuser or at premises where the wrong was done, and (iii) the evidence has not been tampered with.

In the case of *PP v Teoh Hoe Chye* [1987] 1 MLJ 220, the drug packages were not kept in safe and secured place and their movements too was not properly recorded. It cannot therefore be proved that the drug packages adduced in court were the same one taken at the crime scene by the police. The accused person was acquitted.

In *Abdul Jalil Bin Abdul Satar* [1991] 2 MLJ 194, the accused person was acquitted since the link between the cannabis and the accused person cannot be

ascertained. The Lance Corporeal who handed over and took back the cannabis to the chemist was not called to testify in court. Thus, it cannot be proven by the prosecution that the seized cannabis that was adduced in court was the same one seized at the crime scene.

In the Federal Court (Putrajaya) appeal case of *Ng Tiam Kok & Ors v. PP* [2013] 1 CLJ 632, three accused persons appealed against their conviction for trafficking in dangerous drugs under section 39B which carries the mandatory death penalty. The tagging or labeling on the seized 40 quantities of drugs and the existence of handing over documents of those seized drugs from the time they were seized until the same were given to the Department of Chemist for analysis had enabled ascertainment of the seized drugs with the persons accused. The officers who seized and who had custody, and who handed over the drugs to the chemist were all called to testify hence there was no break in the custody and chain of evidence of the seized drugs and their link with the three accused.

In the Federal Court (Putrajaya) appeal case of *Zaifull Muhammad v. Pendakwaraya & Satu Lagi Rayuan* [2013] 2 CLJ 383, the accused was charged under section 39B of the Dangerous Drugs Act 1952 for trafficking 799.4 grammes of cannabis. The original charge stated the gross weight at 880 grammes. The amended charge, however, stated the weight at 799.4 grammes. The prosecution argued that the weight of the cannabis in the amended charge was based on the net weight. Chief Justice Yang Amat Arif Arifin Zakaria, in delivering the judgment held that any serious discrepancy in respect of the gross weight and quantities of the seized drugs unless a satisfactory explanation is provided by the prosecution, will create a reasonable doubt linking the accused with the seized drugs. The Federal Court held that the accused should not have been called to enter upon their defence at the close of the case for the prosecution as there was no case for the accused persons to answer i.e. their link with the seized drugs were doubtful.

CONCLUSION

Administrators in charge in the prevention and enforcement of drugs, alcohol and substance abuse regardless whether they are at tertiary institutions or not must be mindful of the laws and that they must act according to law. Besides acting within their given jurisdiction, the disciplinary action must be in line too with their respective disciplinary rules and if they have none, one must be made or the allegation is surely groundless as disclosing no offence or wrong according to law. If administrators failed in exercising rules of natural justice in their judicial or quasi-judicial functions in any disciplinary action, their orders or decisions would be liable to be quashed on *certiorari* by the court, and the legal entity they are working for must incur payment of damages and cost to the aggrieved person. Understanding the need to act fairly by giving the person accused his right to be heard, the disciplinary

tribunal panel members having no personal interest, the nature of the disciplinary tribunal proceeding being civil in nature will ensure unnecessary problems. In any allegation, it goes without saying that evidence must be adduced by the accuser to prove the allegation and can be best achieved if the custody and chain of evidence and their link to the person accused are not broken. It is commendable that for public universities there is already a recent requirement to have a legal adviser to advise them in their legal matters as having to act according to law is not an option, and what more when acting blindly of the law.

SECOND DAY: 21 SEPTEMBER 2014 (SUNDAY)

PARALLEL SESSION 1
(2.30 PM – 3.30 PM)

