

The Effectiveness of Mediation as an Alternative to Medical Dispute Resolution: A Systematic Review

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ABSTRACT

Expectations for health services provided by health workers are not always following the expectations of patients and families. This gap often leads to dissatisfaction, leading to health disputes. Dispute resolution can be done through litigation or non-litigation, one of which is through non-litigation which can be used is mediation

A Systematic review is in line with PRISMA guidelines. Four databases were systematically searched (PubMed, Science Direct, Proquest, Springerlink). From January 2016 to February 2021. For quantitative studies describing the effectiveness of mediation using predefined search strategy and any relevant keywords.

A total of 10 out of 338 studies were included. Only medical dispute resolution mediation included and only for health worker. The study design used includes a literature review, cross-sectional study, and qualitative study. The average number of participants was more than one thousand overall for every study.

Mediation as an alternative dispute resolution provides a solution to open communication between disputing parties. There is much value in mediation because it is inexpensive, quick, confidential, private, and allows for a creative solution.

Keywords: Alternative Dispute Resolution, Mediation, Medical Dispute

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BACKGROUND

The interactions between health workers, patients, and their environment have created an engagement that creates rights and obligations between service providers and patients as service recipients. The legal relationship between patient and hospital begins with a contract when registering at the time of initial admission, which is then followed by an agreement in the informed consent for any actions taken by medical personnel against the patient. According to Siska (2015), this legal relationship often raises a gap between the expectations and reality obtained by patients, which can be a triggering factor for conflict. If the conflict is not handled properly and immediately, it will result in a dispute between the patient and the nurse. The presumption of committing malpractice is always attached to the medical personnel who provide services, which results in prosecution, both criminal and civil. In recent years the medical profession has faced many lawsuits. There were 405 reports of medical problems from various parts of Indonesia received by the Health Legal Aid Institute (LBH). The report on losses due to medical negligence claims is stated by Lum (2017) (Khan et al., 2020), which stated that Medical Defense Malaysia (MDM) reports claims of up to RM5.4 million per case, excluding interest paid by local courts on 2011. In 2014-2015, around 3,526 cases of medical negligence occurred and were reported to the Patient Safety Unit of the Ministry of Health. Alternative dispute resolution is deemed necessary in line with the increasing number of medical negligence reports today.

In the dispute resolution process, two channels can be used: litigation (court) and non-litigation/consensual/non-adjudication. We can all understand that proceeding in court is a costly and time-consuming process. Because conventional court systems are by nature opposites, it often results in one party winning and the other losing. Meanwhile, sharp criticism of the judiciary in carrying out its functions is considered too dense, slow and time-consuming, expensive and less responsive to public interests. It is considered too formalistic and too technical. That is why the problem of reviewing the improvement of the justice system to an effective and efficient direction occurs everywhere. There has even been criticism that the civil process is considered inefficient and unfair (the civil procedure was neither efficient nor fair). Justice is seen as the last way to get justice. Which theoretically is still considered as a body that functions and plays a role in upholding truth and justice, so that litigation efforts are always an option that can be taken by the disputing parties to resolve the dispute at hand.

Settlement of cases still takes a long time. It was starting from the first level, appeal, cassation and review. This is inversely proportional to the needs of the justice-seeking community, which requires fast time and is not just a mere formality. While from the nurse's side as the party being demanded, the unclear responsibilities regarding independent duties, delegation duties and mandated duties are often a problem that can lead to demands. The legal remedies that nurses must take had created new problems such as the time too long and felt anxiety due to the demands filed for the nurse.

The mediation process is one form of alternative dispute resolution (ADR) or alternative problem resolution. Mediation is a method of dispute resolution through the negotiation process to obtain an agreement between the parties, assisted by a mediator. This research will summarize all scientific literature on the effectiveness of alternative dispute resolution in medical dispute resolution.

METHODS

Design and samples

A systematic review was used and ten studies were reviewed.

