



E59 How Italy Deals With the Increase of Medical Malpractice Claims: The Binding Mediation and the Gap in Understanding Between Patient and Physician

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After attending this presentation, attendees will understand some of the legal aspects of a mandatory mediation system recently introduced in Italy regarding medical malpractice litigation, how medical liability claims are handled by the mediator, statistic data collected by the Italian Ministry of Justice, potential benefits for physician-patient relationship, and differences between two examples of claims settled by mediator and court.

This presentation will impact the forensic science community by providing a model to drastically reduce the number of disputes in court and to promote the dialogue between physicians and patients. In fact, the traditional legal system emphasizes the physician-patient relationship and raises behaviors as reticence and retraction, delaying the achievement of the injury compensation and increasing the defensive medicine.

A new Italian law enacted March 21, 2010 enforces parties, in a medical malpractice action, to proceed with mediation before moving forward with the lawsuit. In the event the parties do not proceed with mediation, the court has the duty to suspend trial, ordering them to try to settle the claim through mediation. A fine is ordered to be paid by the party which does not take part in mediation. The law provides that the mediation must be completed within four months after the patient filed the claim, regardless of the achievement of agreement. If parties do not reach an agreement, the mediator can make a proposal on how he/she would settle the claim and, thus the parties can move to court to resolve their disputes. During the trial, the judge could discretionally evaluate the mediator's proposal. The high cost of mediation is split between plaintiffs and defendants and it is calculated regardless the requested amount for injury compensation claimed by patient. The mediation allows patient to hear explanations behind medical errors or complications and to hear a physician express apology. In the current practice, the mediator does not strictly ascertain the physician's fault by the evaluation of standard of care, but rather he/she promotes and facilitates the communication between patient (plaintiff) and physician (defendants) in order to achieve an agreement that meets their wishes. Parties must be assisted by a lawyer. The mediation is not overseen by court nor does the mediator have to be a judge. The mediator could evaluate the opportunity to be supported by a forensic scientist or specialist, charging fees to parties.

Two case studies will be highlighted, the first one settled by mediator and the other one by the court, comparing the dynamics, length, effects (on the patients' and physicians' quality of life), and the modalities of involvement of forensic scientist.

The impact of the new reform in the field of medical malpractice is also evaluated and discussed on the basis of statistic data collected by the Italian Ministry of Justice. The statistic survey was completed on March 31, 2012. The data confirm relevant decrease of medical liability claims in front of courts. Moreover, a widespread skeptical attitude towards mediation was registered. Three main criticisms could be identified: (1) the compulsoriness of mediation; (2) the fact that mediation implies expensive costs for parties (remuneration of mediator, lawyer and forensic scientist) without guaranteeing a good compromise; and, (3) the concern in delaying the achievement of injury compensation in case of lack of agreement.

Overall, taking into account that the priority in medical malpractice litigation should be reduce the gap in understanding between physicians and patients, the Italian experience provides a practical example, which deserves international attention in order to discuss and argument whether communication approach could be incentivized by a binding system.

Medical Malpractice Litigation, Mandatory Mediation, Physician-Patient Relationship