PANEL 1			
Sub Theme : Social impact on drug, substance and alcohol abuse			
Venue : A (DELIMA 2)			
	PAPER ID	PRESENTER	TITLE
CHAIRMAN Maskor Baijuri	1. IMTGT2014-9	Soufiane Bourega (UIAM)	Drugs And Their Impacts On Committing Crimes
	2. IMTGT2014-24	Raudhatun Nurul, Vesara Ardhe Gatera (University of U'budiyah Indonesia)	Study Of Antipsychotropic Patterns In Productive Age Enrolled Who Drug Classification System In Aceh
	3. IMTGT2014-20	Norhilmi Muhammad, Mahadzirah Mohamad, Mohd Ekhwan Toriman, Nor Azman Mat Ali, Fazida Karim, Sharifah Sakinah Habibah Syed Omar (UNISZA)	The Mediating Effect Of Quality Of Life On The Relationships Between Spirituality And Retention Among Opiate Dependence In Methadone Maintenance Therapy
	4. IMTGT2014-66	Maidar M. Kes (District Health Office North Aceh)	Integrated Promotion Of Drug Abused in Almuslim of University Bireuen-Aceh
PANEL 2			
Sub Theme : Related issue on drug, substance and alcohol abuse			
Venue : B (DELIMA 4)			
	PAPER ID	PRESENTER	TITLE
CHAIRMAN Nor Azizah Hitam	5. IMTGT2014-19	Fazida Karim, Mahadzirah Mohamad, Mohd Ekhwan Toriman, Nor Azman Mat Ali, Norhilmi Muhammad (UNISZA)	The Mediating Effect Of Perceived Social Support On The Relationships Between Quality Of Life And Retention Among Opiate Dependence In Methadone Maintenance Therapy
	6. IMTGT2014-30	Mohamad Hashim Othman, Abdul Majid Isa, Kamarudin Hussin, Abdul Halim Abdull, Huzili Husin, Mahmood Nazar, Abdul Rani Kamarudin, Norazmah Abdul Karim & Ku Azira Ku Aziz (USM)	The Effectiveness Of Psychometric Measures In Screening Drug, Alcohol And Substance Abuse
	7. IMTGT2014-48	Abdul Rani Kamarudin, Mohamad Mos (UIAM)	Laws That Administrator In Tertiary Institution Should Know In Prevention Of Drugs, Alcohol And Substance Abuse
	8. IMTGT2014-67	Marniati (Universitas Ubudiyah Indonesia)	Drugs Problem : Challenge, Disadvantages and Utilization

PROGRAMME SCHEDULE
2ND IMT-GT REGIONAL CONVENTION ON DRUG, SUBSTANCE & ALCOHOL ABUSE
AMONG TERTIARY INSTITUTIONS 2014,
UNIVERSITI MALAYSIA PERLIS
TH HOTEL & CONVENTION CENTRE, ALOR STAR, KEDAH

DATE/DAY	TIME	PROGRAMME
DAY 1 20 TH SEPTEMBER 2014 (SATURDAY)	9.00 am - 4.00 pm	Registration
	8.30 pm - 10.30 pm	'Free & Easy'
DAY 2 21 ST SEPTEMBER 2014 (SUNDAY)	8.00 am - 9.00 am	Breakfast
	9.00 am - 10.00 am	Keynote Address
	10.00 am - 10.30 am	Refreshments
	10.30 am - 11.30 pm	Plenary Session 1 (Theme 1 & 2) Speaker 1 = From Malaysia Speaker 2 = From Indonesia Speaker 3 = From Thailand
	11.30 pm - 1.00 pm	Plenary Session 2 (Theme 3 & 4) Speaker 1 = From Malaysia Speaker 2 = From Indonesia Speaker 3 = From Thailand
	1.00 pm - 2.30 pm	Lunch
	2.30 pm - 3.30 pm	Parallel Session 1
	3.30 pm - 4.30 pm	Parallel session 2
	4.30 pm - 5.00 pm	'Tea Break'
	8.30 pm - 10.30 pm	Opening Ceremony & Welcoming Dinner
	DAY 3 22 ND SEPTEMBER 2014 (MONDAY)	7.00 am - 8.30 am
8.30 am - 10.30 am		Student Forum / Resolution <i>"Student Free From Drug, Substance and Alcohol Among Tertiary Institutions"</i>
		Parallel Session 3 (8.30 am - 9.30 am)
10.30 am - 11.00 am		Parallel Session 4 (9.30 am - 10.30 am)
		Refreshments
11.00 am - 12.00 am		Parallel Session 5
12.00 pm - 1.00 pm		Closing ceremony
1.00 pm - 2.00 pm	Lunch	



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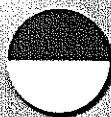
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2nd IMT-GT Regional Convention on **Drug, Substance & Alcohol Abuse among Tertiary Institutions 2014**

20 - 22
September 2014

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Alor Setar, Kedah**



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