Research instrument and data collection

The databases included in this study were *PubMed*, *Science Direct*, *Proquest*, *Springerlink*. A manual search was also conducted to ensure that all articles were included. The keywords included “*alternative dispute resolution*” OR “*mediation*” AND “*medical dispute*” OR “*conflict medicolegal*” AND “*health worker*” OR “*Doctor*” OR “*Nurse*” to search for journals in English, the search strategy was limited to 5 years from January 2016 until December 2020.

Data analysis

The study quality of each article was determined as a systematic review source based on the quality analysis of The JBI critical appraisal tools so that 10 articles were obtained according to the systematic review. From a total of 10 studies that met the criteria for a systematic review, the results obtained were as many as a review article, a study using a cross-sectional design and a study using a pre-experimental design and a study using a qualitative research design. Based on these results, the critical appraisal was carried out using the JBI critical appraisal tool.

RESULTS

A total of 335 articles were identified. Then duplicate removal was carried out, and the remaining 302 articles were reviewed for eligibility. Then there were excluded as many as 153 articles based on the last 5 years, and English so that it obtained 139 articles. From the feasibility test of the full-text article, there are 45 articles and 10 research articles are taken for review. From the included studies, three were conducted in China ((Li et al., 2018), (Zeng et al., 2018), (Wang et al., 2020)), one in Indonesia (Widjaja, 2020), one in Switzerland (Schaad et al., 2019), two in Malaysia ((Khan et al., 2020), (Khodapanahandeh & Hambali, 2014)), one in United States of America (Sohn et al., 2012), one in Singapore (Lin et al., 2018), and One in Hongkong (Cheng & le Roux-Kemp, 2017)

DISCUSSION

There are many reason cause of medical dispute. According to (Zeng et al., 2018), the leading cause of medical disputes is improper communication (24.0%) lower therapeutic skills (43.7%) in secondary hospitals, respectively. The patient's age, occupation, and location of medical doctors are a major risk factor for the violent medic. While Wang et al (2020) stated that the main causes of disagreement were: different opinions about responsibility (for example, the patient would ask the hospital to take primary responsibility or all responsibility for the unsatisfactory medical outcome) (54%), the skills of the doctor or nurse (27%) and dissatisfaction with care and medication (7%). While medical accidents (unexpected and accidental medical injuries, usually due to limited medical conditions and skills) (5%) and hospital management problems (4%), and lack of informed consent (3%) constitute a small proportion of cases. -the case. The complaints received by the HA against healthcare practitioners increased from around 2,000 to its peak of about 2,650 in 2013-2014. The majority of the complaints are related to medical services 50-60 per cent of the cases, followed by staff attitude (20 %) and administrative procedures (17 %).

The conflict has resulted in lawsuits for officers. According to the "China Health Statistics Yearbook recorded in 2016", the number of doctors in China is 2.65 million, and of these, the number of malpractice suits is 21,480. It is estimated that every 123 doctors

have one malpractice suit in 2016, according to Lum (2017) in (Khan et al., 2020), stated that in 2014-2015, approximately 3,526 cases of medical negligence occurred, and reported to the Patient Safety Unit to the Ministry of Health. (Zeng et al., 2018) stated that 896 cases of medical disputes occurred from 2012 to 2014. The conflicts between professionals and patients had led to some losses (Widjaja, 2020) mixed picture of the economic costs of litigation and the social cost of litigation is the most common example. Based on a report made in 2013, in the United States, litigation costs were estimated at 2.4% of total national health care spending. Of this, only about 30% to 45% of the money involved in the claim is returned to the plaintiff. Social costs can include loss of trust, confidence and respect for the medical profession and confidential information in medical litigation. In the patient's medical record to the public.

Mediation is one of the Alternative Dispute Resolution (ADR) methods used in setting healthcare malpractice claims. It refers to the voluntary and confidential process in the which parties seek to find practical solutions to Reviews their dispute (Cheng & le Roux-Kemp, 2017). Whereas (Li et al., 2018) said that mediation is a voluntary and confidential conflict resolution process in which the three neutral parties, the mediator, work with the parties to find mutually agreeable solutions to the disputes at hand. This is useful when the relationship between the parties is strained, and direct communication reaches a dead end. In the lawsuit, the type of mediation was intended for several cases, including surgery (46.2%), treatment (21.0%), and diagnostics (13.9%). In the lawsuits assessed, the most common types of side effects were surgery (39.3%), medication (19.1%), and diagnostics (18.6%). Death was the most common outcome in both mediated lawsuits (32.7%) and lawsuits that were judged (41.1%). Permanent injury is the following most common outcome in both mediated lawsuits (24.8%) and judged lawsuits (29.1%) (Li et al., 2018)

According to recent research (Sohn et al., 2012), mediation discloses 75% to 90% success in avoiding litigation, \$ 50,000 in cost savings per claim, and a 90% satisfaction rate among plaintiffs and defendants. Significantly shorter settlement times for mediated lawsuits compared to lawsuits in court (for mediation, mean = 13 months (399 days); for decisions, mean = 27 months (817 days); $p < 0.001$). Seventy-five percent of mediated lawsuits took 16 months or less to complete, while 75% of decisions took 17 months or more to complete Li et al. (2018). Seabury et al. reported that on average, doctors in the United States spent nearly 11% of their 40-year career with open and unresolved malpractice claims - major claims took 4.93 years to settle out of court and 6.50 years for court decisions, while mediation and appraisal lawsuits are in our system. According to research results (Cheng & le Roux-Kemp, 2017).

At the time of the survey in November 2015, 55 and 80 emergency nurses were practicing in North Lantau Hospital and Princess Margaret Hospital AED, respectively. A total of 22 practicing ENPs were identified in the 5 different AEDs.⁷⁷ During the data collection period, 76 questionnaires were completed and returned from the AEDs of North Lantau Hospital and Princess Margaret Hospital, while 14 ENPs took part in the study. Therefore, a total of 90 questionnaires were completed, and the overall response rate was about 57 per cent. 82 per cent of the participants believed that the process was helpful to settle healthcare disputes. In this sample, nurses consistently reported that mediation was "helpful in clarifying issues emotions" (= 88 per cent), could offer an opportunity to "explain respective positions" (= 82 per cent) and could provide "confidentiality to explore and resolve" (= 85 per cent). The majority of participants (= 93 per cent) believed that privacy was important in dispute resolution probably because it limits the adverse effects of negative publicity and would help protect their reputation.

Wang et al.(2020) stated that among the cases analyzed, 1995 (41%) were resolved by agreement through mediation, 1030 closed with reconciliation, 559 closed by referring to the court, and 1017 cases were withdrawn after mediation. Five hundred and five Yinao's cases were resolved with the help of mediators, mediation resolved about 90% of medical disputes under the current mechanism, while more police support was needed to address Yinao. With an average mediation compensation of around CNY 60, 200 and an average mediation length of 87 days.

The longer time it took to achieve a resolution and more money claimed by patients was associated with lower resolution success rates ($p < 0.01$) and higher compensation rates ($p < 0.01$). In Indonesia. Mediation is apart from being instructed by laws, statutory regulations and other regulations. Mediation finds its foundation in local Indonesian culture. Researchers strongly recommend using mediation as a means to resolve medical disputes in Indonesia (Widjaja, 2020)

CONCLUSION

Mediation is suitable as the best method, method and tool to resolve medical disputes mediation can help substantially reduce conflicts between physicians and patients to avoid litigations, thus saving time and money for both parties. Mediation resolves the dispute and preserves the trust in the doctor-patient relationship.

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CONFLICTS OF INTEREST

There is no conflict of interest.

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